



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

## **Petroleum Safety Levy Methodology**

### **Decision Paper**

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## Related Documents

<a href="#">CER12062</a>	High Level Design Petroleum Safety Framework
SI 89 of 2013	Petroleum Safety (Designation of Certain Classes of Petroleum Activity) Regulations 2013
SI 136 of 2013	Electricity Regulation Act 1999 (Petroleum Safety) Levy Order 2013

## List of Defined Terms in this Paper

Words and phrases defined in Section 13A of the Act shall, unless the context otherwise requires, have the same meanings when used in this Paper.

Term	Definition or Meaning
<b>Act</b>	The <i>Petroleum (Exploration and Extraction) Safety Act 2010</i> as amended
<b>Designated Petroleum Activities Regulations</b>	The regulations made by the CER pursuant to Section 13D of the Act: See SI 89 of 2013 <i>Petroleum Safety (Designation of Certain Classes of Petroleum Activity) Regulations 2013</i>
<b>Establishment Costs</b>	The costs incurred by the CER in the establishment of the Framework up to November 30 <sup>th</sup> 2013
<b>Framework</b>	The Petroleum Safety Framework established under Section 13I of the Act which comprises the collection of regulations, written regulatory documents and procedures which, taken together, describe the system the CER uses to regulate the activities of petroleum undertakings with respect to safety.
<b>High Level Design</b>	The CER <i>Decision Paper on the High Level Design of the Petroleum Safety Framework</i> (the <a href="#">High Level Design</a> ) as amended from time to time.
<b>Operational Costs</b>	The costs incurred by the CER in the discharge of its function under the Act, excluding Safety Case Fees.
<b>Safety Case Fees</b>	The costs incurred by the CER in the assessment of a safety case, or a revised safety case and the costs associated with determining the conditions relating to the issue of a safety permit or the refusal to issue a safety permit. issuance of a safety permit under Section 13R of the Act

# 1. Introduction

## 1.1 Background

### 1.1.1 *The Petroleum Safety Framework*

The *Electricity Regulation Act 1999*, as amended *inter alia* by the *Petroleum (Exploration and Extraction) Safety Act 2010* (the Act) gives the Commission for Energy Regulation (CER) responsibility for the safety regulation of petroleum exploration and extraction activities in Ireland, including specifically a requirement for the CER to “establish and implement a risk-based petroleum safety framework” (collectively referred to in this document as the Framework). The Framework is the entire system that the CER will use to regulate the safety of petroleum activities, and in particular designated petroleum activities, carried out by Petroleum Undertakings. The Framework established by the Act is risk-based, recognising that hazards may be presented by the activities to be regulated and it requires Petroleum Undertakings<sup>1</sup> to reduce risks to a level that is as low as is reasonably practicable (ALARP).

The CER *Decision Paper on the High Level Design of the Petroleum Safety Framework* (the ‘High Level Design’) sets out, at a high level, how the Framework operates. Section 13 of the High Level Design, 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.”*

This Paper sets out the methodology to determine the Petroleum Safety Levy for the recovery of Operational and Establishment Costs of the Framework. The methodology to determine Safety Case Fees will be set out in a *Safety Case Fees Structure Decision Paper* and is not dealt within this Paper.

### 1.1.2 *To whom and what does the Levy apply?*

Petroleum undertakings are subject to the Levy (the ‘Levy’) by the CER. Regarding which activities are potentially subject to the Levy, Section 13C of Part IIA of the Act 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*

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<sup>1</sup> As defined in Section 13A(1) of the Act

*order [...]*.

It follows that the Levy can be applied to any petroleum undertaking that proposes to carry out designated petroleum activities<sup>2</sup> or that is carrying on an established petroleum activity as defined in the Act.

The Levy is also applicable 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 are 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 function in relation to ensuring petroleum undertakings comply with their obligations under the Act in relation to designated petroleum activities and as Part IIA of the Act applies to petroleum undertakings, the CER has the function to ensure petroleum undertakings comply with their obligations under the Act in relation to petroleum activities.

The Levy will be used by the CER to recover its ongoing annual operational costs relating to the Framework (the ‘Operational Costs’) and the costs for establishing and implementing the Framework (the ‘Establishment Costs’). 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 impose a levy on a class or classes of Petroleum Undertakings for expenses properly incurred by it in the performance of its functions under the Act. However, as is set out in Section 2 of this Paper, only certain classes of petroleum undertaking, those imposing a safety regulatory burden on the CER, will be subject to the Levy.

