

EXECUTIVE COUNCIL

PUBLIC

Title: Updated Safety Regulations - Initial Paper on policy direction

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Responsible Director: Director of Mineral Resources

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For policy decision

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Not Recommended:

Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld

The categories which are potentially relevant to this paper are:

Paragraph 10: Information about relevant contracts and negotiations

Previous papers: 70-13, 155-15

List of Documents: None

1. Recommendations

Honourable Members are recommended to approve that the Department of Mineral Resources:

- (a) Develops new safety policies and updates critical safety legislation in line with updates in the UKCS legislation driven by the European Safety Directive 2013/30/EU.

- (b) Ensures that any future changes to the Offshore Petroleum (Licensing) Regulations 1995 & 2000 take into account the requirements imposed on UKCS licensing legislation by the European Safety Directive 2013/30/EU.
- (c) Reviews wider implications to the Falklands offshore regulations with regard to the European Safety Directive 2013/30/EU and the changes to the UK regime resulting from that directive.

2. Additional Budgetary Implications

- 2.1 None at this point.

3. Executive Summary

- 3.1 As part of the implementation of the EU Safety Directive in 2013, much of the core safety legislation in the UK was updated.
- 3.2 The Falkland Islands regulatory regime has been developed to closely follow the UK regime as a measure of best practice. The UK update is now largely complete; therefore it is now time to review the Falkland Islands safety regulations.
- 3.3 The Recommendations in section 1 reflect the best option for implementing these changes with the optimum use of current FIG resource. This will require some additional external resource as the body of work with regard to drafting and policy development is significant.
- 3.4 Once completed the Falkland Islands offshore regulatory regime will be largely if not completely compliant with the EU safety Directive, and will mirror the best practice of the UK North Sea.

4. Background

GENERAL BACKGROUND

- 4.1 In ExCo paper 70-13 (regarding the Knights Consulting report on Oil readiness), Recommendation 14 indicated a specific review of offshore and onshore Health and Safety to determine new legislation/guidelines required for the Falklands.
- 4.2 The Falklands safety regime is drafted to reflect the UK regime as closely as possible, which is considered a very high standard in the global oil industry. It also allows the Falkland Islands Government (FIG) to utilise relationships with UK agencies for review and advice without conflicting regimes in place.
- 4.3 Following the Macondo disaster in the Gulf of Mexico in 2010, in June 2013 the European Union released DIRECTIVE 2013/30/EU (Hereafter “the Directive”) relating to safety of offshore oil and gas operations. To conform to this directive required significant review of the UK offshore safety legislation.
- 4.4 As an Overseas Territory, the Falkland Islands are not automatically bound by the Directive, and there are several aspects which are not relevant. Much of the direction

given by the Directive is relevant to current best practice for offshore safety, and will be adopted by updating the Falkland Islands regulations in line with the UK.

- 4.5 Due to the changes to the UK offshore regulatory regime it was decided that a review of the Falkland Islands regime would be postponed until the new regulations were in effect in the UK and any initial issues had been identified during the implementation process. A further complication has been possible effects of the Brexit process, but it is believed that the implications of Brexit on the UK legislation framework are largely irrelevant to implementation of the UK legislation in the Falkland Islands.
- 4.6 The process of implementing changes to the relevant UK regulations resulting from the Directive is now largely completed.
- 4.7 The FIG Department of Mineral Resources (DMR) is now in a position to review the changes to the UK regime and adopt the relevant regulations in order to bring the Falkland Islands regulatory regime into line with best practice.

SAFETY REGIME

- 4.8 The existing Falklands regulations mirror the UK regulations in their intent.
- 4.9 In response to the action in point 4.1, DMR conducted a review of safety legislation in 2015 which identified several specific areas of safety legislation which would need to be updated:
 - Offshore Installations (Safety Case) Order 2008
 - Offshore Installations (Automatic Safety Zones) Regulations 1998
 - Offshore Installation & Pipeline Works (Management & Administration Order) 1998
 - Reporting of Injuries, Diseases and Dangerous Occurrences 1998
 - Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Order 1998
 - Management of Health and Safety at Work Order 1998
 - Personal Protective Equipment at Work Order 1998
- 4.10 New Safety Case regulations were published by the UK in 2015 along with updates to several other regulations, which matured past the transitional provisions in 2018.
- 4.11 In order to maintain a high standard of offshore safety and to remain current with the agencies utilised in the UK for advice, it is apparent that the Falklands safety case regulations require updating before any new production or exploration activity commences. At the present time it is envisaged that drilling activity may recommence in the second half of 2020, meaning that a safety case for a drilling platform could be submitted for review as early as H2 2019.
- 4.12 Updating the Safety Case Regulations will supersede parts of existing Falkland Islands regulations. Therefore updates to the below will be required (there is significant crossover between this and the suggestions in 4.9):

- Offshore Installations (Prevention of Fire Explosion Emergency Response) Regulations (PFEER) 1998,
- Offshore Installations and Pipeline Works (Management and Administration) Order (MAR)1998,
- Offshore Installations and wells (Design and Construction) Order 1998,
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) Order 1998,

4.13 These updates are not as major as the Safety Case Regulations in that they can be incorporated into the Safety Case Regulations work without requiring additional resource.

