



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Consultation Paper on Safety Case Publication Policy

Part of the Petroleum Safety Framework

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RESPONSES TO:	Jennifer Burke

*The Commission for Energy Regulation,
The Exchange,
Belgard Square North,
Tallaght,
Dublin 24.
www.cer.ie*

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Glossary of Terms & Abbreviations

List of Abbreviations and Defined Terms in this Consultation Paper

Unless otherwise indicated, words and phrases shall have the same meaning given to them in the Electricity Regulation Act 1999 as amended *inter alia* by the Petroleum (Exploration and Extraction) Safety Act 2010.

Term or Abbreviation	Definition or Meaning
Act	The Electricity Regulation Act 1999, as amended, <i>inter alia</i> , by the Petroleum (Exploration and Extraction) Safety Act 2010.
CER	Commission for Energy Regulation
Exclusion Criteria	The following criteria listed under Section 13AC(2) of the Act on the basis of which information may be excluded from the public version of an approved safety case: industrial, commercial or personal confidentiality, public security or national defence.
FOI	Freedom of Information
FOI Act	The Freedom of Information Act 1997, as amended by the Freedom of Information (Amendment) Act 2003.
Framework	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.
High Level Design	The CER <i>Decision Paper on the High Level Design of the Petroleum Safety Framework</i> as amended from time to time.
Information Commissioner	The person appointed as such from time to time under section 33(3) of the FOI Act.
Safety Case Guidelines	Guidelines, as amended from time to time, prepared by the CER under section 13L of the Act relating to the preparation and appropriate contents of safety cases for petroleum undertakings. The Safety Case Guidelines form part of the Framework.

Related Documents

- [CER12062](#) High Level Design Petroleum Safety Framework
- [CER13071](#) Safety Case Guidelines Decision Paper
- [CER11015](#) GL Noble Denton Report on Review and Comparison of Petroleum Safety Regulatory Regimes

1. Introduction

1.1 *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 (the CER) responsibility for the safety regulation of petroleum exploration and extraction activities in Ireland. The Act specifically includes a requirement for the CER to “establish and implement a risk-based Petroleum Safety Framework” (the Framework). The Framework can be understood as the entire system that the CER uses to regulate the safety of petroleum activities, and in particular designated petroleum activities¹, carried out by petroleum undertakings. The Framework required by the Act is permissioning and risk-based, recognising that hazards may be presented by the activities to be regulated. It requires petroleum undertakings to obtain permission from the CER to undertake designated petroleum activities by submission and approval of a safety case that, amongst other things, describes how risks have been reduced 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.

1.2 *Publication of Safety Cases*

Section 13AC(1) of Part IIA of the Act requires a petroleum undertaking that has been issued with a safety permit to make available a copy of the approved safety case to which that permit relates to any member of the public who requests it.

Under section 13AC(2), this obligation does not extend to any content of an approved safety case that relates to the following matters:

- industrial confidentiality;
- commercial confidentiality;
- personal confidentiality;
- public security; or
- national defence.

Under section 13AC(3) of the Act, a petroleum undertaking must obtain the written consent of the CER in order to omit any approved safety case content for the purposes of publication.

Under section 13AC(4) of the Act, a petroleum undertaking that makes available a copy of an approved safety case is entitled to charge a fee to the person who requests it. This fee shall not exceed an amount which is reasonable having regard to the cost of making it available and the CER may give the petroleum undertaking such direction as it considers appropriate in relation to what is a reasonable fee.

¹ A designated petroleum activity is a petroleum activity designated as such by CER by regulation pursuant to Section 13D of the Act. See S.I. No. 89 of 2013

1.3 Purpose of Consultation Paper

This consultation paper (the Paper) sets out for consultation the following:

- (a) the proposed CER consent process for the exclusion of information from the “public version” of an approved safety case;
- (b) the CER’s guidance on the application of the matters listed in section 13AC(2) of the Act; and
- (c) the CER’s view on the reasonableness of the fee charged under section 13AC(4) of the Act.

For the purposes of this Paper, matters listed in section 13AC(2) of the Act (industrial, commercial or personal confidentiality, public security or national defence) are together termed the ‘Exclusion Criteria’.

This Paper enables the general public, industry and other interested parties to have input into the three matters set out above. The CER commits to considering all responses and representations affording each respondent the opportunity to clarify any issue raised in this Paper. Following consideration of responses received, the CER proposes to publish a decision paper on Safety Case Publication Policy in September 2013.

On 28th February 2013 the CER published a decision paper on the proposed form and content of the Safety Case Guidelines. Following the CER’s decision on Safety Case Publication Policy, the Safety Case Guidelines will be amended to include details on the CER procedure when considering whether or not to approve the exclusion of information from the approved safety case for the purposes of publication under section 13AC of the Act.

