

APPENDIX C - SAFETY AND ENVIRONMENTAL ISSUES LICENSING AND OPERATORSHIP

LICENSING AND OPERATORSHIP

The Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (the OSD Licensing Regulations) include provisions relating to the capability of prospective licensees and the capacity of operators who are appointed under the regulations to undertake the offshore oil and gas activities. Prospective licensees and operators should also be aware of the requirements detailed in the Hydrocarbons Licensing Directive Regulations 1995 and the Petroleum Licensing (Applications) Regulations 2015. Where the provisions in those regulations overlap with the safety and environmental provisions of the OSD Licensing Regulations, the requirements are consolidated in this guidance document. More general guidance relating to petroleum licensing can be found at <https://www.ogauthority.co.uk/licensing-consents/licensing-system/licensee-criteria/>

1. LICENSING TRANSACTIONS

1.1 Prospective Licensees

Prospective licensees are required to provide the Oil and Gas Authority's Licensing Authority (LA) with a number of submissions in support of their applications, including submissions to enable the Offshore Safety Directive Competent Authority¹ (CA) to assess their safety and environmental capability. It should be noted that the requirements are not restricted to formal Licensing Rounds, and the LA will normally require submissions from companies applying for out-of-round licences and, where appropriate, to support applications requesting consent for licence assignments or applications seeking comfort for other changes of control.

All prospective licensees must provide the safety and environmental submissions described in Sections 1.2 to 1.5 below. Where full details in relation to a particular requirement cannot be provided at the application stage, as the development of proposals may be dependent upon licence award or the commencement of offshore oil and gas activities, applicants can provide brief submissions to demonstrate that they understand the requirements and, if possible, provide an outline timetable for the submission of full details prior to appointing an operator to undertake any offshore activities. Timetables should be clearly linked to any work programme submitted in support of the application, and approvals for specific offshore activities will not be issued until applicants have provided a supplementary submission that addresses any outstanding requirements. Where applicants only intend to hold a financial interest in a licence, and the safety and environmental responsibilities relating to offshore activities will be assigned to a partner applicant or an appointed third party, this should be clearly stated in the relevant sections of the submissions.

Established licensees who have provided submissions in accordance with the requirements of Sections 1.2 and 1.3 since the OSD Licensing Regulations came into force can provide up-dates detailing any amendments relating to their previous submissions, but all applications must be supported by details of the relevant Liability Arrangements described in Section 1.4, and all applications for new licences must be supported by the Environmental Sensitivity Assessment described in Section 1.5. When providing up-dates, prospective licensees should bear in mind that

¹ The competent authority is the Department for Business, Energy and Industrial Strategy (BEIS) Offshore Oil and Gas Environment and Decommissioning Unit (OGED) and the Health and Safety Executive (HSE). BEIS has taken over the functions of the former Department for Energy and Climate Change (DECC), and all references in this document to work undertaken or guidance produced by BEIS are intended to cover work previously undertaken or guidance produced by DECC.

the CA will have access to the previous submissions, and will also hold details of the company's record of UK legislative compliance.

Prospective licensees should note that the OSD Licensing Regulations include provisions for the LA and CA to request additional documentation, both in support of a licence application and following licence award. In particular, applicants and licensees may be required to provide additional information in relation to the liability arrangements resulting from new licence assignments or changes of control, or the development of a firm work programme.

Prospective licensees should also note that third parties can request access to the safety and environmental submissions submitted in support of applications that are held by the CA, and the CA may be required to make the submissions available for inspection. If the submissions contain any information that is considered to be commercially sensitive, the relevant sections should therefore be clearly identified. In such cases, if the CA receives a request for access to a submission, the relevant company will be consulted prior to any proposed release of the relevant information.

