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## PROPOSED OFFSHORE INSTALLATIONS (OFFSHORE SAFETY DIRECTIVE) (SAFETY CASE ETC) REGULATIONS 2015:

### OUTCOME OF THE PUBLIC CONSULTATION AND REQUEST TO PROCEED WITH IMPLEMENTATION

#### Purpose of the paper

1. To inform the HSE Board of the outcome of the public consultation on the proposed Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SCR 2015) and agree publication of the Consultation Summary Report (**see Annex 1 of the Board paper**).
2. To seek Board approval to recommend to the Minister for Welfare Reform that the proposed SCR 2015 are implemented.

#### Background

3. The Directive on the safety of offshore oil and gas operations (the Directive) was published in the official Journal of the European Union on the 28<sup>th</sup> 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.
4. 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<sup>th</sup> July 2015.
5. In December 2013 the Board was given the opportunity to comment and offer direction on proposed approach to implementation of the Directive and in May 2014 agreed the consultation package based on those proposals. These papers highlighted that although the Directive is broadly based on the UK's offshore safety case regime, changes were required by the Directive. These changes preserve the high standards of the existing health and safety regime but strengthen the environmental aspects by the enhanced integration of health, safety and environmental elements.

6. In addition, the Directive requires the creation of an offshore competent authority. DECC and HSE proposals in this area do not require legislation so will not form part of the DECC or HSE legislative packages to implement the Directive. However, 79% of respondents to the public consultation did not support the proposal for establishing the offshore competent authority, where DECC and HSE would work in partnership to deliver this requirement. Their main reasons for opposing this approach were that it: is not efficient or effective; adds duplication and bureaucracy; increases complexity; and that it overlooks findings of the BRE Review of COMAH. Most respondents wanted a single regulator, be that HSE or a new standalone regulator. Discussions at Ministerial level have agreed that the competent authority will progress via partnership.
7. As well as implementing the SCR 2015 to transpose the requirements in the Directive on which HSE are leading, we are also taking this opportunity to reduce the stock of offshore regulations (by four) and to update our onshore major hazard legislation to address emerging energy technologies (e.g. underground coal gasification).
8. Significant informal consultation with industry, trade unions and other stakeholders has taken place before and after the public consultation (at open workshops, conferences and monthly meetings) to discuss the emerging proposals with the members of key industry associations. The Offshore Directive web-pages on the HSE website are also key to ensuring that stakeholders are updated on developments. This engagement is on-going to enable DECC and HSE to clear final drafts of the legislation, and supporting guidance, with industry.
9. Subject to clearance from the Board, the Minister for Welfare Reform and the Reducing Regulation Committee, the SCR 2015 will be laid by the 9<sup>th</sup> March 2015 to come into force on 19<sup>th</sup> July 2015. SCR 2015 is one of three sets of regulations being introduced to implement the Directive (the other two are DECC licensing and oil pollution emergency response legislation). As the SCR 2015 cross reference DECC's licensing regulations, DECC and HSE Parliamentary and legislative Teams will be liaising closely to ensure that all legislation is implemented in the right order and time.

## **Proposed Changes and Costs**

10. The primary changes between the current safety case regime (SCR 2005) and SCR 2015 are:
  1. A requirement to produce a corporate major accident prevention policy (**see Regulation 30 of the draft SCR 2015, at Annex 2**);
  2. The extension of the verification scheme requirements in the safety case regulations to cover environmental critical elements and some additional safety elements (**see Regulations 19 and 20 of the draft SCR 2015**);
  3. A requirement for a safety and environmental management system (SEMS) (**see Regulation 31 of the draft SCR 2015**);
  4. Additional information (e.g. related to environmental protection) required in the safety case, emergency response plans, design, relocation well and combined use notifications;
  5. A duty on operators and owners to participate in producing standards and guidance (**see Regulation 37 of the draft SCR 2015, at Annex 2**); and

