

# *GOVERNMENT RESPONSE TO PUBLIC CONSULTATION*

**dti**

*OFFSHORE NATURAL GAS  
STORAGE AND LIQUEFIED  
NATURAL GAS IMPORT FACILITIES*

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## Executive Summary

The DTI issued a consultation document in November 2006 in which it sought views on proposals to improve the regulatory environment for the offshore storage of natural gas and the offshore unloading of Liquefied Natural Gas (LNG).

As the UK's indigenous gas supplies decline, the UK will need to import more gas, and will therefore require additional gas supply infrastructure onshore and offshore to enable us to import, store and transport gas to UK consumers when it is required.

26 responses were received to the consultation, from a large variety of interested parties including developers and their representative organisations, consultants, environmental, heritage and maritime organisations, and other public bodies.

The vast majority of respondents were extremely supportive of DTI's proposals to put in place new, bespoke legislation to permit such offshore activities.

Many respondents considered that new legislation was a necessary condition to provide the legal certainty that they believed to be fundamental to encouraging development offshore, and encouraging investment in such developments. Non-regulatory solutions were overwhelmingly unpopular.

Following consideration of responses to this consultation, DTI intends that draft legislation be prepared, and that this to be considered by Parliament as soon as Parliamentary time allows, given the number of parties interested in offshore developments, and the UK's need for this new infrastructure.

# OFFSHORE NATURAL GAS STORAGE AND LIQUEFIED NATURAL GAS IMPORT FACILITIES

## GOVERNMENT RESPONSE TO PUBLIC CONSULTATION

### 1. Introduction

1.1 The DTI issued a consultation paper in November 2006<sup>1</sup> on its proposals to establish a clear regulatory framework for the offshore storage of natural gas and the unloading of Liquefied Natural Gas (LNG) offshore.

1.2 The closing date was 16 February 2007. 27 responses were received in total.

1.3 A list of all respondents is attached at Annex A. Copies of all original responses are available on the DTI website.<sup>2</sup>

1.4 A breakdown of the 27 responses received is as follows:

Central Government organisation, Agency or statutory adviser	3
Consultant	1
Consumer organisation	1
Developer or developers' representative organisation	15
Devolved Administration	1
Heritage organisation	1
Maritime organisation	2
Other	3

1.5 The DTI is grateful to respondents for their time and careful consideration of the proposals set out. Views expressed have been carefully analysed and this document seeks to reflect them.

<sup>1</sup> <http://www.dti.gov.uk/consultations/page35612.html>

<sup>2</sup> <http://www.dti.gov.uk/energy/review/implementation/gas-storage/cons-responses/page39055.html>

## **2. Background**

- 2.1 Indigenous gas production from the United Kingdom Continental Shelf (UKCS) is declining. The UK will move from a position of virtual self sufficiency, to being 80-90% reliant on imports by 2020. To meet this challenge, our regulatory framework must encourage the market to provide new gas infrastructure that this shift may require.
- 2.2 The Secretary of State announced in May 2006 that the regulatory framework for gas supply infrastructure onshore and offshore would be reviewed. The onshore framework is being considered separately as part of the Government's Planning White Paper, to be published this Spring.
- 2.3 This consultation examined two types of offshore development: the storage of natural gas under the seabed in partially depleted oil/gas fields or in non-hydrocarbon features (e.g. salt caverns), and the unloading of Liquefied Natural Gas (LNG). It is recognised that some developments may incorporate both activities.
- 2.4 It considered options for these types of activity, ranging from the non-legislative (e.g. publication of guidance on the existing framework for the benefit of developers) through to the legislative (introducing new legislation to specifically deal with this type of activity).
- 2.5 This consultation posed a number of questions to help policy makers understand the limitations of current legislation, the existing burden facing developers, the desirability of introducing either new legislation or considering non-legislative improvements, and the burden that introducing any new legislation would bring.

## **3. General comments**

- 3.1 Virtually all respondents expressly welcomed the publication of this consultation document. It was recognised that changes to the offshore infrastructure consent regimes were essential to ensure that the "market is not restricted in its efforts" to deliver new infrastructure (Ofgem). A number of respondents including UKOOA, the Gas Storage Operators Group, Centrica and E.ON supported this view, stressing the need for simplification of the current regime, and encouraging the DTI to provide "additional definition and clarity" (BP) in order to facilitate the development of offshore infrastructure.
- 3.2 Both Interconnector (UK) Ltd and Energywatch commented on the need to give strong incentives to those wishing to invest in new infrastructure.

Interconnector noted that: "The private sector is investing considerable sums of money in new gas infrastructure to meet the future needs of the UK. However, the current legislative regime does not facilitate the infrastructure investment that is now required in respect of LNG import and offshore gas storage facilities and may be acting as a disincentive to further investment."

3.3 The preference expressed by virtually all respondents was for a fit-for-purpose regulatory framework (Option 3 as referenced in the consultation document). This was thought to: "grant developers the certainty needed to take forward their involvement in the relevant technologies (Scottish and Southern Energy); to provide the regulatory ease and legal clarity that might aid the securing of investment in such developments, which is particularly important for smaller developers; and to broaden the scope for development by "increasing the number of options open to developers" (EDF Energy) with a potential subsequent increase in the future security of UK gas supplies.

3.4 It was recognised that any new regime should be able to dovetail appropriately with existing legislation, for example the need for appropriate decommissioning provisions, as well as forthcoming legislation, particularly the Marine Management Organisation (MMO) (RWE npower), and it was noted by English Heritage that the "fractured nature" of existing marine regulations including the Food and Environment Protection Act (FEPA) and the Coast Protection Act (CPA) complicated matters needlessly. DTI agrees that it will be important for interested parties to have clear guidance in due course on the precise roles of the MMO and the authorisations granted by the DTI and The Crown Estate in relation to offshore gas supply infrastructure.

3.5 Respondents also noted that in addition to regulatory clarity about the consents require for building and operating such offshore facilities, clarity and certainty over other arrangements not administered by DTI such a fiscal issues, Third Party Access and entry and exit capacities, can all play a significant role in the Final Investment Decisions to be made by companies. DTI does not have responsibility for these areas, but recognises these concerns, and has forwarded them to the appropriate authorities for their consideration.

#### **4. Responses by Question**

##### ***Offshore Gas Storage***

***Question 1. Does the current regulatory framework present a disincentive to the development of offshore gas storage infrastructure development or not in your view? Why?***

4.1 Sixteen responses were received to this question. All respondents were of the opinion that the current regulatory framework was indeed a disincentive

to the offshore development of gas storage facilities. Several respondents including the Gas Storage Operator's Group (GSOG), Centrica Storage Ltd, Shell and the Geological Survey of Northern Ireland (GSNI) expressed the view that there was a real lack of clarity in existing legislation, with confusion over the types of activity that could be carried out offshore, and through which legislation. Centrica described the regulatory framework as being "unclear, overly complex, and incomplete", and The Crown Estate noted that in the absence of the relevant sovereign rights being claimed under the UN Convention on the Law of the SEA (UNCLOS), there was a regulatory 'gap' beyond 12 nautical miles which would make investment in this area a "riskier proposition", a position that Marathon Oil shared.