4.14 There are also several other regulations which are impacted but are not currently in force in the Falkland Islands or are not relevant:

- Offshore Installations (Safety Representatives and Safety Committees) Regulations
- Offshore Installations and Pipeline Works (First-Aid) Regulations
- The Offshore Safety (Repeals and Modifications) Regulations 1993
- The Offshore Safety (Miscellaneous Amendments) Regulations 2002
- Health and Safety and Nuclear (Fees) Regulations 2015 (*Not relevant*)
- The Offshore Installations (Logbooks and Registration of Death) Regulations 1972 (*revoked*)
- The Offshore Installations (Inspectors and Casualties) Regulations 1973 (*revoked*)
- The Submarine Pipe-lines (Inspectors etc.) Regulations 1977 (*revoked*)
- The Submarine Pipe-lines Safety Regulations 1982 (*revoked*)
- The Offshore Installations (Safety Zones) Regulations 1987 (*revoked*)

4.15 These regulations will need to be considered as to whether they are important to adopt (those that are relevant). A full determination on this will be submitted to ExCo as part of the recommended actions 1(c).

LICENSING REGIME

REDACTED

OTHER AREAS UNDER SAFETY REGIME

4.16 There are a number of far-reaching implications under the Directive, many of which are not required or applicable to the Falkland Islands.

4.17 Transboundary collaboration, reporting of accidents to the Commission and other member states, and reports of activity to the Commission are all examples of clauses within the Directive which are not relevant or useful to the Falklands in terms of organising a robust regulatory regime.

4.18 Emergency planning and co-operation between Member States (EU) is also not relevant given the isolated geographical status of the Falkland Islands (from the EU). The

relationship with the closest neighbouring countries will also impact the capacity of the Falkland Islands to co-operate with regard to regional matters.

- 4.19 National Emergency Plans are covered under article 29 and ANNEX VII and ANNEX VIII.

4.19.1 REDACTED

- 4.20 Liability on the operator for potential economic damage - they are required to maintain sufficient capacity to meet financial obligations - possibly not applicable under Falklands Law but will be reviewed to align with the report produced by Sweetbriar Advisory Ltd.

- 4.21 Establishment of a Competent Authority for review and approval of various regulatory documents.

4.21.1 The Directive makes consistent reference to a Competent Authority (Article 10). To implement the main direction of the Directive the Falkland Islands will need to set up an equivalent body to provide the function of the Competent Authority. This will be covered in the review of the safety case regulations.

5. Options and Reasons for Recommending Relevant Option

- 5.1 Option 1 (**Recommended**) – Develop the critical pieces of policy and regulations in house at DMR, while reviewing the further reaching parts of legislation and policy for possible outsourcing. There is precedent for this in the environmental legislation which has been outsourced (ExCo paper 155-15)
- 5.2 Option 2 – Outsource all of the policy and regulation development, including drafting instructions and legislative drafting. This will carry the largest cost which is currently unknown, and also carries the largest risk in relation to committing FIG to aspects of the directive that FIG are not required to comply with.
- 5.3 Option 3 – complete all the development of policy and legislation with current FIG resource - this is possible, however there is currently not the resource within FIG to complete this within a meaningful timeframe. It is likely that this would take several years, by which time the requirements may have changed. Therefore the outcome of this option is an increase to staff numbers in the Policy, Minerals, and Legislative departments or more likely all.

6. Resource Implications

6.1 Financial Implications

For the preferred option there are no immediate additional financial implications for the in-house work. As the project develops, it is proposed that the cost of drafting and/or external policy or legal advice be met via a bid to the Oil Reserve.

- 6.1.1 At a point in the future with the establishment of several areas of policy and legislation there is likely to be a significant financial burden to be borne by FIG for legislative drafting, expert advice and policy development.
- 6.1.2 This future burden will need to be brought to ExCo in a separate paper once there is clarity on the requirements.
- 6.1.3 In the new regulations there is a mechanism for cost recovery from the principle operators/licensees/owners, where financial costs to the competent authority carrying out its duties are partially or fully recoverable (in line with current FIG policy regarding cost recovery). This will partially offset the financial implications of the enhanced review burden that will arise from adhering to these new regulations (Annex III - Directive)

6.2 Human Resource Implications

There is no requirement for additional resource under the preferred option. If Option 3 was to be selected then there would be. As this is not considered to be a viable option, no detailed staffing or resource proposals have been developed.

6.3 Other Resource Implications

No significant resource implications at this stage. Any future resource implications to this work will be covered under detailed proposal papers.

7. Legal Implications

- 7.1 The review of the safety case and related regulations (in line with recommended Option 1) will result in a new detailed policy being developed which will require approval by ExCo before drafting instructions are written and legislative drafting commenced. However it is preferable for the legal department to have early input to ensure an efficient process.

8. Environmental & Sustainability Implications

- 8.1 None initially. Improvements to safety legislation are likely to lead to a further reduction in the already very low risk of major accidents. Given that most major historical environmental incidents in the offshore industry have resulted from substantial safety failures, this means that there will also be a further reduction in the risk of such environmental incidents.

9. Significant Risks

- 9.1 The Sea Lion Field development is currently proposed to enter the commercial project sanction process around the end of 2018.
- 9.2 The Falkland Islands Government needs to have a defined process for the submission of plans and documents for that development, which requires a defined regulatory regime.

9.3 If the Falkland Islands does not have a defined regime in place there is a possibility that the Sea Lion development will not be compliant with the proposed safety regulations and will not meet UKCS North Sea standards, which FIG generally adopts as a yardstick for best practice.

9.4 This is mitigated through early engagement with oil operators and clearly defining the intended direction of future legislation with them.

10. Consultation

10.1 As mentioned in point 9.4 the engagement with stakeholders (licence operators) is crucial for the success of all aspects of the recommended option.

10.2 Early engagement with UK agencies involved and the Legislative drafting function of FIG will also ensure that the process of developing the new regulations goes as smoothly as possible.

11. Communication

11.1 Draft regulations, once prepared, will be subject to the normal consultation process and publication via the Gazette, prior to passing through the Assembly for final approval.