1.4 Responding to Consultation Paper

Interested parties are invited to comment on the matters set out in this Paper by submission of written responses by close of business on Friday 14th June 2013.

As responses will be published in full on the CER’s website, respondents should include any confidential information in a separate document, clearly identifying such information as confidential. Submissions on this Paper should be forwarded, preferably in electronic format, to:

Jennifer Burke
Policy Analyst,
Commission for Energy Regulation,
The Exchange, Belgard Square North,
Tallaght,
Dublin 24.
E-mail: jennifer.burke@cer.ie

The CER will be available to meet with respondents to discuss their submissions during the week commencing on Monday 24th June 2013. Respondents wishing to meet with the CER to discuss their submission should contact the above not later than 5pm on Thursday 20th June 2013.

1.5 Structure of Consultation Paper

The remainder of this Paper is divided into the following sections:

Section 2 Proposed CER Consent Procedure

This section sets out the proposed process to obtain CER consent under Section 13AC(3) of the Act.

Section 3 Proposed Guidance on the Application of the Exclusion Criteria.

This section sets out the CER's proposed guidance on the application of the Exclusion Criteria.

Section 4 Fee for public version of approved safety case

This section sets out a proposed guidance of reasonableness of the fee for the purposes of section 13AC(4) of the Act.

Section 5 Next steps

This section summarises the next steps in the consultation process.

2. Proposed CER Consent Procedure

Section 13AC(3) states that where a petroleum undertaking proposes to rely on section 13AC(2) to exclude certain information from the public version of its approved safety case, “*it shall obtain the prior written consent*” of the CER.

The CER proposes the following consent procedure:

1. Within a specified period of time from the point a member of the public requests a copy of the approved safety case from the petroleum undertaking, the petroleum undertaking submits the following to the CER:
 - a. the exact content which the petroleum undertaking proposes to exclude from the public version of its approved safety case, if any;
 - b. if it proposes to exclude any content, the Exclusion Criteria on which it proposes excluding this information; and
 - c. if it proposes to exclude any content, a detailed explanation as to why the information falls under section 13AC(2).
2. The CER will provide either:
 - a. written consent to all of the exclusions;
 - b. written consent to part of the exclusions only and a written refusal of consent to the remaining exclusions; or
 - c. a written refusal of consent to all of the exclusions.
3. In the case of a refusal or part refusal of consent, the CER will provide an outline of the reasons for its decision.
4. Having received the CER’s decision and the fee from the requester, the petroleum undertaking will provide the public version of the approved safety case, as soon as possible, unless the petroleum undertaking provides further submissions under subparagraph 5 below.
5. If the petroleum undertaking disagrees with the CER’s refusal to consent to the exclusion of certain information, it can make submissions to the CER outlining its concern(s).
6. The CER will consider the petroleum undertaking’s submission and will revoke, amend or confirm its original decision. The CER will provide an outline of the reasons for its decision if the refusal to consent, or part of it, stands. Following the CER’s decision and the fee from the requester, the petroleum undertaking will provide the public version of the approved safety case.
7. This version will be considered the “public version” of the approved safety case for all subsequent requests.

Consultation Question 1:

Respondents are requested to comment on the above proposed procedure and suggest any changes which respondents believe could improve the procedure.

Consultation Question 2:

Respondents are requested to suggest reasonable timeframes in relation to the following:

- (a) the length of time within which the petroleum undertaking should submit its request for exclusions to the CER, having received a request for a public version;
- (b) how long should the petroleum undertaking have to make further submissions to the CER if it disagrees with the CER's refusal or part refusal?

3. Proposed Guidance on the Application of the Exclusion Criteria

As stated in paragraph 1.3 of this Paper, under section 13AC(2) of the Act, the obligation on a petroleum undertaking to make available their approved safety case to any member of the public upon request does not extend to any content of the approved safety case that relates to the following matters:

- industrial confidentiality;
- commercial confidentiality;
- personal confidentiality;
- public security; or
- national defence.

Where a petroleum undertaking proposes to omit certain information from the public version of its approved safety case under section 13AC(2) and has submitted such a proposal to the CER under the procedure set out in section 2 of this Paper, the CER shall approve or disapprove the proposed exclusion(s) following its consideration of the Exclusion Criteria.

To provide guidance on CER consideration of the Exclusion Criteria, this section of the paper of the Paper sets out for consultation:

- International and national precedent for such guidance (Section 3.1);
- the scope of the public version of the approved safety case (Section 3.2); and
- Proposed guidance of the individual Exclusion Criteria (Section 3.3).

