

ANNEX to HSC/03/127

Offshore Installations (Safety Case) Regulations (OSCR) - issues identified

1. Assuming the OSCR are retained, HSE has identified a large number of aspects for potential reform. Many of these are minor (eg updating out of date references), but several are key to maximising the effectiveness of the regulations in driving the safety agenda.

Key issues – options

Duty holders

2. HSE considers that the definition of “operator” in relation to fixed installations is potentially inadequate where responsibilities for organising or supervising operations are divided among several persons. We are considering whether to tighten the definition to target the person with main or overall responsibility or the person who actually carries out the operation (who may be a contractor).
3. The Regulations might also be amended to place specific duties on the concession owner (ie the DTI licensee), who appoints the operator, to ensure their appointees are competent, adequately resourced and carry out their legal responsibilities. This would be similar in some respects to the Norwegian Petroleum Directorate’s approach; and to the Railway Safety Case Regulations (RSCR), which require infrastructure controllers to take all reasonable steps to ensure that train and station operators comply with their own safety cases. If the “operator” were unable to discharge the management and control functions, the duty to do so would revert to the concession owner.
4. Changing the definition of “operator” would mean also changing its use in PFEER and other related regulations. Extending the duties on concession owners could be restricted to safety case matters, but it would be less arbitrary to extend them to all the operator’s legal responsibilities for health and safety.

Safety case acceptance

5. Several connected issues arise from the nature and purpose of the safety case and from the need to demonstrate ALARP. The OSCR do not specifically state the purpose of the safety case, but guidance may be sufficient for this (as with RSCR). The purpose could also be illuminated by redefining “acceptance” (the clarity of the current definition has been criticised) on the lines of the HSC Policy Statement on Permissioning, ie as acceptance of the duty holder’s approach. We are considering how self-contained a safety case should be and whether HSE should be able to take account during assessment of evidence not in the documented case.

6. HSE has considered possible alternatives to formal acceptance (eg the COMAH model of formal conclusions combined with powers to prohibit operation). However, to do without a permissioning element at all would remove the main incentive to comply. We feel it is appropriate to continue to accept the first Operational Safety Case (OSC) for installations new to the UKCS plus any major revisions. Possible modifications might be to provide for acceptance with conditions and/or a development plan (again, as with RSCR). A development plan would go beyond the current OSCR requirement for remedial work by proposing improvements to the safety case and the measures to which it refers.
7. As well as or instead of defining “acceptance”, the revised OSCR might define what is meant by “demonstrating” that risks are ALARP. This could be that either the management system or measures described (separately or together), if implemented, are capable of achieving and maintaining the necessary risk reduction rather than that this reduction has been achieved.

Combined operations and abandonment (decommissioning)

8. A general reform objective is to simplify the OSCR by reducing both the range of types of safety case and the overall number of cases to be submitted. HSE doubts whether specific safety cases are needed for combined operations. Combined Operations Safety Cases (COSC) create significant burdens for both duty holders and assessors, as they are often required at very short notice. COSCs could be replaced by requiring additional generic information in OSCs perhaps with a separate notification (tying in with the review of Regulation 11 – see para 17) and/or an interface document to be agreed between the dutyholders. If operations outside the OSC scope are carried out, a reg 9(2) revision (or equivalent) could be required.
9. Current Abandonment Safety Cases (ASCs) are probably required too early. Activities from cessation of production until preparation for dismantlement could be covered by the OSC or a reg 9(2) revision, as simply a stage in the installation’s life cycle. However, there are special risks involved in dismantlement which justify the need to maintain a specific hold point and safety case acceptance before it starts.

Design Safety Cases (DSCs)

10. Options suggested for DSCs range from strengthening the requirement (eg introducing HSE acceptance as for other safety cases) to doing away with it. HSE considers it is appropriate to retain a submission (without the need for HSE acceptance) to be able to assess the design and the management and verification of the design process – a key to safety. The main problem is in getting the submission point right – too early and there may be insufficient detail, too late and key decisions may be made before HSE can comment. The best approach may be a much less detailed document at an earlier stage – eg when the “Annex B” is submitted to DTI

for field development approval. This could cover an overview of the design concept, process technology to be used and installation layout. The OSC would contain the detail and explain how matters raised at the design stage have been dealt with.

