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Please find attached Appendix ZD – ZO

Kind regards

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APPENDIX ZF

LEGISLATIVE FRAMEWORK SUMMARY

LEGISLATIVE FRAMEWORK

1. The regulation of safety in the marine environment is fragmented. The marine environment (including that of the UK) is subject to three Directives whose requirements abut: Directive 2008/56/EC; 2012/18/EU; and 2013/30/EU. ALARP is not an EU concept but is a domestic concept. The latter has been transposed into domestic law by Regulations but which themselves also adopt the ALARP concept.

2. Directive 2008/56/EC established a framework for community action in the field of marine environmental policy. Recital (9) provides:

In order to achieve those objectives, a transparent and coherent legislative framework is required. This framework should contribute to coherence between different policies and foster the integration of environmental concerns into other policies, such as the Common Fisheries Policy, the Common Agricultural Policy and other relevant Community policies. The legislative framework should provide an overall framework for action and enable the action taken to be coordinated, consistent and properly integrated with action under other Community legislation and international agreements.

3. By Article 5(1), Member States are required to establish a marine strategy.

4. Directive 2012/18/EU concerns the control of major-accidents involving dangerous substances and applies to offshore exploitations of hydrocarbons. It covers the UK, and, thereby, UK waters.

5. By Article 1 it “lays down rules for the prevention of major accidents which involve dangerous substances, and the limitations of their consequences for human health and the environment, with a view to ensuring high level of protection *throughout the Union* in a consistent and effective manner”.

6. By Article 13, Land –use planning: (Emphasis added)

1. Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in their land-use policies or other relevant policies. They shall pursue those objectives through controls on:

(a) the siting of new establishments;

(b) modifications to establishments covered by Article 11;

(c) *new developments including transport routes, locations of public use and residential areas in the vicinity of establishments, where the siting or developments may be the source of or increase the risk or consequences of a major accident...*

2. *Member States shall ensure that their land-use or other relevant policies and the procedures for implementing those policies take account of the need, in the long term:*

c) *in the case of existing establishments, to take additional technical measures in accordance with Article 5 so as not to increase the risks to human health and the environment.*

3. *Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that operators provide sufficient information on the risks arising from the establishment and that technical advice on those risks is available, either on a case-by-case or on a generic basis, when decisions are taken.*

4. *The requirements of paragraphs 1, 2 and 3 of this Article shall apply without prejudice to the provisions of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (1), Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (2) and other relevant Union legislation. Member States may provide for coordinated or joint procedures in order to fulfil the requirements of this Article and the requirements of that legislation, inter alia, to avoid duplication of assessment or consultations.*

7. Directive 2013/30/EU provides for the safety of offshore oil and gas operations and applies to existing and future installations. The Recitals explain at (emphasis added): (1) “Article 191 of the Treaty on the Functioning of the European Union establishes the objectives of preserving, protecting and improving the quality of the environment and the prudent and rational utilisation of natural resources. It creates an obligation for all Union action to be supported by a high level of protection based on the precautionary principle, and on the principles that preventive action needs to be taken, that environmental damage needs as a matter of priority to be rectified at source and that the polluter must pay.” (2) “The objective of this Directive is to reduce as far as possible the occurrence of major accidents relating to offshore oil and gas operations and to limit their consequences, thus increasing the protection of the marine environment and coastal economies against pollution, establishing minimum conditions for safe offshore exploration and exploitation of oil and gas and limiting possible disruptions to Union indigenous energy production, and to improve the response mechanisms in case of an accident”; (4) “Major accidents relating to offshore oil and gas operations are likely to have devastating and irreversible consequences on the marine and coastal environment as well as significant negative impacts on coastal economies”; (5) “Accidents relating to offshore oil and gas operations, in particular the accident in the Gulf of Mexico in 2010, have raised public awareness of the risks involved in offshore oil and gas operations and have prompted a review of policies

