

THE OIL & GAS INDUSTRY: THE ROLE OF AN EMPLOYED BARRISTER AND THE CHALLENGES IT FACES

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THE OFFSHORE UPSTREAM OIL AND GAS INDUSTRY

- OGUK VIDEO
- BACKGROUND & NORTH SEA BUSINESS OUTLOOK 2019
- ROLE AN EMPLOYED BARRISTER
- CHALLENGES FACING INDUSTRY

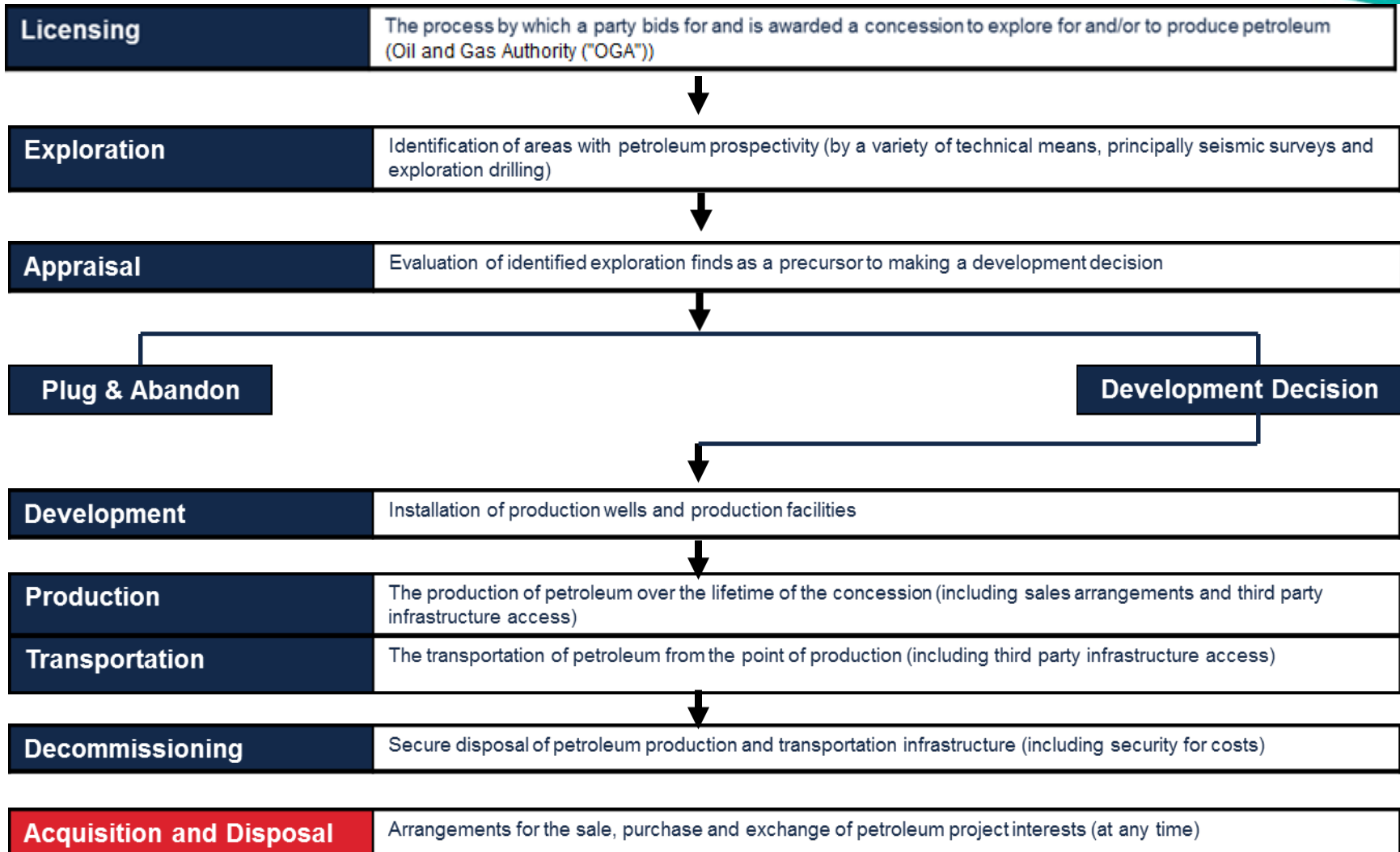
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OIL & GAS LAW & PRACTISE: WHAT WE DO...

Lawyers involved across entire oil and gas field life-cycle...

