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Implementation of the Directive on the safety of offshore oil and gas operations – Consultation Package

Purpose of the paper

1. The Board is asked to consider and approve the HSE contribution to the public consultation package on:
 - The steps HSE and DECC will take to transpose the Offshore Directive;
 - The amendments HSE proposes to its onshore and offshore oil and gas regulation to address operational issues and to bring emerging energy technologies (e.g. underground coal gasification) within scope of this legislation; and
 - The initial reviews of the two offshore Approved Codes of Practice (ACoPs).
2. The draft consultation document, draft regulations and preliminary impact assessment are provided. If approved, public consultation will commence in June 2014 for 8 weeks.

Background and timetable

3. The Offshore Directive (2013/30/EU) was published in the official Journal of the European Union on the 28th June 2013. The objective of this Directive is to reduce as far as possible the occurrence of major accidents, including major environmental incidents, related to offshore oil and gas operations and to limit their consequences. Although the Directive is broadly based on the UK offshore regime, the changes required by the Directive should collectively build on, and improve, the UK's world class regime by providing further protection for the safety of offshore workers, limiting potential damage to infrastructure, increasing the protection of the marine environment and coastal economies against pollution and mitigating the consequences of major accidents.
4. In the event of an incident, the measures in the Directive will further strengthen the UK's response mechanisms that are currently in place and ensure that there are funds available to cover first party costs (well control) and third party costs (caused by pollution damage). Although major accidents offshore are rare, they can have devastating and irreversible consequences. The Deepwater Horizon disaster (Gulf of Mexico 2010), which prompted the Offshore Directive, demonstrated how huge and far-reaching the consequences of a single incident can be, particularly as regards to maritime and coastal pollution. Eleven people lost their lives, an estimated 4.9 million barrels (660,000 tonnes) of oil were spilled into the sea and a state-of-the-art drilling rig, valued at US \$560 million was written off. The oil spill occasioned a response effort involving 48,000

people, 6,500 vessels and 125 aircraft at it's peak. There was also a dramatic financial impact on the companies involved, and associated national economies.

5. As the Directive contains requirements relating to licensing, safety and environmental protection, and emergency response the Department of Energy and Climate Change (DECC) and the Health and Safety Executive (HSE) are jointly leading the transposition of the Directive. As the Department of Environment and Rural Affairs (DEFRA) and the Department for Transport (DfT) are responsible for some of the areas covered by the Directive, they are also supporting the implementation work. The Directive must be fully implemented by 19 July 2015.
6. In December 2013 the HSE Board were updated on the work being undertaken by HSE and DECC to implement the Directive. That paper highlighted that during negotiations, the UK (supported by industry and the offshore workforce) argued against a direct-acting European regulation, as this would have resulted in the need to revoke many of the UK's existing offshore oil and gas regulations. By the end of these negotiations the UK (DECC and HSE) successfully secured a Directive. HSE also secured the integrity of the exiting regimes by negotiating the inclusions of the additional key safety and environmental requirements from the UK regime known to be essential to mitigating the risk of a major accident (e.g. design notifications for production installations, relocation notifications and weekly well reports).
7. We feel that the new requirements that will add value include to the existing UK offshore regime, including:
 - New liability for environmental damage;
 - The creation of an independent offshore competent authority;
 - Integrating the management of safety and environmental risks, which impacts on the safety case, well notification, independent verification scheme and well examination requirements;
 - Requirements for the production of a corporate major accident policy;
 - Duties on operators registered in the UK to report major accidents that occur outside of Europe;
 - Duties on operators to report a new range of incidents and dangerous occurrences to the new competent authority; and
 - Requirements on the competent authority to report a range of information to the EC, including the findings of their major accident investigations, and to share additional information on transboundary emergency responses.
8. Significant informal consultation with industry, Trade Unions and other stakeholders has taken place at open workshops, conferences and monthly meetings to discuss the emerging proposals. The Offshore Directive web-pages on the HSE website are also key to ensuring that stakeholders are updated on developments and provides answers to frequently asked questions (FAQs). To date the main concern expressed by Industry has been how the transitional arrangements in the Directive will be implemented (**see paragraphs 21-22**).

