Department for Transport

Environmental Impact Assessment: Technical consultation (Transport regulations)

Transport and Works Act 1992
Harbours Act 1964
Highways Act 1980

Moving Britain Ahead

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General enquiries: https://forms.dft.gov.uk

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Executive summary

Introduction

1 In May 2014 European Directive 2014/52/EU came into force, amending Directive 2011/92/EU '*on the assessment of the effects of certain public and private projects on the environment*' (known as the "Environmental Impact Assessment" or "EIA" Directive).

2 This consultation seeks views on the proposed approach to implementing the amended Directive through the Transport and Works Act (TWA) 1992 and procedure rules made under that Act, the Highways Act 1980 and the Harbours Act 1964.

3 Each regime applies to different transport systems and may apply differently across the UK:

a. TWA Orders relate to the construction and operation of guided transport systems such as railways[1], tramways and trolley vehicle systems. TWA Orders can also relate to the construction and operation of inland waterways and certain types of works that interfere with rights of navigation in waters within or adjacent to England and Wales, such as bridges, piers, barrages and tunnels.

b. The Highways Act 1980 applies to certain projects for constructing or improving a highway which forms part of the Strategic Road Network in England or Wales.

c. The Harbours Act 1964 applies to England, Scotland and Wales. Schedule 3 of the Harbours Act 1964 sets out the procedure for making Harbour revision and Empowerment Orders. Harbour Revision Orders (HROs) are used to change the legislation governing the management, maintenance and improvement of a harbour and to authorise development. Harbour empowerment orders (HEOs) are mainly concerned with building new harbours and or creating harbour authorities responsible for improving, maintaining and managing them.

4 As a European Union measure with no gold-plating, this is a Non-Qualifying Regulatory Provision (NQRP) under the Better Regulation Framework. An internal triage assessment has confirmed that the measures qualify for the Fast Track as deregulatory measures.

5 No impact assessment has been completed for the amendments suggested for the Highways Act 1980, because the legislation only affects the Secretary of State and Highways England acting on his behalf in England, and the Welsh Ministers in Wales, who are the only promoters of projects covered by this legislation. So there are no effects on costs to businesses or others.

6 The consultation will last for 5 weeks from 25 January 2017 and the deadline for

[1] excluding those which require development consent under the Planning Act 2008

submitting a response is 02 March 2017

7 Similar consultations are being conducted on the changes proposed for regulations managed by other Government departments.

- For the consultation on changes to the EIA regulations managed by the Department for Communities and Local Government (closes 01 February) please visit:

  https://www.gov.uk/government/consultations/amending-environmental-impact-asssessment-regulations

- For the consultation on changes to the EIA regulations managed by the Department for Environment, Food and Rural Affairs (closes 31 January) please visit:

  https://www.gov.uk/government/consultations/environmental-impact-assessment-joint-technical-consultation-planning-changes-to-regulations-on-forestry-agriculture-water-resources-land-draina

How to respond

The consultation period began on 26 January 2017 and will run until 02 March 2017. Please ensure that your response reaches us before the closing date. If you would like further copies of this consultation document, it can be found at https://www.gov.uk/dft#consultations or you can contact us using the details below if you need alternative formats (Braille, audio CD, etc.).

Please send consultation responses using the template provided on the consultation web-page to:

Email address: EIAconsultation@dft.gsi.gov.uk

or

Environment Strategy team - EIA

Address: 1/33 Great Minster House
33 Horseferry Road
London
SW1P 4DR

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

1. Introduction

Exit from the European Union

1.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. It is for the Prime Minister to trigger Article 50 and begin negotiations to exit the EU. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

The Consultation

1.2 The Government is inviting comments on the enclosed consultation which sets out proposals for implementing the European Directive 2014/52/EU amending Directive 2011/92/EU '*on the assessment of the effects of certain public and private projects on the environment*' (known as the Environmental Impact Assessment or EIA Directive) in so far as the Directive applies to the Transport and Works Act (TWA) 1992 and procedure Rules made under that Act, the Highways Act 1980 and the Harbours Act 1964.

