



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Consultation Paper on the Annual Petroleum Safety  
Levy Order

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## Executive Summary

In 2010, the enactment of the *Petroleum (Exploration and Extraction) Safety Act 2010* (the 2010 Act), which amended the *Electricity Regulation Act 1999*, increased the CER's safety role to include the responsibility for the safety regulation of petroleum exploration and extraction activities in Ireland. It also required the CER to establish and implement a risk-based petroleum safety framework (the 'Framework'). The Framework can be best understood as the collection of regulations, written regulatory documents and procedures which, taken together, describe the system the CER will use to regulate safety for petroleum activities and infrastructure in Ireland.

With the passing of the 2010 Act, the CER formally established a project team to manage the design and implementation of the Framework. The project is formally titled the *Petroleum Safety Framework Implementation Project* (the 'Project') and commenced in July 2010. It contains five phases:

- A. Initial Scoping and Planning;
- B. High Level Design;
- C. Detailed Design;
- D. Internal Readiness; and
- E. Implementation.

Under the Act the CER can recover costs properly incurred in the carrying out of its functions through a levy order, hereafter referred to as the Annual Petroleum Safety Levy. These costs include the set up and implementation costs of the Framework. This Consultation Paper sets out the high level options considered by the CER in structuring the Annual Petroleum Safety Levy. In particular the Paper seeks stakeholder comment on:

1. the criteria the CER should employ when making its decisions on the Annual Petroleum Safety Levy;
2. the class or classes of petroleum undertakings that should be subject to the Annual Petroleum Safety Levy; and
3. the methodology that should be used to determine what proportion of the Annual Petroleum Safety Levy individual classes of petroleum undertaking will be required to pay. This includes options on apportioning the PSF set up costs in a different manner to the operational costs.

A Draft Decision Paper on the development of the Annual Petroleum Safety Levy is scheduled to be published in September 2012, with the Decision Paper scheduled for publication in November 2012. Stakeholders are invited to input into the Annual Petroleum Safety Levy development process to inform the most appropriate levy structure for the petroleum industry in Ireland.

The CER propose to begin levying industry in February 2013.

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# 1. Introduction

## 1.1 Background

### 1.1.1 *The Commission for Energy Regulation*

The Commission for Energy Regulation (CER) is the independent body responsible for the economic regulation of Ireland's electricity and gas sectors, and the safety regulation of petroleum undertakings, natural gas and LPG undertakings, natural gas and LPG installers and electrical contractors. The CER's role as an economic regulator began with its initial establishment under the *Electricity Regulation Act, 1999* (the 1999 Act) where it was given regulatory powers over the electricity sector. The enactment of the *Gas (Interim) (Regulation) Act, 2002* expanded the CER's jurisdiction to include the economic regulation of the natural gas sector. More recently the *Electricity Regulation Amendment (Single Electricity Market) Act 2007* outlined the CER's functions in relation to the Single Electricity Market (SEM) for the island of Ireland. This wholesale electricity market is regulated jointly by the CER and the Northern Ireland Authority for Utility Regulation (NIAUR). Through its economic regulatory powers and functions the CER is working to ensure that consumers benefit from regulation and the introduction of competition in the energy sector.

The CER's role was extended into safety regulation with the *Energy (Miscellaneous Provisions) Act, 2006* (the 2006 Act). The 2006 Act gave the CER functions and powers relating the safety regulation of natural gas undertakings (such as Bord Gáis Éireann), natural gas installers and electrical contractors. By virtue of the 2006 Act, the CER was required to establish and implement a Natural Gas Safety Regulatory Framework<sup>1</sup> which outlines how the CER discharges its downstream natural gas safety regulatory responsibilities. The Natural Gas Safety Framework was published in October 2007 and the CER has been regulating natural gas undertakings and natural gas installers through that Framework since then.

In June 2010, the responsibility of the CER, under the 1999 Act<sup>2</sup> was extended to regulate the activities of LPG installers with respect to safety. In 2011, the publication of the Liquefied Petroleum Gas Works Regulations 2011 (S.I. 299 of 2011) set out the LPG works which would come under the safety regulation of the CER.

In 2010 the CER's safety role was increased further with the enactment of the *Petroleum (Exploration and Extraction) Safety Act, 2010* (the 2010 Act), which amended the 1999 Act to include the safety regulation of petroleum undertakings engaging in certain petroleum activities.

### 1.1.2 *Petroleum Safety Framework Implementation Project*

As set out above, the Act gives the CER responsibilities for the safety regulation of petroleum exploration and extraction activities in Ireland including requiring the CER

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<sup>1</sup> [A Natural Gas Safety Regulatory Framework for Ireland \(CER/07/172\)](http://www.cer.ie/en/gas-safety-framework-overview.aspx?article=2f38e2cb-1a01-4c99-a73a-850216413ef7). This paper is available at <http://www.cer.ie/en/gas-safety-framework-overview.aspx?article=2f38e2cb-1a01-4c99-a73a-850216413ef7>

<sup>2</sup> As amended by the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010.

to establish and implement a risk-based petroleum safety framework (collectively referred to in this Paper as the 'Framework'). The Framework can be best understood as the collection of regulations, written regulatory documents and procedures which, taken together, describe the system the CER will use to regulate safety for petroleum activities and infrastructure in Ireland.

