



Energy Act 2016

2016 CHAPTER 20

PART 2

FURTHER FUNCTIONS OF THE OGA RELATING TO OFFSHORE PETROLEUM

VALID FROM 01/10/2016

CHAPTER 2

DISPUTES

19 Qualifying disputes and relevant parties

- (1) For the purposes of this Chapter, a dispute is a qualifying dispute if—
 - (a) the dispute relates to qualifying issues, and
 - (b) the parties to the dispute include at least one relevant party.
- (2) In this Chapter, “qualifying issues” means issues which—
 - (a) are relevant to the fulfilment of the principal objective, or
 - (b) relate to activities carried out under an offshore licence, and are not the subject of a section 82 application.
- (3) If a dispute relates in part to qualifying issues and in part to other issues, the dispute is a qualifying dispute only to the extent that it relates to the qualifying issues.
- (4) For the purposes of subsection (2), an issue is the subject of a section 82 application if—
 - (a) an application has been made under section 82(4) of the Energy Act 2011 (acquisition of rights to use upstream petroleum infrastructure) in connection with the issue, and
 - (b) the OGA has made a decision under section 82(6)(a)(iii) of that Act to consider the application further.

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- (5) In this Chapter “relevant party” to a dispute means a party to the dispute who is a relevant person.

20 Reference of disputes to the OGA

- (1) A relevant party to a qualifying dispute may refer it to the OGA.
- (2) A reference under this section is to be made in such manner as the OGA may require.
- (3) Requirements under subsection (2) as to the manner in which a reference is to be made—
- (a) may make different provision for different cases;
 - (b) are to be imposed, withdrawn or modified by notice published in such manner as the OGA considers appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in the OGA's opinion, are likely to be affected by it.

21 Action by the OGA on a dispute reference

- (1) On a reference of a dispute made under section 20, the OGA must decide whether the reference is to be—
- (a) rejected,
 - (b) adjourned to enable further negotiation between the parties to the dispute, or
 - (c) accepted (see section 23).
- (2) The OGA must issue guidance about the matters to which it will have regard when making a decision under subsection (1).
- (3) As soon as reasonably practicable after the OGA has made a decision under subsection (1), it must give notice in writing stating—
- (a) its decision,
 - (b) the reasons for the decision, and
 - (c) the date of the decision,
- to each relevant party to the dispute, and to any other parties to the dispute who have contributed (whether by providing information or attending meetings) to the OGA's decision-making process.
- (4) The grounds on which the OGA may reject a reference include, but are not limited to, grounds that—
- (a) the dispute is not a qualifying dispute;
 - (b) the party that referred the dispute is not a relevant party;
 - (c) the reference is frivolous or vexatious;
 - (d) there are more appropriate means available for resolving the dispute;
 - (e) the dispute is not sufficiently material to the fulfilment of the principal objective to warrant, in the circumstances, its consideration by the OGA;
 - (f) the OGA considers it unlikely that, in the circumstances, it would be able to make a satisfactory recommendation in respect of the dispute.
- (5) Where the OGA adjourns a reference of a dispute—
- (a) it must set a timetable in accordance with which relevant parties to the dispute are to conduct further negotiations and revert to the OGA,

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- (b) it may give directions with which relevant parties to the dispute are to comply during the adjournment, and
 - (c) it must, when the relevant parties revert to it following the adjournment, make a further decision under subsection (1) in respect of the reference.
- (6) Requirements imposed by the OGA on relevant parties—
- (a) under subsection (5)(a), or
 - (b) by directions under subsection (5)(b),
- are sanctionable in accordance with Chapter 5.

22 Power of the OGA to consider disputes on its own initiative

- (1) The OGA may decide, on its own initiative, to consider a qualifying dispute (see section 23).
- (2) If the OGA decides to consider a qualifying dispute under this section, it must notify all parties to the dispute.