4.2 E.ON UK Plc commented that: "The current arrangements are creating a barrier to entry for prospective market participants, add unnecessary time and expense to new projects and could prevent some investments." They suggested that the increase in demand for such projects that we were likely to see would "be better served by specific, simplified licensing and consents arrangements".

4.3 And there was an appreciation of the consequences of this lack of clarity on investment too; GSNI noted that: "[...] where companies are unsure that their proposed developments are clearly and unambiguously covered by the existing legislation, then they are less inclined to invest even in the initial exploration phase." Shell agreed with this position, citing a number of likely consequences if the existing regulatory framework were not properly addressed, as the ongoing uncertainty would risk projects being delayed, financing costs increasing, or projects even being terminated altogether.

4.4 It was very clear that the existing framework was seen by all parties who responded to this question to be undesirable, and in need of updating to reflect the technology that the market is seeking to deliver, and in so doing, providing clarity to developers, their investors, and those responsible for regulating developments.

*These views corresponded closely with DTI's view, which is that the current regulatory framework is viewed by interested parties, from developers to environmentalists, as being inadequate. It confirms that this is an appropriate time for Government to consider how the regulatory framework might be revised, given the number of responses and level of interest in what might be considered as a fairly niche area.*

**Question 2. What could the implications (positive or negative) be of no change to the current regulatory framework in your view?**

4.5 No change to the existing regime was generally thought to have negative implications. There were several reasons put forward to support this view.

At least 3 respondents specifically cited concerns of legal risks associated with use of current legislation. Whilst existing legislation could, we believe, in many cases, be used to consent to such activities, the fact that it was not designed specifically with these activities in mind, creates an unwelcome degree of uncertainty for developers and for their financiers. RWE npower highlighted the fact that these regulatory uncertainties simply increase the costs and timescales associated with these projects and could ultimately endanger them.

4.6 In the absence of new regulation, developers would need to seek guidance from Government departments and their own legal advisors as to the most appropriate routes through which consent might be sought. Shell suggested that seeking Government views on this matter would not always be straightforward, as the existing legislation is not the domain of on single Department, but consents for the project as a whole may be spread across several, with a risk therein of “miscommunication and misunderstanding”.

4.7 The Crown Estate highlighted the fact that no change could see another risk for developers, this being the impact of storage potentially being limited to the area of the territorial sea (the area within 12 nautical miles). This had the attendant risk of an increasing number of companies being restricted to a smaller than desirable number of potential offshore storage sites.

4.8 Whilst it would not be accurate to predict that the failure to streamline and simplify the offshore gas infrastructure legislation could alone have a significant impact on our future security of gas supplies, respondents suggested that failure to implement changes could certainly deter, slow down, or endanger offshore gas infrastructure investment, which would be very unfortunate considering the number of possible offshore projects that could make a valuable contribution to securing our future gas supplies.

*From the responses received, DTI does not consider that a ‘no change’ approach to the current regulatory framework would deliver any benefits. The key risks appear to be the undesirability of ongoing legal uncertainty for developers and investors, the continuation of a system involving a number of consents from different authorities, and limitations in terms of available area for development. DTI considers that these factors could cumulatively impact negatively on future investment decisions with potential security of supply consequences.*

***Question 3. Would the ability to store natural gas in porous space under the seabed extending beyond the current 12 nml limit be a significant advantage to developers, even if no changes were made to the regulatory framework?***

4.9 Fourteen responses were received to this question. It was generally thought that it would be an advantage to developers if exclusive rights to use the porous space under the seabed were to be claimed under UNCLOS and

vested in the Crown, enabling storage developments beyond 12 nautical miles (nml) to be granted exclusive authorisations for particular areas.

- 4.10 E.On UK Plc agreed that it would be advantageous and noted that a "...territorial water restriction would cut the number of suitable hydrocarbon fields for use as gas (or carbon) storage facilities by 95%" in their estimation. The Gas Storage Operators' Group commented that primary legislation would offer the most certainty in terms of being able to store gas beyond 12 nml, and it therefore made sense to "take the opportunity to also deliver the benefits of a more certain and complete legislative and regulatory environment".
- 4.11 However, approximately one quarter of respondents to this question were unconvinced that the clear ability to store gas beyond 12 nml would, on its own, and without additional regulatory reform, have the desired impact. Both Marathon Oil and Shell felt that such a move would be unlikely to be of significant benefit without the legislation surrounding this activity as a whole being revised.
- 4.12 Shell also suggested that it would be useful to clarify the remit of The Crown Estate, the circumstances under which an authorisation from The Crown Estate would be required, and under which it would be granted, plus a framework of likely costs would be of great benefit to developers wishing to use any new regulatory regime in which The Crown Estate played a role, in order to ease the early screening of project feasibility.

*DTI recognises the support for the clear ability to conduct such activities beyond 12nml. However, responses demonstrate that enlarging the area for such activities would be relatively meaningless, if not accompanied by more significant regulatory reform. On this basis, we do not consider Option 2 (extending the area for developments to beyond 12nml) to be a satisfactory stand-alone solution. Further comments on the role of The Crown Estate are contained in the conclusions to Question 11.*

**Question 4. Are there any additional non-regulatory solutions that should be considered? Please provide details.**

- 4.13 Half of the 12 respondents to this question had no view on it. 5 respondents did not believe that non-regulatory solutions would be appropriate in this context, noting that "clear, comprehensive legislation is the preferred solution" (Geological Survey of Northern Ireland), and that "regulatory reform is the most appropriate and efficient solution to maximise certainty" (E.On UK Plc). The Crown Estate commented that primary legislation through Parliament would be the safest route, but that there may be opportunities in relation to use of the porous space beyond

territorial waters that could be achieved via an Order in Council or by an 'act of occupation'.

*DTI considers that in light of the legal certainty sought by respondents (see replies to questions 1 and 2), an 'act of occupation' would not be a satisfactory solution. With regard to an Order in Council, this may be a possible option, but due to the fact that uncertainty over the use of porous space beyond 12 nml is only one of the issues being dealt with, new legislation that regulates a range of activities is more appropriate.*

**Question 5. Would you consider it advantageous for any new Offshore Natural Gas Storage Licence to have terms similar to those expected of Petroleum Licence holders? Please explain.**

- 4.14 All respondents broadly agreed with this suggestion, some with qualifications. The Joint Nature Conservation Committee (JNCC) and Countryside Council for Wales's response noted that it seemed "logical to try to use, and if possible, improve an existing regime, than put resources into setting up a completely new licensing system". Other respondents cited the benefit of familiarity, which could serve to minimise regulatory burden (Centrica Storage Ltd), and the usefulness of replicating a regime in which DTI has expertise. The Geological Survey of Northern Ireland spoke of the exploration and development of gas storage employing similar techniques to those used in the petroleum exploration industry, and suggested it made good sense to employ a framework well known to exploration companies.
- 4.15 Shell were supportive of this proposal, but highlighted the fact that the licence must be flexible enough to deal with a range of scenarios, whether that be a new storage project, conversion of a partially depleted reservoir, or the conversion of a reservoir for which production operations have ceased.

