

Health and Safety Executive SMT Paper		HSE/SMT/09/33	
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HEALTH AND SAFETY EXECUTIVE
Senior Management Team

Proposed Changes to HSE's Offshore Regulatory Framework

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Issue

1. The attached Paper alerts the Board to the work needed to update the offshore regulatory framework to take account of account of:
 - Changes in the Department for Energy and Climate Change's (DECC) licensing regime for the exploration and exploitation of oil and gas reserves;
 - The impact of the Energy Act 2008, including emerging technologies; and
 - Operational experience.

Timing

2. Routine. The timetables for the work are set out in the Board paper (Appendix 2).

Recommendation

3. That the SMT agrees the attached paper for submission to the HSE Board.

Background

4. See attached draft Board paper.

Argument

5. See attached draft Board paper.

Consultation

6. HID (OSD), LAO, CDS, PFPD, the HSE Emerging Energy Technologies (EET) Programme and the Better Regulation Unit.

Presentation

7. These changes will provide legal underpinning on health and safety for the emerging energy technologies (non-nuclear). The EET Programme is developing a Communication Plan to inform Industry of how it proposes to deal with this regulatory change, including using the Offshore Industry Advisory Committee to distribute key messages. Further reference to communications is in the EET paper SMT/09/35.
8. Robust management of the project risks is required given the potential damage to HSE's reputation if we fail to deliver the regulatory amendments within timescales specified in the Board Paper (Appendix 2) or manage effectively the short term enforcement gap that will apply to wind farms (paragraph 7).

Financial/Resource Implications for HSE

9. The estimated full economic costs for the project are £300,000. The costs of the project are affordable within indicative budget allocations for 2009/10. Costs incurred by CDS for revising and publishing the new guidance will be recovered via HSE's commercial publishing activities.
10. HSE officials will recommend amending existing offshore regulations so that HSE can continue to apply the current regime to any decommissioning work, whether or not there is a current Petroleum Act (PA) licence (see paragraph 3 of Board paper). This will mean that HSE will continue to recover the costs associated with decommissioning work. If the offshore regulations were not updated by October 2010, and decommissioning activities were undertaken by a company that did not have a PA licence, then the HSE costs may not be recoverable.
11. HSE may want to bring some emerging technologies within the offshore permissioning regime longer-term (e.g. natural gas and carbon dioxide storage and recovery). Until HSE knows more about the activities involved, it is difficult to be accurate on the resources required to regulate and the costs HSE could recover. The resource implications, including the potential income generated, will be outlined in the Impact Assessment that will support the consultation package.

Action

12. That the SMT clears the attached Board Paper.

DRAFT – 19 MARCH 2009

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Proposed Changes to HSE's Offshore Regulatory Framework			

Purpose of the paper

1. To alert the Board to forthcoming proposals needed to ensure the offshore regulatory framework continues to operate effectively, in particular taking account of:

- Changes in Department for Energy and Climate Change's (DECC) licensing regime for the exploration and exploitation of oil and gas reserves; and
- The impact of the Energy Act 2008, including emerging energy technologies.

Background

2. The current offshore health and safety regulatory framework was constructed around the hydrocarbon industry and is closely linked with DECC's licensing regime for the exploration and exploitation of oil and gas reserves under the Petroleum Act 1998 (PA) and the EU Hydrocarbons Licensing Directive. In particular, in several sets of HSE offshore regulations, a "dutyholder" is defined with reference to licensees under section 3 of the PA.

3. DECC has said it is unable to renew licences which expire (from September 2010) unless there is production of hydrocarbon associated with the licence. It would not be possible to regulate activities on an installation, including decommissioning, using offshore legislation where a dutyholder is defined with reference to licensee and where a PA licence has expired. Some general Health and Safety at Work etc Act (HSWA) duties would still apply to such activities, due to the HSWA (Application outside Great Britain) Order 2001 (AOGBO).

4. The application of the current offshore legislation to Energy Act topic areas is inconsistent. Some of the emerging energy technologies facilitated by the Energy Act (e.g. storage and recovery of natural gas and carbon dioxide storage) may already be covered by the AOGBO in designated areas of the UK continental shelf (UKCS), when they are activities associated with an offshore installation, but the offshore specific legislation would not apply. However, if such activities are not associated with an installation, and occur elsewhere in the UKCS, they may not be covered by the AOGBO. It is also not clear if the AOGBO covers activities involving natural gas or carbon dioxide in liquid form. Wind and wave farms inside Great Britain's territorial seas are within the scope of the AOGBO, but offshore specific legislation does not apply to such structures. Wind and wave farms beyond our territorial seas are not covered by the AOGBO.

5. The AOGBO, and the offshore specific legislation, also need to be updated to take account of the language in the Energy Act and new industry terminology. The Offshore Division has also identified a number of additional areas where the legislative framework could be updated to take account of operational experience (e.g. requiring a registered place of business in GB and clarifying the status of vessels used for accommodation).