Points to note

Transposition approach

9. The transposition approach adopted by HSE and DECC takes full account of the Government's Guiding Principles for EU Legislation. The key focus is on minimising the burdens on the offshore oil and gas industry and fulfilling the UK goal (regulator, industry and Trade Unions) of keeping intact the high standards maintained under the UK's current offshore regulatory regimes. Therefore, although the approach preferred by Government is to use 'copy out' for transposition where possible, we intend to mesh the majority of Directive requirements into the existing safety and environmental regimes. HSE do not intend to 'gold plate' any of the Directive's minimum requirements that will be new to the UK offshore regimes, but there are a few elements of the current legislation that will be retained that go beyond the requirements of the Directive. Industry has expressed a genuine need to retain these requirements to maintain the standards of the existing regime (**see table 1**). Similarly, there are instances where it has been necessary to elaborate on the Directive to ensure that requirements are: clear to industry; maintain consistency with the current regulations; or ensure they are enforceable (e.g. by using terms like "so far as is reasonably practicable").

Offshore Competent Authority

10. The Directive requires that the UK establish an offshore Competent Authority (CA). **Chapter 1** of the draft consultation document (**see Appendix 1**) outlines that the preferred option for delivering this requirement is for HSE and DECC to work in a partnership Competent Authority (CA) to deliver the functions specified in the Directive, with each party concentrating on their areas of expertise. This CA would be governed via an enhanced MoU between DECC and HSE, and would be analogous to the existing COMAH model used for the regulation of onshore major hazard installations¹. A high-level oversight CA Board would provide the forum to agree on implementation arrangements and in future setting the strategic direction and agreeing decisions for the CA.
11. During discussion of the Government's response to the Triennial Review, and on how to establish an offshore CA, DECC and HSE have agreed in principle that the CA should work more as a single body and the lessons learned from the Chemicals Focus on Enforcement Review (FoE) must be applied to the Offshore Oil and Gas regulatory regime, where appropriate. The Impact Assessment (IA) supporting this consultation document outlines a number of alternative options that were considered for establishing an offshore CA (**see Appendix 2, Section 9.1**).

Legislative Change

12. As many of the Directive's requirements are already implemented through the existing Offshore Installations (Safety Case Regulations) 2005 (SCR 2005), these regulations will be revoked and re-introduced as the Offshore Installations (Safety Case) Regulations 2015 (SCR 2015). The existing provisions in SCR 2005 will be

¹ The COMAH Competent Authority for onshore major hazard installations involves HSE and the Environment Agency (in England and Wales) and the Scottish Environment Protection Agency (in Scotland).

expanded, and new duties added (including some on environmental protection and emergency response requirements), to implement the Directive (**see Chapter 2 of the consultation document**). It is possible that the name of these Regulations will change to better reflect their updated content but these discussions are ongoing with TSoL. In addition, as the SCR 2015 will now include environmental issues, DECC will be given relevant enforcement powers under SCR 2015. Please note that the consultation document, and HSE's early draft Regulations at Annex 2 of the consultation document, will continue to evolve right up to publication.

13. The Directive requires that operators and owners produce a report on major hazards. HSE and DECC propose to use the safety case as the vehicle to deliver this requirement. To achieve this goal, SCR 2015 will be amended to provide details of the relevant environmental information required to meet the Directive's requirements. However, we think that duplicating environmental information already provided for assessment and acceptance under the Oil Pollution Emergency Plan (OPEP), Environmental Management System (EMS) and Environmental Impact Assessment (EIA) processes under DECC's environmental legislative regime, would introduce unnecessary administrative burdens on the industry and regulators. We are therefore proposing that the safety case only contains relevant short descriptions of such environmental information and/or with appropriate links to existing environmental demonstrations and assessments. However, additional or revised environmental information not assessed and accepted by DECC will have to be submitted with the safety case for the CA to assess, and when appropriate, accept.
14. DECC's environmental regime relating to offshore oil and gas operations is very comprehensive. Following a review of the Articles of the Directive, it is apparent that the majority of its obligations are already met by existing legislation. Therefore, to ensure effective transposition, DECC proposes to introduce one set of Regulations which will amend the Merchant Shipping (Oil Pollution Preparedness, Response Co-operation Convention) Regulations 1998 (**see Chapter 3 of the consultation document**).
15. With respect to the national emergency response plans and emergency preparedness provisions of the Directive, it is considered that existing UK legislation and guidance meets those requirements. On that basis, DfT and the Maritime and Coastguard Agency (MCA) do not need to introduce new legislation to implement the Directive (**see Chapter 4 of the consultation document**).
16. DEFRA and the Devolved Administrations (DAs) are responsible for transposing Article 38 of the Directive, which extends the offshore scope of the Environmental Liability Directive (ELD) to cover water damage in marine waters that fall within the scope of the Marine Strategy Framework Directive. Defra and the DAs will achieve transposition via appropriate amendments to their respective Environmental Damage (Prevention and Remediation) Regulations. This work is not part of this consultation document (DEFRA is planning a separate consultation to meet DAs needs, especially as this requirement can impact on many sectors, not just oil and gas), but this are is partly covered in the Impact Assessment as it is in the Directive (**see Sections 8.8 and 9.10**).