*The DTI recognises and concurs with the advantages cited by the majority of developers, and noted in the consultation document that the Petroleum licensing system was thought to be an effective model, transferable to these types of infrastructure too, with minimum additional burden on industry, many (though not all) of whom, had a degree of familiarity with this system. On this basis, we propose to use Petroleum Act licensing terms as a starting point, whilst taking care not to duplicate provisions or create additional burdens on industry.*

**Question 6. Are there any further issues to be considered with regard to an Offshore Natural Gas Storage Licence being issued in the vicinity of a currently producing field?**

- 4.16 There were 12 responses to this question. 5 respondents had no view, or thought there was nothing further to be considered. Of the other responses, the majority focussed on the issue of where licences held by different parties covering say production/storage or storage/storage might overlap. E.On UK recognised that there would be some benefit in allowing gas storage facilities to operate within the vicinity of a currently producing field, because this would maximise storage opportunities, but they did stress that there needed to be protection of commercial interests so far as existing operators were concerned. Centrica Storage Ltd, Excelebrate and Shell concurred.

*DTI does not wish to see large areas of the seabed, which are currently active hydrocarbon producing areas, effectively 'sterilised', with proposed gas storage projects in these areas being automatically prevented. Indeed it will be necessary to enable such developments to take place in areas that may be held under a Petroleum Production Licence by another party. To this end, the DTI is in discussions with the Health and Safety Executive (HSE) to establish the necessary parameters and measures that will be needed to ensure developments can take place, and that they are both safe, and do not impinge upon either the petroleum licensee or the gas storage activities.*

***Question 7. Are there specific issues of interest to hydrocarbon producers who may be considering changing the main purpose of their activity from gas production to storage which are not addressed in this consultation? Please explain.***

- 4.17 Of the comments received to this question, several related to the nature of any competition requirements from The Crown Estate regarding the position of an incumbent producer who, for example, wished to commence a storage activity in a partially depleted field. This was viewed by Shell as being likely to deter any projects from being brought forward. BP considered that it was imperative that incumbent operators are given 'first refusal', and that it would be "totally impracticable as well as extremely costly, for the production licence holder to be required against his wishes to vacate the site in order for a third party to be engaged".
- 4.18 Eclipse Energy noted that "there should be an assumption that the existing licence holder would have a pre-emptive position in being licensed to operate the storage facilities". If the present licensee could not demonstrate a viable project, or did not wish to continue to operate facilities post-production cessation, then "other parties should be invited to register interest in taking over the facilities".
- 4.19 On this point, The Crown Estate confirmed in their response that it is "anticipated that [in relation to the transfer of an active petroleum licence to a storage one] an operator will not be subject to any selection process; transferral of licence will be acceptable".

- 4.20 Shell expressed their concern about the possibility of an activity being licensed in an area already being explored or produced from and requested that due consideration be given to: “the interests of other users of the marine environment and in particular to the safe conduct of operations in the vicinity of currently producing fields or currently operating offshore gas storage facilities”. They recommended that separate licences should not be issued on the same acreage for this reason. DTI comments on this point are contained in the conclusion the Question 6.
- 4.21 Other issues raised by developers included important points such as clarity over applicable taxation regimes and the necessity of a secure and stable NTS capacity regime. Whilst we would agree that clarity on both matters is indeed vital for developers, such points are beyond the scope of any potential DTI legislation on offshore gas supply infrastructure. Further comment on these points is set out below.

*As noted, a number of respondents raised issues around the tax implications of offshore gas storage, in particular the interaction with the current tax regime for hydrocarbon extraction (and the boundaries with storage activities) and the use of existing infrastructure and access to tax relief for decommissioning costs.*

*Following the Pre-Budget Report in 2006, the Government set up a Working Group to explore the application of the existing tax rules to changes of use of North Sea infrastructure, including gas storage in hydrocarbon fields. The Group includes representatives from the oil and gas industry, DTI and HMRC. The Group aims to report by the summer, after which the Government will consider the appropriate way forward on any issues that have arisen.*

*In addition, HM Treasury published a discussion paper ‘The North Sea Fiscal Regime’ at Budget 2007, which will provide a basis for industry and Government to have further discussions on the future structure of the North Sea fiscal regime, including Petroleum Revenue Tax and relief for decommissioning costs. The discussions will last until autumn 2007.*

*In relation to issues raised by respondents on entry/exit capacity regimes, Ofgem has noted that: “ the long term onshore regime for gas entry is intended to provide long term certainty to gas producers and shippers” whilst recognising that some recent changes to the entry capacity output measures at some terminals have caused some concern. Ofgem also notes that: “the long term auction regime at gas entry has not prevented in excess of £10bn being invested in over 60bcm of new sources of supply”.*

*Insofar as gas offtake is relevant to the offshore consent regime, Ofgem notes that it has recently accepted a major UNC modification proposal on the long term*

*framework for offtake capacity, ending (subject to appeal) many months of discussion on this matter. Ofgem also notes that the offtake arrangements "provide for the introduction of long term user commitment frameworks", which help to provide certainty by "allowing parties to book capacity several years in advance".*

**Question 8. Do you consider that a fit for purpose licensing regime, administered by the DTI, covering the activities outlined above, would provide a clear consents process for developers? Please explain.**

- 4.22 Almost without exception, respondents were clear that a new DTI-administered licensing regime offshore would be the optimum solution. Reasons for this were cited as being DTI's prior experience in licensing oil and gas exploration and production, and its relevant technical and operational expertise of this type of activity. A DTI-administered regime was anticipated by The Crown Estate to "offer a clear route to investment decision-making, reduce administration, and overall be sensible".
- 4.23 Scottish and Southern Energy agreed that it would "seem to offer the most appropriate solution", but stressed the need for a "light-touch" approach, without replicating existing conditions on developers. There was some concern about appropriate resourcing to deal with applications, and E.On UK also wanted to see clear administrative timescales to aid developers published.

*DTI is confident, based on the responses received, that the proposals set out in Option 3 of the consultation document relating to a new licensing regime, administered by DTI, would be well received by interested parties, and moreover, would provide a level of continuity and expertise in offshore petroleum matters. DTI's stated aim is a light-touch regime and applications would be processed as expeditiously as possible.*

**Question 9. Do you consider that the non-legislative proposals would provide a better solution? Please explain.**

- 4.24 All respondents excepting one were in favour of legislative proposals. Non-legislative proposals were not thought to meet the needs of interested parties appropriately. The JNCC/CCW response noted that "non-legislative guidance can be useful in certain circumstances" but they did not believe it would provide an appropriate solution for the offshore storage of gas, or unloading of LNG because a licensing regime ensures that "conditions of operation can be applied on developers which may not be possible using non-legislative proposals".
- 4.25 Furthermore, question marks remained around the legal complexities of the current regimes, and a non-legislative approach was not deemed

sufficient. Only one company considered that the alternative of simply claiming appropriate rights under UNCLOS might provide a quicker solution, suitable for their project, suggesting that vesting the rights in the Crown by Order in Council would suffice to provide a framework for authorising the storage of gas beyond 12 nml.

