



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

**Petroleum Safety Framework
Update for the Petroleum (Exploration and
Extraction) Safety Act 2015**

Consultation Response Paper

| | |
|-----------------|------------------------------------|
| DOCUMENT TYPE: | Consultation Response Paper |
| REFERENCE: | CER/15/264 |
| DATE PUBLISHED: | November 11 th 2015 |

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

www.cer.ie

Table of Contents

| | | |
|----------|--|-----------|
| 1 | Introduction | 4 |
| 1.1 | Background | 4 |
| 1.2 | Purpose of this Paper | 4 |
| 1.3 | Respondents | 4 |
| 1.4 | Document Structure..... | 5 |
| 2 | Responses to the Requirements of the Petroleum Safety Framework Consultation Paper..... | 6 |
| 2.1 | Comment 1 | 6 |
| 2.1.1 | CER response | 6 |
| 3 | Responses to the Safety Case Requirements Consultation Paper..... | 8 |
| 3.1 | Comment 1 | 8 |
| 3.1.1 | CER response | 8 |
| 3.2 | Comment 2..... | 8 |
| 3.2.1 | CER response | 8 |
| 3.3 | Comment 3..... | 8 |
| 3.3.1 | CER response | 8 |
| 3.4 | Comment 4..... | 8 |
| 3.4.1 | CER response | 9 |
| 3.5 | Comment 5..... | 9 |
| 3.5.1 | CER response | 10 |
| 3.6 | Comment 7..... | 10 |
| 3.6.1 | CER response | 10 |
| 3.7 | Comment 8..... | 10 |
| 3.7.1 | CER response | 10 |
| 3.8 | Comment 9..... | 10 |
| 3.8.1 | CER response | 11 |
| 4 | Responses to the Compliance Assurance System Consultation Paper..... | 12 |
| 4.1 | Comment 1 | 12 |
| | <i>Respondents propose continuing with the existing requirements, rather than further adding to them. 12</i> | |
| 4.1.1 | CER response | 12 |
| 4.2 | Comment 2..... | 13 |

| | | |
|----------|--|-----------|
| 4.2.1 | <i>CER response</i> | 14 |
| 4.3 | Comment 3 | 14 |
| 4.3.1 | <i>CER response</i> | 15 |
| 5 | Responses to the Requirements CER Audit and Inspection Consultation Paper . | 16 |
| 5.1 | Comment 1 | 16 |
| 5.1.1 | <i>CER response</i> | 16 |
| 6 | Other Comments Received | 17 |
| 7 | Transitional Provisions and Next Steps | 18 |

1 Introduction

1.1 Background

On September 4th 2015 the CER published a number of consultation documents as part of the first consultation process for the update of the Petroleum Safety Framework for the new *Petroleum (Exploration and Extraction) Safety Act 2015*. The papers were:

1. *Petroleum Safety Framework Update for the Petroleum (Exploration and Extraction) Safety Act 2015 – CER1522;*
2. *Requirements of the Petroleum Safety Framework – Consultation Paper – CER15218;*
3. *Safety Case Requirements – Consultation Paper – CER15 219;*
4. *Compliance Assurance System – Consultation Paper – CER15220; and*
5. *CER Audit and Inspection System – Consultation Paper – CER15221.*

The first paper, *Petroleum Safety Framework Update for the Petroleum (Exploration and Extraction) Safety Act 2015*, provides the full details on the background to this consultation process.

1.2 Purpose of this Paper

The purpose of this paper is to set out the CER response to responses received with regard to the updates to the Framework pursuant to the requirements of the 2015 Act.

Responses were received in relation to the four consultation documents:

1. *Requirements of the Petroleum Safety Framework;*
2. *Safety Case Requirements;*
3. *Compliance Assurance System; and*
4. *CER Audit and Inspection System*

1.3 Respondents

The CER received 2 responses from:

- Irish Offshore Operators Association (IOOA)
- Shell Exploration and Production Ireland Limited (SEPIL)

The individual responses are published in full as part of this consultation process and are available to view on the Petroleum Safety section of the CER website.

1.3.1.1 Reading this document

Where alternative views were provided on topics set out in consultation papers, CER responses are provided below. Where multiple comments were received on the same topic, these comments have been merged to avoid repetition.

