



Memorandum of Understanding between the Commission for Energy Regulation and the Marine Casualty Investigation Board

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 Marine Casualty Investigation Board (the ‘MCIB’) is to facilitate communication, co-operation and mutual assistance between the CER and MCIB 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 MCIB (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 MCIB 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 both of the following:

- marine casualties that take place in Irish waters, involving Irish registered vessels or vessels normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters; and
- petroleum incidents defined under the *Electricity Regulation Act 1999 (as amended)*.

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

a) **MCIB**

The MCIB is an independent body with its own funding provided for by the Oireachtas under Section 19 of the *Merchant Shipping (Investigation of Marine Casualties) Act, 2000* (the 2000 Act). The MCIB is independent of the Minister for Transport in the performance of its functions and, in general, shall be independent of any other person or body whose interests could conflict with the functions of the Board

The function of the MCIB is to carry out investigations into marine casualties that take place in Irish waters, involve Irish registered vessels or involve vessels normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters. The main purpose of the Board's investigations is to establish the cause or causes of a marine casualty with a view to making recommendations to the Minister for Transport, Tourism and Sport for the avoidance of similar marine casualties. It shall not be the purpose of an investigation to attribute blame or fault.

The legislative framework for the operation of the MCIB, the reporting and investigating of marine casualties and the powers of MCIB in respect of investigations are set out in the 2000 Act and S.I. No. 276 of 2011 *European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011*, (S.I. No 276 of 2011). The 2000 Act and the SI define what a marine casualty is, set out the purpose of investigations, lay down the requirement for reporting a marine casualty, set out when and how investigations are to be conducted, set out the powers of the MCIB when carrying out the investigation and indicate the timeframes to be adhered to in the investigation of marine casualties.

In carrying out its functions the MCIB complies with the provisions of the International Maritime Organisation's Casualty Investigation Code, EU Directive 2009/18/EC governing the investigation of accidents in the maritime transport sector and Commission Regulation (EU) 1286/2011 on the common methodology for investigating marine casualties and incidents.

Further detail on the MCIB is available at <http://www.mcib.ie>

b) **CER**

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 accident¹;
 - 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

¹ 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.

(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 MCIB and the CER interface in circumstances where;

- a marine casualty under the 2000 Act and/or S.I. No 276 of 2011 has taken place, and
- is also classified as a petroleum incidents defined under the Act².

For the purposes of this MoU this is termed as a marine casualty occurrence/petroleum incident.

It is recognised by both the MCIB and the CER that each marine casualty occurrence/petroleum incident is unique and as such any co-operation of marine casualty investigation by the MCIB and petroleum incident investigation by the CER will be largely dependent on the unique circumstances of the marine casualty occurrence/petroleum incident. Therefore the Bodies agree that in the event of a marine casualty occurrence/petroleum incident, initial contact will be made between the MCIB and CER to agree the level of co-operation relevant to the specific marine casualty occurrence/petroleum incident investigation and to agree the appropriate line of communication with respect to the marine casualty 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 MCIB will endeavour to liaise closely particularly in relation to the areas set out below:

a) Emergency Planning and Preparedness

The CER and MCIB 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 marine casualty occurrence/petroleum incident.

b) General Consultation/Liaison Arrangements

The CER and the MCIB 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

²Petroleum 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

efforts will be made through consultation to align the work of both to the greatest extent possible.

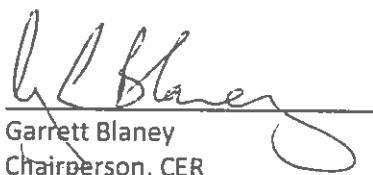
Where consultation or interaction is required or mutually beneficial in the circumstances, responses will be submitted where possible within the scheduled timescale in order to allow for the orderly progression of the project in question.

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 MCIB 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.

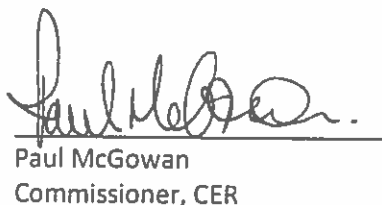
This MoU is effective from the date of signing by the CER and the MCIB and will remain effective until it is amended or the bodies herein formally agree in writing agree to terminate the MoU. This MoU is not legally binding on the Bodies but rather is an expression of individual and collective commitment to work together in order to realise the shared objectives expressed herein.



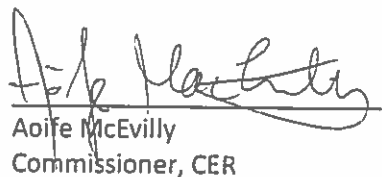
Garrett Blaney
Chairperson, CER



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Commissioner, CER



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5th Aug 2016