*In view of the responses received, DTI has been given no reason to believe that either guidance on the existing consents that developers might use, or that extending the area in which such activities are permitted beyond 12nml by use of means other than primary legislation would have over-riding benefits to developers. We believe that the vast majority of developers would consider the risks of such a complex legislative route undesirable, and this would discourage investment offshore.*

**Question 10. Do the proposals outlined regarding a fit for purpose licensing regime for offshore gas storage present a reduced, unchanged or increased administrative burden for developers?**

- 4.26 Respondents were evenly split between the likelihood of a new regime provided an unchanged burden, and a reduced burden for developers.
- 4.27 Reasons for an unchanged burden included the fact that several developers, including Shell and EnCore Oil considered that more information about the requirements of the new regime would be required before it was possible to consider how the burden on developers might change. It was also suggested that the level of work needed to support an application would be the same, although it was recognised by JNCC/CCW that the “process will hopefully be simpler and more streamlined”.
- 4.28 Centrica Storage Ltd was of the view that developers should see a reduction in burden because “existing arrangements involve uncertainties which are likely to act as a serious and in some cases insurmountable barrier to developments”. Others including the Geological Survey of Northern Ireland agreed, on the basis that a streamlined regulatory process would aid developers.

*DTI understands that the burden of a new process is difficult to assess without a precise understanding of what that process may be. The DTI will be working with interested parties, as the detail of the process is further developed. Our aim is that through a clear, consistent approach to the application for a Gas Storage Licence or authorisation for use of the seabed, the burden on developers is significantly reduced, whilst accepting that some time will need to be spent on familiarisation of the new regime.*

**Question 11. Do you have any additional suggestions for simplification of the current regulatory framework for offshore gas storage which might be taken into consideration?**

- 4.29 Where respondents held views on this point, they were somewhat divergent. Points specific to this question included Shell's view that DTI reconsider the proposal to involve The Crown Estate in the consenting process in addition to the DTI, as doing so would provide a 'one-stop-shop' arrangement as is the case for hydrocarbon exploration and production. Shell note that they consider it may be problematic involving two separate organisations that may have different interests.
- 4.30 Scottish and Southern Plc had noted in their response to Defra's Marine Bill consultation that the lack of regulatory coherence offshore was problematic and that merging the Food and Environment Protection Act and Coast Protection Act would be sensible, and noted the difficulties caused by the "complicated mix of devolved and non-devolved legislative powers and executive functions governing UK waters".

*A number of respondents remarked on the involvement of The Crown Estate. The Crown owns the seabed out to the 12 nautical mile limit of the territorial sea as well as the rights to explore and utilize the natural resources of the UK Continental Shelf, such as its mineral resources (but excluding coal). The power to grant licences to search for, bore for and extract Petroleum has been given to the Secretary of State, acting on behalf of the Crown, as set out in Part I of the Petroleum Act 1998<sup>3</sup> (derived from the 1934 Act). In other cases, however, including that of gas storage, the Crown's rights are administered by The Crown Estate. Thus the storage of gas which is not produced from the UK Continental Shelf is not covered by the Petroleum Act, and the right to exploit the seabed for that purpose cannot be authorised by the Secretary of State. The UK can claim certain further rights within the first 200 nml of the Continental Shelf, under Part V of UNCLOS.*

*The most recent model for claiming such further rights offshore is the Energy Act 2004<sup>4</sup>. This provided the basis for The Crown Estate to grant licences in sea areas beyond the 12nml limit for the generation of renewable energy on the continental shelf within the designated Renewable Energy Zone. This supplemented its existing powers to grant leases for renewable projects within the territorial sea.*

*Both gas storage and LNG unloading would involve the creation of structures on the seabed; additionally offshore unloading would require exclusion zones, with careful management of the seabed being required to ensure it remains most usable. The offshore renewable energy model, with its dual DTI/Crown Estate*

<sup>3</sup> <http://www.opsi.gov.uk/acts/acts1998/19980017.htm>

<sup>4</sup> <http://www.opsi.gov.uk/acts/acts2004/20040020.htm>

*consenting process has not presented any significant problems, and DTI has a constructive relationship with The Crown Estate on offshore gas issues.*

*With regard to FEPA and the CPA, the intention is that these two pieces of legislation will be merged and amended through Defra's forthcoming Marine Bill. In English waters and the United Kingdom Continental Shelf (UKCS), existing FEPA provisions will be replaced by the DTI licensing process. In Welsh and Scottish territorial waters, a separate FEPA application may need to be made to the Devolved Administrations in addition to the DTI licence provisions.*

### *LNG Offshore Unloading*

*Question 12. Does the current regulatory framework present a disincentive to the development of offshore LNG unloading facilities in your view? Please explain.*

- 4.31 Where respondents expressed a view, all agreed that the current regulatory framework did indeed present a disincentive to developers. Reasons cited by respondents included significantly increased development costs. Mulberry Capital, responding on behalf of Canatxx LNG Ltd, noted that development costs are increased "in particular at a time when funding is limited" and that "it provides uncertainty to equity investors and subsequently the banks when project finance is sought".
- 4.32 E.On UK Plc considered that if the current regime were to be clarified and simplified, it would support greater investment in offshore infrastructure. Excelerate pointed out the security that developers seek is absent in the current complex regime. The potential for navigational issues relating to LNG unloading was also raised, which added support to proposals for a new regulatory framework. Hoegh LNG requested that careful attention be paid to terminology and definitions in the development of any new legislation because this may have implications pertaining to the type of facilities required.

*The responses to this question suggested that the current framework did present a disincentive, and if we were to try and facilitate an environment which encouraged development of and investment in offshore LNG unloading infrastructure, we should look to make changes to the regime in order to do so.*

*Question 13. What could the implications (positive or negative) be of no change to the current regulatory framework in your view?*

- 4.33 Consequences of not changing the current regulatory regime were thought to be threefold: i) ongoing uncertainty for developers; ii) continued difficulties in seeking to attract financial backing for such projects and; iii) that without an appropriate regulatory framework, the UK could find it hard to compete with other countries for such infrastructure, with

subsequent security of supply implications. On the latter point, in light of the increasing importance of LNG imports to the UK, Shell said: "In the absence of such a framework, i.e. the no change scenario envisaged in the consultation document, the UK could find it difficult to compete with other countries as a favourable destination for LNG."

*There were no benefits presented to the 'no change' scenario. In contrast, the costs of the 'no change' scenario were clear and potentially serious, particularly in light of rising import predictions, and to the attractiveness of the UK, which is one of only a growing number of countries who are looking to exploit the development of LNG import projects. From responses therefore, we are clear that respondents back a change to the current framework.*

**Question 14. Would the ability to unload LNG in the area extending beyond the current 12 nml limit be a significant advantage to developers, even if no changes were made to the regulatory framework?**

- 4.34 Where respondents had a view on this question, they were largely in agreement with the advantages that being able to use the waters beyond 12nml would bring.
- 4.35 It was thought that clarity beyond 12nml would increase the scope for such developments (Shell), and that it would also offer increased legal certainty which would be valuable to developers. E.On felt strongly that developers must have the opportunity to develop beyond 12nml, and that any restrictions in their ability to do so would be inefficient and would drastically increase project costs.
- 4.36 Hoegh LNG recognised that developments beyond 12nml are not currently impossible, but that greater clarity on the situation was required. They also suggested that projects may wish to utilise existing infrastructure, and that much of this would be beyond the 12nml limit.

