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## HEALTH AND SAFETY COMMISSION

### Publication of Consultative Document on Revision of the Offshore Installations (Safety Case) Regulations 1992

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**Cleared by Elizabeth Gyngell on 16 April 2004**

#### Issue

1. Publication of a Consultative Document (CD) dealing with revision of the Offshore Installations (Safety Case) Regulations 1992 (OSCR).

#### Timing

2. Routine.

#### Recommendation

3. That you:
  - a) Approve publication of the attached CD (Annex A);
  - b) Approve the consultation list (Annex B); and
  - c) Approve the suggested approach on key issues set out in paragraphs 10 and 12.

#### Background

4. On 16<sup>th</sup> September 2003 the Commission agreed the proposals in paper HSC/03/127 to develop, in consultation with stakeholders, consultative proposals to reform the OSCR. This paper meets that commitment. The attached CD includes the case for reform (Part 1), proposed revised regulations (Annex 1) and a partial Regulatory Impact Assessment (RIA) (Annex 2).
5. This project will help to take forward the commitment in the Commission's new Strategy for 2010 and beyond to "review its safety case regimes to ensure that they remain relevant and proportionate to the changing nature of these industries".

## **Argument**

6. The most important proposed changes set out in the CD are: -
  - Replacing 3-yearly safety case resubmissions with 5-yearly thorough reviews;
  - New duties on licensees;
  - Replacing some safety cases with notifications, removing some existing safety case particulars and making some others better focussed;
  - Replacing the requirement for an ALARP demonstration with a demonstration that Relevant Statutory Provisions (RSPs) will be complied with;
  - Introducing a new fallback HSE power to direct the duty holder to revise a Safety Case;
  - General updating throughout and consequential amendments to related Regulations. The opportunity would also be taken to propose a small amendment to the Offshore Fire & Explosion Regulations (PFEER) to clarify that emergency arrangements should always involve people beyond the installation.
7. Discussions so far with stakeholders suggest that these changes will be widely supported, subject to further discussions on the detail. However, the following issues may be contentious.

## **Right of Appeal against an HSE decision**

8. The OSCR provide no statutory right of appeal against an HSE decision not to accept a safety case. Internal HSE review arrangements exist and have been revised in line with the Policy Statement on Permissioning Regimes.
9. There has been little criticism of the current arrangement, which is very seldom used. Nor is there any legal reason to introduce a statutory right of appeal. The Solicitor's advice is that a combination of an internal review procedure and the right to seek judicial review are sufficient to meet the requirements of the Human Rights Act.
10. However, a statutory independent right of appeal should increase stakeholder confidence in the fairness and transparency of the safety case system. Key stakeholders, including UKOOA and IADC, have called for this right. It would bring the OSCR into line with the majority of safety case and permissioning regimes. We therefore recommend proposing a right of appeal in the proposed regulations.
11. We recommend also that the appeal should be to the Secretary of State (SoS). We have made soundings of DWP Ministers on this. We hope to report their response at or before the HSC meeting on 11<sup>th</sup> May. This is the model used for all permissioning regimes having statutory appeals except COMAH, which provides for appeal to an Employment Tribunal (ET). COMAH is unique because of its use of Prohibition Notices in place of safety case acceptance. A right of appeal to an ET requires the prior agreement of the Lord Chancellor's Department. This is likely to be difficult to secure. Alternatively, a tribunal could be created just for this purpose, but it would be very costly and would not be seen to be independent.

### **A new power to suspend/withdraw a safety case**

12. Under OSCR a Safety Case acceptance normally lasts for three years only. We propose to replace this with thorough reviews every five years, plus the existing duty to keep the safety case up to date.
13. A thorough review will ensure the fundamental assumptions in the Safety Case are examined. If this process fails, HSE would have recourse to a proposed new power to direct a revision of a Safety Case that would then be submitted for acceptance. This is similar to requirements already in place in the Railways Safety Case Regulations. It is possible that such a directed revision is not acceptable to HSE, leaving in place the existing, but unsatisfactory, safety case. In this unlikely and exceptional circumstance, we propose that HSE should have power to withdraw or suspend the current safety case, subject to a right of appeal.

### **Potential Criticisms that Proposals downgrade or weaken Safety Cases**

14. Some stakeholders may criticise these proposals as merely deregulatory, or assume that they signify a reduced importance for safety cases. Both views would be wrong. The aim of the proposals is to improve the effectiveness of safety cases in reducing major hazard risks offshore, in part by redirecting duty holder and HSE efforts to more productive areas. If this reduces costs, as we expect, it is a welcome benefit, but not the main driver for change. The proposals are intended to ensure that the safety case remains the cornerstone of the offshore health and safety regime, in line with the Strategy commitment (above).
15. HSE is confident that the proposals will strengthen the Safety Case regime and allow more effective interventions through linked inspection and investigation work. This is emphasised in the draft CD and will be repeated in the associated publicity.

### **Consultation**

16. During 2002 HSE sought the views of offshore stakeholders (e.g. at a practitioners workshop in May that year) on what improvements they might like to see to the Regulations. This was followed by a major conference for stakeholders (owners, operators and Trade Unions) held in November 2003 to discuss how to improve the offshore safety case regime. These views have been taken into account in producing the CD. The HSC's Offshore Industry Advisory Committee (OIAC) has also endorsed the proposals.

### **Presentation**

17. A press release will be issued when the CD is published. The CD will be sent directly to all key offshore stakeholders (Annex B) and made available on HSE's website.

### **Costs and Benefits**

18. A preliminary RIA is presented in Annex 2 of Annex A. It compares the effect over ten years of revoking OSCR without replacement; leaving OSCR unaltered; and making the proposed revisions. Though subject to considerable uncertainties and assumptions,

the last option has the greatest net benefit. Its gross benefits are between £45.1M and £76.5M, compared to costs of £25.3M to £31.5M.

### **Financial / Resource Implications for HSE**

19. If the new regulations are made, there will be minor costs, which will be met from existing budget allocations, associated with producing and introducing the revised procedures. No net change in revenue from chargeable activities is anticipated. There will be fewer safety case assessments each year because no more resubmission, combined operations or design safety cases will be required. However, this resource will be redeployed to chargeable inspection, investigation and enforcement work. In the long term, therefore, the impact on HSE should be neutral.

### **Environmental Implications**

20. There is no direct environmental implication. It can be argued that if the new regulations result in reduced risk of major incidents offshore (and fewer precursor incidents like hydrocarbon releases) it will also reduce the associated risk to the environment. No allowance is made for this in the regulatory impact assessment.

### **Other Implications**

21. N/a

### **Action**

22. To agree the recommendations in Para. 3 of this paper.