1.2 Safety and Environmental Capability

All prospective licensees must provide a high level document containing the following:

- (i) A section summarising the company's safety and environmental policies, or a commitment to have such policies in place prior to appointing an operator to undertake any offshore oil and gas activities.
- (ii) A section confirming that the company possesses an understanding of the relevant statutory safety and environmental provisions, and understands the roles and responsibilities of licensees in relation to safety and environmental management.
- (iii) A section describing the company's management structure, including details of functional responsibility for the management of safety and environmental matters (an organogram may be useful to summarise the structure and responsibilities).
- (iv) A section confirming that the company has relevant safety and environmental management systems, or a commitment to have such systems in place prior to appointing an operator to undertake any offshore oil and gas activities.
- (v) A section confirming that, where a third party is appointed to manage the offshore oil and gas activities, or to manage the liabilities relating to those activities, the company will select a third party that has the capacity to adequately undertake the duties relating to the appointment, and that reasonable steps such as monitoring, audit and review will be put in place to ensure that the third party meets, and continues to meet, the relevant requirements.

It should be noted that only brief summaries are required in support of applications, and prospective licensees should not include copies of detailed supporting documents.

1.3 Safety and Environmental Performance

All prospective licensees must provide details of the company's safety and environmental performance record in relation to both onshore and offshore oil and gas activities, including information in relation to any major accidents. Applicants should specifically include information relating to the following:

- (i) Details of any major accidents² during the last five years (either in the UK or in other countries).

² 'Major accident' has the meaning given in Article 2(1) of the EU Directive on safety of offshore oil and gas operations (2013/30/EU)

- (ii) Details of any failure to comply with any relevant safety or environmental legislative standards or requirements that resulted in enforcement action by the regulator during the last five years (either in the UK or in other countries).
- (iii) Details of any criminal or civil action taken against the company, or pending against the company, with respect to safety or environmental issues during the last five years (either in the UK or in other countries).
- (iv) Details of any conviction for breaching any safety or environmental legislation during the last five years (either in the UK or in other countries).

It should be noted that details are only required in relation to onshore and offshore oil and gas activities undertaken by the specific prospective licensee. Companies with no previous experience of oil and gas activities should therefore provide a 'nil' return.

1.4 Liability Arrangements

The OSD provides that licensees are financially liable for the prevention and remediation of any environmental damage that is, or may be, caused by the offshore oil and gas activities carried out by the licensees, or by persons acting on their behalf. Prospective licensees must therefore demonstrate that they have made, or will make, adequate provision to cover liabilities potentially deriving from the proposed offshore activities, including liability for activities carried out on their behalf by appointed operators or contractors, and liability for potential economic damages.

Prospective licensees must provide evidence that they have, or will make, adequate provision to access sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation of any damage, including evidence of appropriate insurance or indemnity provision.

Where the liability arrangements will be implemented through the licence operator approved by the OGA, or another third party, this should be explained and, where appropriate, evidence provided to confirm that the relevant licence operator or third party is, or will be, a member of the Offshore Pollution Liability Association Limited (OPOL), or any body that may assume responsibility for the functions currently carried out by OPOL. Further information about OPOL can be found on their website³.

Where it is proposed that a licence will be held by more than one person, the obligations and liabilities that arise under the OSD will be held jointly-and-severally by all of the licensees. In such cases, the liability proposals can be detailed in a joint submission signed by all the prospective licensees, confirming the manner in which the liabilities resulting from exploitation of the licence would be shared among the partner licensees.

Where commitments are provided to confirm aspects of the liability arrangements prior to undertaking offshore oil and gas activities, approvals for those activities will not be issued until a supplementary submission has been provided that addresses any outstanding requirements. Up-dates must also be provided as necessary to reflect any change in the liability provisions, for example as a result of amended licence assignments or changes of control, or when transitioning from the exploration phase to a development phase.