With the passing of the 2010 Act, the CER formally established a project team to manage the design and implementation of the Framework. The project is formally titled the *Petroleum Safety Framework Implementation Project* (the 'Project') and commenced in July 2010. It contains five phases:

- A. Initial Scoping and Planning;
- B. High Level Design;
- C. Detailed Design;
- D. Internal Readiness; and
- E. Implementation.

Phase A of the Project, Initial Scoping and Planning, was completed in March 2011<sup>3</sup>.

Phase B of the Project, which was completed in June 2012, comprised the development of the High Level Design of the Petroleum Safety Framework (the '[High Level Design Decision](#)'<sup>4</sup>). The [High Level Design Decision](#) frames the key policy aspects and principles of the Framework that will subsequently be reflected in the underlying guidance, regulations and written regulatory documents and procedures that will be developed as part of Phase C.

The focus of Phase C, Detailed Design, is to deliver the technical detail and regulatory guidance for each element of the Framework in accordance with principles set out in the [High Level Design Decision](#). This includes, but is not limited to, the completion of the following deliverables:

1. *Designated Petroleum Activities Regulations*;
2. *ALARP Demonstration Guidance Document*;
3. *Safety Case Guidelines*;
4. *Safety Case Assessment Procedures*;
5. *Compliance Assurance Procedures* including:
  - i. The *Audit & Inspection* system;
  - ii. The operation of the *Verification* scheme;
  - iii. The operation of the *Performance Reporting System*; and
  - iv. The monitoring of the petroleum undertaking's *General Duty*.

<sup>3</sup> The key deliverables of this Phase were:

- (a) [Status Analysis Review of Existing Legislative and Regulatory System for Petroleum Exploration and Extraction Activities in Ireland \(CER/11/058\)](http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=bb6f9bb2-c072-4743-a4a5-7ebb93fce053). This paper is available at: <http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=bb6f9bb2-c072-4743-a4a5-7ebb93fce053>
- (b) [Review and Comparison of International Petroleum Safety Regulatory Regimes \(CER/11/015\)](http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=7e64ebfb-984b-4217-88e7-093c110e63ec). This paper is available at: <http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=7e64ebfb-984b-4217-88e7-093c110e63ec>

<sup>4</sup> [Decision Paper on the High Level Design of the Petroleum Safety Framework cer12062.pdf](http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=7e64ebfb-984b-4217-88e7-093c110e63ec). This Paper is available at: <http://www.cer.ie/GetAttachment.aspx?id=ca63edee-0f0c-4a82-b2c5-73cbc675596a>

6. *Petroleum Incident Regulations*; and
7. *Enforcement Procedures*.

Phase D of the Project, Internal Readiness, involves the CER putting in place the people, processes and procedures necessary to operate and enforce the Framework effectively and efficiently on an enduring basis. The CER expect that Phase D will be completed before the end of 2013.

The final phase of the Project, Phase E Implementation, involves the assessment by the CER of Safety Cases to be submitted by petroleum undertakings, to determine whether a Safety Permit should be issued<sup>5</sup>. The CER will only take receipt of Safety Cases when it has the resources, policies and procedures in place to assess Safety Cases and discharge its regulatory responsibilities under the Framework and the *2010 Act*. The CER expects the new regulatory Framework will begin operation before the end of 2013.

### 1.1.3 **Annual Petroleum Safety Levy**

#### 1.1.3.1 *Overview*

Section 13 of the [High Level Design Decision](#), which deals with the regulatory recovery of costs under the Framework, states:

*“Paragraph 16 of Schedule 1 of the Act enables the CER to impose an annual levy order on petroleum undertakings for the purposes of meeting its expenses.*

*The CER will set out the basis on which it will impose such a levy on classes of petroleum undertakings in an Annual Petroleum Safety Framework Levy Order Decision Paper.*

*Section 13R of the Act enables the CER to require a fee to be paid by a petroleum undertaking relating to the consideration of a safety case. The basis on which the CER will structure such fees will be set out in a Safety Case Fees Structure Decision Paper”*

This consultation paper (the ‘Paper’) begins the consultation process for *Annual Petroleum Safety Framework Levy Order Decision Paper*. This Paper does not cover structure of Safety Case fees. These will be consulted upon separately in 2013 through the *Safety Case Fees Structure Consultation Paper*<sup>6</sup>.

