

Decommissioning Oil and Gas Wells: the Legal Dimension

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Overview

- The legal position in international law
- The legal position in domestic law
- Guidance Notes – OPRED
- Petroleum licences – NSTA
- Does everything fit together?
- What happens if there is a leak post-close out?
- What else might we need to think about?

The basic legal position – international

- International law (especially UNCLOS 1982)
 - confers sovereign rights on coastal states to explore for and exploit natural resources on and under the continental shelf
 - allows coastal states to place installations on the continental shelf
 - requires coastal states to remove them when redundant to ensure the safety of navigation, etc. (note role of regional arrangements e.g. OSPAR)
 - is silent with respect to the question of plugging and abandoning wells...

The basic legal position – domestic

- Petroleum Act 1998, Part IV
 - principally concerned to identify **who** will be responsible for preparing an **abandonment programme** (section 29 notice)
 - principally concerned with the decommissioning of **offshore installations** and **submarine pipelines**
 - “Offshore installations” is defined in a way that does **not** include **wells**
 - the **one reference** to wells relates to the power of the appropriate authority to obtain information about the duty holder’s financial affairs
 - gives Minister power to make regulations re decommissioning of installations and pipelines, a power which has **never** been used...

Guidance Notes – OPRED

- Latest edition – November 2018
- Sets out requirements for [preparation](#) and [implementation](#) of decommissioning programme obligations arising from s29 notice
- Makes few mentions of wells, including:
 - Where a well has been part of the associated infrastructure of an offshore installation at the time a s29 notice was served...[they] [will be obliged to include the decommissioning of that well](#) in the...programme
- [Why](#) the need to incorporate wells in this way?
 - Because not part of definition of “offshore installation” and “regulated under the model clauses incorporated in [individual licences](#)”

What do licences require?

- Model clauses have been **modified** through time, but broadly:
 - the Licensee shall **not** abandon any Well **without the consent** in writing of the Minister
 - the plugging of any Well shall be done in accordance with a specification **approved** by the Minister.... and shall be carried out in an efficient and workmanlike manner
- So, because this is a licensing issue, the **NSTA** is the relevant regulator

NSTA

- Licensees must apply to NSTA for consent to suspend, abandon and conduct other activities on a well and notify the NSTA of these through the [Well Operations and Notifications System](#)
- The NSTA expects wells to be abandoned in a timely manner in accordance with their [Wells Consents Guidance](#)

OPRED again (and OEUK)

- OPRED requires decommissioning programme to include
 - A summary of the [methods](#) used or proposed to be used to plug and abandon the wells
 - This involves detailing [how](#) the P&A will be carried out as well as the timing, and that a [relevant notification](#) will be submitted in support of any works that are to be carried out
 - [Guidelines](#) on well abandonment are available from [OEUK](#) and further details regarding the well P&A process can be found on the NSTA website

Does everything connect coherently?

- Maybe...
- Scenario – [derogation](#) under OSPAR Decision 98/3
- Infrastructure left in place – who has [residual liability](#)?
- OPRED Guidance:
 - The persons/parties who own an installation or pipeline, or are a section 29 holder, at the time of its decommissioning will [remain the owners](#) of any residues and remains [after decommissioning](#)
 - Residual liability remains with the owners [in perpetuity](#)
- So far, so good...

But...

- NSTA Guidance
 - There are limited instances where licensees may apply for derogation from OPRED to leave part of an installation structure in place **which may mean that the well origin and all conductor above the well origin are not removed**
- What does the licence say about any part of a well not removed?
 - All casings and **fixtures** forming part of a Well and left in position at the expiry or determination...of the Licensee's rights in respect of the area...in which that Well is drilled...**shall be the property of the Minister**
- Interesting...

Leak

- Scenario
 - Decommissioning programme **implemented**
 - Close-out report **accepted**
 - **Leak** detected
 - **Liability?**
- Issues
 - **Where** is the gas coming from? Shallow? Reservoir? Does it matter?
 - **Why** is it leaking?
 - **Who** might be held liable?
 - First stop will be **licensee**, but could they seek to **pass that on**?
 - What happens after 10 years? 20 years? Longer?
 - Does **property law** play a role?

Anything else to think about?

- Open letter from NSTA, November 2023, re meeting licence commitments to suspend a well and meet decommissioning obligations in a **timely manner** and expressing concern “at the number of **deferrals** of well decommissioning activities that are being sought”
- Note **legal action** in July 2024 by the Centre for Biological Diversity against the Interior Department in the US over **failure** to ensure wells are decommissioned in a **timely manner**
- Impact of **EPL** given absence of deductions for decommissioning costs
 - “incentives to **delay** decommissioning work”...