1.3 The 2014 Directive forms part of European law and must be incorporated into national legislation. It first came into force in 1985 as Council Directive 85/337/EEC (the "1985 Directive") and was amended in 1997, 2003 and 2009. The 1985 Directive and its three amendments were codified by Directive 2011/92/EU (referred to as "the Directive" in this document) in advance of the European Commission adopting a proposal in October 2012 to amend the Directive. Following negotiations in the European Parliament and Council a compromise text was agreed. The amending Directive entered into force on 15 May 2014 (Directive 2014/52/EU - referred to in this consultation as the "2014 Directive"). Member States have to transpose the 2014 Directive into domestic legislation by 16 May 2017.

1.4 Environmental impact assessment is well established in domestic legislation and planning practice. The Department for Communities and Local Government has the overall lead for the Directive and is responsible for the regulations for England which cover projects consented through the Town and Country Planning and Infrastructure Planning Regulations. The Welsh Government is leading on the transposition of regulations for Wales to cover projects consented through the town and country planning and infrastructure planning systems. The Scottish Government is leading on the transposition of regulations for Scotland to cover eight different regimes including Transport and Works projects and trunk roads.

1.5 The Directive also applies to project types which fall outside of these systems. Those covered in this consultation – the TWA 1992 and procedure rules made under that

Act, the Highways Act 1980 and the Harbours Act 1964 - are the responsibility of the Department for Transport in England. In Wales, the Welsh Ministers are responsible for the Highways Act 1980 provisions and the Harbours Act 1964 provisions in relation to fisheries harbours only. The Welsh Ministers have responsibility for executive functions under TWA 1992 for projects which are solely in Wales and are not national defence projects. .

1.6 Several different Government departments[2] and Devolved Administrations lead on transposing the amendments to various regimes. The devolved administrations for Scotland, Wales and Northern Ireland will generally have powers to transpose the amendments in respect of matters which are devolved. Often this power can be exercised jointly with the Secretary of State, meaning administrations make transposing legislation together. In other cases, the power can be exercised concurrently, meaning that administrations have the option to make legislation separately, or agree to the same piece of transposing legislation covering the devolved administration areas. This option can be used to avoid unnecessary duplication of legislation where administrations wish to take the same approach to transposition. This approach is proposed for transposing the Highways Act 1980 amendments for England and Wales, and the Harbours Act 1964 amendments for England, Scotland and Wales. The Welsh Ministers do not have powers to transpose the amendments to the Transport and Works Act 1992, so this must be transposed by the Secretary of State, for England and Wales.

The Environmental Impact Assessment Process[3]

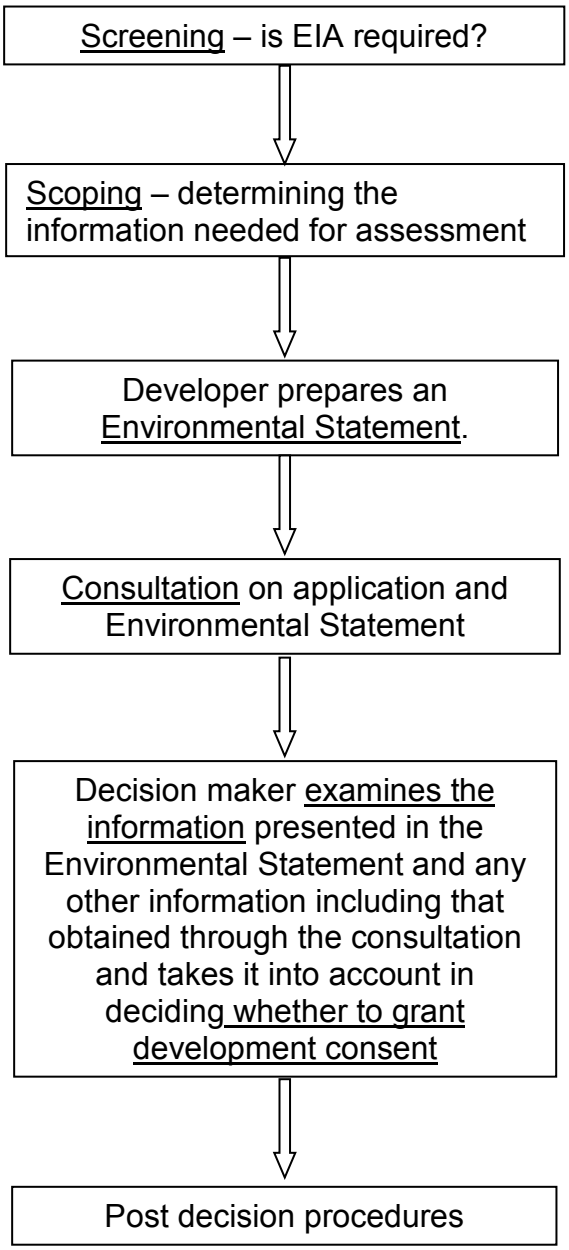
1.7 Environmental impact assessment is a process. It aims to provide a high level of protection to the environment and to help integrate environmental considerations into the preparation of projects to reduce their impact on the environment. It seeks to ensure that proposals for development (referred to as 'projects' in the Directive) which are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location are subject to a requirement for development consent and an assessment of those effects before the development is allowed to proceed.