With regard to which activities will potentially incur the Levy, Section 13C of Part IIA

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<sup>5</sup> This includes Safety Cases for each petroleum undertaking carrying on an established petroleum activity defined under the 2010 Act or who have received a petroleum authorisation from the Minister prior to the completion of the Safety Case Guidelines

<sup>6</sup> It should be noted that there is an interaction between the Annual Petroleum Safety Levy and Safety Case Fees. Where the CER is engaged in safety case assessments, the costs incurred will be billed directly to the relevant petroleum undertakings. A significant portion of the Safety Case Fees will be driven by CER staff costs. Therefore, this will ultimately reduce the Petroleum Safety Levy order for that year as a certain portion of staff costs will be recouped through Safety Case Fees.

states:

*“This Part [Part IIA] applies to any petroleum undertaking that (a) proposes to carry on a designated petroleum activity, or (b) is carrying on an established petroleum activity.”*

Schedule 1, paragraph 16 of the Act goes on to state that:

*“For the purposes of meeting expenses properly incurred by the Commission in the discharge of its function under this Act, the Commission may make an order [...] imposing a levy to be paid each year on such class or classes of [...] (b) petroleum undertakings, as may be specified by the Commission in the order [...]”.*

It follows that the Levy can be applied to any petroleum undertaking that proposes to carry out designated petroleum activities<sup>7</sup> or that is carrying on an established petroleum activity.

The Levy can also be applied to any petroleum undertaking carrying on a petroleum activity as the CER has the function to monitor and enforce compliance by petroleum undertakings with their obligations under Part IIA. For example, section 13K(1) of Part IIA of the Act states that:

*“In addition to complying with the requirements of any other provisions of [Part IIA] a petroleum undertaking shall ensure that (a) any petroleum activity is carried on in such a manner as to reduce risks to a level that is as low as is reasonably practicable [...]”.*

Section 13K of Part IIA of the Act refers to ‘petroleum activities’. Petroleum Activities is defined in section 13A(2)(a) of the Act. In light of the general terms in which section 13K is drafted it is clear the CER has a safety regulation functions in relation to ensuring petroleum undertakings comply with their obligations under the Act in relation to designated petroleum activities and if Part IIA of the Act applies to the petroleum undertaking, the CER has the function to ensure petroleum undertakings comply with their obligations under the Act in relation to petroleum activities.

It should be noted that the Annual Petroleum Safety Levy will be used by the CER to recover its ongoing annual operational costs as well as the costs for establishing and implementing the Framework over the period 2010 to 2013. As stated above, this is provided for in the Act under Schedule 1, paragraph 16, which states that:

*“For the purposes of meeting expenses properly incurred by the Commission in the discharge of its function under this Act, the Commission may make an order...imposing a levy to be paid each year on such class or classes of ...petroleum undertakings, as may be specified by the Commission...”.*

Put simply, the CER may levy a class or classes of petroleum undertakings for expenses properly incurred by it in the performance of its functions under the Act. In particular, the CER has discharged the following functions since their

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<sup>7</sup> The CER will publish the Designated Petroleum Activities Regulations in Q1 2013. These Regulations will set out which activities will be designated and consequently will require an approved Safety Case from the CER prior to being carried on.

commencement.

Part IIA, section 13G of the Act states that:

*“The principal objective of the Commission in exercising its function under this Part is to protect the public by fostering and encouraging safety as respects the carrying on of designated petroleum activities.”*

Section 13H(1) goes on to state that:

*“The Commission shall do all things necessary and reasonable to further its objectives and shall exercise its powers and perform its functions in the public interest.”*

This provides the basis for the recovery of project costs through the Annual Petroleum Safety Levy.

The above sections of the Act were commenced under S.I. 227 of 2010 and S.I. 367 of 2010 enabling the CER to start work on the PSF Implementation Project and to borrow monies for this purpose. Sections 1<sup>8</sup>, 2<sup>9</sup>, and 4<sup>10</sup> together with sections 13A,<sup>11</sup> 13B<sup>12</sup>, 13C<sup>13</sup>, 13G<sup>14</sup>, 13H<sup>15</sup> and 13K<sup>16</sup> inserted by section 3 of the 2010 Act came into operation on May 22<sup>nd</sup> 2010, under S.I. 227 of 2010<sup>17</sup>. On July 23<sup>rd</sup> 2010, under S.I. 367 of 2010<sup>18</sup> the following sections of the 2010 Act came into operation: section 3(a)<sup>19</sup>, section 3(c)<sup>20</sup> and section 3(d)<sup>21</sup> except in so far as it relates to section 13D to F, 13I-J, 13L-AD.

### 1.1.3.2 *Estimated Annual Petroleum Safety Levy*

The CER is acutely aware of the need to be as efficient as possible in order to minimise regulatory costs for the establishment of the Framework and its operation. In particular the CER aim to minimise costs by working closely with statutory stakeholders to increase efficiencies and avoid duplication of efforts, where possible.