Gold plating

17. To maintain the UK offshore oil and gas regime in its current form, and to maintain the standards for safety and environmental protection it has established, HSE will potentially gold plate some elements of the Directive. These are:
- Maintaining the definition of major accident. This keeps diving operations of fewer than five people in scope and retain a definition which the industry understands well, and
 - Keeping non-production installations within scope of notification requirements when entering and leaving UK waters. This maintains health and safety standards.
18. HSE have support from industry in principle for this approach, obtained via informal discussions, but this will be tested during formal consultation. **Table 1** provides some additional information on the areas where HSE's is proposing to gold plate transposition of the Directive.

Updates to health and safety legislation to address operational issues and emerging energy technologies

19. **Chapter 5**, outlines the additional legislative work proposed to deliver red tape challenge commitments (e.g. reduce the stock of legislation), address operational lessons learnt and to ensure emerging energy technologies are within scope of our onshore oil and gas major hazard legislation. For these areas, the consultation document is seeking stakeholders' views on the principles of what HSE is proposing, not the minor amendments to the legislation required to deliver this policy. This additional work includes:
- Learning from operational experience over the past ten years, HSE has identified that amendments to health and safety legislation are necessary to clarify what structures fall within the definition of offshore installation. DECC legislative amendments will give legal certainty about who is the operator when a Petroleum Licence holder is not in place (e.g. as it has been revoked, relinquished or expired). Some amendments to health and safety legislation will be required to complement this new approach.
 - Experience of regulating the early exploration phase of shale gas operations in the UK, has highlighted to the Government the importance of having a robust regulatory regime in place to build public and investor confidence. To ensure that future emerging energy technologies (e.g. underground coal gasification) are covered by a robust regulatory regime for their exploration phase, steps need to be taken to bring such activities within scope of our onshore oil and gas regulatory regime. In addition, making these changes will ensure that the UK fully implements Directive 92/91, on mineral extraction through drilling. The Directive does not specifically name techniques of extraction of oil and gas (e.g. UCG and shale gas extraction using hydraulic fracturing), the expectation is that these are all covered under the general 'drilling' term. As UCG was not an issue when the UK implemented the Directive, we now need to bring this activity within the scope of our legislation. As this change is implementing an existing Directive, HSE is of the opinion

that the existing Government policy of one in two out for business regulation does not apply (**see Appendix 2, Section 9.11.3**).

- To maintain public and investor confidence in hydrocarbon gas storage in salt caverns, and ensure that any future operators follow the robust regulation that has been voluntarily adopted by this sector, we plan to update our onshore oil and gas major hazard legislation to cover these activities. Non-legislative approaches that maintain the voluntary approach taken to date may not deliver the same outcome in terms of ensuring future operators comply or that information is delivered to the regulator on time so that they can intervene effectively. Although the one in two out policy applies, HSE is arguing that as the industry is already voluntarily complying with these requirements there are no additional costs (**see Appendix 2, Section 9.11.4**).
- **Chapter 2 (paragraphs 2.42-2.44 and 2.52-2.53) and Chapter 5 (paragraph 5.24)** outline that by meshing small sets of regulations with only a few remaining requirements, into our core offshore major hazard legislation HSE can reduce the stock of offshore regulations by 3.

Offshore Approved Codes of Practice (ACoP) Review

20. There are two offshore ACoPs, one relates to the Prevention of Fire and Explosion, and Emergency Response on Offshore Installations and the other is on Health Care and First Aid on Offshore Installations and Pipeline Works. We are reviewing these at this time as part of the Løfstedt commitment that HSE gave to review all of its ACoPs.
21. HSE's initial assessment is that these ACoPs should remain, but be simplified and updated where possible. A summary of the changes proposed to each ACoP is outlined in **Chapter 6** of the consultation document.

Guide to the SCR 2015

22. The existing SCR 2005 are supported the "Guide to the Offshore Installations (Safety Case) Regulations 2005". HSE will work with industry and the Trade Unions to update this guide. It is the intention that the guide to support new SCR 2015 will be published in spring 2015.