1.8 The Directive sets out that some project types are considered very likely to have significant effects on the environment and must be subject to environmental impact assessment. These project types are listed in Annex I of the Directive. They include the construction of motorways, trading ports and long distance railways. Other project types are only considered likely to have significant effects in some cases depending on their nature, size and location. These project types are listed in Annex II of the Directive. They include the construction of roads, harbours and railways where these are not included in Annex I. The process for determining whether a project listed in Annex II is likely to have significant effects on the environment is usually referred to as 'screening'. Member States can decide whether a project listed in Annex II should be subject to environmental impact assessment through a case-by-case examination and/or by setting thresholds or criteria.

1.9 Where an assessment is required, the developer must provide specified information to the relevant competent authority (for example a local planning authority), which

[2] Department for Environment, Food and Rural Affairs (e.g. agriculture and marine works); Department for Business, Energy & Industrial Strategy (e.g. electricity and pipelines). The Welsh Government is leading on these areas in relation to Wales, either separately or jointly with the UK Government depending on the policy area.
[3] Process set out in Directive 2011/92/EU as amended by Directive 2014/52/EU

enables the authority to make an informed decision on whether the project should proceed (for example, by granting planning permission or, in the case of nationally significant infrastructure projects, development consent). It also requires that the public and other bodies are consulted and given an opportunity to participate in the decision making process. The main steps are illustrated below:



The proposals

1.10 According to the European Commission[4] the 2014 Directive will simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, and lighten administrative burdens. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term. The European Commission has produced an unofficial consolidated version of the 2014 Directive which is available here: http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf. Extracts from all the 2014 Directive articles referred to in this consultation paper can be found in **Annex B**.

1.11 The Government's Better Regulation agenda includes the requirements that when transposing EU law the Government will ensure that the UK does not go beyond the minimum requirements of the measure which is being transposed and will use copy out for transposition where it is available, except where doing so would adversely affect UK interests. We have sought to follow these principles in transposing the amendments made by Directive 2014/52/EU, and to minimise additional regulatory burden whilst protecting the environment.

1.12 In transposing the 2014 Directive, our view at the outset is that there is merit in retaining, as far as is practicable, the existing approaches to environmental impact assessment in England and in Wales as they are well understood by developers, local planning authorities and others involved in the procedures. Our proposals for consultation therefore represent what we consider to be the minimum changes necessary to the existing regulations in order to bring them into line with the 2014 Directive. This will also minimise familiarisation costs and business uncertainty.