The costs for the establishment and implementation of the Framework are funded through a commercial loan (the Loan) obtained from the National Treasury Management Agency (NTMA). The Loan must be repaid by CER by 2016, with the repayments themselves commencing in 2013. The repayment amount is expected to total approximately €5.7 million and this cost will be recovered through the Annual Petroleum Safety Levy. In addition the CER will begin to recover its operational costs

<sup>8</sup> Short title and commencement

<sup>9</sup> Interpretation

<sup>10</sup> Amendment to Schedule 1 to Act of 1999

<sup>11</sup> Interpretation (Part IIA)

<sup>12</sup> Safety Obligations

<sup>13</sup> Application on Part IIA

<sup>14</sup> Object of Commission relating to petroleum safety

<sup>15</sup> Functions of Commission relating to petroleum safety

<sup>16</sup> General duties on petroleum undertakings

<sup>17</sup> See <http://www.irishstatutebook.ie/pdf/2011/en.si.2011.0227.pdf>

<sup>18</sup> See <http://www.attorneygeneral.ie/esi/2010/B27813.pdf>

<sup>19</sup> Definition of petroleum undertaking in section 2(1) of the 2010 Act

<sup>20</sup> Functions of the Commission under Part IIA relating to petroleum safety

<sup>21</sup> Insertion of Part IIA after Part II.

in 2013. Operational costs (excluding safety case assessment costs for specific applications) are estimated to range from €1 million to €1.5 million annually in the initial years of operation.

Once the cost for the establishment and implementation of the Petroleum Safety Framework has been recovered, the Annual Petroleum Safety Levy will be based solely on the operational costs.

The CER anticipate that it will publish the first Annual Petroleum Safety Levy Order in February 2013.

## 1.2 Purpose of this Paper and the Consultation Process

The purpose of this Paper is to seek initial stakeholder views on a number of issues relating to the Annual Petroleum Safety Levy prior to the CER setting out its detailed proposals. In particular the Paper seeks stakeholder comment on:

1. the criteria the CER should employ when making its decisions on the Annual Petroleum Safety Levy;
2. the class or classes of petroleum undertakings that should be subject to the Annual Petroleum Safety Levy; and
3. the methodology that should be used to determine what proportion of the Annual Petroleum Safety Levy that classes of petroleum undertaking will be required to pay. This includes options on apportioning the costs for the establishment and implementation of the Framework in a different manner to the operational costs.

Following consideration of comments to this Paper, the CER will publish a Draft Decision Paper that will set out the CER's detailed proposal for the Annual Petroleum Safety Levy. This Draft Decision Paper is expected to be published for consultation in September 2012. Having considered all responses to the Draft Decision Paper, the CER aims to publish its Decision Paper in November 2012, with the first Petroleum Safety Levy Order published in February 2013.

## 1.3 Responding to this paper

Interested parties are invited to provide written responses to this paper. Comments should be sent by 5pm the 9th August 2012, preferably in electronic format to;

Róisín Cullinan  
Commission for Energy Regulation  
The Exchange  
Belgard Square North  
Tallaght  
Dublin 24  
[rcullinan@cer.ie](mailto:rcullinan@cer.ie)

For convenience, Appendix A contains a summary of the questions posed in this Consultation Paper.

The CER intends to publish all comments received on the CER website. Respondents wishing for their submission, or sections therein, to be treated as confidential should note this in their submission.

Should respondent wish to meet with the CER to discuss their submission, the CER will make itself available for such meeting the week commencing August 13<sup>th</sup>. Respondents wishing to meet with the CER to discuss their submission should contact the above no later than 5pm August 9th 2012.

#### 1.4 **Structure of the Paper**

The remainder of this Paper is structured as follows:

**Section 2:** *Proposed Evaluation Criteria in Determining an Appropriate Annual Petroleum Safety Levy Structure*

This section proposes criteria to aid the evaluation of the levy development options for consideration.

**Section 3:** *What Classes of Petroleum Undertakings should be subject to the Annual Petroleum Safety Levy?*

This section proposes the classes of petroleum undertakings that will be subject to the Annual Petroleum Safety Levy.

**Section 4:** *Annual Petroleum Safety Levy Structure*

This section summarises a review of cost recovery arrangements applied by other jurisdictions internationally and proposes an Annual Petroleum Safety Levy structure that could be applied in Ireland.

**Section 5:** *Options for the Recovery of Costs for Establishment and Implementation of the Framework*

This section proposes options for structuring the levy with specific regard for the establishment and implementation costs.

**Section 6:** *Operation of the Levy System*

This section proposes the anticipated operation of the Annual Petroleum Safety Levy;

**Section 7:** *Next Steps*

This section outlines the full consultation process for the Annual Petroleum Safety Levy development.