aimed at ensuring the safety of such operations”; (6) “The risks relating to major offshore oil or gas accidents are significant. By reducing the risk of pollution of offshore waters, this Directive should therefore contribute to ensuring the protection of the marine environment and in particular to achieving or maintaining good environmental status by 2020 at the latest, an objective set out in Directive 2008/56/EC of the European Parliament and the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)”; (9) “The existing divergent and fragmented regulatory framework applying to safety of offshore oil and gas operations in the Union and current industry safety practices do not provide a fully adequate assurance that the risk of offshore accidents is minimised throughout the Union, and that in the event of an accident occurring in offshore waters of Member States, the most effective response would be deployed in a timely manner. Under existing liability regimes, the party responsible may not always be clearly identifiable and may not be able, or liable, to pay all the costs to remedy the damage it has caused. The party responsible should always be clearly identifiable before offshore oil and gas operations are commenced.” (17) Within the Union, there are already examples of good standards in national regulatory practices relating to offshore oil and gas operations. However, these are inconsistently applied throughout the Union and no Member State has yet incorporated all of the best regulatory practices in its legislation for preventing major accidents or limiting the consequences for human life and health, and for the environment. Best regulatory practices are necessary to deliver effective regulation which secures the highest safety standards and protects the environment, and can be achieved, inter alia, by integrating related functions into a competent authority that may draw resources from one or more national bodies.” (25) “The best practices currently available for major accident prevention in offshore oil and gas operations are based on a goal-setting approach and on achieving desirable outcomes through thorough risk assessment and reliable management systems”; (26) “According to the best practices in the Union, operators and owners are encouraged to establish effective corporate safety and environmental policies and to give effect to them in a comprehensive safety and environmental management system and emergency response plan. In order to make suitable arrangements for major accident prevention, operators and owners should comprehensively and systematically identify all major accident scenarios relating to all hazardous activities that may be carried out on that installation, including impacts on the environment arising from a major accident. Those best practices also require an assessment of the likelihood and consequences and therefore the risk of major accidents, and also the measures necessary to prevent them and the measures necessary for emergency response, should a major accident nonetheless occur. The risk assessments and arrangements for major accident prevention should be clearly described and compiled in the report on major hazards. The report on major hazards should be

complementary to the safety and health document referred to in Directive 92/91/EEC”; and (27) “In order to maintain the effectiveness of major hazard controls in offshore waters of Member States, the report on major hazards should be prepared and, as necessary, amended in respect of any significant aspect of the lifecycle of a production installation, including design, operation, operations when combined with other installations, relocation of such installation within the offshore waters of the Member State in question, major modifications, and final abandonment. Similarly, the report on major hazards should also be prepared in respect of non-production installations and amended as necessary to take into account significant changes to the installation. No installation should be operated in offshore waters of Member States unless the competent authority has accepted the report on major hazards submitted by the operator or owner. Acceptance by the competent authority of the report on major hazards should not imply any transfer of responsibility for control of major hazards from the operator or the owner to the competent authority.”

8. Article 2 defines terms including “major accident” and “risk”. ‘Major accident’ means:

in relation to an installation or connected infrastructure:

- a) *an incident involving an explosion, fire, loss of well control, or release of oil, gas or dangerous substances involving, or with a significant potential to cause, fatalities or serious personal injury;*
- b) *an incident leading to serious damage to the installation or connected infrastructure involving, or with a significant potential to cause, fatalities or serious personal injury;*
- c) *any other incident leading to fatalities or serious injury to five or more persons who are on the offshore installation where the source of danger occurs or who are engaged in an offshore oil and gas operation in connection with the installation or connected infrastructure; or*
- d) *any major environmental incident resulting from incidents referred to in points (a), (b) and (c).*

For the purposes of determining whether an incident constitutes a major accident under points (a), (b) or (d), an installation that is normally unattended shall be treated as if it were attended.

9. “Offshore oil and gas operations” means:

all activities associated with an installation or connected infrastructure, including design, planning, construction, operation and decommissioning thereof, relating to exploration and production of oil or gas, but excluding conveyance of oil and gas from one coast to another; ...

