



**Memorandum of Understanding
between the
Commission for Energy Regulation
and the
Air Accident Investigation Unit**

7th July 2016

1. Objective of the Memorandum of Understanding

The objective of this Memorandum of Understanding (“MoU”) between the Commission for Energy Regulation (“CER”) and the Air Accident Investigation Unit (the ‘AAIU’) is to facilitate communication, co-operation and mutual assistance between the CER and AAIU in the discharge of their respective statutory responsibilities in order to:

- enhance the actions of both;
- avoid unnecessary duplication of effort by both; and
- avoid the imposition of unnecessary regulatory burden.

This MoU identifies the roles and responsibilities of the CER and the AAIU (the ‘Bodies’) as they may relate to each other and sets out the areas where both will interface and co-ordinate with respect to their activities. Where appropriate, both the CER and the AAIU are committed to a policy of ongoing co-operation and interaction with respect to the discharge of their respective statutory responsibilities.

Notwithstanding this commitment to co-operate and co-ordinate generally, the specific focus of this MoU relates to the investigation of certain occurrences which fall within the classification of the following:

- aircraft accidents, serious incidents, and incidents within Ireland;
- aircraft accidents, serious incidents and incidents to Irish registered/operated aircraft in international waters off the coast of Ireland; and
- petroleum incidents defined under the *Electricity Regulation Act 1999 (as amended)*.

2. Statutory Responsibilities of AAIU and CER relevant to the scope of the MoU

a) AAIU

The Air Accident Investigation Unit (AAIU) was established in 1994. It is a functionally independent Unit within the Department of Transport, Tourism and Sport and is separate from the aviation regulator, the Irish Aviation Authority (IAA). It is responsible for the investigation of aviation occurrences in Ireland, provides assistance to foreign states who conduct investigations into Irish registered/operated aircraft abroad and investigates occurrences that occur to Irish registered/operated aircraft in international waters.

The AAIU conducts its investigations in accordance with Annex 13 to the *International Civil Aviation Organisation Convention*, *European Union Regulation No. 996/2010*, and the *Air Navigation (Notification and Investigation of Accidents, Serious Incidents and Incidents) Regulations, 2009* (S.I. No. 460/2009).

The AAIU is concerned with aviation accidents, serious incidents and incidents which are collectively defined as aviation occurrences under S.I. No 460 of 2009¹. An occurrence is defined as an accident where the aircraft incurs damage, or in which any person suffers death or serious injury. In general terms this includes events associated with the operation of an aircraft which takes place from the time any person boards the aircraft with the intention of flight until all such persons have disembarked from the aircraft. It also includes an aviation occurrence when other persons are struck by an aircraft, part of the aircraft or its jet-blast, while persons with the intention of flight are on the aircraft.

The purpose of AAIU investigations is to determine a cause and make safety recommendations² where appropriate, with a view to preventing similar occurrences in the future. AAIU investigations are not concerned with enforcement actions, criminal investigations, or apportioning blame or liability. Reports of investigations which may include recommendations with regard to safety are publicly posted on the AAIU website.

If, in the course of an AAIU investigation, it becomes known or is suspected that an act of unlawful interference or criminal act was involved in the occurrence, the AAIU Investigator-in-Charge is required under legislation to immediately initiate action to ensure that the aviation security authorities or the police of the states concerned are informed. Within Ireland and its territorial waters, the Garda Síochána will be informed.

Further detail on the AAIU is available at <http://www.aaiu.ie/>

b) CER

¹ These terms are defined in S.I. 460 of 2009 and are collectively defined as aviation occurrences.

² Means a proposal, based on information derived from an investigation, made with the intention of preventing accidents or incidents in the future, and which in no case creates a presumption of blame or liability for the accident or incident.

The CER was established in 1999 and its role and functions have been expanded over time by legislation including the *Electricity Regulation Act 1999* (the Act), *Gas Act 1976*, *Gas (Interim) Regulation Act 2002*, *Energy (Miscellaneous Provisions) Act 2006 & 2012* and *Petroleum (Exploration and Extraction) Act 2010* (Act of 2010) and *Petroleum (Exploration and Extraction) Act 2015* (Act of 2015) (as are amended from time to time) and related secondary legislation. The CER has various safety and economic functions including the regulation of electricity and gas undertakings and ensuring the competitive, sustainable and reliable supply of electricity and natural gas at reasonable cost to Irish energy customers. The CER is also responsible for the safety regulation of upstream petroleum activities by petroleum undertakings, operators and owners, the safety regulation of gas supply, transmission, distribution, storage and use of gas, and the registration of electrical contractors and gas installers.