3.1 *International and National Precedent*

3.1.1 *International Precedent*

To support the development of the High Level Design, the CER commissioned a report on international petroleum safety regulatory regimes which was prepared by GL Noble Denton². In this report, five petroleum safety regulation regimes were chosen for comparison - UK, Norway, Australia, Denmark and Nova Scotia. These countries were chosen because they all have well-established onshore and offshore oil and gas industries and they reflect the extent to which different approaches to safety regulation are recognised internationally as both being appropriate and effective. The CER has reviewed the approach of these countries to publishing safety cases and found that none of these countries require the publication of a public version of an approved safety case. The CER is unaware of any international precedent for the requirement to make publically available an approved safety case in the oil and gas industry.

3.1.2 *National Precedent - Freedom of Information*

In the absence of any international precedent, the CER has identified the freedom of information (FOI) regimes as the most comparable national precedent to provide guidance on the Exclusion Criteria.

² See CER/11/105: <http://www.cer.ie/en/petroleum-safety-reports-and-publications.aspx?article=7e64ebfb-984b-4217-88e7-093c110e63ec>

FOI requires public access to information and so the criteria set out in the FOI Act provides a useful starting point for the CER in determining the appropriate guidance for the Exclusion Criteria. The FOI Act and section 13AC(1) of the Act both are based on the important principle of the right to access information in the public interest.

The FOI Act sets out exclusion criteria to freedom of information requests including the following which are particularly relevant to the Exclusion Criteria:

- (a) Commercially sensitive information;
- (b) Personal Information;
- (c) Law Enforcement & Public Safety; and
- (d) Security, Defence & International Relations.

The FOI Act relates to information held by public bodies, rather than the approved safety cases of private petroleum undertakings. Yet many of the principles and the spirit of the FOI Act appear transferable. The interpretation by the Information Commissioner of the FOI exclusion criteria in her decisions and the Freedom of Information Central Policy Unit in its *Manual for Decision Makers*³ provide some useful and instructive guidance.

Therefore, the CER has employed many of the principles of freedom of information's treatment of exclusion criteria in developed its proposed guidance on the individual Exclusion Criteria discussed in section 3.3

3.2 Scope of the public version of the approved safety case

Under section 13A of the Act, an "approved safety case" is defined as "a safety case in respect of a designated petroleum activity or activities which has been approved by the Commission pursuant to the provisions of this Part and includes any revision made to a safety case which (a) may take effect without prior approval of the Commission, or (b) has been approved by the Commission."

Safety cases may contain mentions of, or references to separate documents, for example, policies and procedures, without attaching these documents to the safety case. The CER may request sight of these documents for the purposes of determining if they are sufficient in the context of approving the safety case. For the purposes of providing a public version of an approved safety case, the petroleum undertaking is required to provide only the safety case approved by the CER. Petroleum undertakings are not required to publish referenced documents, regardless of whether the CER requested to review them.

Consultation Question 3:

Do respondents agree with the proposed scope of the public version of the approved safety case?

³ A manual for FOI decision makers issued by the Freedom of Information Central Policy Unit. See <http://foi.gov.ie/decision-makers-manual/>

3.3 Guidance on Exclusion Criteria

When considering a request to exclude content that relates to the Exclusion Criteria, the CER will always be mindful of the public interest. The CER will always balance the importance the legislature has placed on public access with protecting privacy and ensuring security and defence are not compromised, which are in the interest of both the public and the petroleum undertaking. That being said, the following sections set out the CER proposed guidance on each of the Exclusion Criteria:

- Industry & commercial confidentiality (section 3.3.1);
- Personal confidentiality (section 3.3.2);
- Public security (section 3.3.3); and
- National Defence (section 3.3.4).

3.3.1 Industrial & Commercial Confidentiality

For the purposes of reviewing whether to approve the exclusion of information from an aspect of an approved safety case for the purposes of publication, “industrial confidentiality” and “commercial confidentiality” will be taken as interchangeable terms.

The CER may approve the exemption of certain information from disclosure under section 13AC(2) if that information contains:

- (a) a trade secret;
- (b) financial, commercial, scientific, technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation; or
- (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

In determining whether information constitutes a “trade secret” in the application of paragraph (a) above, the following criteria may be considered by the CER:

1. the extent to which the information is known outside the business;
2. the extent to which the information is known to employees and others involved in the business;
3. the protective measures taken to guard the secrecy of the information;
4. the value of the information to the owners and the owner’s competitors;
5. the amount of money or effort expended by the owner to develop the information;
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

In applying paragraph (b) above, the phrase “financial, commercial, scientific, technical or other information” shall be interpreted broadly by the CER to relate to all information relevant to the business. The type of information shall not in itself be determinative of whether or not this criteria applies. The test shall be whether disclosure of that information (whether financial, commercial, scientific, technical or other) could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates or could

prejudice the competitive position of that person in the conduct of their profession or business or otherwise in their occupation.