## 2. Proposed Evaluation Criteria in Determining an Appropriate Annual Petroleum Safety Levy Structure

As set out in section 1.1.3, the CER will recover its ongoing annual operational costs as well as the costs for establishing and implementing the Framework over the period 2010 to 2013 through the Annual Petroleum Safety Levy.

In determining how this Annual Petroleum Safety Levy should be structured, and in accordance with good regulatory principles and other international regulatory levy systems, the CER propose that its decision making process should be based on the following evaluation criteria:

1. Fairness;
2. Simplicity; and
3. Sustainability.

The first criteria, Fairness, will guide how the Annual Petroleum Safety Levy will be apportioned across the petroleum undertakings. It will aid in the decision making process of who will be levied and to what degree. Utilising the second criteria, Simplicity, guides the levy development such that it will not impose a complicated or unnecessary administrative burden on the petroleum undertaking or the CER. The final proposed criteria, Sustainability, recognises the current size and nature of the petroleum exploration and extraction industry in Ireland and reflects the need for the Annual Petroleum Safety Levy structure to be suitable for the current industry whilst being easily adapted for future changes in the industry.

Table 1 below outlines the proposed evaluation criteria with guidance on how it could be applied to the proposals in the later sections of this Paper.

<b>Evaluation criteria</b>	<b>Guidance</b>
<b>Fairness</b>	Is the levy apportioned fairly across petroleum undertakings? Is the levy proportionate to the regulatory burden imposed on the CER in discharging its functions under the Act?
<b>Simplicity</b>	Is the methodology clear and easily understandable? Does it impose unnecessary administrative burden?
<b>Sustainability</b>	Is the proposed methodology appropriate for the current petroleum exploration and extraction industry in Ireland and is it robust enough and flexible enough to be adaptable to potential future changes?

**Table 1: Proposed evaluation criteria for the development of the petroleum safety levy**

### Question 1

Respondents are requested to comment on the proposed evaluation criteria and to propose additional criteria (with associated rationale) if necessary.

### 3. What Classes of Petroleum Undertakings should be subject to the Annual Petroleum Safety Levy?

Under the Act, the CER can impose a levy on such class or classes of petroleum undertakings for the purposes of meeting expenses properly incurred in the discharge of its functions. Petroleum undertakings are defined by the Act as '*any person to whom a petroleum authorisation has been given or granted*'. The Act defines a petroleum authorisation as any one of the following:

- an exploration licence granted pursuant to section 8 of the Act of 1960 (Petroleum and Other Minerals Development Act, 1960);
- a petroleum lease granted pursuant section 13 of the Act of 1960;
- a petroleum prospecting licence granted pursuant to section 9 of the Act of 1960;
- a reserved area licence granted pursuant Section 19 of the Act of 1960 ;
- a lease option; (undertaking) granted pursuant to section 10 of the Act of 1960
- a Section 5 consent; granted pursuant to the Continental Shelf Act, 1968 and
- a Section 40 consent granted pursuant to the Gas Act, 1976.

It follows that holders of the above authorisations can be subject to the petroleum safety levy.

As stated in Section 1.1.3.1, the CER can impose a levy on designated petroleum activities and related petroleum activities.

The CER is currently minded that all petroleum undertakings holding any of the authorisations above will be subject to the Annual Petroleum Safety Levy. However, there may be strong arguments that holders of certain petroleum authorisations (e.g. a petroleum prospecting licence; or a lease option (undertaking)) should not be subject to the Levy as it is unlikely that the petroleum undertaking holding such petroleum authorisations will impose a regulatory burden on the CER. Notwithstanding the decision on which petroleum undertakings are subject to the Annual Petroleum Safety Levy, the apportionment of the levy across different classes of petroleum undertakings is likely to vary. The options for structuring the levy are discussed in Section 4.

Applying the levy to all petroleum undertakings as defined under the Act will spread the levy across a greater number of licensed entities. It will also ensure that all those who have the potential to impose a safety regulatory burden can be levied. This is consistent with the proposed 'fairness' evaluation criteria, as well as being simple and more sustainable.

#### **Question 2**

The CER requests respondent's views on applying the levy to all classes of petroleum undertakings, as defined under the Act.

## 4. Annual Petroleum Safety Levy Structure

The Act provides for the CER to develop a levy to recover costs properly incurred in the carrying out of its functions. To inform the Annual Petroleum Safety Levy development, the CER initially carried out a review of existing cost recovery arrangements related to the safety regulation of petroleum activities. The results are provided in section 4.1.

Section 3 proposes that all classes of petroleum undertakings will be subject to the annual petroleum safety levy whilst noting that the levy apportionment will vary across the different classes. Section 4.2 expands on the latter comment and proposes a minimum annual levy amount.

### 4.1 International review of cost recovery arrangements

It should be noted that under the current system in Ireland for the regulation of petroleum activities, arrangements are in place for industry to fund safety regulatory activities.