Argument

6. Without an installation licensee, key elements of our offshore legislative framework cannot be applied (see paragraph 3). Many of HSE's offshore regulations are designed to implement Directive 92/91/EEC (mineral extraction). If these offshore regulations did not apply to decommissioning, the UK could also be in breach of its obligations in relation to this Directive.

7. Consent has been given for offshore wind turbines to be constructed beyond our territorial seas and work is likely to start in summer 2009. The proposed timetable for updating the AOGBO (paragraph 10) will result in wind and wave farms outside our territorial seas not being covered by the HSWA until April 2010. This work cannot be accelerated due to the need to consult fully on the changes (formal consultation is necessary as the proposed amendments will have an impact on industry). In the interim, HSE will work with industry and DECC to try to ensure that suitable health and safety standards are maintained wherever such structures are installed, operated and maintained on the UKCS prior to the application of our regulations. This matter is being given urgent consideration by the EET Programme and an assessment of the risks (including to HSE's reputation and to the emerging energy agenda) and the potential remedial measures will be developed as soon as possible.

8. New licences for natural gas, and possibly carbon dioxide, storage and recovery offshore will have no link to the offshore safety regime. HSE will need to update the offshore regulatory framework (see Appendix 1) if it would like the framework to apply to some, or all, of these activities.

9. To enable the offshore health and safety regime to operate effectively, and ensure that duty holders take appropriate steps to prevent major accidents and that HSE has the power to take enforcement action when they do not, officials have concluded that there is a need to make amendments to the definition of 'dutyholder' and 'installation' within relevant offshore regulations. There are additional advantages to HSE in doing this. It removes the offshore regulatory framework's dependency on other Department's legislation. Importantly, the changes will provide the legal underpinning in relation to health and safety for the emerging energy technologies (non-nuclear).

10. HSE officials have started a programme of work that will ensure that:

- The current AOGBO is redrafted by April 2010 to bring wind and wave farms outside our territorial waters into scope of the HSWA, and update the language to be consistent with the Energy Act 2008 and industry terminology;

- The offshore regulatory Framework is updated by October 2010 to ensure that HSE's needs in relation to decommissioning, emerging energy technologies and operational lessons learnt are addressed. This will include consideration of which emerging technologies need to be part of the offshore permissioning regime; and
- Longer-term, offshore leaflets and topic specific guidance are updated.

11. Appendix 2 highlights the timetable for this work.

Financial/Resource Implications for HSE

12. The estimated full economic costs for the project are £300,000. The costs of the project are affordable within indicative budget allocations for 2009/10.

13. It is likely that HSE will want to amend existing offshore regulations so that it can continue to apply the current regime to any decommissioning work, whether or not there is a current PA licence. This will mean that HSE will continue to recover the costs associated with decommissioning work. If the offshore regulations were not updated by October 2010, and decommissioning activities were undertaken by a company that did not have a PA licence, then HSE's costs may not be recoverable (as the offshore legislative framework would not apply).

14. HSE may also want to bring some emerging energy technologies within the offshore permissioning regime longer-term (e.g. natural gas and carbon dioxide storage and recovery).

Action

15. To note the commencement of this work and that additional matters (e.g. to agree consultation packages and the updated legislation) are due to be presented to the Board over the next 18 months.

Paper clearance

16. The HSE Senior Management Team.

**OFFSHORE REGULATIONS THAT MAY NOT APPLY TO INSTALLATIONS
WITHOUT A LICENCE**

Several key HSE offshore regulations only apply to installations for which there is a licensee, licensed under section 3 of the Petroleum Act 1998. The following regulations may not apply to installations where there is no licensee:

- Offshore Installations (Safety Case) Regulations 2005 (SCR)
- Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995 (PFEER)
- Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (MAR)
- Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989
- Offshore Installations and Pipeline Works (First- Aid) Regulations 1989
- Offshore Installations and Wells (Design and Construction, etc) Regulations 1996

**THE TIMETABLE FOR UPDATING THE AOGBO AND THE OFFSHORE
REGULATORY FRAMEWORK**

AOGBO - TIMELINES FOR COMING INTO FORCE ON 1 APRIL 2010

Action	Timing
AOGBO comes into force	1 April 2010
AOGBO laid before Parliament	11 March 2010
Submission to Privy Council's Office	February 2010
HSE Board approves new AOGBO	16 December 2009
3 months consultation on propose AOGBO amendments	July 2009 - September 2009
HSE Board clears AOGBO Consultation Document	24 June 2009

**OFFSHORE REGULATIONS - TIMELINES FOR NEW REGULATIONS COMING
INTO FORCE ON 1 OCTOBER 2010**

Action	Timing
New Offshore Regulations comes into force	1 October 2010
New Offshore Regulations laid before Parliament	10 September 2010
Signature by Minister	20 August 2010
HSE Board approves new Offshore Regulations	June 2010
3 month consultation on proposed Offshore Regulations amendments	December 2009 - February 2010
HSE Board clears Offshore Regulations Consultative Document	21 October 2009