



The Legal 500 Country Comparative Guides

United Kingdom: Energy - Oil & Gas

This country-specific Q&A provides an overview of energy - oil & gas laws and regulations applicable in United Kingdom.

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Contributing Firm



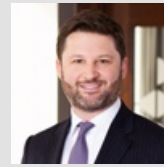
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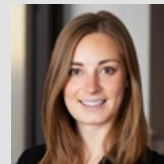
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1. Does your jurisdiction have an established upstream oil and gas industry? What are the current production levels and what are the oil and gas reserve levels?

The UK has a well-established upstream oil and gas industry, with commercial production from the UK Continental Shelf (UKCS) since the 1960s. An average of 1.7 million barrels of oil equivalent (boe) were produced per day in the UK in 2019.

Although UK production has been in gradual decline since its peak in 1999 (for crude) / 2000 (for natural gas), the UK's independent regulator, the Oil and Gas Authority (**OGA**), estimates that overall remaining recoverable reserves and resources range from 10 to 20 billion plus boe, as at the end of 2019. The OGA's estimate for proven and probable (2P) UK reserves as at end 2019 is 5.2 billion boe, slightly lower than as at end 2018 despite reserve additions. On the basis of current production projections, the OGA's view is that remaining reserves could sustain production from the UKCS for another 20 years or more.

2. How are rights to explore and exploit oil and gas resources granted? Please provide a brief overview of the structure of the regulatory regime for upstream oil and gas. Is the regime the same for both onshore and offshore?

The primary legislation relating to the exploration and development of hydrocarbon resources is the Petroleum Act 1998 (**Petroleum Act**). The Petroleum Act governs all offshore licensing. It also governs onshore licensing, except as follows:

- onshore licensing in Northern Ireland is subject to a separate regime; and
- onshore licensing in Scotland and Wales has been devolved to those governments under the Scotland Act 2016 and the Wales Act 2017.

The Petroleum Act vests all rights to "search for, bore and get" crude oil and natural gas resources in the Crown. Regulatory responsibility on behalf of the Crown lies with the Department for Business, Energy and Industrial Strategy (**BEIS**), but much of its authority is exercised by the OGA. Under the Energy Act 2016, the OGA was formally granted various functions and powers relating to the administration and enforcement of licences. A Framework Document governs the relationship between BEIS and the OGA.

Licences are awarded by the OGA through competitive licensing rounds that are held almost annually in respect of offshore licences, and less frequently in respect of onshore licences. The most recent offshore licensing round (the 32nd) was held in July 2019 (with licence awards made in September 2020) and the most recent onshore licensing round (the 14th) was held in 2014. On occasion, there are separate "out of round" offers and awards of licences.

3. What are the key features of the licence/production sharing contract/concession/other pursuant to which oil and gas companies undertake oil

and gas exploration and exploitation?

The UK has offshore licences called Seaward Production Licences and Seaward Exploration Licences. Onshore licences are called Landward Production Licences and Landward Exploration Licences. The OGA regulates, influences and promotes the UK's oil and gas industry, including licence holders.

Licences can be held by a single company or by several working together, but in legal terms there is only ever a single licensee however many companies it may comprise. All companies on a licence share joint and several liability for obligations and liabilities that arise under it.

Offshore production licences are issued after a competitive process, usually a licensing round. They give licence holders exclusive rights to exploration and production within the licence area. They typically run for three successive terms. The initial term is usually for exploration activities such as geotechnical studies and geophysical data reprocessing, undertaking seismic surveys and acquiring other geophysical data, and drilling wells. The licence will expire at the end of its initial term unless the licensee has completed an agreed initial term work programme and surrendered a fixed amount of acreage (generally 50%). The second term is for further exploration and appraisal work. The licence will expire at the end of its second term unless the OGA has approved a development plan. The third term is intended for production.

Offshore exploration licences are intended for exploration only and do not confer production rights. They are typically for seismic contractors and others who wish to gather data, on a non-exclusive basis, to sell rather than use themselves. They may also be used for production licence holders wishing to explore outside the areas where they hold production licence rights. Offshore "innovate licences" are also available, which offer greater flexibility in the durations of the initial and second terms.

Licences incorporate terms, referred to as the "model clauses", which are set out in statutory regulations. Licensees must also comply with generally applicable law, including the obligations arising under the legally binding Maximising Economic Recovery Strategy for the UK (see question 18 for further detail on the strategy).