*As per Question 3, DTI recognises the support for the clear ability to conduct such activities beyond 12nml, and understands that if current legal uncertainties inadvertently restrict this activity, or create unwelcome delays, then project costs could rise. The use of existing petroleum-related infrastructure may be important for some projects, and perceived difficulties with development beyond 12nml could again create unnecessary costs for business. Again, responses reflected the fact that what was required was more certainty about this activity in general, rather than just the extension of the area in which these activities could potentially be carried out. On this basis, we do not consider Option 2 (extending the area for developments to beyond 12nml) to be a satisfactory stand-alone solution.*

**Question 15. Are there any additional non-regulatory solutions that should be considered? Please provide details.**

- 4.37 Most respondents expressed no view on this question. Both Shell and E.On UK believed that guidance alone would do little to solve the problem of regulatory uncertainty. Hoegh suggested that whatever solutions were considered, it would be prudent in any case for the UK to assert the appropriate rights under UNCLOS to make use of the water column for this type of activity. JNCC/CCW advised that they would prefer a regulatory solution.

*We were clear from responses that a regulatory solution was preferred, with guidance alone being insufficient even if coupled with the assertion of rights beyond 12nml.*

**Question 16. Do you consider that a fit for purpose consenting regime, administered by the DTI, covering the activities outlined above, would provide a clear consents process for developers? Please explain.**

- 4.38 All respondents to this question believed that such a regime would provide a clear consenting route for developers, and that there would be advantages therein.

4.39 This approach was qualified on a number of counts:

- Process: a new regime would need to be implemented in a timely fashion (Mulberry Capital); the timescales of the process itself should be determined and made public (E.On UK); the new regime would need to be light-touch (Scottish and Southern Energy) and there would need to be sufficient resources to deal with applications (E.On UK).
- Related matters: a new regime would be advantageous if issues of stability and certainty in relation to NTS capacity and NTS pricing (Excelerate Energy) were properly addressed by the competent authority. Fiscal issues were also of great relevance to developers, and clarity was needed as to the treatment which would be given to these developments. Finally, Third Party Access requirements would need to be clearly set out.

*We are clear from responses that our proposal for a DTI-led licensing regime is regarded by respondents as being clear and sensible. Our intention is to take forward legislation as soon as Parliamentary time allows, given the level of interest in such projects, and the UK's growing import dependence. The new regime will indeed be "light-touch" and will not seek to place unnecessary burdens on developers. Applications will be dealt with as expeditiously as possible. Third Party Access requirements are detailed in Chapter 5 of the consultation document (paras 5.6 – 5.9). NTS pricing and capacity comments and issues pertaining to fiscal arrangements have been passed to the*

*appropriate authorities. More detail on both NTS-related issues and on fiscal matters is contained in the conclusions to Question 7.*

**Question 17. Do you consider that the non-legislative proposals would provide a better solution? Please explain.**

4.40 No respondent considered that a non-legislative solution would provide a better solution, in large because it would provide no additional legal certainty to developers or to those investing in the project.

*We have been provided with no evidence to suggest that a non-legislative solution is either required or desired by interested parties with relation to offshore LNG unloading.*

**Question 18. Do the proposals outlined regarding a fit for purpose licensing regime for offshore gas storage present a reduced, unchanged or increased administrative burden for developers?**

4.41 As per Question 10, there was a relatively even split between those who believed the proposals represented a reduced burden, and those who believed it was likely to remain the same, and couldn't comment further without understanding more about the detail of the regime.

4.42 Those who considered the burden would be reduced focussed on the benefits of certainty given by set procedures. Hoegh LNG commented that such procedures "will result in reduced administrative burden on developers and, in the long run, the administrative authorities".

*As per Question 10, DTI understands that the burden of a new process is difficult to assess without a precise understanding of what that process may be. DTI will work with interested parties, as thinking on the process is developed. We agree that a clear and consistent approach to the application for a LNG Unloading Licence should benefit developers, whilst accepting that some time will need to be spent on familiarisation of the new regime.*

**Question 19. Do you have any additional suggestions for simplification of the current regulatory framework for offshore LNG unloading which might be taken into consideration?**

4.43 JNCC/CCW commented that it would be beneficial for all land and sea based infrastructure relating to individual developments to be simultaneously considered by the consenting and assessment process. This view was supported by Hoegh LNG who requested a "one-stop-shop framework to cover both on- and offshore aspects of the project", they

considered that this would “simplify procedures for all persons concerned in such activities”.

*We accept that there would be advantages to developers in one consenting authority considering all aspects of a project, even where a project may necessarily be split with onshore and offshore elements. However, under the existing Petroleum Act 1998 provisions, it is necessary to make a separate application, as appropriate, for any onshore aspects associated with the project. The DTI does not propose to make any changes in this respect relating to these new provisions. The Planning White Paper, due to be published by the Government in Spring 2007 will separately be making proposals for the reform of onshore planning processes. DTI has been active in the development of this Paper.*

**Question 20. Are there any additional scenarios regarding LNG offshore unloading to which thought should be given?**

- 4.44 Two additional scenarios were described. Both Scottish and Southern Energy Plc and Hoegh LNG described projects which combined both LNG offshore unloading and offshore gas storage. It was requested that the legislation drafting provided flexibility for this type of arrangement.
- 4.45 The Crown Estate raised the possibility that tankers could unload offshore, via buoys, to pipelines which carried gas to onshore storage sites, and noted that such projects were not covered by this consultation.

*The DTI envisages that in the scenario where a related storage and LNG unloading facility is being applied for, this would be covered by the provisions set out by the DTI, indeed we think this is a very likely scenario. In this case, it may be sufficient for the developer to apply for a Gas Storage Licence, with the Field Development Plan containing details of the related unloading facility. In the second scenario, with buoys being used to connect pipelines to shore, it is possible, depending on the circumstances that authorisations may be simply given through a Pipeline Works Authorisation under the Petroleum Act 1998. If not, the provisions in new legislation would cover this activity.*

## Scope

**Question 21. Are there other offshore activities of this nature, excluding Carbon Capture and Storage, which should be included in the scope of this legislation? Please provide details.**

- 4.46 Half of respondents did not consider that there were additional activities that should be considered within the scope of this legislation. Two respondents, whilst recognising that Carbon Capture and Storage (CCS) was not intended to be part of this regime, suggested that it would be logical for CCS legislative provisions to follow a similar model to gas

storage, as similar geological features would be used. BP commented that it was “important to recognise the likely interaction between the offshore gas storage and CCS regimes [...] because the two technologies could in actuality be competing for the same pore space”.

- 4.47 Eclipse Energy raised the proposal of the storage of non-petroleum products, including hydrogen gas generated via electrolysis from associated renewable energy projects.