The specific functions of the CER which are relevant to the scope of this MoU are;

- to regulate designated petroleum activities with respect to safety;
- to investigate and report to the Minister of Communications, Energy and Natural Resources on petroleum incidents;
- to monitor and enforce compliance by petroleum undertakings, operators and owners with their obligations;
- to issue safety permits;
- to provide safety information to the public when appropriate;
- to assess, and where relevant accept or reject, safety cases and notifications submitted by operators and owners;
- to carry out its objectives as competent authority, including:
 - to cooperate with other competent authorities and contact points in other Member States;
 - to jointly adopt measures with the competent authority of relevant Member States to prevent significant impact on the environment from potential major accident hazards;
 - the establishment of mechanisms for the confidential reporting of safety and environmental concerns relating to a designated petroleum activity and the investigation of such reports;
 - reporting to the European Commission on any investigation of petroleum incidents which resulted in an offshore major accident³;

³ Section 13A of the Act (as amended by the Act of 2015) defines major accident in relation to petroleum infrastructure or petroleum activities as ' (a) an event involving an explosion, fire, loss of well control, or release of oil, gas or dangerous substances involving, or with a significant potential to cause, fatalities or serious personal injury, (b) an event leading to serious damage of petroleum infrastructure involving, or with a significant potential to cause, fatalities or serious personal injury, (c) any other event leading to fatalities or serious injury to multiple persons, or (d) any major environmental incident resulting from incidents referred to in paragraphs (a), (b) and (c) and which relates to petroleum activities carried out offshore.

- requesting a report from a petroleum undertaking, operator or owner on the circumstances of any major accident in which they or their subsidiaries have been involved outside the European Union.

The principal objective of the CER in carrying out its functions is to protect the public by fostering and encouraging safety as respects the carrying on of designated petroleum activities, with the duty to perform its functions in the public interest and to do all things necessary and reasonable to further its objectives and exercise its powers. How the CER discharges this petroleum safety regulatory role is set out in the regulatory document, the Petroleum Safety Framework.

Specific to its role as competent authority under Directive 2013/30EU on the Safety of Offshore Oil and Gas Operations, the CERs principal objective is the effective safety regulatory oversight of operator and owner compliance with the Act in reducing the risk and potential consequences (including major environmental incidents) of major accidents offshore to a level that is as low as is reasonably practicable.

The other functions of the CER are set out at www.cer.ie

3. Areas of Interface

The respective statutory responsibilities of the AAIU and the CER interface in circumstances where;

- an aviation occurrence under S.I. No 460 of 2009 has taken place, and
- is also classified as a petroleum incident defined under the Act⁴.

For the purposes of this MoU this is termed as an aviation occurrence/petroleum incident.

In the event of a petroleum incident involving an aircraft, the AAIU is the lead agency for the investigation of the aviation occurrence where;

- a) the occurrence, involving any aircraft (including state aircraft),⁵ occurs within the State of Ireland, including its territorial waters; or
- b) the aircraft is Irish registered/operated and the occurrence occurs in international waters.

It is recognised by both the AAIU and the CER that each aviation occurrence/petroleum incident is unique and as such any co-operation of aviation occurrence investigation by the AAIU and petroleum incident investigation by the CER will be largely dependent on the unique circumstances of the aviation occurrence/petroleum incident. Therefore the Bodies agree that in the event of an aviation occurrence/petroleum incident, initial contact will be made between the AAIU and CER to agree the level

⁴ Petroleum incidents are defined under regulation by the CER in accordance with section 13V of the Act as amended. The current regulations are: *Petroleum Safety (Petroleum Incident) Regulations S.I. 116 of 2016*

⁵ The AAIU shall also investigate occurrences involving Irish State aircraft within Ireland or its waters, or in international waters, where the Ministers of Transport, Tourism and Sport, in consultation with the Minister of Defence, so decides.

of co-operation relevant to the specific aviation occurrence/petroleum incident investigation and to agree the appropriate line of communication with respect to the aviation occurrence/petroleum incident investigations.

4. Areas for Cooperation and Co-ordination

In acknowledging each others respective statutory responsibilities, functions and duties, both the CER and the AAIU will endeavour to liaise closely particularly in relation to the areas set out below:

a) Emergency Planning and Preparedness

The CER and AAIU will co-operate generally with respect to emergency planning and preparedness involving operators and owners in recognition that there is a relationship between the immediate emergency response (making the site safe and securing the site) and the subsequent investigation of the aviation occurrence/petroleum incident.

b) General Consultation/Liaison Arrangements

The CER and the AAIU will consult with each other when either is engaged in producing guidelines or procedural documentation which is relevant to the implementation of their respective statutory functions. In developing such guidelines or procedural documentation efforts will be made through consultation to align the work of both to the greatest extent possible.

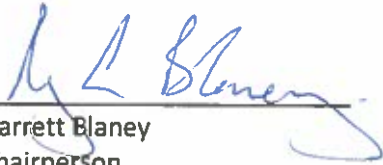
Where consultation or interaction is required or mutually beneficial in the circumstances, responses will be submitted where possible within the scheduled timescale in order to allow for the orderly progression of the project in question.

Nominated points of contact will be identified in both Bodies, who will be responsible for managing communications in each of the above identified areas of interface and co-operation and communication.

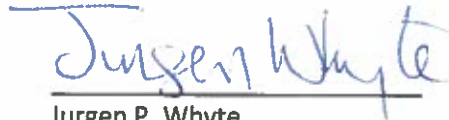
5. Annual Review of Memorandum of Understanding

It is envisaged that the CER and AAIU representatives will meet on an annual basis to review this MoU and monitor its relevance, effectiveness, operation, and in particular, the cooperative measures and consultation established in the areas of shared or overlapping responsibility.

This MoU is effective from the date of signing by the CER and the AAIU. This MoU is not legally binding on the Bodies but rather is an expression of individual and collective commitment to work together in order to realise the shared objectives expressed herein.



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Commission for Energy Regulation



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2016