4. Are there any unconventional hydrocarbon resources (such as shale gas) being exploited and is there a separate regulatory regime for unconventional?

Shale gas discoveries have been made in the UK, but are not currently being exploited.

In addition to the usual consents required for onshore oil and gas development, any operator intending to undertake hydraulic fracturing for shale must obtain a Hydraulic Fracturing Consent (**HFC**) issued by the Secretary of State for BEIS, which is only issued once a list of pre-conditions are satisfied. HFCs were introduced under the Infrastructure Act 2015 (by way

of amendment to the Petroleum Act 1998), as an additional step to the existing onshore oil and gas regulatory and permitting regime.

On 2 November 2019, the UK government announced that it would take a presumption against issuing any further Hydraulic Fracturing Consents in England, effectively creating a moratorium on shale development. The government has confirmed that the moratorium will remain in place until “compelling new evidence” can be provided to address concerns around the accuracy of predicting the probability or magnitude of earthquakes linked to fracking operations. The licensing of onshore oil and gas has been devolved to Scotland and Wales. The Scottish Government confirmed its final policy position of no support for unconventional oil and gas in October 2019, and the Welsh government confirmed that fracking would not be supported in Wales in December 2018.

Prior to its November 2019 announcement, the UK government was encouraging shale gas exploration, and had introduced a number of measures to support such exploration, including:

- sharing the proceeds of the wealth generated with communities affected;
- proposing legislation to change planning law and policy to facilitate shale development; and
- setting up a new Shale Environmental Regulator in 2018.

5. Who are the key regulators for the upstream oil and gas industry?

The key regulator for the upstream oil and gas industry is the OGA. The OGA is a government-owned company and exercises almost all of the regulatory functions relevant to the upstream industry. It was granted these powers under the Energy Act 2016. However, BEIS remains the government department with regulatory control over the industry and is responsible for the overall policy and legislative framework within which the OGA operates. BEIS has also retained responsibilities relating to the application of environmental legislation (carried out through a unit called the Offshore Petroleum Regulator for Environment and Decommissioning (**OPRED**)) and in respect of decommissioning activities. The relationship between BEIS and the OGA is governed by a Framework Document.

Other regulators also play important, but more specific, roles - the Health and Safety Executive (**HSE**) is responsible for health and safety matters, the Maritime and Coastguard Agency have authority in respect of emergency response and the Offshore Safety Directive Regulator (a partnership of HSE and OPRED) is responsible for the purposes of the EU directive relating to safety.

6. Is the government directly involved in the upstream oil and gas industry? Is there a government-owned oil and gas company?

The government does not directly participate in the upstream oil and gas industry, other than

having an economic interest in the development of oil and gas by collecting tax revenues (see question 9). The UK does not have a government-owned oil and gas company; all oil and gas development is carried out by privately owned or foreign-state owned companies under the licensing regime described in question 2.

7. Are there any special requirements for or restrictions on participation in the upstream oil and gas industry by foreign oil and gas companies?

In order to apply for a licence, a company must satisfy the OGA that it has a place of business within the UK, which will be satisfied if the company (i) has a staffed presence in the UK; (ii) is registered at Companies House as a UK company; or (iii) has a UK branch of a foreign company registered at Companies House.

In addition, there have been some recent legislative proposals which are relevant in the context of foreign participation in the upstream oil and gas industry. In July 2018 the government published a White Paper setting out proposals to strengthen its powers to scrutinise certain transactions and projects on national security grounds. After receiving responses to its consultation, the government published its response to the White Paper in November 2020 alongside a draft National Security and Investment Bill. The Bill sets out a regime under which “mandatory” notification of certain transactions (including direct and indirect acquisitions) within specified sectors. Following notification or “call-in” of a qualifying transaction by the government, a full national security assessment may be made, which may result in the transaction being blocked or allowed subject to certain conditions. The precise sector definitions will be subject to further government consultation, but the energy sector has already been flagged as a key concern, in particularly transactions which involve ownership or control of “significant” upstream petroleum infrastructure.

8. What are the key features of the environmental and health and safety regime that applies to upstream oil and gas activities?

In light of the North Sea Piper Alpha, and Gulf of Mexico Deepwater Horizon, disasters in 1988 and 2010 respectively, the UK has a stringent environmental and health and safety regime.