1.5 Environmental Sensitivity Assessment

All applications for new licences must be supported by a brief environmental sensitivity assessment (10-20 pages including any relevant maps or diagrams), detailing any relevant sensitive marine and coastal environments, and identifying the risks, hazards and other factors relevant to the potential degradation of the area that is the subject of the application and, where available, the potential cost of that degradation. The assessment should demonstrate that applicants are aware of the

³ See <http://www.opol.org.uk>

sensitivities within, and immediately adjacent to, the block(s) of interest, and aware of the potential impacts that would have to be managed during the execution of potential future activities. Sensitivities that would need to be taken into consideration would include ecosystems that play an important role in mitigation and adaptation to climate change, including salt marshes and sea grass beds; habitats and species that are protected under the Habitats and Birds Directives, including Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); and any areas designated as protected under any relevant international, regional or domestic agreements, including Marine Conservation Zones (MCZ's) and Marine Protected Areas (MPA's). The assessments should also take account of policies relating to relevant national and regional marine plans. Further information about marine sensitivities can be found on the Defra, Joint Nature Conservation Committee (JNCC), Scottish Government and Natural Resources Wales websites^{4,5,6,7,8}. Further information about marine plans can be found on relevant government and devolved authority websites^{9,10,11,12}.

The sensitivity assessment should take account of the potential work programme, and take account of the recommendations arising from the Strategic Environmental Assessments (SEAs) undertaken by BEIS¹³ relating to the wider marine environment, and any other relevant published reports. In recognition of the national and international focus on climate change and curbing fossil fuel emissions, the assessment should include consideration of relevant potential climate change impacts. A list of SEA recommendations and their current status is available on the SEA website¹⁴, and information concerning other potential restrictions on offshore activity can be found on the gov.uk website¹⁵.

2 OPERATOR APPOINTMENTS

2.1 Offshore Safety Directive Well and Installation Operators

Following a successful licence application, the licensee(s) will be required to undertake the exploration or development activities agreed with the Oil and Gas Authority (OGA). Following cessation of production activities, the licensee(s) will be required to undertake the decommissioning activities detailed in the decommissioning programme agreed with the BEIS Offshore Decommissioning Unit (ODU).

Prior to undertaking relevant exploration, development or decommissioning activities, the licensee(s) must appoint Offshore Safety Directive (OSD) operators to undertake any well operations and any production installation operations under the licence. For example, the licensee(s) would normally be expected to appoint:

- Exploration Phase
 - Well operator(s), to undertake exploration and appraisal well operations, including drilling, well suspension and abandonment operations
- Development Phase

⁴ See <http://jncc.defra.gov.uk/page-4>

⁵ See <https://www.gov.uk/government/news/new-network-to-protect-valuable-marine-life>

⁶ See <http://www.jncc.gov.uk/page-3>

⁷ See <http://www.scotland.gov.uk/Topics/marine/marine-environment/mpanetwork>

⁸ See <https://naturalresources.wales/conservation-biodiversity-and-wildlife/?lang=en>

⁹ See <https://www.gov.uk/government/collections/marine-planning-in-england>

¹⁰ See <http://www.scotland.gov.uk/Topics/marine/seamanagement>

¹¹ See http://www.planningni.gov.uk/index/policy/common_policy-marine-plan-for-northern-ireland-home.htm

¹² See <http://wales.gov.uk/topics/environmentcountryside/fisheries/marine/marine-planning/?lang=en>

¹³ See <https://www.gov.uk/offshore-energy-strategic-environmental-assessment-sea-an-overview-of-the-sea-process>

¹⁴ See <https://www.gov.uk/offshore-energy-strategic-environmental-assessment-sea-an-overview-of-the-sea-process>

¹⁵ See https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274943/28R_other_regulatory_issues.pdf

- Well operator(s), to undertake development well operations, including production well drilling, well intervention (maintenance) and well suspension and abandonment operations
- Installation operator, where relevant, to undertake production installation operations
- Decommissioning Phase
 - Well operator(s), to undertake well abandonment operations
 - Installation operator, where relevant, to undertake decommissioning operations

Proposed OSD well and installation operators can be a licensee, or within a licensee's company group; the licence operator approved by the OGA; or a separate third party selected to provide the service. In many cases, it is likely that the licensee(s) will appoint the licence operator as the OSD well operator and OSD installation operator for the life of the licence. However, the licensee(s) can appoint one or more companies as an OSD well operator, for specific well operations or for one or more phases, and can appoint a single third party as the OSD installation operator for one or both relevant phases. The licensee(s) can also appoint an OSD installation operator to undertake specific duties, e.g. the preparation and submission of a design notification, and then terminate the original appointment and appoint a replacement OSD installation operator.