1.4 **Document Structure**

The structure of the remainder of this document is:

| | |
|-----------|--|
| Section 2 | Responses to the <i>Requirements of the Petroleum Safety Framework</i> Consultation Paper; |
| Section 3 | Responses to the <i>Safety Case Requirements</i> Consultation Paper; |
| Section 4 | Responses to the <i>Compliance Assurance System</i> Consultation Paper; |
| Section 5 | Responses to the <i>CER Audit and Inspection</i> Consultation Paper; and |
| Section 6 | Other Comments Received |
| Section 7 | Transitional Provisions and Next Steps |

2 Responses to the Requirements of the Petroleum Safety Framework Consultation Paper

2.1 *Comment 1*

The CER states “In the performance of its functions (including exercising its powers and performing its duties), the CER will consult with the aforementioned statutory authorities to identify where regulatory activities are duplication, Where potential duplicated activities are identified, the CER can prepare and implement coordinated or joint procedures with these authorities, to carry out its functions under section 13H(5) of the Act.”

The list of statutory authorities includes the Health and Safety Authority (HSA). The respondents states that the CER should work with the HSA to discharge aspects of its functions, specifically the assessment of the control of major accident hazards at upper tier COMAH/Seveso sites, such as Bellanaboy Bridge Gas Terminal. The assessment of such information is already carried out by the HSA as part of its Safety Report assessment and acceptance. It is proposed that a joint procedure between the CER and the HSA for upper tier COMAH/Seveso sites should be developed in order to minimise duplication of regulatory efforts.

It is proposed that a reference to the other joint procedures which may be prepared in the future could be included in this section.

2.1.1 *CER response*

Section 13H(5) of the Act allows for the CER to implement joint procedures to carry out its functions under the Act. To date the CER has identified the possibility and benefits of developing one such joint procedure with the Irish Coast Guard relating to aspects of the assessment of the Internal Emergency Response Plan/Oil Spill Response Plan. The development of this joint procedure is possible as the new regulatory requirements on the CER will continue to be carried out in full by the Irish Coast Guard. Therefore, were CER to undertake this role, it would be duplication.

The CER recognises that in discharging certain safety regulatory functions, the CER and HSA carry out some similar operational roles when regulating Seveso sites such as Bellanaboy Bridge Gas Terminal. However, due to the differences in functions a joint procedure cannot facilitate full discharge of functions relating to the terminal alone. The CER remit covers the terminal, pipelines and subsea offshore infrastructure, whereas the HSA remit covers the terminal only. Therefore, CER would still be required to assess a safety case and inspect against it even in a situation where HSA was legally authorised to solely regulate the terminal alone with respect to major accident hazards.

To date, the CER and HSA have worked together to avoid regulatory overlap during operational work where possible. This has included the carrying out of joint inspections. The CER will continue to work with the HSA where relevant to identify areas where further cooperation and efficiencies can be introduced. The existing memorandum of understanding between the CER and the HSA which underpins this working relationship is available to view on the CER website¹.

Where the potential for further joint procedures is identified and joint procedures with other state agencies are developed, these will be published on the CER website in the 'Interface Arrangements' section.

¹ <http://www.cer.ie/energy-safety/petroleum/co-operation-arrangements>

3 Responses to the Safety Case Requirements Consultation Paper

3.1 Comment 1

Respondents stated that it would be helpful if the impact of the definition below was set out in an overarching statement in the opening section to the document:

“The environmental term is only applicable offshore and relates to the definition of a major hazard, which includes major environmental incidents offshore”.

3.1.1 CER response

This comments is accepted and the text has been updated.

3.2 Comment 2

Section 3.5 ‘*Safety Management System / Safety and Environment Management System*’: Respondents set out that they intended to continue to operate a separate Safety Management System (SMS) and Environmental Management System (EMS).

3.2.1 CER response

Joint or separate management systems are acceptable. A combined management system is the CER preferred option. CER also note that the EMS is only required offshore.

3.3 Comment 3

Section 3.8 ‘*Combined Operations*’: Respondents stated that it was their understanding that the contents of the Combined Operations section is not applicable to the Corrib Production Facilities as there is no Production Installation offshore for Corrib.

3.3.1 CER response

Any Well Work Activities, as defined in the *Safety Case Requirements*, on the Corrib gas field subsea wells, will require a combined operations notification.