The key features of the environmental regime are to protect the land, air, and water and marine environments, including through the use of environmental impact assessments (**EIAs**) which may be required before operations are authorised.

OPRED is responsible for implementing offshore environmental legislation. Onshore environmental compliance is regulated by the Environment Agency (**EA**) in England, Natural Resources Wales (**NRW**) in Wales and the Scottish Environment Protection Agency (**SEPA**) in Scotland.

The HSE is Britain’s national regulator for workplace health and safety. The principle

underpinning the regime is that all workers have a right to work in places where risks to their health and safety are properly controlled, including through risk assessments, training, and insurance. HSE is an executive non-departmental public body, sponsored by the Department for Work and Pensions. HSE's Energy Division (**ED**) is responsible for implementing health and safety legislation for oil and gas operations. OPRED and HSE work closely together.

The Offshore Safety Directive Regulator is the Competent Authority responsible for overseeing industry compliance with the EU Directive on the safety of offshore oil and gas operations. The Directive was published following the Deepwater Horizon disaster in the Gulf of Mexico.

Central to the regime is the requirement to have a "safety case" in place that demonstrates the ability and means to control major accident risks effectively and have it accepted by HSE.

9. How does the government derive value from oil and gas resources (royalties/production sharing/taxes)? Are there any special tax deductions or incentives offered?

The government derives revenue from oil and gas resources through the application of various taxes. There are no royalties and nor is there any form of production sharing. The taxes that apply are as follows:

- Ring Fence Corporation Tax (**RFCT**) – RFCT is applied to the profits of oil and gas activities in the UK in place of corporation tax (which would otherwise apply). These profits are "ring fenced" as a separate trade such that only losses relating to oil and gas activities (and not losses from any other form of activity) can be set off against the profits from those oil and gas activities. Various deductions are permitted, including in respect of capital expenditure, research and development and decommissioning. For some technically challenging fields there are various other "field allowances" available as a form of tax incentive for their development. The current rate of RFCT is 30%.
- Supplementary Charge – The Supplementary Charge is in addition to the RFCT rate as was designed to prevent "windfall profits" for oil and gas companies. The rate has been amended over time and is currently 10%.
- Petroleum Revenue Tax (**PRT**) – PRT is a further tax on profits in addition to RFCT and the Supplementary Charge, but only applies to fields where the development was approved before 16 March 1993. PRT was permanently zero-rated from 1 January 2016, but was not abolished, and remains relevant, because some companies still require access to their tax history for carrying back trading losses and decommissioning costs.

In addition to these taxes there are also annual rental fees payable, calculated by reference to the area of the licence. These fees are on an increasing scale of rates per square kilometre, in order to promote relinquishment of areas that licensees are not actively exploring or developing.

10. Are there any restrictions on export, local content obligations or domestic supply obligations?

In general, there are no such restrictions or obligations. However, the Government does have emergency powers under the Energy Act 1976, which it can use to control supply and demand of petroleum products, although the use of these powers is reserved for exceptional circumstances where there is a severe threat to fuel or other energy supplies.

11. Does the regulatory regime include any specific decommissioning obligations?

Decommissioning offshore oil and gas installations and pipelines is governed through the Petroleum Act 1998. The UK's international obligations on decommissioning are governed principally by the 1992 Convention for the Protection of the Marine Environment of the North East Atlantic (OSPAR Convention). OPRED is the regulator with responsibility for decommissioning. The regime is underpinned by the general principles that decommissioning should aim to achieve a clear sea bed (acknowledging that this will not always be achievable given the complexities involved) and that the "polluter pays", consistent with domestic UK law and international obligations.

Operators, licence holders, owners of offshore installations and pipelines, co-venturers, and their affiliated entities, as well as former owners and their affiliates, can be made jointly and severally liable to decommission offshore installations and pipelines. Regulatory approvals are required before decommissioning is carried out.

The UK government has the power to require those liable to carry out decommissioning to provide financial security to support their decommissioning obligations. Licence holders and others with potential liability to carry out decommissioning customarily enter into decommissioning security agreements to make provision for future decommissioning liabilities, although entering into such agreements is not a regulatory requirement.