6. As the Directive only covers offshore, and not internal waters (e.g. estuaries), it would be considered gold plating to apply the new SCR 2015 regime to internal waters. The SCR 2005 requirements will remain in place for internal waters.
11. To maintain current standards, HSE proposed three instances of gold plating:
- Maintaining the definition of major accident that industry is used to, and to keep diving operations of fewer than five people in scope;
  - Keeping supplementary units (e.g. additional power supplies to an offshore installation), if they are greater than 500m from an installation within the scope of HSE's definition of offshore installation; and
  - Keeping non-production installations within scope for enter and leave notification requirements.
12. In addition, the Schedules to the SCR 2015 provide HSE with an appropriate and convenient vehicle to deliver additional legislation which is not related to the Directive: namely an opportunity to bring underground coal gasification and onshore hydrocarbon gas storage within the scope of HSE onshore oil and gas major hazard legislation.
13. The changes proposed will reduce the overall stock of legislation, by revoking five sets of offshore and pipeline regulations, and placing the requirements within other offshore safety legislation with no reduction in standards.
14. The Consultation Impact Assessment, which covered both HSE and DECC's proposals to implement the Directive, was given a green rating by the Regulatory Policy Committee in May 2014 and the committee is currently considering the Final Stage Impact Assessment (**see Annex 3**). This gives a total best estimate net cost to society, including the changes to HSE and DECC legislation and the creation of the competent authority, of around £196m in present values over ten years. The best estimate net cost to business is around £193m in present values over ten years. This gives a best estimate equivalent annual net cost to business of around £17.1m in 2009 prices. None of this cost is in scope of the One in Two Out (OITO) rule.
15. In relation to the changes to HSE legislation alone, these costs are borne entirely by industry, either directly or through cost recovery by the competent authority. For the changes to implement the Directive, these are estimated at around £158m in present values over ten years. To bring underground coal gasification into scope of the onshore regulations, this imposes a further estimated cost on industry of around £0.4m in present values over ten years.
16. The costs to set up and manage the competent authority will be borne by HSE and DECC and not recovered from industry (although the costs of assessing submissions related to particular Regulatory measures will be recovered from industry). The set up costs are estimated to impose a total cost on HSE of around £0.7m. The running management costs thereafter are estimated to cost HSE around £0.05m per annum. These costs represent the staff time required to set up new procedures and are available within current resourcing.

## Consultation Response to HSE's Directive Proposals

17. HSE believes that the 65 responses to the offshore consultation was a good representative sample from this small, but important, sector. Currently there are just over 300 offshore installations which work in the UK, and the 45 responses received from Industry (as well as 27 from other employers) represented a high proportion of the industry. In addition, trade bodies like Oil and Gas UK (OGUK), and the International Association of Drilling Contractors (IADC), obtained detailed views from their members before submitting their collective views. The four trade union responses, including from RMT, UNITE and the Scottish TUC, also ensured the views of the workforce were represented. There were also responses from health and safety professionals and verification bodies.
18. The majority of respondents provided well informed and detailed comments. Most respondents supported HSE's legislative proposals and there was overwhelming support (80-100%) for HSE's proposed gold plating. Paragraph 20 outlines areas where there was less agreement with the proposals. The responses also demonstrated a high understanding of the issues, which is partly a reflection of the extensive pre-consultation engagement undertaken with Industry. Sometimes the responses suggested how proposals could be improved to ensure gold plating is avoided and burdens on industry are kept to a minimum. One common theme in the majority of the responses received was the need for further guidance. HSE is committed to including such guidance within the new guide to the SCR 2015.
19. In three areas, although there was good support for the proposals, respondents raised some additional views:
- 72% agreed with DECC and HSE's proposals for internal emergency response plans (maintaining the separate legislation for safety and environmental plans). However, about half of respondents agreed on condition that this was an interim measure and stated that the long-term goal must be one plan covering the safety and environmental protection response. The offshore competent authority will consider what further integration can be adopted in future; and
  - Although 59% of respondents supported the transitional arrangements (**see Regulation 28 of the draft SCR 2015**), many wanted more guidance, including more detail on the practical arrangements behind these proposals. Those that did not support the proposals were seeking longer periods for transition but HSE are clear that the Directive does not allow for this. HSE have recently written to all offshore installation operators and owners to explain what these transitional arrangements mean for them and industry seem content with the transitional arrangements proposed. The guide to the SCR 2015 will also provide detailed information on the transitional arrangements.
20. There were two areas where respondents did not support HSE's proposals. These were in areas where both DECC and HSE had an interest:
- The Directive can be read as only requiring a single operator to be responsible for all offshore oil and gas operations, rather than HSE's current multi operator model (e.g. well operator and installation operator). 76% of respondents did not support the single operator model proposed in the consultation, because they felt it would impact (mostly negative) on standards and discourage smaller companies and new entrants from entering the UK continental shelf. The