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<sup>2</sup> A designated petroleum activity is a petroleum activity designated as such by the CER by regulation pursuant to Section 13D of the Act.

## 1.2 Structure of the Paper

The remainder of this Paper is structured as follows:

**Section 2:** *The Levy Methodology*

This section provides details on the development and structure of the Levy, including the Operational Cost Recovery Methodology and the Establishment Cost Recovery Methodology. It also sets out who will be liable for the Levy;

**Section 3:** *Administrative Considerations*

This section sets out the administrative details for the Levy; and

**Section 4:** *Next Steps*

This section describes the next steps in implementing the policy set out in this Paper.

## 2. The Levy Methodology

In developing the Levy methodology, the CER had regard to the following three criteria (i) Fairness, (ii) Simplicity and (iii) Sustainability. A key principle of the Levy methodology is to impose the Levy upon petroleum undertakings proportionate to the level of regulatory burden created for the CER as regulator in the performance of its functions under the Act.

The Levy will apply to petroleum undertakings that carry out, or propose to carry out, designated petroleum activities. The classes of designated petroleum activities are set out in the Designated Petroleum Activities Regulations<sup>3</sup>, which includes: Well Works; Production and Decommissioning.

The CER will recover all its Establishment Costs and the majority of its Operational Costs through the Levy. The Establishment Costs will be recovered through the Levy from 2013 until 2016. Operational Costs will be recovered through the Levy each year from 2013 once the Framework is fully implemented. Different methodologies will be employed to recover the Operational Costs (see section 2.1) and the Establishment Costs (see section 2.2).

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<sup>3</sup> SI No. 89 of 2013 *Petroleum Safety (Designation of Certain Classes of Petroleum Activity) Regulations 2013*

## 2.1 Operational Cost Recovery Methodology

Operational Costs will apply to petroleum undertakings that carry out, or propose to carry out, designated petroleum activities and have, or propose to have, the types of Infrastructure set out in Table 1 in situ.

Table 1 below identifies the types of Infrastructure that will incur costs under the Levy along with their associated weighting: the higher the weighting, the higher the proportion of Levy to be paid in connection with that Infrastructure. Where an Infrastructure type is not specified, the weighting can be taken as zero.

Reference	Infrastructure	Weighting
<b>A</b>	Onshore Facility	5
<b>B</b>	Manned Offshore Facility	5
<b>C</b>	Unmanned Offshore Facility	2
<b>D</b>	Subsea Pipeline	3
<b>E</b>	Onshore Pipeline	3
<b>F</b>	Well(s) (under a single approved wells safety case)	3

Table 1: Infrastructure types for Operational Costs and associated weightings.

Reference F, Wells, refers to a well or wells under a single approved Well Work safety case only. For clarity, this does not include wells under a Production safety case. Under a Production safety case, the wells will be included as part of the weighting assigned to the most appropriate infrastructure type references A to E. The most appropriate infrastructure type into which wells will be assigned will be decided on a case by case basis.

### 2.1.1 Variable Weightings

The CER recognises that different Infrastructure employed by the petroleum undertaking to carry out a designated petroleum activity, has the potential to require different levels of safety regulation by the CER under the Framework. To this end, all weightings indicated in Table 1 are variable and indicate the maximum weighting that can be applied.

To determine the weighting for a specific piece of Infrastructure, the CER will make an initial assessment to determine the intensity of resources required to perform the CER's safety regulatory functions under the Act in relation to such Infrastructure (and associated activities). The assessment of the appropriate weighting for such Infrastructure *in situ and proposed to be in situ*, for each applicable petroleum undertaking, will be carried out on a case by case basis and on the CER's duty to act consistently. The CER will consult with the petroleum undertaking on the proposed weighting to be applied before it is imposed. Following the assessment and where deemed equitable, the CER may lower the weighting to zero.

Where a weighting has been lowered following a CER assessment of a petroleum undertakings specific Infrastructure but the actual regulatory burden imposed exceeds the new predicted level, the CER can reassess the weighting to reflect the actual costs imposed.

Following implementation of the Framework, the CER may amend the weightings as set out in Table 1 if they do not align with the actual regulatory burden imposed. Any proposed amendments to the weightings in Table 1 by the CER will be subject to a public consultation process.

### 2.1.2 Worked Example

Estimated Operational Costs for Year: €500,000

Petroleum undertakings liable for the Levy: 3 – *petroleum undertaking A* and *petroleum undertaking B* both carrying on Production and *petroleum undertaking C* carrying on Well Work under a single approved well safety case.