1.13 The changes introduced by the 2014 Directive which we consider to be of most significance are:

- The addition of a definition of the environmental impact assessment process - Article 1(2)g;
- Changes to the circumstances in which a project may be exempt from the requirements of the Directive – Articles 1(3);
- Introduction of Joint and/or Coordinated procedures for projects which are subject to the Habitats or Wild Birds Directives as well as the EIA Directive – Article 2(3);
- Changes to the list of environmental factors to be considered as part of the environmental impact assessment process – Article 3;
- Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the Directive applies – Article 4, Annex IIA and Annex III;

[4] http://ec.europa.eu/environment/eia/review.htm

- Amendments to the information to be included in the environmental statement – Article 5 and Annex IV;
- A requirement for environmental statements to be 'based on' a scoping opinion, where one is issued – Article 5(2);
- The use of competent experts - Article 5(3);
- A requirement to inform the public of projects electronically - Article 6(2) and 6(5);
- A new article elaborating on information to be given in decision notices and the decision making procedures – Article 8a;
- Monitoring significant adverse effects - Article 8a(4);
- A new article requiring the avoidance of conflicts of interest – Article 9a;
- The introduction of penalties for infringements of national provisions – Article 10a.

1.14 We have set out below these amendments from the 2014 Directive, and our approach to transposing them. In most cases the text of the 2014 Directive has been 'copied-out' as far as is practicable, but we have proposed an alternative approach where this is considered beneficial. We welcome comments on our interpretation of the changes and how we propose to implement them through regulations.

1.15 The next three chapters are ordered in the following manner:

- Changes to the TWA 1992; and
- Changes to the Harbours Act 1964; and
- Changes to the Highways Act 1980.

1.16 The intention is that the changes to each of these regimes will be set out in separate Schedules to a single Statutory Instrument introducing the changes required by the 2014 Directive.

2. Changes to the Transport and Works Act 1992 and the procedure rules made under that Act

Please note that extracts from all the 2014 Directive articles referred to in this consultation paper can be found in ***Annex B****.*

2.1 The Transport and Works (Application and Objections Procedure) (England and Wales) Rules 2006 ("AOPR") set out the procedures for applying for and objecting to Orders under Part 1 of the TWA. The TWA itself includes requirements about how decisions on TWA Order applications are to be made and publicised. Both the TWA and the AOPR contain provisions implementing the EIA Directive.

2.2 Consideration has been given to whether the TWA regime introduce a separate, stand-alone set of rules or regulations specifically implementing the EIA Directive (as amended by the 2014 Directive). We have decided against that approach as the current system works effectively and we see no reason to introduce such wholescale changes at this stage. In addition there is some convenience to applicants to have the rules and requirements in relation to a TWA Order application located in the TWA and a single additional instrument (the AOPR). Accordingly, we are proposing to transpose the amendments to the EIA Directive made by the 2014 Directive via amendments to the AOPR and the TWA, including new provisions, as set out below. We are not intending to make any additional amendments to change the way the EIA Directive is already integrated into the TWA regime.

2.3 In the following paragraphs, except where otherwise stated, references to numbered Articles and Annexes are to the Articles of, and Annexes to, the EIA Directive as amended by the 2014 Directive.

2.4 Rule 28 of AOPR provides that where applications relate solely to Wales (except in relation to national defence projects), references in the rules to the Secretary of State shall be construed as references to the Welsh Ministers. Therefore any reference to Secretary of State in this Chapter should be read as the Welsh Ministers in relation to applications which solely relate to Wales and are not national defence projects.

Definition of the environmental impact assessment process

2.5 Article 1(2)(g) introduces a definition of "environmental impact assessment". We consider that this could be transposed by either amending the current definition in rule 4(1) of the AOPR (to include the matters described in Article 1(2)(g)(i) and (ii)) or by introducing a new rule which sets out the whole environmental impact assessment process, similar to the proposed regulation 5 in the draft Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 . In addition we are proposing to introduce a new section 13A into the TWA specifying the steps to be taken at the decision stage as described in Article 1(2)(g)(iii) to (v). We propose to retain the

existing term “environmental statement” and “applicant’s statement of environmental information” as these are familiar to practitioners rather than replace them with “environmental impact assessment report” as used in the 2014 Directive.

Exemptions for defence and civil emergencies

2.6 Rule 7(3) of the AOPR will be amended in line with Article 1(3) to restrict the existing exemption for defence projects so that it can only apply where a project, or part of a project, has defence as its sole purpose. The exemption will also be extended to include projects for which the sole purpose is to respond to civil emergencies. In both instances the exemption will only apply if the Secretary of State considers that the carrying out of an EIA would have an adverse effect on those purposes.