10. “Risk” means:

the combination of the probability of an event and the consequences of that event;

11. “Acceptable” means:

in relation to a risk, means a level of risk for which the time, cost or effort of further reducing it would be grossly disproportionate to the benefits of such reduction. In assessing whether the time, cost or effort would be grossly disproportionate to the benefits of further reducing the risk, regard shall be had to best practice risk levels compatible with the undertaking;

12. "Installation" means:

'installation' means a stationary, fixed or mobile facility, or a combination of facilities permanently interconnected by bridges or other structures, used for offshore oil and gas operations or in connection with such operations. Installations include mobile offshore drilling units only when they are stationed in offshore waters for drilling, production or other activities associated with offshore oil and gas operations;

13. "Material change" means:

a) *in the case of a report on major hazards, a change to the basis on which the original report was accepted including, inter alia, physical modifications, availability of new knowledge or technology and operational management changes;*

14. The Directive does not include the UK concept of "ALARP". The Directive has been transposed by the Offshore Installations (Offshore Safety Directive) (Safety Case etc) Regulations 2015 (SI215/398, in force from 19th July 2015) ("the Safety Case Regulations") and the Government has included the UK concept of ALARP in the Regulations. The Regulations apply to Great Britain and supersede the Offshore Installations (Safety Case) Regulations 2005.

15. By Regulation 8:

- (1) *The duty holder must prepare a document setting out its safety and environmental management system.*
- (2) *In the case of a body corporate or unincorporate, the safety and environmental management system must include the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the corporate major accident prevention policy.*
- (3) *The safety and environmental management system is to be integrated with the overall management system of the duty holder.*
- (4) *The safety and environmental management system must address the particulars in Schedule 3 and must be prepared in accordance with the matters set out in Schedule 2.*
- (5) *The document setting out the safety and environmental management system must include a description of—*
 - (a) *the organisational arrangements for the control of major hazards;*
 - (b) *the arrangements for preparing and submitting documents under the relevant statutory provisions; and*
 - (c) *the verification scheme (which description must comply with regulation 13(1)).*
- (6) *This regulation applies to a well operator—*
 - (a) *as if the reference to the duty holder in paragraph (1) were a reference to a well operator; and*
 - (b) *as if the reference to the description of the verification scheme in paragraph (5)(c) were a reference to the description of the well examination scheme (which description must comply with regulation 13(2)).*

16. By Regulation 10(4), where there is a material change to a design notification, a relocation notification, the safety case or a notification of combined operations the duty holder must refer the material change to the verifier for further comment in accordance with the verification scheme.

17. By Regulation 15, the operator of a production installation which is to be established in external waters must— (a) prepare a design notification containing, subject to paragraph (6), the particulars specified in Schedule 5; and (b) send the design notification to the competent authority; (7) where there is a material change in any of the particulars notified pursuant to— (a) paragraph (1) prior to the operator sending a safety case to the competent authority in accordance with regulation 17(1)(b); or (b) paragraph (3) prior to the operator sending— (i) a safety case to the competent authority in accordance with regulation 17(1)(b); or (ii) revisions to the current safety case to the competent authority in accordance with regulation 24(2), the operator must notify the competent authority of that change as soon as practicable.

18. By Regulation 16:

(1), a duty holder who prepares a safety case pursuant to these Regulations must, subject to paragraph (2), include in the safety case sufficient particulars to demonstrate that—

(a) the duty holder's management system is adequate to ensure—

(i) that the relevant statutory provisions will, in respect of matters within the duty holder's control, be complied with; and

(ii) that the management of arrangements with contractors and sub-contractors is satisfactory;

(b) the duty holder has established adequate arrangements for audit and for the making of reports of the audit;

(c) all hazards with the potential to cause a major accident have been identified;

(d) all major accident risks have been evaluated, their likelihood and consequences assessed, including any environmental, meteorological and seabed limitations on safe operations, and that suitable measures, including the selection and deployment of associated safety and environmental-critical elements have been, or will be, taken to control those risks to ensure that the relevant statutory provisions will be complied with; and

(e) in the case of a non-production installation, all the major hazards have been identified for all operations the installation is capable of performing.

19. Regulation 17 provides for a “Safety Case for production installation”: (Emphasis added)

(1) Subject to Schedule 14, the operator of a production installation must ensure that it is not operated in external waters unless—

(a) the operator has prepared a safety case containing the particulars specified in regulation 16 and Schedule 6;

(b) the operator has sent the safety case to the competent authority at least six months (or such shorter period as the competent authority may specify) before commencing operation; and

(c) the competent authority has accepted the safety case.