3.3.2 Personal Confidentiality

The CER may approve the exemption of certain information from disclosure under section 13AC(2) if that information contains personal information.

For the purposes of this exclusion criteria, “personal information” means information about an identifiable individual that:

- (a) would in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual; or
- (b) is held by the petroleum undertaking on the understanding that it would be treated as confidential.

3.3.3 Public Security

The CER may approve the exemption of certain information from disclosure under section 13AC(2) if the information could reasonably be expected to:

- (a) prejudice or impair lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property;
- (b) prejudice or impair the security of a building or other structure or a vehicle, ship, boat or aircraft;
- (c) endanger the life or safety of any person;
- (d) facilitate the commission of an offence; or
- (e) in any other way not covered by (a) – (d) above, prejudice public security.

3.3.4 National Defence

The CER may approve the exemption of certain information from disclosure under section 13AC(2) if its publication could reasonably be expected to adversely affect the:

- (a) security of the State;
- (b) defence of the State; or
- (c) international relations of the State.

If a petroleum undertaking requests the exclusion of certain information from publication on the grounds of national defence, then in considering this criteria the CER must discuss the matter with the Minister for Defence and, if relevant, other ministers and other members of the Department of Defence.

Consultation Question 4:

Respondents are requested to provide comments on the proposed guidance of each of the Exclusion Criteria:

- (a) Industrial and commercial confidentiality;
- (b) Personal confidentiality;
- (c) Public security; and
- (d) National defence

4. Fee for public version of approved safety case

Section 13AC(4)(a) entitles petroleum undertakings to charge the person who requests the approved safety case a fee in respect of making the copy available. The fee must not exceed an amount which is reasonable having regard to the cost of making it available.

Section 13AC(4)(b) allows the CER give the petroleum undertaking a direction it considers appropriate in relation to what is a reasonable fee.

The CER recognises that once the approved safety case is modified to reflect exclusions approved by the CER under section 13AC(3), this shall be considered the “public version” for all subsequent requests. Therefore, the majority of the work involved in preparing the public version of the safety case will only have to be done once. The CER is of the view that it is not reasonable for one member of the public to be burdened with a higher fee than others to cover the cost of this exercise, simply because that person made the request first. However, there is no way to know how many requests there will be in the future and so realistically the actual cost of modifying the approved safety case for publication cannot be split evenly between all requesters.

It must also be recognised that the principle underpinning the requirement to make available a public version of the approved safety case is that that public access to this information is in the public interest and any fee charged should be nominal.

On the basis of the above, the CER is of the view that a standard, nominal fee is appropriate.

Consultation Question 5:

Do respondents agree with the CER’s proposal to recommend a standard, nominal fee that petroleum undertakings should charge to members of public who request a copy of the approved safety case?

Consultation Question 6:

Respondents are requested to suggest what fee would be reasonable, with associated rationale.

5. Next steps

The CER is seeking comments from the general public, industry and other interested parties on the proposals contained in this Paper by close of business on Friday 14th June 2013. A summary of the consultation questions is set out in Appendix I. Please note respondents are in no way obliged to respond to the questionnaire provided in Appendix I 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.

The CER commits to considering all responses and representations affording each respondent the opportunity to clarify any issue raised in this Paper. The CER will be available to meet with respondents to discuss their submissions from Monday 24th June 2013. Respondents wishing to meet with the CER to discuss their submission should contact the above not later than 5pm on Thursday 20th June 2013.

Following consideration of responses received, the CER aim to publish a decision paper on Safety Case Publication Policy in September 2013.

Appendix I – 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.

No.	Consultation Question	Agree: Yes/No	Comment
1.	Respondents are requested to comment on the above proposed procedure and suggest any changes which respondents believe could improve the procedure.		
2(a)	Respondents are requested to suggest reasonable timeframes in relation to the following: (a) the length of time within which the petroleum undertaking should submit its request for exclusions to the CER, having received a request for a public version;		
2(b)	(b) how long should the petroleum undertaking have to make further submissions to the CER if it disagrees with the CER's refusal or part refusal?		
3	Do respondents agree with the proposed scope of the public version of the approved safety case?		
4(a)	Respondents are requested to provide comments on the proposed guidance of each of the Exclusion Criteria: (a) Industrial and commercial confidentiality		
4(b)	(b) Personal confidentiality		
4(c)	(c) Public security		

4(d)	(d) National defence		
5.	Do respondents agree with the CER's proposal to recommend a standard, nominal fee that petroleum undertakings should charge to members of public who request a copy of the approved safety case?		
6.	Respondents are requested to suggest what fee would be reasonable, with associated rationale.		