Coordinated procedures

2.7 Article 2(3) requires that, where a project is subject to assessment under both the EIA Directive and the Habitats and/or Wild Birds Directives, Member States must provide for either a coordinated or joint procedure. In line with the approach adopted by DCLG in the proposed Town and Country Planning EIA Regulations and the Infrastructure Planning EIA Regulations and the approach proposed in Wales in the consultation document ‘Proposed changes to how Environmental Impact Assessment applies to Town and Country Planning’[5], we consider that coordinated procedures would provide the greatest flexibility for applicants in relation to the phasing and timing of assessments where both are required.

2.8 A new duty will be inserted into the TWA requiring the Secretary of State to ensure, where appropriate, that the Habitats Regulations Assessment and the EIA are coordinated.

2.9 The Directive also allows Member States, if they chose, to also apply joint or coordinated procedures to any other assessments required under EU law including the Water Framework Directive, the Industrial Emissions Directive and the Waste Framework Directive. The provision is not mandatory and we do not propose to include it in the AOPR.

Determining whether Environmental Impact Assessment is required – screening

Information to be provided for screening

2.10 Article 4(4) seeks to standardise the type of information to be provided when a developer seeks a screening decision, as set out in Annex IIA. It also enables a developer to describe any features of a project or mitigation measures that are envisaged to avoid or prevent significant adverse environmental effects. Rule 7(5) of the AOPR will be amended to reflect the provisions of Article 4(4) and Annex IIA.

Screening decision

2.11 Article 4(5) and Annex III clarify the approach to be adopted by the competent authority in making screening decisions. Rule 7(11) and (14) of the AOPR will be

[5] https://consultations.gov.wales/sites/default/files/consultation_doc_files/160822proposed-eia-changes-consultation-document-en.pdf

amended to reflect the provisions of Article 4(5). Consistent with our approach not to change the way the EIA Directive is currently implemented in relation to the TWA regime, rule 7(11) will continue to refer to the selection criteria set out in Annex III to the EIA Directive as being a matter which the Secretary of State must take into account when making a screening decision, which will now be the selection criteria as amended by the 2014 Directive; but Annex III will not be transposed into the AOPR itself. In the amended rule 7(11) it is not intended to refer to "preliminary verifications" as referred to in Article 4(5) as the term is not defined in the 2014 Directive and we are not aware of similar references in other relevant EU environmental legislation. We do not consider that its omission will make a material difference in the implementation of the 2014 Directive.

2.12 There is no requirement in Article 4(5) for the competent authority to consult relevant authorities on screening requests such as is currently provided for in rule 7(8) and (9) of the AOPR. However, we propose to retain this provision as this imposes no burden on applicants and enables the Secretary of State to make a well informed screening decision.

2.13 We propose also to amend rule 7(12) of the AOPR so as to make clear that the Secretary of State may take into account in the screening decision any features of the works or any measures proposed by the applicant to avoid or prevent significant adverse environmental effects

Timeframe for screening

2.14 Article 4(6) introduces a new requirement that screening decisions be made "as soon as possible" and within a period of time not exceeding 90 days. This period can be extended in exceptional circumstances. We propose to maintain the requirement in rule 7(13) of the AOPR that screening decisions must be made within 42 days. However, we will amend rule 7 to ensure that any later time limit set under rule 26 of the AOPR must not exceed 90 days other than in exceptional circumstances.

The scope of the assessment process

2.15 Article 3 sets out the environmental factors that should be considered as part of the assessment where they are likely to be significantly affected by the project. As well as amending some of the terminology used, it introduces a new requirement to consider the expected effects as a result of the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.

2.16 In order to make clear the scope of the EIA process (as opposed to the information that must be included in an environmental statement) we are proposing either to insert a new paragraph or paragraphs into rule 7 of the AOPR specifying that where an EIA is required it must identify and assess the matters as set out in Article 3, or to include these requirements in a new rule describing the EIA process (similar to regulation 5 of the draft Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 referred to above in connection with providing a definition of the EIA process).

