

**Department of Communications, Energy and Natural Resources  
response to submissions received on foot of the public consultation on  
the Heads of the Petroleum Exploration and Extraction Bill, 2008.**

The following contains a summary of the main issues raised in submissions received by the Department of Communications, Energy and Natural Resources in response to the Minister's public consultation on the proposed Petroleum Exploration and Extraction (Safety) Bill, 2008 which commenced on 31 March, 2008 and concluded on 28 April, 2008.

**Comment**

- *Definitions - There were a number of concerns raised with regard to the scope, extent and applicability of the definitions currently in the Heads of Bill.*

**DCENR Response**

- The views and observations outlined are noted. The Department is working with Industry, the Commission for Energy Regulation (CER), and technical and legal advisors with regard to the scope, extent and applicability of the various definitions in the Bill. These matters will be addressed during the drafting process.

**Comment**

- *A number of observations were made with regard to the necessity for demarcation between the CER's role and that of other agencies e.g. HSA, Maritime Safety Directorate.*

**DCENR Response**

- The concerns raised with regard to the demarcation between the proposed role of the CER and other agencies are noted. The Department will seek, insofar as possible, to ring-fence the CER responsibilities during the drafting process.

**Comment**

- *A Goal-setting regime appears contradictory in the context of the broad remit of the CER to impose unspecified restrictions.*

### **DCENR Response**

- It is expected that, in general, a goal-setting regime would be implemented by the CER. It is however necessary to make provision for situations where such a regime may not be appropriate.

### **Comment**

- *Appropriate guidance will need to be available to the CER to support the proposed Safety Framework.*

### **DCENR Response**

- The Department recognises that the CER will require additional resources to discharge the new specialist function being conferred on in by this Bill. This matter is being progressed.

### **Comment**

*Adequate provision should be made to ensure detailed transitional arrangements are put in place and that consultations with other regulatory authorities are completed prior to commencement of any new regulations.*

### **DCENR Response**

- The Department notes the concerns raised. It will be necessary to carefully manage transitional arrangements once the legislation is enacted. A similar transitional period was managed by the CER with regard to its responsibility in respect of downstream gas safety matters. It is reasonable to expect the upstream process to be similar to the wide consultative process undertaken by the CER in the context of the downstream safety case framework.

### **Comment**

- *The level of fines/penalties attached to offences outlined in the Bill should be proportionate to the scale of the industry.*

### **DCENR Response**

- The Department notes the views expressed. The level of fines/penalties to be applied for failure to comply with statutory requirements set out in the Bill will be finalised during the drafting in accordance with legal advice.

## **Comment**

- *The flexibility of the framework approach is somewhat diluted by the prescription and detail of Heads 5, 6 and 7 of the Bill.*

## **DCENR Response**

- The provisions of Heads 5, 6 and 7 of the Bill are modelled on similar provisions of the Railway Safety Act, 2005. If current provisions can be demonstrated to be overly restrictive from an operational perspective, the Department will examine revising specific identified provisions as appropriate.

## **Comment**

- *The appointment of a Petroleum Safety Officer is not considered required or appropriate.*

## **DCENR Response**

- The Department considers that the role of a Petroleum Safety Officer would be much like a Fire Safety Officer in an office environment. The intention is that the undertaking would have the opportunity to appoint such an officer who would be statutorily certified to make safety related decisions without having to have regard to the commercial implications of such decisions. This is an option being made available to undertakings to make such an appointment where they consider it would be beneficial to do so. This is not a requirement and as such does not place an obligation on undertakings to appoint such a person in circumstances considered to be inappropriate.

## **Comment**

- *CER powers of Direction appear to be far reaching without further clarification.*

## **DCENR Response**

- The CER also has powers of direction with regard to downstream safety matters. The powers of direction set out in the Heads of Bill are based on existing powers that other safety authorities have both in Ireland and in the UK. If the current provisions can be demonstrated to be overly restrictive from an operational perspective, the Department will examine revising specific identified provisions as appropriate.

The CER will not be the licensing authority for upstream infrastructure. This function will remain with the Minister for Communications, Energy and Natural Resources. It is therefore necessary to ensure that the CER has the statutory power to carry out the functions conferred on it by this Bill and the power to issue directions in certain instances is intended to ensure this is the case.

### **Comment**

- *Regulations relating to exploration and extraction safety activities – this appears to provide an extremely broad ranging authority for the CER to make “specifications or requirements regarding the installation or maintenance of infrastructure.”*

### **DCENR Response**

- Again, the CER will not be the licensing authority for upstream infrastructure. This function will remain with the Minister for Communications, Energy and Natural Resources. It is therefore necessary to ensure that the CER has the statutory power to carry out the functions conferred on it by this Bill and the power to make regulations will ensure that this is the case.