11. We do not favour requiring HSE acceptance because this could be seen as interfering with commercial decisions. The COMAH approach is not to finalise the design until receipt of HSE's conclusions. This is quite close to the present OSCR requirement, which envisages HSE's comments being taken into account in the design. We might seek to clarify/tighten this a little.
12. The DSC requirement applies to "fixed" installations, defined (in effect) to include floating production platforms (FPPs). This is confusing and it may be better to apply it to fixed (literally) installations plus those used primarily for production (no matter how temporarily?). A submission might also be required when non-production units are converted to production – perhaps covering the changes only. Existing FPPs entering the UKCS would still not have to submit a DSC. For these only, additional design details could be required in the OSC.

Review and resubmission

13. The need for revision remains to ensure the safety case is kept up to date. However, the value of the current 3-yearly resubmission has been questioned by both industry and HSE. Removing or reducing this cycle would reduce considerably the burdens of preparation and assessment. HSE favours replacing routine resubmission with regular review by the duty holder (this might be every 3 years or when HSE directs as in RSCR; or every 5 years as in COMAH), leading to revision as appropriate. HSE would want to sample the adequacy of such reviews and to have a new power to direct a revision and its submission to HSE, on the lines of RSCR reg 8. The aim is to ensure that necessary revisions are not overlooked for the lack of a fixed revision date.
14. There may also be scope to introduce criteria for determining which revisions should lead to resubmission (ie those which are "materially different"). This might be covered in guidance, if the current regulation wording is sufficient to cover management changes or downsizing. Implementation of the change which prompts a revision could be made conditional on HSE accepting a revised safety case, if reg 10 (duty to conform with a safety case) is not sufficient.

Operational Safety Cases (OSCs)

15. Many of the issues impact on the details of OSCs and, to some extent, other types of safety case. Some are consequential on other changes, eg to DSCs or COSCs. In addition, HSE considers the schedules should be simplified, to avoid unnecessary detail and to minimise overlaps with PFEER, the Design and Construction Regulations or the Pipelines Safety

Regulations. However they probably need more details of management systems, including interface arrangements, co-operation with other duty holders etc, or managing contractors. Such things are covered by RSCR and are being considered in the review of the Construction Design and Management Regulations. This would complement duty holder definition changes and a new HSE direction power (paras 3 and 14 above).

Secondary issues – options

Notifications and timescales

16. In the interests of reducing bureaucracy, we are reviewing the continuing need to notify HSE of well operations (reg 11) and construction activities (reg 12). Even if still needed, it might be possible to simplify the requirements (eg rationalise reg 11 and schedules 6 and 6A, aligned to changes in combined operations arrangements) and review the various timescales for notifications. OSCR timescales, including those for submission of safety cases, are confusingly diverse and there may be some scope to standardise. Of course, the need for some of them would fall if the range of safety cases were reduced. More flexibility to vary timescales might also help, if achievable.

Electronic submissions

17. Government policy is to facilitate exchange and storage of data by electronic means. The OSCR clearly envisage electronic versions of safety cases and notifications, but there is some legal doubt about how far these are permissible. Amending the regulations could put this beyond doubt. However, HSE needs to consider what conditions, if any, might apply to electronic safety cases, in particular, given any practical problems in handling and assessing them.

Appeals

18. The OSCR provide no statutory right of appeal against HSE's decision not to accept a safety case. Internal review arrangements are being revised (in line with the Policy Statement on Permissioning), but this leaves the final decision with the Executive – as it must, since the Executive is legally responsible under the OSCR. A forthcoming House of Lords decision may clarify the relevance of the Human Rights Act. Even if it does not, the HSC may choose to propose a statutory mechanism – in line with most other permissioning regimes – to enhance confidence in the fairness of the offshore regime. If so, there are a number of possible models to choose from.