Information to be provided in the environmental statement

Minimum information requirements

2.17 Article 5(1) sets out the minimum information that must be included in an environmental statement and Annex IV provides a longer list of topics that should be covered where relevant. The amended requirements will be reflected in revisions to rule 11 of the AOPR; and the amendments to Annex IV will be made to Schedule 1 to the AOPR.

Determining the scope and level of detail of the assessment - scoping

2.18 Article 5(2) clarifies the requirements that apply where a request is made for an opinion on the scope and level of detail of the information to be included in an environmental statement. Rule 8 of the AOPR will be amended to reflect the adjustments that have been made to Article 5(2). This will include:

- removing the requirement in rule 8(4) for the Secretary of State to consult the applicant on a request for a scoping opinion; and
- extending the consultation requirement in rule 8(4)(f) of the AOPR to include "any other body which is designated by statutory provision as having specific environmental responsibilities ***or local and regional competencies*** and which the Secretary of State considers is likely to have an interest in the application".

2.19 The new requirement (in Article 5(1)) that the environmental statement must be "based on" the scoping opinion will be reflected in changes to rule 11 of the AOPR to the effect that the environmental statement must be "based on the most recent scoping opinion given (so far as the works in question remain materially the same as the works which were subject to that opinion)". Rule 11(3) will be removed as it is no longer relevant in the light of the above amendments and serves no useful purpose.

Competent experts

2.20 Article 5(3)(a) introduces a new requirement on the developer to ensure that the environmental statement is prepared by competent experts. Article 5(3)(b) requires similarly that the competent authority has, or has access as necessary to, sufficient expertise to examine the environmental statement. Our initial view is that at present most decision makers either have persons with sufficient expertise within their planning or wider teams to examine the environmental statement, or could readily obtain access to such expertise. They will also have any comments of the statutory consultation bodies, including Natural England and the Environment Agency to assist them.

2.21 However, we propose to add a requirement to rule 11 of the AOPR that the environmental statement must be prepared by persons who, in the opinion of the Secretary of State, have sufficient expertise to ensure the completeness and quality of the environmental statement; and that the environmental statement must contain a statement by or on behalf of the applicant setting out how that requirement has been complied with. As regards the examination of environmental statements, we propose to include a provision in the new section 13A of the TWA specifying the Secretary of State's obligations in relation to the examination of the environmental statement in accordance with Article 5(3)(b).

2.22 The requirement in Article 5(3)(c) for the competent authority, where necessary, to seek supplementary information from the developer for the purposes of reaching a reasoned conclusion is already addressed by rule 17(1) and (2) of the AOPR.

Consultation

Consultation bodies

2.23 Article 6(1) requires Member States to designate environmental authorities which must be consulted on requests for a scoping opinion or following the submission of an environmental statement. The current requirements as to consultation on scoping opinion requests are set out in AOPR 8(4) and, in relation to applications for TWA Orders, in AOPR 13 and Schedule 5. Article 6(1) adds a requirement to consult authorities "with local and regional competencies". We consider that the existing provisions in the AOPR satisfy the requirements of Article 6(1), subject to providing additionally for the Secretary of State to designate on a case-by-case basis further authorities with local and regional competencies who are to be consulted on scoping opinion requests or on TWA Order applications.

Electronic communication

2.24 Article 6(2) requires that the public should be informed about a consent application and related matters electronically (as well as by public notice and other means). We propose to amend rule 14 of the AOPR so as to require applicants additionally to arrange for a notice containing the information specified in rule 14(5) to be published on a website maintained for the purpose in cases where EIA is required. This could, for example, be on the TWA page on the DfT website.

2.25 Article 6(5) requires that relevant information (namely, the environmental statement and any further information considered necessary for the environmental statement properly to assess the likely significant impacts of the proposed development) must be "electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level". We propose to add to rule 14 of the AOPR a new requirement that environmental statements and any further environmental information submitted under AOPR 17 must be accessible on a website maintained for the purpose. It is anticipated that this would be by way of a link from the DfT website to a website maintained by the applicant where the relevant information would be published. Given that most TWA Order applicants already publish environmental information electronically, this approach should minimise any additional burdens as a result of transposing this requirement.