*Government is currently considering the extent of legislative reform that may be necessary for regulating Carbon Dioxide storage. We will be consulting on our ideas and the options we identify as they develop. We agree that whatever arrangements apply to Carbon Dioxide storage will have to take account of other users of the sub-surface porous space.*

*The prospect of using hydrogen as an energy carrier and related technologies are familiar to DTI. A report commissioned on behalf of Government indicated that the use of hydrogen as a transport fuel could deliver cost-competitive CO<sub>2</sub> savings by 2030. Funds are available for research, applied research, and demonstration for hydrogen technologies. The DTI does not consider that at this stage specific changes to offshore gas legislation would assist in the deployment of such hydrogen energy technologies. However, deployment of new and emerging energy technologies will be considered in the Energy White Paper.*

#### *Decommissioning:*

*Question 22. Do you think the decommissioning arrangements noted in the consultation are suitable, or would you like to see separate decommissioning provisions provided for gas storage installations and LNG unloading platforms. What would you like those new provisions to look like?*

- 4.48 Respondents were split fairly evenly on this question. Marathon Oil believed that the Petroleum Act 1998 provisions would probably be a “starting point”, and Scottish and Southern Energy considered that any new decommissioning provisions put in place should certainly not be any more onerous than those under the Petroleum Act.
- 4.49 Generally it was felt that the Petroleum Act provisions needed to be revisited in more detail to ascertain their appropriateness, particularly in the case of gas storage. Hoegh LNG concurred with this view, suggesting that the storing of gas, and the unloading of LNG needed to be considered separately as far as decommissioning provisions were concerned. LNG unloading was thought by Hoegh to be appropriately covered under Part IV of the Petroleum Act, as long as the infrastructure was appropriately defined under those provisions. Hoegh also requested clarification of legal requirements pertaining to decommissioning of platforms or other infrastructure that were subject to international law.

Gas storage was thought by Hoegh to have separate considerations, including international (OSPAR) obligations, which would need to be taken into account in deciding whether the Petroleum Act provisions would suffice. Centrica Storage Ltd noted that the provisions regarding salt caverns needed to be examined in particular detail, given the “unproven nature of such facilities”.

- 4.50 The Crown Estate also recommended a “health-check” on existing provisions, though they noted that whilst separate provisions may be required for the restoration of the storage facility, many if not all other features were already covered under Petroleum Act provisions. English Heritage commented that separate decommissioning provisions would be appropriate “if the present regulatory framework does not ensure comprehensive assessment of the implications on the marine environment inclusive of cultural heritage interests”. JNCC/CCW added that it would be very useful if a decommissioning plan or strategy were required prior to installation, in order that total life cycle impacts of the proposed development might be assessed.
- 4.51 Shell provided an extensive response to this question. They noted that decommissioning provisions would need to cover three separate scenarios: i) new storage projects for which new facilities have been installed; ii) conversion of existing production facilities for storage purposes for which there will need to be decommissioning of legacy equipment; and iii) continued production operations following cessation of storage operations. In all cases, Shell would wish to see deferral of commissioning obligations to allow “facilities of different vintage to be decommissioned together, if required by the Operator, as this could represent significant benefits in terms of operations, health and safety, and cost”.
- 4.52 Due to the potentially very long term nature of storage operations, Shell noted that legislation would need to be able to deal with the transfer of liabilities and the requirement for securitisation. They also requested that new arrangements should see decommissioning liabilities rest only with the gas storage/production JV licencees, rather than ex-licencees and other parties, as is currently the case under the Petroleum Act. If such arrangements were not in place, Shell have concerns that future trades in such assets could be completely stifled. In all cases, Shell would expect that decommissioning arrangements would be covered by a Joint Operating Agreement, “addressing *inter alia* responsibilities and liabilities for decommissioning”.

*DTI notes Shell’s suggestion that the sellers of existing facilities should be able to pass on all liabilities to the buyers, but believe that the uncertainties in respect of cost estimating and the effectiveness of security arrangements do not currently*

*support a policy of automatically excluding those companies which installed the facilities from all contingent liabilities.*

*With regard to the suitability of existing decommissioning provisions in the Petroleum Act, the Act as it stands provides for the Secretary of State to call for and approve a decommissioning programme for installations and pipelines and detailed requirements are set out in guidance notes for industry. These notes can be expanded to cover any specific needs for gas storage or unloading projects (e.g. restoration) and already require environmental impact assessments and compliance with appropriate international obligations such as OSPAR and IMO. The notes also provide for decommissioning of facilities to be combined and timed to make efficiency savings.*

*DTI believe that the assessment of the total life cycle impacts of the proposed development would be more appropriate to the initial development plan than the decommissioning programme.*

*Finally, with regard to a gas storage developer using an existing Petroleum Revenue Tax and Corporation Tax paying facility, concerns were expressed as to whether extending the life of the facility would remove the entitlement to claim tax relief on the decommissioning. As noted in the conclusions to Question 7, HM Treasury published a discussion paper 'The North Sea Fiscal Regime' at Budget 2007, and discussions around the issues raised, including PRT, relief on decommissioning costs, and tax implications for oil and gas fields where there is a change of use, are ongoing.*

***RIA Question 1: Are there any other offshore gas storage options we should consider?***

- 4.53 Two respondents highlighted additional types of storage that might be considered in the context of new legislation. These are dealt with in detail in the conclusions to Question 20. No change is required to the Regulatory Impact Assessment.

***RIA Question 2. Do you agree with the analysis of the benefits, costs and risks of proposed gas storage options? We would welcome any further data/estimates of costs and benefits, particularly in relation to the environmental implications of these proposals and the administrative burdens of option 3.***

- 4.54 Most respondents concurred with the question, some had no view. JNCC/CCW considered that there may be some additional burden at the outset, and that they, as statutory consultees may see casework rise, but they did not believe that this would be to any burdensome level. Shell

concluded, but pointed out that there were also high risks and costs that were associated with the rest of the regulatory environment, for example TPA exemptions, that had a significant impact on the Final Investment Decision that a company would make. Shell noted that: "This delay and uncertainty can result in a sub-optimal investment climate that ultimately could result in the investment not proceeding".

- 4.55 Stag Energy considered that the costs were in fact higher than set out in the RIA. They noted that the ILEX assessment of the risk/financial cost of a gas interruption is understated, as reflected in their comments to the DTI's Gas Security of Supply Consultation of 9 January 2007<sup>5</sup>. In addition, they considered that legal and familiarisation costs of a regulatory regime were closer to £50,000 than £20,000, and that administrative costs of a one year delay were closer to £250,000 than £50-100,000.