Where:

- Petroleum undertaking A (PU(A)) operates an onshore facility (assessed by the CER to result in a 3 weighting), an onshore pipeline (assessed by the CER to result in a 2 weighting), and a subsea pipeline (assessed by the CER to result in a 3 weighting) with a group of offshore wells (weighting for production wells incorporated into subsea pipeline weighting), their combined weighting will be:  $3 + 2 + 3 = 8$ ; and
- Petroleum undertaking B (PU(B)) operates an onshore facility (assessed by the CER to result in a 1 weighting), an onshore pipeline (assessed by the CER to result in a 2 weighting), a manned offshore facility, a subsea pipeline (assessed by the CER to result in a 3 weighting) and a group of offshore wells (weighting for production wells incorporated into subsea pipeline weighting), their combined weighting will be:  $1 + 2 + 5 + 3 = 11$
- Petroleum undertaking C (PU(C)) operates an offshore well under a single wells safety case (assessed by the CER to result in a 1 weighting), the total weighting = 1.

PU(A) will be levied:  $8/20$  of €500,000 = €200,000

PU(B) will be levied:  $11/20$  of €500,000 = €275,000

PU(C) will be levied:  $1/20$  of €500,000 = €25,000

## 2.2 Establishment Cost Recovery Methodology

### 2.2.1 Establishment Cost Recovery Methodology – Overview

Establishing Costs will be recovered from petroleum undertakings that carry out or propose to carry out Production activities and those petroleum undertakings that carry out Well Work.

For those carrying out or proposing to carry out Production, the apportionment of costs will be split between Infrastructure and Estimated Production Volumes with a greater weighting on Production Volumes to reflect the increased degree of regulatory burden that will be required over the lifetime of the Framework by Petroleum Undertakings with larger reserves. The Estimated Production Volumes will be based on a 15 year production profile submitted by the petroleum undertaking to the CER. Section 2.2.3 provides further information on the requirements of the production profile to be submitted.

For those Petroleum Undertakings, the apportionment of Establishment Costs will be split as follows:

- a) 40% based on Infrastructure. See section 2.2.2 below; and
- b) 60% based on Estimated Production Volumes for a 15 year period. See section 2.2.3 below.

Petroleum undertakings carrying out Well Work activities with an approved well work safety case will be required to contribute towards the Establishment Costs. The level of contribution will be proportionate to their Safety Case Fee paid in respect of the Well Work but recovered via this Levy. The Establishment Costs to be levied from these petroleum undertakings from 2013 to 2016 will reduce the Establishment Costs payable via the Levy during that period by petroleum undertakings that carry out or propose to carry out Production.

#### 2.2.1.1 *Claw Back Facility*

The CER will recover its Establishment Costs between 2013 and 2016. However, in the interest of fairness, any petroleum undertaking that carries out or proposes to carry out production activities, or any petroleum undertaking carrying on well works until 2028 will be liable for a contribution towards the Establishment Costs. This will be facilitated through the provision of a 'claw back' facility whereby the original payees will be reimbursed Establishments Costs paid up to 2016 by future petroleum undertakings liable for the Establishment Costs. The claw back will be incorporated into the Levy as follows:

1. Petroleum undertakings liable for repayment of the Establishment Costs between 2013 and 2016 will be levied the full amount during that period.
2. Additional petroleum undertakings meeting the criteria for repayment of the Establishment Costs post 2016 and prior to 2028 will contribute to the repayment of the Establishment Costs using the Establishment Costs methodology described in this section.
3. All contributions towards the Establishment Costs of petroleum undertakings carrying out or proposing to carry out production activities during the period 2016 to 2028, will be based on a 15 year Estimated Production Volumes regardless of their year of entry.
4. With respect to petroleum undertaking carrying on Well Works during the period 2016 to 2028, monies collected from the specified petroleum undertakings during that period will be repaid to the original payees who were carrying out or proposing to carry out production activities during the period 2013 to 2016.
5. When costs are recovered through Well Work activities or new petroleum undertakings proposing to carry out production activities, a review of the Establishment Costs repayment will be undertaken by the CER.
6. Where any repayment of the Establishment Costs is due to the original payees, it will be repaid in the subsequent levy year to that in which it was collected.

Where one of the original payees of the Establishment Costs from 2013 to 2016 is scheduled to no longer qualify as a petroleum undertaking prior to the end of the claw back period, the CER will make arrangements with that petroleum undertaking for the potential repayment of future claw back monies prior to their exit from the Levy.