Details of proposed appointments must be submitted to the OGA Licensing Authority (LA) and must:

- Name the proposed OSD operator and the particular offshore oil and gas activities, duties and responsibilities relevant to the appointment;
- Confirm that the licensee(s) will provide the selected operator with the necessary authority to deliver their safety and environmental duties and responsibilities;
- Confirm that the selected operator has the capacity to meet the requirements relevant to those duties and responsibilities; and
- Confirm that the licensees will take all reasonable steps to ensure that the appointed operator meets those requirements, by implementing arrangements for the monitoring, audit and review of the operator's performance.

Proposed appointments must also be accompanied by evidence of the proposed OSD operator's capacity to manage the offshore activities, duties and responsibilities relevant to the appointment. Where the proposed OSD operator is a licensee, it is likely that they will be covered by the safety and environmental submissions submitted in support of the licence application. The licensee(s) can therefore reference the relevant submissions, or provide relevant up-dates as appropriate. Where the proposed OSD operator is a separate third party company and not connected to a licensee, it will be necessary for the licensee(s) to provide separate submissions.

Notice of proposed OSD operator appointments can be made at the time of the licence application or at a later date, and should normally be sent to the LA at least three (3) months before the date of the proposed appointment taking effect. In exceptional cases, the licensee(s) can request that proposed appointments are fast-tracked, and submissions will then be processed within a timeline that the LA has agreed with the CA. Following consultation with the CA, the LA may object in writing to the appointment, within the relevant determination period, outlining the reasons for its objection. Where the LA objects to the proposed appointment and there would otherwise be no accepted OSD operator, the licensee(s) will be responsible for the duties covered by the proposed appointment until another OSD operator is appointed and accepted by the LA. Where the LA does not object to the proposed appointment within the relevant determination period, the licensee(s) can proceed with the appointment. Following termination of any OSD operator appointment, the relevant licensee(s) who appointed the operator must also notify the LA of the termination.

The safety and environmental submissions required to support proposed OSD operator appointments are described in Sections 2.3 and 2.4 below. Where full details cannot be provided at the appointment stage, as the development of firm proposals may be dependent upon contract

award, the licensee(s) can provide brief submissions to demonstrate that they understand the safety and environmental requirements, and provide an outline timetable for the submission of full details prior to undertaking any offshore oil and gas activities. The timetable should be clearly linked to the particular offshore oil and gas activities, duties and responsibilities relevant to the appointment, and approvals for specific offshore activities will not be issued until licensees have provided a supplementary submission that addresses any outstanding requirements.

Licensees and proposed OSD operators should note that the OSD Licensing Regulations include provision for the LA and CA to request additional information, both in support of the proposed operator appointment and following appointment, and in exceptional circumstances the CA may also wish to interview proposed operators to discuss the submissions submitted in support of their appointments. They should also note that third parties can request access to safety and environmental submissions submitted in support of operator appointments that are held by the CA, and the CA may be required to make the submissions available for inspection. If the submissions contain any information that is considered to be commercially sensitive, the relevant sections should therefore be clearly identified. In such cases, if the CA receives a request for access to a submission, the relevant licensee(s) will be consulted prior to any proposed release of the relevant information.