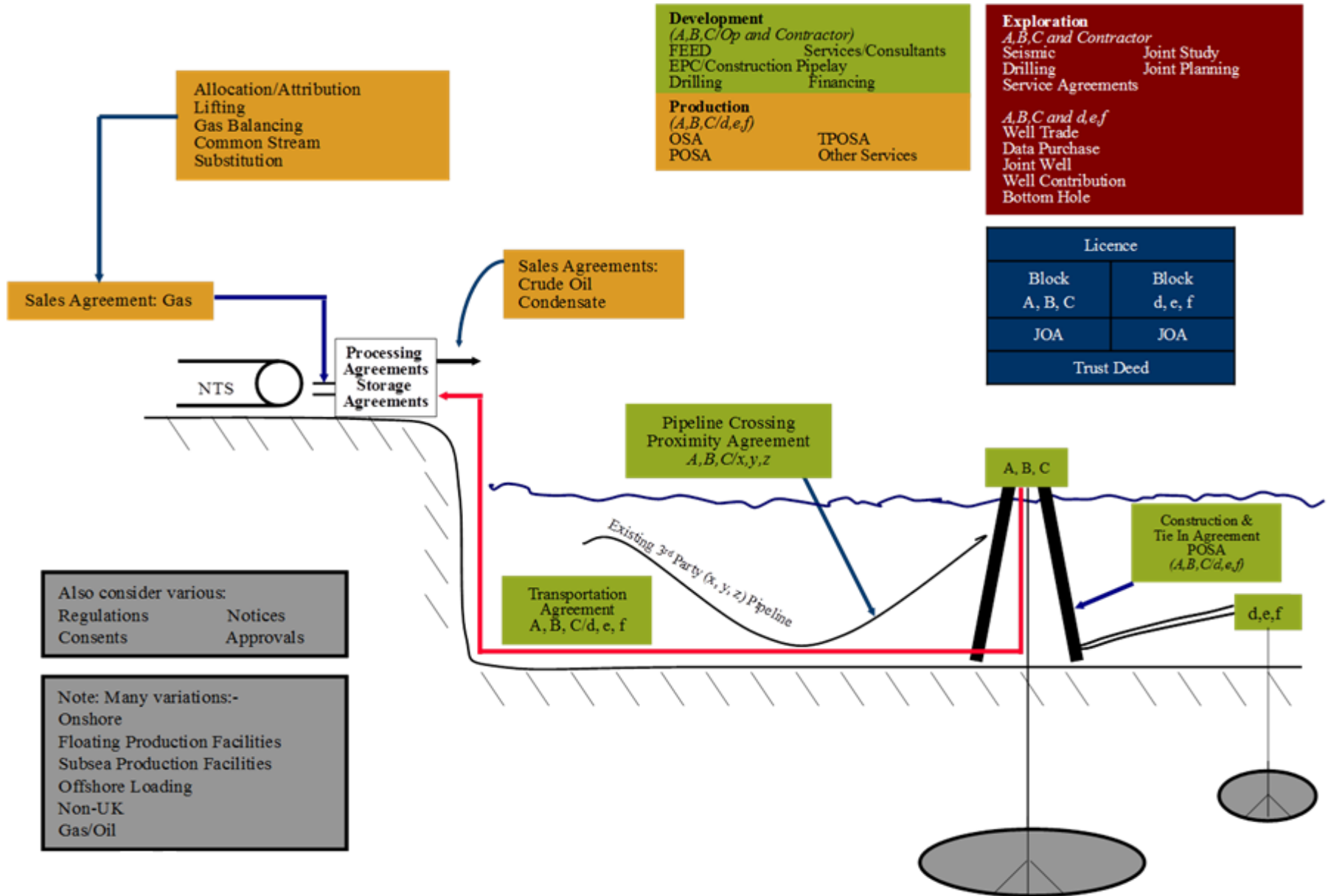
The Lifecycle of a UK North Sea Petroleum Project





- Use of un-incorporated JVs to share risk/technology/huge costs (Mariner field £6bn investment, due onstream this year; Culzean gas field £3bn investment, will deliver 5% of UK gas supply)
- Vast number of commercial contracts required, some probably unique to the sector (“Farmouts”; “DSAs”). Fortunately, we have some model forms to guide us...