European Commission have confirmed that a multi operator model e.g. involving an installation and well operator as under the current safety case regulations is acceptable, DECC and HSE are working with industry to agree an appropriate multi operator model; and

- The original proposal in the consultation - to have separate health, safety and environmental management requirements - was strongly resisted by industry (59% of respondents did not agree with the proposals). HSE and DECC have now agreed to proceed with a requirement for an integrated safety and environmental management system in SCR 2015 (**see Regulation 31 of the draft SCR 2015**).

## **Consultation Response to HSE's Onshore Oil and Gas and ACoP Proposals**

21. The Government is looking to reduce its overall stock of regulations that apply to businesses, including those associated with the safety of offshore oil and gas operations. HSE proposes meshing some existing Regulations, which were made a long time ago and now only have a few remaining requirements (e.g. the Offshore Installations (Inspector and Casualties) Regulations and the Logbook and Registration of Deaths Regulations) into some of the core offshore health and safety legislation. In total HSE expects to reduce the stock of offshore regulations by four, with no reduction in standards. There was overwhelming support for these proposals (98-100%), as respondents did not see any unintentional consequences from consolidation.

22. HSE is also currently reviewing all of its ACoPs as part of a commitment following the review by Professor Löfstedt. HSE has reviewed the Prevention of Fire and Explosion, and Emergency Response on Offshore Installations (PFEER) ACoP and the Health Care and First Aid on Offshore Installations and Pipeline Works ACoP.

23. Respondents to the consultation agreed with HSE's initial assessment that the two offshore ACoPs should be kept, with overwhelming agreement to the modernisation and simplification changes proposed.

## **Future work**

24. In developing the proposed way forward to implement the Directive two areas of future work have been identified:

- Currently, offshore gas storage (e.g. hydrocarbon gas or carbon dioxide) is only covered by the general requirements of the Health and Safety at Work etc. Act 1974. It is likely that government (and HSE) will want these high risk activities covered by additional robust regulatory regimes (e.g. to ensure operators demonstrate that they are managing and controlling risks, and to build investor and public confidence). To ensure that such offshore work activities do not occur before robust regulatory regimes are in place, HSE will need to initiate work with other Departments to agree what legislative regimes are required and then implement these (with our partners) as necessary; and
- There is a reputational risk if the offshore competent authority does not take forward work to further consider how safety and environmental emergency response plans can be better integrated. The competent authority oversight board will need to manage this risk.

## Communications

25. The Consultation Summary Report can be found at **Annex 1**. Subject to agreement from the Board, this summary will be published on the HSE's Directive Webpages, with a link to the Offshore Competent Authority webpages.
26. Work is underway to draft the legal guidance supporting the SCR 2015. This legal guidance must be available online, in draft form, at least twelve weeks before the Regulations come in to force.

## Devolved Administrations

27. 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 were consulted on the UK proposals for implementing the Directive, but no comments were received.
28. We are also working with Northern Ireland (NI) and Gibraltar to ensure that they take the necessary measures to implement the Directive. As NI has similar legislation to HSE, they are planning to consult on their proposals soon. We expect they will use the DECC/HSE Consultation Document as the basis for their consultation. The European Commission have confirmed that Gibraltar can implement the Directive in a minimal way (e.g. only implementing those Articles that are relevant to countries without oil and gas operations), as they do not expect to have any oil and gas operations.

## Action

29. The HSE Board is invited to:

- Note the issues raised in the responses to the consultation outlined in paragraphs 17– 24, and the action initiated to address any concerns;
- Agree that the Consultation Summary Response (**see Annex 1**) can be published on HSE's website; and
- Agree that the legislative package (**the draft SCR 2015 at Annex 2, and the Impact Assessment at Annex 3**) can be sent to the Minister for Welfare Reform recommending that the SCR 2015 are implemented. As the lead department for implementing the Directive, DECC Ministers will then initiate the final write round.

## Paper clearance

30. This paper has been clear by Susan Mackenzie, Director of Hazardous Installations Directorate.