3.4 Comment 4

The second paragraph in Section 6.4 contains significant requirements for a Design Notification. The CER proposed text states:

*“For those safety (and environmental) critical elements that are fundamental to the design, the high level performance of the S(E)CEs must be **given in quantitative terms** wherever possible and should demonstrate how those choices that have been made in relation to S(E)CEs are ALARP.”*

Respondents propose the following alternate text for the first sentence:

*“For those safety (and environmental) critical elements that are fundamental to the design, the high level performance of the S(E)CEs must be **provided where possible** and should demonstrate how these SECE choices achieve ALARP”.*

The reasoning for the proposed change is that it removes the reference to 'quantitative terms' which could change as the project progresses resulting in a delay to the completion of the design period.

3.4.1 CER response

CER will update this section to clarify the level of quantitative analysis required in a design notification. A detailed account, such as including the reliability of individual components, is not envisaged.

3.5 Comment 5

Section 11.4 'Verification': This section/table states that:

- (i) the Facilities Verification and Well Verification Schemes in their entirety should be contained within the Production and Decommissioning Safety Cases,
- (ii) the Facilities Verification Scheme in its entirety should be contained within the Non-production Safety Case, and
- (iii) the Well Verification Scheme in its entirety should be contained within the Well Work Safety Case.

Respondents are of the view that descriptions of, and references to, the schemes would be more appropriate. The reasoning is that:

- a. it would be very cumbersome to manage changes to the safety case, performance standards and verification scheme within one document;
- b. changes to the performance standards could be deemed to be material and therefore would have to follow the material change process;
- c. updates made following any verification amendment notices and performance standard amendment notices would be more onerous and there would be a risk that the documentation would be out of sync;
- d. the need to be track minor changes in the safety case could act as a deterrent to implementing improvements in/making changes to the performance standards; and
- e. it would not be possible for the CER to approve a safety case without approving all of the performance standards and verification scheme.

Respondents stated that the latter point could add significantly to the timeframe for preparation and approval of a safety case. It would mean that the CER would have an 'approval' role for the performance standards and verification scheme.

3.5.1 CER response

This comment is accepted. The relevant section will be updated to require a summary of the verification scheme and a list of performance standards. The CER may request the full verification scheme via a request for additional information during the safety case assessment.

3.6 Comment 7

Section 12 'Safety and Environmental Management System': This section refers to OHSAS 18001 standard but does not specifically refer to environmental management standards. There is also a strong focus on the term 'safety' in section 12 (p. 62), for example under the headings Plan, Do, Check, Act the term environment is not mentioned. Respondents suggest the CER reviews section 12 to include further references to environmental management standards/environment.

3.6.1 CER response

Both the environmental and safety management systems follows the same Plan, Do, Check, Act format. In line with other Framework documents, the reference to a specific standard will be removed. The section will be reviewed and further reference to environmental management systems may be input.

3.7 Comment 8

Respondents were of the understanding that, for offshore emergencies, the 'off-site emergency response team' refers to personnel under the operator's or owner's control who support management of the emergency off-site, e.g. personnel on stand-by vessels.

3.7.1 CER response

The CER consider personnel on stand-by vessel to be part of the on-site emergency response team.

Examples of off-site emergency response personnel may include contractors engaged for the purposes of responding to oil spill incidents and emergency response co-ordinators based in regional offices.

3.8 Comment 9

Section 14.1 states that "the requirements here are expected to be a subset of the Oil Spill Contingency Plan (OSCP) that has to be approved by the IRCG in compliance with the Sea Pollution Act 1991, as amended. It is suggested that the OSCP is submitted in its entirety as an appendix to the safety case."

Respondents requested that as the OSCP requires separate approval from the IRCG, it would seem more appropriate to reference the OSCP in the safety case as this would avoid duplication of regulatory efforts. The OSCP could subsequently change based on feedback/queries from the IRCG - thus potentially leading to a material change to the safety case. If required, the OSCP could be provided to the CER during the safety case assessment process.

3.8.1 CER response

This text will be updated to require an adequate description of the oil spill contingency section of the Internal Emergency Response Plan.

The CER intends to request the final IRCG approved version of the OSCP under an additional information request as part of its safety case assessment.