UKCS Offshore Production: Some of the Agreements that may be Involved





ADVISING ON UK OFFSHORE OIL AND GAS REGULATORY FRAMEWORK

- Petroleum Act 1998, other Energy Acts, EU laws, secondary legislation
- Licensing regime: joint and several liability
- Regulators: Oil & Gas Authority; Offshore Petroleum Regulator for Environment & Decommissioning



- Contract interpretation a key part of our role.
- If a dispute arises, it will be determined by the Court, Arbitration, Mediation or (for technical issues) by an Expert
- e.g. The “Scottish Power” case: interpretation of clauses in a a long-term (“life of field”) Sale & Purchase Agreement for gas supplied from an offshore oilfield



SCOTTISH POWER –V- BP, **JX NIPPON** & REPSOL [2016]
EWCA Civ 1043

- Gas supply to SP suspended for 3 years due to new oilfield tie-in and subsequent project delay
- SP claimed substantial market price damages for non-delivery of gas
- Gas Sales Agreement contained following clause...



GSA Article 16.6 provided:

- *"The delivery of Natural Gas at the Default Gas Price and the payment of sums due in accordance with the provisions of Clause 16.4 shall be in full satisfaction and discharge of all rights, remedies and claims howsoever arising whether in contract or in tort or otherwise in law on the part of the Buyer against the Seller in respect of underdeliveries by the Seller under this Agreement, and save for the rights and remedies set out in Clauses 16.1 to 16.5 (inclusive) and any claims arising pursuant thereto, the Buyer shall have no right or remedy and shall not be entitled to make any claims in respect of any such underdelivery."*



SP contended (inter alia) that there is a presumption that the parties do not intend to give up rights or claims which the general law gives them: see *Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd* [1974] AC 689; that clear words are required to exclude or limit those rights; Article 16.6 inapplicable in respect of the Seller's breach of contract; Court should adopt a meaning which did not involve Scottish Power losing what may be very valuable rights to claim damages—said in this case to amount to up to £85 million.



Sellers contended that the GSA provided sole and exclusive remedy for failure to supply gas, being the delivery of “Default Gas” at a substantial discount. Such remedy applied in the case of any and all breaches of contract (save in the case of a repudiation of the whole contract)

Note: This interpretation formed part of the project economics for the board sanction of the new field tie-in. So the lawyers were in the hot seat!



- COMMERCIAL COURT (LEGGATT J AS HE THEN WAS) DECIDED IN FAVOUR OF GAS SELLERS. ARTICLE 16.6 (DELIVERY OF GAS AT A DISCOUNT) WAS SOLE REMEDY. DAMAGES AT LARGE NOT AVAILABLE
- AFFIRMED BY COURT OF APPEAL (THANK GOODNESS!)
- CONSEQUENCE: GAS DELIVERED AFTER FIELD RE-STARTED PAID FOR AT (30%) LOWER “DEFAULT GAS” PRICE UNTIL BALANCE EXHAUSTED



OIL & GAS LAW & PRACTISE: WHAT ELSE?

- Transactions/M&A (\$8bn of deals in 2017)
- Compliance issues: GDPR; MSA; ABC
- Stock Exchange rules (if listed) & Company law
- Project finance/Capital markets work
- Competition law
- Sanctions (e.g. US Iranian sanctions affecting North Sea)
- Restructuring & Insolvency (e.g. when oil price collapses)
- Employment law
- Health, Safety & Environment law
- Decommissioning work...

DECOMMISSIONING



Over the next 10 years, forecasts suggest the following will require decommissioning in the UKCS:

- Approx 7,500 km of pipelines
- Around 1,800 wells for plugging and abandonment
- Over 100 platforms
- 619,580 tonnes coming onshore

Over the next 30-40 years, some 470 installations will require decommissioning.

Lawyers involved throughout this process (regulatory advice, providing security for costs, supply chain, regulations etc)

Scale of the Task



Source: Oil & Gas UK



THE EXECUTIVE ROLE

- Legal Dept management
- Executive Committee
- Board member



SOME OF THE CHALLENGES FACING THE INDUSTRY TODAY...

- DECARBONISATION/RENEWABLES: ENERGY TRANSITION
- “ETHICAL INVESTORS” SHUNNING FOSSIL FUEL PRODUCERS
- *“NORWAYS SOVERIGN WEALTH FUND TO DIVEST \$7.5BN OF OIL SHARES” (FT 19/3/19)*
- ENVIRONMENTAL PRESSURES: AVOIDING ANOTHER MACONDO
- MATURE BASIN: AGEING INFRASTRUCTURE
- STATUTORY MAXIMUM ECONOMIC RECOVERY OBLIGATION
- \$200BN INVESTMENT REQUIRED (SEE HANDOUT)
- BREXIT!