23 Procedure for consideration of disputes

- (1) This section applies where the OGA—
 - (a) accepts a reference of a dispute under section 21(1), or
 - (b) decides to consider a dispute under section 22(1).
- (2) The OGA must—
 - (a) consider the dispute, and
 - (b) make a recommendation for resolving it.
- (3) The OGA—
 - (a) must draw up a timetable for performing its duties under subsection (2), and
 - (b) may give directions with which the relevant parties to the dispute are to comply in order to enable the OGA to carry out those duties.
- (4) The OGA's recommendation must be one which it considers will enable the dispute to be resolved in a way which best contributes to the fulfilment of the principal objective whilst having regard to the need to achieve an economically viable position for the parties to the dispute.
- (5) The procedure for considering the dispute and making a recommendation is the procedure that the OGA considers most appropriate.
- (6) Where the OGA makes a recommendation under this section, the OGA may publish—
 - (a) the recommendation or any part of it;
 - (b) a summary of the recommendation or of any part of it.
- (7) Before publishing anything under subsection (6), the OGA must give an opportunity to be heard to each relevant party to the dispute.
- (8) The OGA must issue guidance about the matters to which it will have regard when performing its duties under this section.
- (9) Requirements imposed by directions under subsection (3)(b) are sanctionable in accordance with Chapter 5.

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24 Power of the OGA to acquire information

- (1) The OGA may require a relevant party to a dispute to provide it with such information as may be required by the OGA for the purposes of—
 - (a) deciding whether to reject, adjourn or accept a reference of the dispute under section 21(1),
 - (b) setting a timetable in respect of an adjournment of a reference of the dispute under section 21(5),
 - (c) assessing progress of further negotiations during such an adjournment,
 - (d) making a decision under section 22(1) to consider the dispute on its own initiative, or
 - (e) considering the dispute and making a recommendation under section 23(2), subject to subsection (3).
- (2) A person required to provide information under subsection (1) must provide it in such manner and within such reasonable period as may be specified by the OGA in the request for information.
- (3) Information requested under subsection (1) may not include items subject to legal privilege.
- (4) Requirements imposed under this section are sanctionable in accordance with Chapter 5.

25 Power of the OGA to require attendance at meetings

- (1) The OGA may require a relevant party to a dispute to send an individual to act as its representative at a meeting with the OGA for the purpose of participating in proceedings relating to—
 - (a) whether a reference of the dispute is to be rejected, adjourned or accepted under section 21(1),
 - (b) whether the OGA is to make a decision to consider the dispute under section 22(1), or
 - (c) the consideration of the dispute and the making of a recommendation under section 23(2).
- (2) The OGA may require that the individual sent to attend the meeting has the necessary knowledge and expertise for the purpose of participating in the proceedings in question.
- (3) The OGA must give reasonable notice of any meeting at which attendance is required under this section.
- (4) Requirements imposed by the OGA on relevant parties under this section are sanctionable in accordance with Chapter 5.

26 Appeals against decisions of the OGA: disputes

- (1) This section applies to any decision of the OGA to which effect is given by one of the actions set out in an entry in column 1 of the table below.
- (2) A person affected by any such decision may appeal against it to the Tribunal—
 - (a) on the grounds that the decision was not within the powers of the OGA, or

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(b) on the grounds set out in the corresponding entry in column 2 of the table.

(1) Action by the OGA

(2) Grounds for appeal

The setting of a timetable under section 21(5)(a).

The timetable is unreasonable.

The giving of directions under section 21(5)(b).

A direction, or a number of directions taken together, are unreasonable.

The giving of directions under section 23(3)(b).

A direction, or a number of directions taken together, are unreasonable.

The imposition of a requirement to provide information under section 24(1).

Either—
(a) the information requested is not relevant to the dispute in question, or
(b) the period specified under section 24(2) is unreasonable.

The imposition of a requirement under section 25(1) or (2) in relation to attendance at a meeting.

Either—
(a) the requirement to attend the meeting is unreasonable,
(b) reasonable notice of the meeting was not given, or
(c) the requirement as to the knowledge and expertise of the person attending the meeting is unreasonable.

(3) On an appeal under this section the Tribunal may—

- (a) affirm, vary or quash the decision under appeal,
- (b) remit the decision under appeal to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate, or
- (c) substitute its own decision for the decision under appeal.

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