(2) A safety case prepared pursuant to paragraph (1) and revisions to a current safety case prepared pursuant to regulation 19(7) may be prepared in relation to more than one production installation where the competent authority so approves in writing and, where a safety case is or revisions are to be so prepared in relation to installations with different operators, it is sufficient compliance with paragraph (1)(a) and (b) and regulation 19(7)(a) and (b) if the operators prepare and agree a safety case or revisions containing the particulars referred to in that paragraph and that regulation and one of them sends it to the competent authority in accordance with paragraph (1) (b) and regulation 19(7)(b).

20. By Regulation 26:

(1) Paragraph (2) applies where—

- (a) the competent authority is of the opinion that the measures for preventing or limiting the consequences of a major accident proposed in a safety case are insufficient to fulfil the requirements set out in the relevant statutory provisions; and*
- (b) the competent authority notifies the duty holder who sent the safety case that it is of the opinion described in sub-paragraph (a).*

(2) Where this paragraph applies, the duty holder must not operate or commence operation of the installation to which the safety case relates.

21. By Regulation 28:

- 1) The duty holder must ensure that the procedures and arrangements described in the current safety case which may affect the health and safety of persons or the environment are followed.*

22. By Regulation 29: (Emphasis added)

- 1) Where an activity carried out by a duty holder significantly increases the risk of a major accident the duty holder must take suitable measures to ensure that the risk is reduced as low as is reasonably practicable.*
- 2) The measures referred to in paragraph (1) include, where necessary, suspending the relevant activity until the risk is adequately controlled.*
- 3) The duty holder must notify the competent authority where it has taken measures under paragraph (1).*
- 4) The duty holder must comply with paragraph (3) immediately after, and in any event no later than 24 hours after, adopting the measures.*

23. By Regulation 30: (Emphasis added)

(1) The duty holder must perform the internal emergency response duties—

- (a) consistently with the external emergency response plan; and*
- (b) taking into account the risk assessment undertaken during preparation of the current safety case for the installation.*

(2) Where the duty holder has adopted other measures, the duty holder must perform the internal emergency response duties so as to secure a good prospect of personal safety and survival, taking into account the adoption of those other measures.

(3) In paragraph (2) “other measures” means measures relating to protection and rescue of personnel from a stricken installation, apart from any measures adopted in performance of the internal emergency response duties..

(14) In this regulation and regulation 2(10) “the internal emergency response duties” means the duties in the following regulations of the PFEER Regulations⁴—

- (a) 5 (assessment);*
- (b) 6 (preparation for emergencies);*
- (c) 7 (equipment for helicopter emergencies);*
- (d) 8(1), (2), and (3) (emergency response plan);*
- (e) 9(1)(prevention of fire and explosion);*
- (f) 10 (detection of incidents);*

- (g) 11 (communication);*
- (h) 12 (control of emergencies);*
- (i) 13 (mitigation of fire and explosion);*
- (j) 14 (muster areas etc.);*
- (k) 15 (arrangements for evacuation);*
- (l) 16 (means of escape);*
- (m) 17 (arrangements for recovery and rescue);*
- (n) 22B (initiation and direction of emergency response, and liaison with external response authorities); and*
- (o) 22C (arrangements for early warning of major accidents).*

24. By Schedule 2, paragraph 1: (Emphasis added)

- 1. The need to take appropriate measures to ensure as far as reasonably practicable that there is no unplanned escape of hazardous substances from pipelines, vessels and systems intended for their safe confinement. In addition, the need to ensure that no single failure of a containment barrier can lead to a major accident.*
- 2. The need to pay particular attention to evaluation of the reliability and integrity requirements of all safety and environmental-critical systems and base inspection and maintenance systems on achieving the required level of safety and environmental integrity.*

25. By Schedule 3, particulars are required to be addressed in a safety and environmental management system.

These include: 2) Identification and evaluation of major hazards as well as their likelihood and potential consequences; 3) Integration of environmental impact into major accident risk assessments in the safety case; 4) Controls of the major hazards during normal operations; 5) Emergency planning and response.; and 6) Limitation of damage to the environment.

26. The Planning Act 2008, section 104(3) requires that a decision be taken in accordance with the relevant National Policy Statement. Those Statements include EN-3. Paragraphs 2.6.163 and 2.6.183 provide for the application of the concept of “ALARP” in the consideration of whether or not to grant a development consent order.