### **Comment**

- *More specific comments with regard to the length of time to submit a safety case, the timing for adjudication of the safety case, the requirement for a revised safety case as opposed to an amended safety case were also highlighted.*

### **DCENR Response**

- These comments are noted and will be addressed during the drafting process.

### **Comment**

- *The Bill considers only the probability of an accident and ignores the consequences of an accident in the safety evaluation of gas and petroleum infrastructure projects.*

## **DCENR Response**

- The purpose of the proposed Bill is to confer statutory responsibility for the regulation of safety of the petroleum exploration and production activities of undertakings on the CER. This will implement a key finding of the safety studies carried out in relation to the Corrib onshore pipeline in that future responsibility for the regulation of safety aspects of that pipeline and for policing the conditions under which safety-related consents are granted would be transferred to the Energy Regulator (CER). To ensure a uniform approach the opportunity is being taken to extend the CER's safety remit to all upstream or unprocessed gas and oil undertakings. The establishment of the proposed safety framework is to ensure, insofar as possible, the safety of exploration and production activities and therefore reduce the potential for accidents.

## **Comment**

- *References are made to minimum distances between developments classified as Control of Major Accident Hazard Sites and other specified types of building. The Safety case should therefore be submitted to public scrutiny, sanction and approval as well as to the Commission for Energy Regulation.*

## **DCENR Response**

- The construction of all strategic projects, including Upstream projects are subject to existing environmental impact legislation both European and domestic. All applications for the construction of such projects over specified thresholds are required to be accompanied by an Environmental Impact Statement (EIS). An integral part of an EIS is the consideration of potential impacts of the project on human beings and the identification and implementation methodologies of appropriate mitigation measures in this regard. EISs submitted to State Agencies are subject to a statutory public consultation process which affords members of the public an opportunity to comment on all elements of the EIS including the proximity of developments to buildings.

## **Comment**

- *There is a need for consultation and communication before projects are sanctioned.*

## **DCENR Response**

- See public consultation process outlined above.

### **Comment**

- *Regulations should be decided upon at the planning stage, this is the only means by which Community consent and approval can be obtained. This will ensure compliance with EU Directives on public access to information, public participation and environmental impact assessment and to ensure compliance with the SEVESO II Directive.*

### **DCENR Response**

- The power to make Regulations proposed by Head 11 of the Bill is restricted to the making of Regulations with regard to the specific powers of the qualified authority (CER) in the discharge of the statutory function conferred on it in primary legislation. In this instance for example, the power to make Regulations prescribing particular technical specifications in respect of particular types of infrastructure in accordance with best practice, and imposing technical conditions on undertakings before infrastructure can be operated. This is a standard operational function for ensuring safety compliance by the authority qualified to do so. It should be noted that the CER is not precluded by this Bill from consulting on any Regulations it may deem it necessary or appropriate to make.

### **Comment**

- *The Bill is attempting to explicitly and implicitly allow a parallel system of planning and development of gas and petroleum without full consultation with the general public and without powers of the general public to veto projects which put their lives in danger when a viable alternative exists.*

### **DCENR Response**

- The purpose of this Bill is to confer responsibility for the regulation of the activities of petroleum exploration and production undertakings on the CER.

This Bill does not propose to transfer responsibility for the development of the industry to the CER, applications for licensing and consents to construct infrastructure in accordance with the provisions of the Petroleum and Other Minerals Act, 1960 and the Gas Acts, 1976, as amended will remain vested in the Minister for Communications, Energy and Natural Resources. As outlined above applications for the approval of all projects above specified thresholds require an EIS and are therefore subject to a public consultation process.

The proposed safety functions to be discharged by the CER pursuant to the provisions of this Bill will be undertaken through the establishment of a Safety Framework similar to that established in respect of downstream safety. Although there are prescribed statutory consultees, the CER is not precluded from consulting more widely on the contents of the Upstream Safety Framework if this is considered appropriate.

It should also be noted that in accordance with Head 15 of the Bill, failure to obtain a safety permit from the CER will result in rendering any consent to construct issued by the Minister inoperable.

**Copies of the submissions received can be downloaded at the following link**

***<http://www.dcmnr.gov.ie/Natural/Petroleum+Affairs+Division/Petroleum+Exploration+and+Extraction+%28Safety%29+Bill+2008.htm>***