## 2.2.2 Establishment Cost Recovery Methodology – Infrastructure

The Infrastructure portion of the Establishment Costs will be apportioned based on: (a) petroleum infrastructure in situ for the classes of petroleum undertakings carrying out Production Activity; and (b) petroleum infrastructure proposed to be in situ for the classes of petroleum undertakings who propose to carrying out Production Activity, as calculated for each petroleum undertaking as per 2.1.1.

Table 1 below identifies the types of Infrastructure that will incur costs under the Levy for Establishment Costs along with their associated weighting.

Reference	Infrastructure	Weighting
<b>A</b>	Onshore Facility	5
<b>B</b>	Manned Offshore Facility	5
<b>C</b>	Unmanned Offshore Facility	2
<b>D</b>	Subsea Pipeline	3
<b>E</b>	Onshore Pipeline	3
	<i>Well(s) – contribution to Establishment Costs from petroleum undertakings carrying out Well Work activities with an approved well work safety case as per 2.2.1.</i>	

Table 2: Infrastructure types for Establishment Costs and associated weightings.

## 2.2.3 Establishment Cost Recovery Methodology – Production Volumes

Applicable petroleum undertakings will submit their Estimated Production Volume profile for a 15 year period to the CER<sup>4</sup>. The data submitted may be independently verified by the CER.

The combined Estimated Production Volumes submitted by all Petroleum Undertakings will be the *Total Estimated Production Volume*. Each petroleum undertaking will pay an Establishment Costs Levy amount equivalent to the proportion of their Estimated Production Volume to the Total Estimated Production Volume. The calculation is:

$$\frac{\text{PU(X) Estimated Production Volume (15 year)}}{\text{Total Estimated Production Volumes}} * 60\% \text{ Establishment Costs}$$

All Estimated Production Volumes (are to be submitted to the CER using Billion cubic metres (bcm) of gas or the equivalent metric for oil.

### 2.2.3.1 Verification of Production Volumes

For the purposes of calculating the levy amounts payable for the Establishment Costs from 2013, Production Volumes are necessarily estimated by petroleum undertakings. It is recognised that the forecasted production volumes may change over time. To accommodate this, a review of the submitted Estimated Production Volumes may be carried out by the CER

<sup>4</sup> This Estimated Production Volume should be calculated by Petroleum Undertakings based on the same process which they currently apply when submitting Forecast Annual Supply estimates to Gaslink for the Annual Gas Capacity Statement or Network Development Plan.

at any point to ensure that accurate data is being utilised.

Should an additional petroleum undertaking become applicable for payment of the Establishment Costs or an existing petroleum undertaking no longer remain liable for payment of the Levy in accordance with the terms set out in this Paper, a review will be carried out immediately and changes to the Establishment Costs repayment will be accounted for in the following levy year. If changes are required to the levy amounts payable by petroleum undertakings, the CER will amend the levy calculation accordingly. The effect will take place in the subsequent levy year.

#### 2.2.4 Establishment Costs - Worked Example

Total Establishment Costs: €6,000,000

Petroleum undertakings liable for the Levy: 2 – PU(A) and PU(B) both carrying out Production activities.

No contribution from Well Works included.

Where:

- Petroleum undertaking A (PU(A)) operates an onshore facility (assessed by the CER to result in a 3 weighting), an onshore pipeline (assessed by the CER to result in a 2 weighting), and a subsea pipeline (assessed by the CER to result in a 3 weighting) with a group of offshore wells (weighting for production wells incorporated into subsea pipeline weighting), their combined weighting will be:  $3 + 2 + 3 = 8$ ; and
- Petroleum undertaking B (PU(B)) operates an onshore facility (assessed by the CER to result in a 1 weighting), an onshore pipeline (assessed by the CER to result in a 2 weighting), a manned offshore facility, a subsea pipeline (assessed by the CER to result in a 3 weighting) and a group of offshore wells (weighting for production wells incorporated into subsea pipeline weighting), their combined weighting will be:  $1 + 2 + 5 + 3 = 11$

#### €2,400,000 of the Establishment Costs to be paid via Infrastructure

PU(A) will be levied:  $8/19$  of €2,400,000 = €1,010,526

PU(B) will be levied:  $11/19$  of €2,400,000 = €1,389,474

#### €3,600,000 of the Establishment Costs to be paid via Production Volumes

Where:

- PU(A) has Estimated Production Volumes of 21.24 bcm
- PU(B) has Estimated Production Volumes of 2.832 bcm

For PU(A):

$$\frac{21.24 \text{ bcm}}{21.24 \text{ bcm} + 2.832 \text{ bcm}} * €3,600,000 = \underline{€3,176,471}$$

21.24 bcm + 2.832 bcm

For PU(B)

$$\frac{2.832 \text{ bcm}}{\text{-----}} * \text{€}3,600,000 = \underline{\text{€}423,529}$$

21.24 bcm + 2.832 bcm

Total Establishment Costs payable by PU(A) = €1,010,526 + €3,176,470 = €4,186,997

Total Establishment Costs payable by PU(B) = €1,389,474 + €423,529 = €1,813,003

#### 2.2.4.1 Worked example

##### Scenario: Establishment Costs:

€6,000,000 repaid by 2016 by PU(A) and PU(B) as per 2.2.4. New petroleum undertaking PU(D) (liable for Establishment Costs) enters in 2028:

- PU(D) Infrastructure – same as PU(B)
- PU(D) Estimated Production Volumes for 15 year period – same as PU(A)

Result:

PU(A) would be reimbursed €1,859,497 via the claw back

PU(B) would be reimbursed €708,003 via the claw back

*Calculations:*

##### **€2,400,000 of the Establishment Costs to be paid via Infrastructure**

PU(A) will be levied: 8/30 of €2,400,000 = €640,000

PU(B) will be levied: 11/30 of €2,400,000 = €880,000

PU(D) will be levied 11/30 of 2,400,000 = €880,000

##### **€3,600,000 of the Establishment Costs to be paid via Estimated Production Volumes**

For PU(A):

$$\frac{21.24 \text{ bcm}}{\text{-----}} * \text{€}3,600,000 = \underline{\text{€}1,687,500}$$

21.24 bcm + 2.832 bcm + 21.24 bcm

For PU(B)

$$\frac{2.832 \text{ bcm}}{\text{-----}} * \text{€}3,600,000 = \underline{\text{€}225,000}$$

21.24 bcm + 2.832 bcm + 21.24 bcm

For PU(D)

$$\begin{array}{r} 21.24 \text{ bcm} \\ \hline \end{array} * \text{ €}3,600,000 = \underline{\text{€}1,687,500}$$

$$21.24 \text{ bcm} + 2.832 \text{ bcm} + 21.24 \text{ bcm}$$

$$\text{Total Establishment Costs payable by PU(A)} = \text{€}640,000 + \text{€}1,687,500 = \underline{\text{€}2,327,500}$$

$$\text{Total Establishment Costs payable by PU(B)} = \text{€}880,000 + \text{€}225,000 = \underline{\text{€}1,105,000}$$

$$\text{Total Establishment Costs payable by PU(D)} = \text{€}880,000 + \text{€}1,687,500 = \underline{\text{€}2,567,500}$$

### 3. Administrative Considerations

The first levy<sup>5</sup> order was published by the CER on the 26<sup>th</sup> April 2013 and covered up to December 31<sup>st</sup> 2013. Future 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.

From 2014, the Levy will be issued on an annual basis and collected quarterly in advance.

Where there is an underpayment of the Levy in a year, Paragraph 20 of Schedule 1 of the Act states that the CER may recover those additional expenses in any subsequent year through the Levy. Conversely, where an excess in revenue is collected by the CER, it can be accounted for in the Levy calculation the following year.

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<sup>5</sup> SI 136 of 2013 *Electricity Regulation Act 1999 (Petroleum Safety) Levy Order 2013*

## 4. Next Steps

The 2013 levy order was issued on the 26<sup>th</sup> April and will recover Establishment Costs only from petroleum undertakings carrying out or propose to carry out Production activities.

While there is potential for the CER to incur Operational Costs in 2013, these costs, if incurred, would be minor. In the interest of simplicity, the CER will account for any Operational Costs incurred in 2013 in the 2014 levy order. The 2014 levy order will be issued by the CER early December 2013.

Post 2013, the CER will recover the Levy from petroleum undertakings that carry out, or propose to carry out, designated petroleum activities in accordance with the methodology set out in this Paper.

In the 2014 levy order, the CER expect to recover Establishment Costs and Operational Costs for Production activities, as well as contributions to the Establishment Costs resulting from Well Work. There is also the potential to recover Operational Costs with respect to Well Work under an approved Wells safety case.