*DTI acknowledges that interested parties will necessarily have to familiarise themselves with a new regime when it is implemented. However, we do not consider that it would be any more costly for those considering development to get to grips with the proposed regime, as compared to the current patchwork of consents. As very few developers have actively begun to explore the current consents, we hope that future burden will be minimised for all parties. We take on board the figures proposed by respondents in relation to legal and familiarisation costs, and will reflect these in an updated Regulatory Impact Assessment. We also note the associated regulatory uncertainties that DTI is not responsible for, and as noted previously, will be raising these points with the responsible authorities.*

**RIA Question 3. Are there any other options for LNG offshore unloading that we should consider?**

- 4.56 English Heritage commented that awarding a gas storage licence where FEPA requirements were disapplied would be a concern if the "requirement for consent is directed solely through the Coast Protection Act" and therefore purely related to navigational issues. They wished to ensure that conditions were set ensuring "provision of mitigation for the overall marine environment inclusive of cultural heritage interests".
- 4.57 Hoegh LNG noted that a "one-stop-shop" system for approvals would be desirable, and that DTI should have responsibility for liaising with a prospective developer to advise on governmental procedures and regulations. The re-use of existing offshore infrastructure could result in

<sup>5</sup> <http://www.dti.gov.uk/files/file37136.pdf>

cost savings for developers, expediting the time required to bring projects to completion. Hoegh also regarded it as particularly important that projects should be considered “as a whole, and not in their isolated parts”, recommending that onshore and offshore elements of a project be considered together with “one governmental body having overall jurisdiction and providing coordination with other authorities”.

*In relation to English Heritage’s concerns, DTI can confirm that it is only the requirement for a separate FEPA consent that is to be disapplied; the environmental controls contained within FEPA will simply be covered by the DTI’s licence requirements. DTI appreciates the desirability of a “one-stop-shop” system for approvals, with responsibility resting solely with the DTI, but for the reasons set out in the conclusions to Questions 11 and 19, this is not considered a feasible option. DTI and The Crown Estate would welcome early engagement with prospective developers to ensure that processes for obtaining the appropriate consents are followed correctly, and guidance to accompany the new legislation would also be considered as necessary.*

**RIA Question 4. Do you agree with the analysis of the benefits, costs and risks of proposed LNG offshore unloading options? We would welcome any further data/estimates of costs and benefits, particularly in relation to the environmental implications of these proposals and the administrative burdens of option 3.**

- 4.58 The majority of respondents agreed with the analysis set out in the RIA. In addition to the benefits set out, Mulberry Capital Ltd outlined that fact that locating such infrastructure offshore would provide enhanced security.
- 4.59 In terms of costs, Hoegh highlighted that the ‘do nothing’ option would certainly act as a disincentive to developers if it were to prove difficult to develop projects beyond 12nml. They commented that whilst introducing new regulation may initially bring an increased regulatory burden, this would decrease with time.
- 4.60 Shell commented that environmental issues related to increased shipping activity may be useful to take into account.

*The DTI accepts the additional information and suggestions provided by respondents to this question, and will use this to inform the updating of the Regulatory Impact Assessment.*

**RIA Question 5. Do consultees agree with this identification of firms affected?**

- 4.61 Most respondents agreed with the identification of firms affected. Two companies emphasized the importance of smaller firms to this type of development, and would like to see a bigger focus on them.

*The DTI very much accepts that smaller firms have a significant part to play in the offshore picture, and the variety of firms included in this consultation process reflects this. We believe that the proposed revisions to offshore legislation will, in fact, create a much improved environment for all firms to operate in, but recognizes that small firms may find the simplification of the regime a particular advantage, given the amount of resource that they would have to devote to navigating current processes.*

**RIA Question 6. Do small firms have any additional information or comments on the likely impact of these proposals?**

- 4.62 Hoegh LNG commented on the beneficial impact that the proposals would have on financiers of projects, if the legal position were to be clarified, but noted that this was of greater importance to small firms. Scottish and Southern Energy Plc noted that any costs would be felt more by small firms. And therefore costs in implementing proposals should be kept to a minimum.

*See conclusions to RIA Question 5 above. DTI strongly believes that costs of familiarization will be minimal, compared to the current processes. In addition, considering so few are currently 'familiar' with existing processes, processes will not have to be 're-learnt'. We concur with Hoegh LNG that smaller firms, who will often need to seek external investment, will benefit from clarification of legal uncertainties.*

**RIA Question 7. Do you agree with this competition assessment?**

- 4.63 The majority of respondents had no view, or agreed with the competition assessment. Hoegh LNG did not consider that the proposed legislation would "introduce any new inequality", but they did believe that it "might encourage smaller developers to invest in offshore projects and thus increase competition" because such developers were unlikely to have the resources to research existing regulatory requirements, and the new regime should therefore "ease their development costs thus providing an incentive for investment".
- 4.64 Scottish and Southern Energy also concurred, noting that a "more complete regulatory framework will have a beneficial impact on competition". BP requested that any new licence delivered a regime that was non-discriminatory, and provided a level playing field with Rough, the only existing offshore storage facility in the UK.

*We are content that the competition assessment accurately reflects the position. We concur that these proposals are more likely to introduce a level playing-field, which will encourage smaller firms to consider offshore developments, therefore having a beneficial impact on competition as a whole.*

## **5. Next Steps**

- 5.1 Following the consideration of responses received to this consultation, and the overall support for new legislation to specifically permit the offshore storage of gas and unloading of LNG, the Government will take forward proposals set out under Option 3 of the consultation and draft a new legislative framework.
- 5.2 New legislation will be progressed through Parliament, as soon as the Parliamentary timetable allows.
- 5.3 Whilst we are not able to discuss the precise details of the new legislation at this time, it is likely to follow the general framework set out in the consultation document (relevant paragraphs are replicated at Annex B for ease of reference). A summary of possible provisions is set out at paragraphs 5.4. As these processes are considered in further detail, ahead of new legislation being introduced, DTI looks forward to continued close cooperation with those who responded to this consultation.

## **6. Summary outline of proposed regime**

- 6.1 The legislation will vest in the Crown the appropriate rights arising under Part V of UNCLOS in relation to the storage and unloading of gas (and associated exploration activities), and will provide a power to define the areas of the continental shelf within which those rights are exercisable (cf. section 84 of the Energy Act 2004).
- 6.2 As a result, an authorisation will be required from The Crown Estate for the use of those areas for such purposes.
- 6.3 Within the territorial sea, a lease from The Crown Estate is already required by virtue of the Crown's existing rights of ownership.
- 6.4 In addition, the legislation will create a statutory prohibition on the use of the seabed, subsoil and the water column for the activities of natural gas storage and LNG unloading, unless a licence has been obtained from the Secretary of State.
- 6.5 Within the scope of that prohibition, the requirement to obtain a licence under FEPA will be removed. In Welsh and Scottish territorial waters, a separate FEPA application may need to be made to the Devolved Administrations.

6.6A petroleum licence under the Petroleum Act 1998 will still be required, in addition to a Gas Storage Licence, where storage of gas is to take place in a hydrocarbon field. Operators will have to either make appropriate arrangements with existing petroleum licence holders, or (if there are none in respect of the relevant area) compete for the award of a petroleum licence in accordance the usual hydrocarbon licensing arrangements.

6.7The Secretary of State will have the power to attach conditions to a gas storage or LNG unloading licence, and to prescribe the “model clauses” normally to be included in any licence.

6.8There will be a power to charge an application fee, and a power to charge consideration for the grant of the licence (although it is not envisaged that the latter power will be exercised for the time being).

6.9The areas and time periods covered by the licence will be closely tied to those specified in the lease or authorisation obtained from The Crown Estate.