The CER carried out a review of international cost recovery arrangements for the safety regulation of petroleum activities to inform the levy development process. The countries reviewed were:

- A. The United Kingdom;
- B. Denmark;
- C. The Netherlands;
- D. Norway;
- E. Canada;
- F. USA; and
- G. Australia.

The findings of the review showed that cost recovery arrangements generally focus on recovering costs incurred by the safety regulatory bodies through their monitoring, enforcement and investigation functions. This aligns with the functions of the CER under the Act.

The HSE UK began charging for permissioning and safety case regimes in 1999. Prior to this the regulation of these regimes were government funded. The introduction of this charging applied to the HSE Offshore Division which regulated the safety of offshore oil and gas activities. As a result of this introduction of charging by the HSE, certain elements of the HSE OSD work now operates a fee for service cost recovery arrangement. 'Fee for service' is where the petroleum undertaking pays the regulatory costs associated with the carrying out of specific regulatory work such as an audit or inspection on a case by case basis. The elements for which costs are recoverable by the HSE OSD, are inspections, investigations and enforcements. The recovery of costs associated with safety case assessments are also recovered in this manner.

Fee for service arrangements are also employed by the Canada-Nova Scotia Offshore Petroleum Board for Nova Scotia and by the Petroleum Safety Authority in Norway. Both regulators also recover costs through government funding which amounts to approximately 50% of all funding. In Denmark, certain expenses related to regulatory supervision by the Danish Energy Agency, such as staff working hours and travel expenses are reimbursed by the duty holders in accordance with rates set by the government.

Although cost recovery through industry is referred to in the USA, following the replacement of the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), (formerly the Minerals Management Service (MMS)), by the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE) and the Office of Natural Resources Revenue (ONRR) in 2011, further details on the cost recovery arrangements employed in the safety regulation of petroleum activities in the USA were not found during the international review.

In the Netherlands, the regulatory body, the State Supervision of Mines, is fully funded by the Ministry of Economic Affairs with no costs recovered through industry.

The National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA, formerly NOPSA), is the safety regulatory body for offshore petroleum exploration and extraction activities in Australia. Full cost recovery is attained through a system of levies on operators (i.e. there is no exchequer contributions to costs), including a;

- Safety case levy – an annual levy imposed in relation to a safety case that is in force in relation to a facility, and comprising a facility amount, a pipeline amount and a Safety Management System amount; and
- Safety investigation levy – imposed on an operator of a facility where the cost of an associated NOPSEMA investigation exceeds €30,000.

Broadly speaking the Australian levy system apportions the annual levy based on the infrastructure/facilities being used by the petroleum undertakings in a given year. NOPSEMA also retains a cash surplus via the levy as a reserve fund in order to meet unplanned events or for future asset replacement or upgrade. This fund is approximately 10% of the total income.

Appendix B provides further details on how the levy amount is determined for operators in a given year under the Australian levy system as well as how the levy system deals with mobile facilities and pipelines.

#### 4.1.1 ***Levy development – assessment of options***

The Act allows for the CER to recover its petroleum safety costs via an Annual Petroleum Safety Levy, which reflects the legislature's requirement for industry to directly pay for its regulation. It is clear that there will be no direct exchequer funding, full or partial, to cover the CER's costs.

A fee for service cost recovery arrangement is a popular choice internationally. It's success is based on knowledge of the national industry, as this enables the regulatory foresight required to accurately plan and budget for regulatory activities in advance. It is also appropriate where full cost recovery is not required (i.e. where a degree of government funding is available to enable ongoing operations in the absence of fee for service work). A fee for service costs recovery arrangement is not suitable for Ireland as the Act states that costs incurred will be recovered annually via a levy.

It should be noted that and a fee for service arrangement is indirectly alluded to in the Act for the Safety Case fees, where the CER will recover the costs associated with a Safety Case assessment directly from the petroleum undertaking concerned.

Based on the results of the international levy review and an analysis of the petroleum industry in Ireland, the CER is minded to develop an Annual Petroleum Safety Levy system that is broadly aligned with the Australia approach, but tailored to the particular characteristics of the industry in Ireland. NOPSEMA, like the CER, is fully funded via industry and therefore its approach at the outset makes it a viable option.

The levy methodology applied by NOPSEMA has also undergone multiple reviews with input from industry since its introduction. These reviews have guided changes to the levy and consequently the CER considers the Australian cost recovery arrangement to be appropriate and reflective of the modern petroleum industry. It is recognised that the industry in Ireland and Australia differ, however industry participants operate internationally and their input into the Australian reviews is taken as indicative of international industry views. Appendix B provides links to further information on the Australian levy system.

### **Question 3**

Are there any other cost recovery arrangements that the CER should consider?

### **Question 4**

The CER requests respondents' views on aligning the Annual Petroleum Safety Levy system with the Australian levy system. Ideas on how the system could be tailored to particular circumstances of the industry in Ireland are also welcomed.