4 Responses to the Compliance Assurance System Consultation Paper

4.1 Comment 1

Respondents noted that new text has been added to the Independence criteria for ICB persons. Respondents are of the view that the current independence criteria (Section 2.1.1.3 of the Compliance Assurance System CER14146) already far exceed those outlined in Annex V of the EU Directive 2013/30/EU. The existing requirements are:

The ICB's persons carrying out verification activities must:

- ...;
- *Not verify their own work;*
- *Not be employed directly by the petroleum undertaking, or any constituent member thereof, its parent company or a company in the same group; or*
- [continues]

The updated requirements in CER15221 are, with the specified section in **bold**:

The ICB's persons carrying out verification activities must:

- ...;
- *Not verify their own work, **including a constituent member of such a company, its parent company or a company in the same group**; and*
- *Not be employed directly by the petroleum undertaking, operator or owner, or*
- [continues]

Respondents propose continuing with the existing requirements, rather than further adding to them.

4.1.1 CER response

It is accepted that the wording of this section could result in a very limited number of options for the appointment of an ICB. As the CER retains the right of approval of the ICB in each case, the wording of this section has been updated to remove potential restrictions on obtaining the appropriate expertise. The CER will only approve the submitted ICB if, among other requirements, it deems it independent during its assessment.

The new wording also aligns with the independence requirements for IRBs. See section 4.3.1 below.

For clarity:

Existing Text (CER/14/146)

The ICB's persons carrying out verification activities must:

- Be impartial and free from direct financial or operational pressures, which could affect their judgement;
- Not verify their own work;
- Not be employed directly by the petroleum undertaking, or any constituent member thereof, its parent company or a company in the same group; and
- Not, if a person is working for an organisation identified in section 4.2.5 of the Safety Case Guidelines, or any constituent member of such a company, its parent company or a company in the same group, verify the work of that organisation.

New text

The ICB's persons carrying out verification activities must:

- Be impartial and free from direct financial or operational pressures, which could affect their judgement;
- Not verify their own work;
- Not be employed directly by the petroleum undertaking, operator or owner (or any constituent member thereof), their parent companies or a company in the same group, and
- Not, if a person is working for a third party company with a safety related relationship, verify the work of that company.

4.2 **Comment 2**

Respondents noted that section 3.1 is not subject to consultation at this time. However, respondents highlighted that the table on page 27 of CER/15/222 states that 'no significant change' is expected between the CER's lagging indicators and the European common reporting legislation. On review of the 'Regulations commission implementing regulation (EU) No 1112/2014 of 13 October 2014 (the Implementing Regulations),' respondents were of the view that a number of the incidents which are currently reportable to the CER are not part of the aforementioned regulation and therefore that significant differences existed.

The following reportable incidents were provided as examples of the existing CER reportable incidents that are not reportable incidents under the EU regulations:

- Injury to a worker that requires treatment at a hospital (EU regulations require reporting of serious injury to 5 or more persons in the same accident);
- Standby vessel not being in a position to provide rescue to persons on offshore petroleum infrastructure; and
- Mustering on onshore or offshore petroleum infrastructure, other than for planned drills.

Respondents would welcome full alignment between the CER's petroleum incident requirements and those in the Commission Implementing Regulation (EU) No 1112/2014.

4.2.1 CER response

The update to *S.I. No. 4 of 2014 Petroleum Safety (Petroleum Incident) Regulations* and the associated CER document *Guidance for Notification of Petroleum Incidents*² will be subject to a separate consultation process and respondents will be given the opportunity at this time to comment on the updates. With regard to the comments above, the CER will respond to these in more detail during that process.

In the interim and in the interest of providing clarity on next steps, the CER is minded to take the following approach during that consultation process:

- A. Where comparable petroleum incidents exist between the requirements of *S.I. No. 4 of 2014 Petroleum Safety (Petroleum Incident) Regulations* and *Implementing Regulation (EU) No 1112/2014*³ (the Implementing Regulation), the CER will aim to align with the wording of the incident as set out in the Implementing Regulation. The same approach will be taken with respect to the guidance.
- B. Where incidents exist under the requirements of *S.I. No. 4 of 2014 Petroleum Safety (Petroleum Incident) Regulations* that do not have a comparable incident under the Implementing Regulation, these will remain.

Respondents' attention is drawn to the updated section 13A of the Act which remove parts (a) to (e) of the definition of 'petroleum incident' as set out in the 2010 Act. The petroleum incident regulations will be updated to include the incidents of (a) to (e) that CER deem should remain reportable. Where these incidents align with incidents in the Implementing Regulations, the approach under (a) above will be employed.