6.10 The consideration of applications for licences will be closely coordinated with the consideration of applications for leases or authorisations by The Crown Estate. Applicants will be required to agree that any information they provide, in making an application, can be exchanged between the DTI and The Crown Estate.

## ***Annex A List of respondents***

### ***Developer or developers’ representative organisations***

BP

Centrica

Centrica Storage Ltd

E.ON UK

Eclipse Energy UK Plc

EDF Energy

EnCore Oil Plc

Excelerate Energy

Gas Storage Operators Group

Hoegh LNG AS

Interconnector (UK) Ltd

Marathon Oil U.K. Ltd

RWE npower

StagEnergy

UK Offshore Operators Association Ltd

***Heritage organisation***

English Heritage

***Maritime organisation***

The Chamber of Shipping

The Institute of Marine Engineering, Science and Technology

***Consumer organisation***

Energywatch

***Central Government organisation, Agency or statutory adviser***

Joint Nature Conservation Committee and Countryside Council for Wales

Ministry of Defence

Ofgem

***Devolved Administration***

Geological Survey of Northern Ireland

***Consultant***

Mulberry Capital Ltd

***Other***

Scottish and Southern Energy

Shell UK Ltd

The Crown Estate

*Annex B Extracts from Offshore Gas Infrastructure Consultation – detail relating to potential provisions of new offshore licences.*

*An Offshore Gas Storage Licence*

- 1 The new provisions would accordingly relate closely to the existing regime under the Petroleum Act 1998 (and might for instance be inserted as a new Part of that Act). Operators will be likely to be already familiar with the Petroleum Act regime, and with the environmental requirements pertinent to these types of activity. As with the case of petroleum licences, Gas Storage Licences will be dealt with by the DTI. Administrative burdens should be minimised as current participants or those wishing to develop such infrastructure would have a clear route for obtaining consents from a single authority.
- 2 A Gas Storage Licence would be granted in the scenarios envisaged, subject to appropriate technical and environmental assessment. It would be issued with terms similar to a Petroleum Production Licence, so we would seek to build on a regime with which many are familiar in order to minimise administrative burdens, ensure environmental protection, and establish pre-activity and potential remediation conditions. It would be valid for the period covering exploration drilling and production purposes. If there were no suitability for storage, the licence would have to be relinquished.
- 3 The terms such a licence would be likely to include are set out below:
  - The requirement to appoint an operator;
  - The requirement for DTI approval to drilling operations;
  - The requirement for DTI consent to the erection or construction of relevant production infrastructure;
  - The appointment of a fisheries liaison officer;
  - The requirement to maintain records and samples, and to provide them to the DTI if requested;
  - The requirement for injection and production data for the national hydrocarbon accounts;
  - The requirement for DTI approval to assignments of the licence;
  - The requirement for DTI consent to injection profiles.

### ***Conversion of depleting hydrocarbon fields***

- 4 Where a storage activity was to be undertaken within a hydrocarbon feature already licensed under the Petroleum Act, the licence issued by the Secretary of State would remain valid. It would be necessary to obtain a Gas Storage Licence in addition to a Petroleum Licence, but there would be no duplication of provisions, and the process would not be burdensome. Developers would need to obtain an authorisation from The Crown Estate for the use of the porous space and it would be obtained on whatever competitive requirements The Crown Estate required, though in practice it is likely that an authorisation would be awarded without recourse to competition.

### ***Development of storage facilities over or near to a producing hydrocarbon field***

- 5 It is intended that a Gas Storage Licence could be issued in areas already held under a Petroleum Licence of a different company (i.e. a suitable non hydrocarbon feature has been identified for storage over or near a producing hydrocarbon field). The reverse would also be true. Operations of either licensee, such as drilling, will only be consented to if they do not interfere with the activities of another licence holder sharing the same region.

### ***Use of a currently unlicensed hydrocarbon feature***

- 6 Where a developer wished to explore and use an unlicensed hydrocarbon feature for gas storage (i.e. a depleted and relinquished petroleum field or field previously classed uneconomic), the developer would need to apply for a Petroleum Licence. The developer, if successful in the award of that Petroleum Licence, would be awarded the Gas Storage Licence at the same time. The developer would then approach The Crown Estate for an authorisation, which would be awarded without recourse to competition.

### ***Gas storage in non-hydrocarbon features***

- 7 Gas storage in non-hydrocarbon features is a relatively new development offshore, although it has proved successful onshore in the UK and elsewhere. Offshore, we believe that there is no fit for purpose regime, although we believe that it may be possible to regulate this type of activity within territorial waters (to 12 nml) by means of consents under the Coast Protection Act 1949, Food and Environment Protection Act 1985, the Petroleum Act 1988 and with a lease for the seabed area from The Crown Estate. Beyond the territorial limit, where the Coast Protection Act 1949, and the Food and Environment Protection Act 1985 still apply, The Crown Estate does not

currently enjoy leasing/authorisation rights. Respondents to the Marine Bill consultation expressed a preference for legislative provisions to cover this type of offshore development.

- 8 Developers wishing to store gas in non-hydrocarbon features under the seabed would need to apply to The Crown Estate for a geographically-bound authorisation to use the feature in question. They would then apply to the Secretary of State for Trade and Industry for a Gas Storage licence for the activity itself.

#### ***Additional consents***

- 9 Where navigational issues needed to be addressed, it is anticipated that these would be dealt with under the Coast Protection Act (CPA) 1949 as now. Future changes to the CPA under the Marine Bill may see consolidation of the current FEPA and CPA provisions.

#### ***Fees***

- 10 The Offshore Gas Storage Licence would have an initial application fee, in order that the DTI recovers the cost of processing the application, and a minimal flat rate area rental fee in order to encourage the relinquishment of acreage should it no longer be required. The Crown Estate will charge a rent or licence fee.

#### ***An Offshore LNG Unloading Licence***

- 11 Offshore LNG unloading could provide a viable alternative to developers looking to import LNG swiftly and easily and with the minimum of disruption to communities.
- 12 With no fit-for-purpose regime, developers have no legally secure or simple route to consent to provide for this type of activity. Therefore we propose to legislate to provide a straightforward framework to consent expressly to this type of activity. Developments covered by Town and Country Planning Act 1990 provisions will remain unaffected by a new offshore regulatory regime.

#### ***Consenting to the building of a platform***

- 13 Under the proposed new legislation, a licence would need to be obtained from the DTI for the purpose of constructing the offshore platform and its associated pipelines, and the ongoing operation of the facility.

14 The licence would be given with conditions such as data reporting for the national hydrocarbon accounts and would only be approved after the considerations of other sea users had been taken in to account.

***Additional requirements and consents***

15 The Crown Estate would continue to lease an area of the seabed for the 'footprint' of platforms within 12nml, as it does now, but it would also be able to grant authorisations in areas beyond that limit.

16 Some platforms may be designed to store gas onboard the platform, before piping it to the UK mainland. The gas could be unloaded directly into an existing pipeline under Third Party Access provisions, or indeed a newly laid pipeline to the UK mainland.

17 Consent would need to be obtained under the Coast Protection Act 1949 for any associated navigational issues, as would currently be the case. Future changes to the CPA under the Marine Bill may see consolidation of the current FEPA and CPA provisions.