## **4.2 Minimum Fee**

Section 3 proposed that all petroleum undertakings could be liable for a levy payment, whilst noting that the apportionment of the levy would vary dependent on the authorisation types. The CER recognises that the holders of certain petroleum

authorisations will impose a significantly greater safety regulatory burden on the CER than others, given the different designated petroleum activities that are permitted to be carried out under those authorisations. Conversely, certain authorisation types, such as petroleum prospecting licenses and lease options (undertakings), may impose minimal regulatory burden. With this in mind, the CER proposes that the following petroleum authorisations will *not* be levied in accordance with the options outlined in Sections 4.1.1(or Section 5 to follow), but will be charged a flat minimum annual levy amount:

- a petroleum prospecting licence;
- a lease option (undertaking).

#### **Question 5**

The CER requests respondents' views on the concept of a minimum annual levy charge for all petroleum authorisation holders?

#### **Question 6**

The CER requests respondents' views on the authorisation types for which only the minimal charge will apply.

## 5. Options for the Recovery of Costs for Establishment and Implementation of the Framework

As set out in section 1.1.3, the CER will recover its ongoing annual operational costs on an enduring basis as well as the costs for establishing and implementing the Framework over the period 2010 to 2013 through the Annual Petroleum Safety Levy. Section 4 outlines the proposed approach to structuring the Annual Petroleum Safety Levy for the recovery of the CER's costs.

From the findings of the international review of cost recovery arrangements, there were no indications that industry funded the establishment and implementation of the regulatory body, as will be the case for the Framework. The CER recognises that there may be an argument to recover the costs for the establishment and implementation of the Framework through a different methodology than that which is used to recover annual operational costs. With this in mind, the CER proposes the following two options to recover costs for establishing and implementing the Framework:

### 1. Pro-rata approach

All costs (set up and annual operational costs) will be recovered via a single methodology (such as that proposed in Section 4 to align with the Australian levy system)

### 2. Separate Methodologies

The operational costs will be recovered via one methodology (such as that proposed in Section 4 to align with the Australian levy system). The Framework set up costs will be recovered under the same levy order but using a different methodology to apportion the set up costs amongst petroleum authorisation holders.

With respect to the different methodologies to recover Framework set up costs under Option 2, there are alternatives which the CER could employ. This could include:

- a) Years remaining on a petroleum authorisation; or
- b) Reservoir capacity remaining.

### Question 7

Respondents are requested to comments and/or state their preference for:

Option 1: All costs (set up and annual operational costs) will be recovered via a single methodology (e.g. proposed alignment with Australian system); or

Option 2: Separate methodologies – The operational costs will be recovered via one methodology (e.g. proposed alignment with Australian system) and the Framework set up costs will be recovered via a different methodology (e.g. years remaining on a

petroleum authorisation or reservoir capacity remaining)

**Question 8**

In relation to Option 2, respondents are requested to comment on their preferred approach to how the PSF set up costs should be recovered, and/or to propose additional alternative approaches if necessary.

## 6. Operation of the Levy System

### 6.1 Timeline for the levy

The CER propose that it will begin levying in February 2013. All subsequent levy orders will be made in the December in advance of the levy year. For example, the levy order for 2014 will be made in December 2013.

#### Question 9

Respondents are requested to comment on the proposed ongoing operation of the annual levy.

## 7. Next Steps

The CER is seeking comment from interested parties on the proposals contained in this Consultation Paper by August 9<sup>th</sup>. Appendix A provides a review of all the questions posed in this Paper.

Should a respondent wish to meet with the CER to discuss their submission, the CER will make itself available for such a meeting the week commencing August 13<sup>th</sup>. Respondents wishing to meet with the CER to discuss their submission should contact the CER (as per Section 1.3) no later than 5pm August 9th 2012.

Following consideration of comments to this Paper, the CER will publish a Draft Decision Paper that will set out the CER's detailed proposal for the Annual Petroleum Safety Levy. This Draft Decision Paper is expected to be published for consultation in September 2012. Having considered all responses to the Draft Decision Paper, the CER aims to publish its Decision Paper in November 2012.

The first Petroleum Safety Levy Order is scheduled to be made in February 2013.

## Appendix A – Consultation Questions

**The aim of this Appendix is to allow for a “short-cut” option for respondents to submit their comments to the CER.**

Please note respondents are in no way obliged to respond to the questionnaire provided and are welcome to submit comments in their preferred format. However when preparing responses respondents should indicate which section or proposal their text refers to.

Question/ Proposal	Comments
1. Respondents are requested to comment on the proposed evaluation criteria and to propose additional criteria (with associated rationale) if necessary.	
2. The CER requests respondent's views on applying the levy to all petroleum undertakings, as defined under the Act.	
3. Are there any other cost recovery arrangements that the CER should consider?	
4. The CER requests respondent's views on aligning the levy development with the Australian levy system.	
5. The CER requests respondent's views on a minimum annual levy charge.	
6. The CER requests respondent's views the authorisation types for which the minimal charge is proposed to apply.	