Key Implementation Risks

Some legal issues and implementation proposals are still being finalised

23. The Board is asked to note that DECC Legal and TSoL have shared their emerging safety and environmental legislation that will implement the Directive, to raise concerns and ensure a consistent legal approach. During this process, a few new legal issues have emerged where we have still to finalise our proposals for consultation. Yellow drafting notes in the current version of the CD highlight these areas. As these are difficult legal issues, often where the Directive is not clear on its intent, these are taking longer than expected to resolve with DECC. However, HSE and DECC feel that it is important to consider all legal advice, and Industry's emerging views, before finalising our proposals. For example, the operatorship approach adopted across the Directive may in some cases change the company recognised as an operator, and so performing the duties, under

safety legislation. Although the project team are confident that appropriate proposals, on which industry will be sighted (at monthly meeting and conferences we are attending in June) will emerge and be included in the final consultation document, this is an ongoing project delivery risk.

Transitional arrangements

24. The transitional arrangements in the Directive are complex. During negotiations the UK asked for a five year transitional period for industry (to match the current safety case thorough review time periods), but this was not supported by the European Commission or Parliament. As drafted, the transitional arrangements have the potential to capture all existing UK offshore installations (ca. 300) within the early July 2016 transitional period, which was not the original intent. HSE proposes to clarify the position in the new regulations so that the early transition dates only apply to specific well-operation requirements (e.g. submitting a well notification) and not to existing production installations where these well activities take place. Consequently, most of the production installations will not need to submit safety cases reflecting the new provisions before April 2018.
25. The early July 2016 transitional period will apply to all non-production installations (there are about 40-80 working in the UK each year), these will include drilling rigs and flotels which regularly move between the UK and Norway. In addition, the majority of the existing 250 production installations, will then need to submit a material change to their safety cases before the April 2018 date (depending on their safety cases thorough review date). These transitional arrangements will be particularly challenging for both operators and the CA and an installation cannot legally operate until the CA has accepted the safety case.
26. DECC and HSE have been working with industry to find an acceptable way forward. This has included exploring any scope for streamlining the process for existing production and non-operational installations. To minimise burdens on industry, HSE is proposing that operators of installations prepare and submit material changes to their safety cases, where the new information required is highlighted within the existing safety case that has already been prepared. These material changes will then be assessed, and if appropriate accepted, by the CA within 3 months (shorter than the 6 month time period for a full safety case).
27. HSE and DECC have also achieved an agreement in principle that operators and owners of offshore installations will book an assessment date with the new CA. This will stagger the work for the CA and will ensure that each operator and owner will meet these transitional arrangements. There are significant risks to HSE, industry and the UK economy if safety cases are not submitted and assessed within the tight timeframes established by the Directive. The CA will need to plan this work early, with extensive contingency plans, to ensure it can deliver this operational commitment.

Regulatory Impact Assessment

28. There is a low risk that the Government Regulatory Policy Committee (RPC) will not agree with HSE's interpretation that it does not have to find any costs under the one in two out policy for the changes we are proposing to our domestic onshore oil and gas major hazard legislation (e.g. for underground coal gasification and hydrocarbon gas storage). As HSE and other relevant

Departments have not got any 'outs' to support this work, if the RPC do not agree with our analysis we will need consider other approaches (e.g. use our 'two out' overdraft facility, ask for help from treasury due to the potential economic benefits to the UK, seek a government exemption or abandon this change).

Impact Assessment

29. **Appendix 2**, is the draft Impact Assessment. This was developed using Industry focus groups to estimate the costs of the new provisions. This impact assessment is currently with RPC awaiting their opinion by the end of May 2014.
30. The impact assessment indicates that the preferred implementation approach imposes a ten-year present value cost on society of between around £74.5 million and £200 million, with a best estimate of around £143 million. All of this cost would be borne by industry, either directly or through cost recovery by the Offshore Competent Authority. This gives an Equivalent Annual Net Cost to Business of around £12.7 million in 2009 prices.

Communications

31. A communications plan has been developed and agreed with the Project Oversight Board, to ensure that all stakeholders, internal and external, are kept aware of developments to transpose the Directive. The informal consultation work that has taken place has already been outlined in **paragraph 8 of this paper**. Other government Departments and related bodies are involved via both the Project Oversight Board and the Officials Implementation Group.
32. In addition, the Offshore Directive transposition work has a dedicated set of pages on the HSE website where all relevant information and FAQs are stored.
33. HSE press office will develop external messages in conjunction with sector colleagues and will communicate changes to the relevant audience using the HSE website; trade and specialist media; and sector-specific e-bulletins. Interest from the wider mass media will be managed on a reactive basis with 'lines to take' prepared beforehand.