4.3 Comment 3

With respect to the Independent Safety Case Review and choice of an Independent Review Body (the IRB), in section 4.2.3, the criteria for independence includes "*the IRB's persons carrying out the review activities must:*

...

- *Not, if a person is working for an ICB for the installation being reviewed, or any constituent member of such a company, its parent company or a company in the same group, review the work of that organisation; and*
- *Not, if a person is working for a third party organisation with a safety-related relationship, such as organisations carrying out:*
 - *Design and construction of changes [continues] review the work of that organisation."*

² CER/14/015 'Guidance for Notification of Petroleum Incidents' Available on the CER website.

³ Commission Implementing Regulation (EU) No 1112/2014 of 13 October 2014 determining a common format for sharing of information on major hazard indicators by the operators and owners of offshore oil and gas installations and a common format for the publication of the information on major hazard indicators by the Member States

As stated in previous submissions, the extension of these criteria to entire companies and third party organisations with a safety-related relationship is very restrictive with respect to choosing an organisation with appropriate expertise. It may prove difficult to find an independent and competent review body.

4.3.1 CER response

It is accepted that the wording of this section could result in a very limited number of options for IRBs. As the CER retains the right of approval of the IRB in each case, the wording of this section has been updated to remove potential restrictions on obtaining the appropriate expertise. The CER will only approve the submitted IRB if it deems it independent during its assessment.

For clarity below:

New text

The IRB's persons carrying out the review activities must:

- Be impartial and free from direct financial or operational pressures, which could affect their judgement;
- Not review their own work;
- Not be employed directly by the petroleum undertaking, operator or owner (or any constituent member thereof), its parent company or a company in the same group;
- Not, if a person is working for an ICB for the installation being reviewed, review the work of that organisation; and
- Not, if a person is working for a third party company with a safety-related relationship, review the work of that company.

Existing text (CER/14/146)

The IRB's persons carrying out the review activities must:

- Be impartial and free from direct financial or operational pressures, which could affect their judgement;
- Not review their own work;
- Not be employed directly by the petroleum undertaking (or any constituent member thereof), its parent company or a company in the same group;
- Not, if a person is working for an ICB for the installation being reviewed, or any constituent member of such a company, its parent company or a company in the same group, review the work of that organisation; and
- Not, if a person is working for an organisation identified in section 4.2.5 of the Safety Case Guidelines, or any constituent member of such a company, its parent company or a company in the same group, review the work of that organisation.

5 Responses to the Requirements CER Audit and Inspection Consultation Paper

5.1 *Comment 1*

It appears that the role of the Petroleum Safety Officer is predominantly 'safety' focussed.

5.1.1 *CER response*

Petroleum Safety Officers will discharge their functions with respect to the Act in full, including environmental aspects.

6 Other Comments Received

For information, the following comments were also received. A CER response was not requested.

- The statement “where potential duplicated activities are now identified, the CER can prepare and implement coordinated or joint procedures with these authorities, to carry out these functions and avoid duplication by the CER” (Section ‘2.3.5 Regulatory Interfaces’ the of *Petroleum Safety Framework Update for the Petroleum (Exploration and Extraction) Safety Act 2015* paper) is welcomed.
- Associated with this, the CER’s efforts to minimise regulatory overlap with the Irish Coast Guard (IRCG) in terms of the review of the Oil Spill Contingency Plan (OSCP) is welcomed.
- Respondents support the use of the same table that is contained in Section 2.3.1 Safety Case Content of the current ‘Compliance Assurance System CER/14/146): ‘*Table 1: Verification Scheme documentation requirements for the safety case*’.

7 Transitional Provisions and Next Steps

The Decision Papers on the four CER documents referenced in section 1 are published alongside this response paper. All changes from the consultation papers have been tracked for ease of review.

It is important to note that the papers do not come into effect until the relevant sections of the *Petroleum (Exploration and Extraction) Safety Act 2015* are commenced. This is currently scheduled for Q1 2016. The existing Petroleum Safety Framework will continue to operate until this time.

The CER will notify the public via the CER website and mailing list of the exact date the updated Petroleum Safety Framework comes into operation. On this day, the final versions of the Decision Papers will be published on the CER website.