Question/ Proposal	Comments
<p>7. Respondents are requested to comments and/or state their preference for:  <u>Option 1</u>: All costs (set up and annual operational costs) will be recovered via a single methodology (e.g. proposed alignment with Australian system); or</p> <p><u>Option 2</u>: Separate methodologies – The operational costs will be recovered via one methodology (e.g. proposed alignment with Australian system) and the Framework set up costs will be recovered via a different methodology (e.g. years remaining on a petroleum authorisation or reservoir capacity remaining)</p>	
<p>8. In relation to <u>Option 2</u>, respondents are requested to comment on their preferred approach to how the PSF set up costs should be recovered, and/or to propose additional alternative approaches if necessary.</p>	
<p>9. Respondents are requested to comment on the proposed ongoing operation of the annual levy.</p>	

## Appendix B – Australian levy system

### Safety Case Levy Calculation for Australia cost recovery for safety regulation

In Australia, an annual levy imposed by NOPSEMA in relation to the safety case that is in force in relation to a facility. This levy is imposed where a safety case has been accepted. It is calculated based on the type facilities in use. The levy calculation is:

$$\text{Facility Amount} * \text{Safety Management System (SMS) fee}$$

where different types of facilities have been assigned a facility rating and a unit value (Facility Amount = facility rating \* unit amount), and a flat fee has been determined for the SMS. Three SMS flat fees are employed depending on whether the facility is:

1. A mobile facility,
2. Not a mobile facility; or
3. A pipeline.

Two unit rates are employed depending on whether the facility is:

1. A pipeline; or
2. Not a pipeline.

Below is an example of the facility ratings:

Item	Facility or proposed facility	Facility rating
1	Large platform with drilling/workover capability	12
2	Other platform with accommodation facilities:	
	(a) when drilling/workover facilities are in commission	8
	(b) when drilling/workover facilities are not in commission	5
	<i>Note</i> This is a <b>variable-rating facility</b> .	
3	Floating production storage and offloading facility	6
4	Mobile offshore drilling unit or drill-ship	6
5	Vessel for laying pipes for petroleum or a greenhouse gas substance	5
5A	Vessel or structure used for the erection, dismantling or decommissioning of a facility or for the provision of accommodation for persons working on another facility	3
6	Floating storage unit linked to a production platform	3
7	Monopod, well head platform or other small production or injection facility with no accommodation	1

The facility amount is taken to be zero for facility types that are not specifically listed.

### Pipelines

Pipelines are levied in the initial year of assessment and when a revision of the associated safety case results in the requirement for a safety case assessment by NOPSEMA.

### Mobile facilities

Mobile facilities are charged a daily rate basis for the number of days the mobile facility operates within the safety jurisdiction of NOPSEMA.

Further details on the Australian levy system can be found on the NOPSEMA website:

- <http://www.nopsema.gov.au/about/cost-recovery/>

## Appendix C – Relevant links: International Cost Recovery Review

### Relevant links: International Cost Recovery Review

Links to the relevant petroleum safety regulatory websites are provided below for the countries reviewed in Section 4. An overview of each country's regulatory system, including its financial basis, can also be found on the International Regulators Forum website here: <http://www.irfshoresafety.com/country/>

- A. The United Kingdom:
  - Health and Safety Executive Offshore Division: <http://www.hse.gov.uk/offshore/>
  - Cost recovery for offshore activities - A guide: <http://www.hse.gov.uk/charging/offshore/chgoffsh.htm>
  
- B. Denmark:
  - Danish Energy Agency – Oil and Gas: <http://www.ens.dk/en-US/OilAndGas/Sider/Oilandgas.aspx>
  
- C. The Netherlands:
  - State Supervision of Mines: <http://www.sodm.nl/english>
  
- D. Norway:
  - The Petroleum Safety Authority: <http://www.ptil.no/>
  
- E. Canada:
  - CNSOPB – Canada – Nova Scotia Offshore Petroleum Board [http://www.cnsopb.ns.ca/regulatory\\_framework.php](http://www.cnsopb.ns.ca/regulatory_framework.php)
  
- F. USA:
  - Bureau of Safety and Environmental Enforcement: <http://www.bsee.gov/>
  - Office of Natural Resources Revenue: <http://www.onrr.gov/>
  - (Bureau of Ocean Energy Management, Regulation and Enforcement: <http://www.boemre.gov/index.htm> - no longer being updated)
  
- G. Australia.
  - NOPSEMA – National Offshore Petroleum Safety and Environmental Management Authority <http://www.nopsema.gov.au/safety/safety-levies/>  
<http://www.nopsema.gov.au/about/cost-recovery/>