Devolved Administrations

34. Responsibility for transposing and enforcing the bulk of the Directive in respect of offshore oil and gas exploration and production activities on the UK Continental Shelf will rest with DECC and HSE, the UK offshore environmental and health and safety regulators respectively. The Devolved Administrations will however be formally consulted on the UK proposals for implementing the Directive.
35. In addition, DEFRA and the Devolved Administrations (DAs) are responsible for transposing Article 38 of the Directive, which extends the offshore scope of the Environmental Liability Directive (ELD) to cover water damage in marine waters that fall within the scope of the Marine Strategy Framework Directive (**see paragraph 16 of this paper**).

36. We are also working with Northern Ireland and Gibraltar to ensure that they take the necessary measures to implement the Directive.

Finance and Resource

37. The potential for new income from emerging technologies is very limited as cost recovering for the gas storage work is already included in the COMAH regime. Similarly, there is limited scope for new income from UCG as this is an emerging industry at an early pilot stage, and current indications are that there are only likely to be a couple of operational wells over the next 10 years.

38. Work to implement the Directive, in particular the development and roll-out of revised operational policies and procedures will require input from and engagement with HSE's Energy Division (ED) offshore staff over the coming 12-18 months. Delivery plans for this work are being finalised which will identify any impact on ED's capacity to deliver its planned front-line work and cost recovery budgets.

Action

39. The Board is asked to approve the HSE contribution to the proposed consultation package (draft Regulations, draft Consultation Document and draft Impact Assessment).

40. Approve (subject to a green or amber rating from the RPC) starting the joint HSE/DECC public consultation on 26th June 2014 (provisional date).

41. The Board is also asked to note that, following approval for consultation, the Minister will be asked to 'write around' on the consultation package including the draft illustrative Regulations. Following the publication of the consultation response and any resultant changes to the Regulations, the final impact assessment will be submitted to the RPC for validation.

42. The intention is that the revised, post-consultation regulations will be seen by the Board again in late 2014, laid in February 2015 before the 2015 election 'purdah' period and come into force on the 19 July 2015. Please note that the additional domestic regulations (e.g. on gas storage and underground coal gasification) will follow the same timetable but come into force on the common commencement date of 1 October 2015.

Clearance

43. Peter Baker. A/Director HID.

Table 1 - Offshore Directive – Gold-plating Issues and Justification

| | Offshore Directive | Safety Case Regulations 2015 | Reason |
|---|---|--|---|
| 1 | The Directive's definition of major accident only covers an event involving major damage to the structure of the installation, or any loss of stability of the installation where there is a potential to cause fatalities or serious personal injury. | The UK definition of major accident does not have this qualification and so retaining the current definition could be seen as gold plating. | <p>Minimising the regulatory changes being imposed on industry while retaining the current UK regime to maintain standards.</p> <p>Keeping the UK definition will have no practical difference in behaviour.</p> |
| 2 | Most diving operations associated with offshore installations will involve five or more people. We feel such operations are mostly covered by the element of the major accident definition in the Directive and SCR 2005 referring to "any other event arising from a work activity involving the death or serious personal injury to five or more persons on the installation or engaged in an activity in connection with it". However, a small number of offshore diving operations will involve fewer than five people. Although a good case could also be made that any subsea diving work on installations or pipelines is likely to be covered | The current UK definition of major accident also includes the wording in the Directive, but also: " <i>the failure of life support systems for diving operations in connection with the installation, the detachment of a diving bell used for such operations or the trapping of a diver in a diving bell or other subsea chamber used for such operations</i> ". | <p>To remove any ambiguity as to whether diving operations involving fewer than 5 people are covered by the definition of "major accident".</p> <p>To maintain health and safety standards during one of the most dangerous offshore activities (52 people have died during such operations in the North Sea in the last 40 years).</p> |

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| | by other aspects of the Directive's definition of a major accident, we would prepare to make it legally clear that such diving operations remain within scope of the new safety case regulations. | | |
| 3 | The Directive requires that the regulator monitors the movement of installations within its waters and requires a notification when an installation enters or leaves. The Directive only requires notifications from mobile production installations. | Current UK legislation requires such notifications from mobile non-production installations (e.g. drilling rigs), as well as mobile production installations. | The UK intends to maintain its current approach, as monitoring the movements of non-production installation (e.g. drilling rigs) via notifications is essential to ensuring they follow UK requirements and so contributes to maintaining safety standards. As Industry is already following this approach there is no additional burden in maintaining this requirement. |