2.2 Safety and Environmental Capacity

Licensee(s) must provide a high level OSD operatorship appointment document that contains the following:

- (i) A section summarising the proposed OSD operator's safety and environmental policies or, in exceptional circumstances, a commitment to have such policies in place prior to undertaking any offshore oil and gas activities.
- (ii) A section confirming that the proposed OSD operator possesses an understanding of the relevant statutory safety and environmental provisions, and understands the roles and responsibilities of OSD operators in relation to safety and environmental management.
- (iii) A section describing the proposed OSD operator's management structure, including details of functional responsibility for the management of safety and environmental matters (an organogram may be useful to summarise the structure and responsibilities).
- (iv) A section confirming that the proposed OSD operator has relevant safety and environmental management systems, or a commitment to have such systems in place prior to undertaking any offshore oil and gas activities. In accordance with current BEIS Environmental Management System (EMS) guidance, to secure compliance with OSPAR Recommendation 2003/5¹⁶ the proposed OSD operator should either:
 - (a) possess an existing EMS (or SEMS) that has been independently verified to comply with the requirements of the BEIS Guidance, or
 - (b) commit to develop an appropriate EMS (or SEMS) that will be implemented, independently verified and notified to BEIS in accordance with its guidance before undertaking any offshore oil and gas activities.

It should be noted that only brief summaries are required in support of proposed appointments, and licensees should not include copies of detailed supporting documents.

2.3 Safety and Environmental Performance

Licensee(s) must provide details of the proposed OSD operator's safety and environmental performance record in relation to both onshore and offshore oil and gas activities, including

¹⁶ See <https://www.gov.uk/oil-and-gas-ospar-ems-recommendation>

information in relation to any major accidents. Submissions should specifically include information relating to the following:

- (i) Details of any major accidents¹⁷ involving the proposed OSD operator during the last five years (either in the UK or in other countries).
- (ii) Details of any failure of the proposed OSD operator to comply with any relevant safety or environmental legislative standards or requirements that resulted in enforcement action being taken by the regulator during the last five years (either in the UK or in other countries).
- (iii) Details of any criminal or civil action taken against the proposed OSD operator, or pending against the proposed operator, with respect to safety or environmental issues during the last five years (either in the UK or in other countries).
- (iv) Details of any conviction imposed on the proposed OSD operator for breaching any safety or environmental legislation during the last five years (either in the UK or in other countries).

It should be noted that details are only required in relation to onshore and offshore oil and gas activities and licensee(s) should provide a 'nil' return for proposed OSD operators with no previous experience of managing offshore oil and gas activities.

3 OPERATOR CAPACITY

The OSD Licensing Regulations require that the licensee(s) must ensure that the appointed OSD operators have the capacity to meet the OSD requirements in relation to the particular offshore operations, duties and responsibilities relevant to the appointments, and must take all reasonable steps to ensure that the appointed operators satisfy those requirements. The OSD Licensing Regulations also include provision for the OGA LA and the OSD CA to request information at any time in relation to compliance with those requirements, to supplement any observations made at the time of the appointment or during CA offshore inspections or interventions.

Where, following appointment, the CA determines that an OSD operator no longer has the capacity to manage the relevant duties and responsibilities for which they were appointed, the CA will notify the LA, and the LA must terminate the appointment of the operator. The LA will therefore issue a written notice of termination, stating the date the appointment is terminated and setting out the reason, or reasons, for the termination. Where the appointment of an OSD operator has been terminated, the licensee(s) will be responsible for the duties covered by the appointment, subject to the outcome of any appeal against the CA determination¹⁸ or until another OSD operator is appointed and accepted by the LA.

For further guidance in relation to the health and safety aspects of licence applications and operator appointments, please contact the HSE Energy Team (e-mail: osdr.general@hse.gov.uk), and for further guidance in relation to the environmental aspects please contact the BEIS Cross Unit Business Support Team (e-mail: CUBS@beis.gov.uk).

¹⁷ 'Major accident' has the meaning given in Article 2(1) of the EU Directive on safety of offshore oil and gas operations (2013/30/EU)

¹⁸ Under Regulation 37(1)(b) of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015