Tax relief is available in respect of the costs of decommissioning once those costs are incurred. The UK Government has made available decommissioning relief deeds (DRDs) to industry participants to provide certainty as to the future availability such tax relief.

12. What is the regulatory regime that applies to the construction and operation of offshore and onshore oil and gas pipelines?

The construction and operation of offshore pipelines is governed by the Petroleum Act. Under the Petroleum Act, a Pipeline Works Authorisation (**PWA**) issued by the OGA is required for the construction of a pipeline. The PWA is typically awarded to the licensee that has been appointed as the operator of the licensee group and permits the licensee group to use the pipeline.

Onshore pipelines are governed by the Pipe-lines Act 1962 (**Pipe-lines Act**) and the regulatory and consent matrix is more complex. Consultation is required with the local authorities, landowners and occupiers that will be affected by the proposed pipeline and, in most cases, a construction authorisation under the Pipe-lines Act will be required. For some pipelines, a development consent under the Planning Act 2008 may instead be necessary.

13. What is the regulatory regime that applies to LNG liquefaction and LNG receiving terminals? Are there any such terminals in your jurisdiction?

The UK imports LNG through three terminals, the Isle of Grain terminal near Rochester and the Dragon and South Hook terminals in Milford Haven. The UK does not export LNG, and consequently there are no LNG liquefaction plants.

The regulatory framework for onshore LNG regasification and conventional importation is set out in the Gas Act 1986. The requirements reflect the Third EU Gas Directive and the Gas (Third Party Access) Regulations 2004 (**TPA Regulations**). These provide for regulated third-party access based on published terms and non-discriminatory prices, although an exemption is available where the use of the facility by other users is not necessary for the operation of an economically efficient gas market or where certain specific requirements are met, including where the facility will increase the UK's security of supply and where the level of risk is such that the investment needed to construct the facility (or new capacity) would not be available in the absence of an exemption. All of the UK's existing LNG import terminals are exempt from the TPA Regulations. New onshore LNG development proposals will require development consent, issued by the relevant determining authority, which is likely to be the Infrastructure Planning Unit within the Planning Inspectorate.

In relation to offshore LNG facilities, and specifically the unloading and regasification of LNG, the relevant framework is set down in the Energy Act 2008, which was introduced to update the existing legislative framework in the UK to reflect the changed nature of the UK energy market, and is intended to facilitate the future development of offshore fixed or floating LNG receiving terminals. The developer of any new offshore LNG terminal will need both a licence to unload gas and a lease of the seabed from the Crown Estate (the body that manages the Crown's property rights).

The construction and operation of onshore and offshore LNG facilities must also comply with the environmental and health and safety requirements which are generally applicable to petroleum installations.

14. What is the regulatory regime that applies to gas storage (not LNG)? Are there any gas storage facilities in your jurisdiction?

Developers must obtain a licence from the OGA for offshore gas storage, and a grant of the appropriate rights from the Crown Estate. General terms and conditions (model clauses)

applicable to such licences are set out in regulations issued under the Energy Act 2008.

Onshore gas storage is permitted and regulated under the Gas Act 1986 (**Gas Act**) and under planning legislation such as the Planning act 2008. Rights to the relevant land are required to be obtained. Negotiated third party access rights are provided for under the Gas Act, although exemptions can be sought.

Gas storage is also regulated by generally applicable environmental and health and safety law.

The UK's largest gas storage facility is the Stublach facility operated by Storengy which stores gas in salt caverns in the Cheshire basin.

15. Is there a gas transmission and distribution system in your jurisdiction? How is gas distribution and transmission infrastructure owned and regulated? Is there a third party access regime?

The gas transmission system in Great Britain is a network of high pressure gas pipelines known as the national transmission system (NTS), owned by National Grid. Distribution occurs through lower pressure, smaller, regional gas distribution networks (**GDNs**) or even smaller networks built to service industrial parks or housing developments. Ownership of the GDNs rests with a concentrated number of companies and owners of the smaller industrial/housing networks are known as independent gas transporters.

This system is regulated by the Office of Gas and Electricity Markets (**Ofgem**) under the authority of the Gas and Electricity Markets Authority (**GEMA**). The regime provides for third party access in a highly regulated fashion, including in respect of calculating transmission and connection charges.

The transmission and distribution system in Northern Ireland is regulated separately, by the devolved government in Northern Ireland.