Consultation timeframes

2.26 Article 6(7) requires the timeframe for consulting the public concerned on the environmental statement to be not shorter than 30 days. This requirement is already satisfied because the minimum period specified in rule 4(1) of the AOPR for making objections or other representations is 42 days, which applies also to further environmental information submitted under rule 17 of the AOPR. All application documents have to be available for inspection during that period.

Decisions

Information to be included in a decision

2.27 New Article 8a(1) requires that a decision to grant development consent must incorporate the reasoned conclusion referred to in Article 1(2)(g)(iv), any environmental conditions attached to the conditions, a description of the features of the project and/or measures envisaged to mitigate significant adverse effects on the environment and, where appropriate, monitoring measures. New Article 8a(2) requires the main reasons to be given for a refusal to grant development consent.

2.28 The considerations to be taken into account when deciding whether to make an Order in relation to works for which EIA is required will be specified in the new section 13A referred to under "Definition of the environmental impact assessment process" above. Section 14(3AA) will be amended to specify the matters referred to in Article 8a(1) and (2) that must also be included in the notice of determination given under subsection (1)(a) (in practice, the decision letter) in cases where EIA is required (in addition to those matters already specified in section 14(2)). (See also the proposed changes to transpose Article 9(1) detailed below.)

Monitoring of significant environmental effects

2.29 New Article 8a(4) requires Member States to ensure that the developer implements environmental conditions and to determine the procedures for monitoring significant environmental effects. It also allows for existing monitoring arrangements from national legislation to be used to avoid duplication of monitoring.

2.30 We consider that in relation to works on land these requirements can be dealt with, where appropriate, by local planning authorities through existing provisions such as conditions attached to a direction as to deemed planning permission and planning obligations. Where a TWA Order would authorise works in navigable waters outside the jurisdiction of a local planning authority, monitoring conditions could be imposed by way of a marine licence under Part 4 of the Marine and Coastal Access Act 2009. The requirements as to considering the imposition of monitoring conditions will be included in the new section 13A referred to above.

Decision timeframes

2.31 New Article 8a(5) requires that decisions are made within a reasonable period of time. The TWA regime does not currently set statutory deadlines by which decisions must be made. We therefore propose to include a requirement in new section 13A that the Secretary of State must make a determination under section 13(1) within a reasonable period of time, taking into account the nature and complexity of the proposed works, from the date on which the Secretary of State has been provided with the environmental information in accordance with rules made under section 6 or section 10. We consider that this would be sufficient to transpose the requirements of the 2014 Directive and would maintain the approach of the current TWA regime which includes non-statutory decision targets published in guidance. This would also retain an appropriate degree of flexibility, given that TWA Order applications are very variable in terms of both the scale and complexity of schemes and the procedures under which they are considered.

Up-to-date reasoned conclusion

2.32 New Article 8a(6) requires that the reasoned conclusion on the significant impacts of a proposal is still "up-to-date" when a final decision is made. We consider that, in practice, the period of time between the Secretary of State reaching a reasoned conclusion of the significant effects of a proposal and deciding whether to make an Order will be limited. However, we propose to include a requirement that the reasoned conclusion is up-to-date in new section 13A, to cover the possibility that new information about significant environmental effects of a proposal becomes available only at a late stage, and needs to be taken into account. This will provide that a reasoned conclusion is to be taken to be up-to-date if in the opinion of the Secretary of State it addresses the significant effects that are likely to arise as a result of the proposed works.

Informing the public of the decision

2.33 Article 9(1) sets out amended requirements as to informing the public of a decision. It includes a new requirement that information about the decision be made available to the environmental authorities referred in in Article 6(1) (in addition to the public). The information to be made available is: the reasoned conclusions and any environmental conditions (referred to in Article 8a(1) and (2)), a summary of the results of consultations and information gathered (under Articles 5 to 7), and how those results have been incorporated or addressed, in particular in relation to transboundary effects.

2.34 We propose to amend section 14(1)(a) to include a requirement to give notice of a determination to any authorities likely to be concerned by the project in question by reason of their specific environmental responsibilities or local and regional competencies. As regards the content of the section 14(1)(a) notice, we propose to amend the requirements of section 14(3AA) so as to include all the matters referred to in Article 9(1) – which includes the matters referred to in Article 8a(1) and (2) – but excluding those matters already specified in section 14(2).