16. Is there a competitive and privatised downstream gas market or is gas supplied to end-customers by one or more incumbent/government-owned suppliers? Can customers choose their supplier?

In Great Britain, gas entering the wholesale gas market (including via pipelines and LNG imports) has one price for gas irrespective of its source. This is called the National Balancing Point price of gas and is usually quoted in price per therm of gas. In the wholesale gas market, gas transporters and shippers have to abide by conditions laid out in the industry-governed Uniform Network Code, as well as relevant UK and EU legislation and conditions of the various licences.

The retail market is privatised and has been competitive since the late 1990s. Consumers can choose their gas supplier from a selection of competitive and independent market participants. Suppliers buy gas from the wholesale market or from gas producers and deliver that gas to end users. Suppliers set their own prices. Certain price caps exist.

17. How is the downstream gas market regulated?

The retail gas market in Britain is regulated by the Office of Gas and Electricity Markets (**Ofgem**) which is an independent National Regulatory Authority. Ofgem's priority is to protect customers' interests, including through the promotion of effectively functioning competitive markets.

Ofgem is governed by GEMA whose members are appointed by the Secretary of State at BEIS. GEMA's powers and duties are largely provided for in statute, such as the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Acts of 2004, 2008, 2010 and 2011) as well as ruling European Community legislation in respect of energy regulation.

18. Have there been any significant recent changes in government policy and regulation in relation to the oil and gas industry?

The current principal objective of the OGA is to "maximise the economic recovery of UK petroleum". The OGA's strategy relating to that objective came into force in March 2016.

In May 2020, the OGA launched a consultation process in relation to potential amendments to that strategy. The consultation acknowledged the shift in public and industry opinion in relation to climate change and proposed a change to its central obligation in order to require licensees to assist in meeting a "net zero" target, including by reducing emissions as far as possible (from sources such as flaring and venting and power generation) and supporting carbon capture and storage projects.

Responses to the consultation were provided by various industry participants in July 2020. As at November 2020, the OGA is yet to make an announcement as to any decisions taken in relation to the consultation.

19. What key challenges have been identified by the government and/or industry in relation to your jurisdiction's oil and gas industry? In this context, has the Covid-19 pandemic had an impact on the oil and gas industry and if so, how has the government and/or industry responded to it?

There are three key challenges that have been identified by the government and industry in relation to the oil and gas sector in the UK:

- Balancing the objective of maximising economic recovery of petroleum with climate change objectives and obligations – This challenge has culminated in the OGA’s consultation paper on this matter, issued in May 2020 (see question 18).
- Brexit – As at November 2020, it remains unclear whether a trade agreement will be reached between the UK and the EU. Accordingly, there is uncertainty relating to the impacts of Brexit upon the end of the transition period on 31 December 2020, including whether tariffs may be applied or if restrictions could be imposed in relation to the importation of goods and services.
- Covid-19 – As has been the case across most industry sectors, the oil and gas industry has been impacted by the covid-19 pandemic. This has affected global demand for hydrocarbons as well as impacting supply chains and physical operations.

20. Are there any policies or regulatory requirements relating to the oil and gas industry which reflect/implement the global trend towards the low-carbon energy transition?

In 2019, following Parliament’s declaration of a ‘climate emergency’ and recommendations from the independent Committee on Climate Change (CCC), the government legislated for net zero greenhouse gas emissions by 2050. One of the principal ways in which the UK proposes to meet the 2050 net zero target is by transitioning to an increased use of renewable energy. Other key measures include managing declining North Sea production to maximise value, minimising greenhouse gas emissions and reducing reliance on hydrocarbon imports.

Oil and gas currently accounts for around 75% of the UK’s total energy needs, and the OGA has emphasised in its 2020 consultation (described in question 18) that, although the UK will be transitioning to net zero, for the foreseeable future, oil and gas will remain a crucial part of the UK’s energy mix and that the oil and gas industry’s capital, skills and technology will be vital in achieving the net zero target.

A government Energy White Paper is expected to be published in the autumn of 2020 by BEIS, having previously been due in the summer of 2019 and then again by the end of spring 2020. The White Paper is expected to provide an insight into the government’s plan for the UK to achieve net zero by 2050, by promoting the use of technologies such as “blue” hydrogen and carbon capture and storage, alongside renewable technologies, to support a green recovery.