2.35 The requirement to inform the public of a decision made under section 13(1) is currently met by way of a notice published in the London Gazette under section 14(1)(b) and by a local newspaper notice published by the applicant under section 14(4); the content of those notices is specified in section 14(2A). We propose to amend section 14(2A) to the effect that notices under section 14(1)(b) and 14(4) must state that all the information referred to in amended section 14(3AA) is given in the section 14(1)(a) notice; must state that the section 14(1)(a) notice has been published on the website maintained for the purpose by the Secretary of State; and must state where copies of the section 14(1)(a) notice may be obtained.

Other issues

Conflicts of interest

2.36 New Article 9a requires Member States to perform the duties arising from the 2014 Directive objectively and to take steps to avoid conflicts of interest where the competent authority is also the developer. We do not consider that this will have any effect in practice as bias may already be used as a ground for judicial review. Administrative arrangements are in place within the Department for Transport and the Welsh Government to ensure that conflicts of interest do not arise between those

who handle applications for TWA Orders and other parts of these organisations. We nevertheless propose to include in section 13 new requirements reflecting those under Article 9a which will apply where the Secretary of State has a duty under Part 1 of the Act or under rules made under section 6 or 10, or where the Secretary of State is proposing to make an Order under section 7.

Penalties

2.37 New Article 10a requires Member States to lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the 2014 Directive. The penalties provided must be effective, proportionate and dissuasive.

2.38 Development that is authorised by a TWA Order in areas which are under the jurisdiction of a local planning authority requires planning permission. Planning permission may be obtained either by asking the Secretary of State to give a direction under section 90(2A) of the Town and Country Planning Act 1990 ("the 1990 Act") at the same time as making the TWA Order, or by applying to the local planning authority for a grant of planning permission under the 1990 Act. We consider that existing enforcement provisions under the 1990 Act (including the enforcement of planning conditions) are sufficient to meet the requirements of the amended EIA Directive. We note further that the Department for Communities and Local Government has proposed in their consultation to place an explicit duty on local planning authorities - in the draft Town and Country Planning (Environmental Impact Assessment) Regulations 2017 - to have regard, when exercising their enforcement functions, to the need to secure compliance with the requirements and objectives of the 2014 Directive.

2.39 The position in Wales is set out in the consultation document 'Proposed changes to how Environmental Impact Assessment applies to Town and Country Planning' , published August 2016. The Welsh Government considers that the enforcement provisions should relate to both the provision of false information in the EIA process, and to unlawful development. The existing EIA Regulations contain a criminal offence relating to applicants who intentionally provide misleading information or are reckless in providing information when certifying they have placed a notice on land publicising the environmental statement. This provision is only applicable to the placing of the notice. If someone intentionally provided false or misleading information in a screening request or environmental statement, intending by doing so to make a gain, this would constitute the offence of fraud by false representation. The Welsh Government therefore proposes to remove the narrow offence contained within the existing Regulations and rely on the criminal law by way of transposition.

2.40 As regards works authorised by a TWA Order in waters adjacent to England or Wales, these would be subject to the licensing requirements in Part 4 of the Marine and Coastal Access Act 2009. These requirements apply, among other things, to the construction, alteration or improvement of works in or over the sea and on or under the sea-bed. Part 4 of that Act also includes provision for the enforcement of marine licensing. We consider that the existing enforcement provisions (including the enforcement of marine licence conditions) are sufficient to meet the requirements of the amended EIA Directive in relation to works in the sea that may be authorised by a TWA Order.

Miscellaneous amendments

2.41 Schedule 7 to the AOPR specifies the procedures that must be followed where the Secretary of State proposes under section 7 to make an Order otherwise than on application. We propose to amend Schedule 7 to mirror the changes that are to be made to the rules referred to above for the purposes of transposing the 2014 Directive.

2.42 We propose to make other consequential amendments to the AOPR and the TWA, for example, where reference to the 2014 Directive should now be included; and rule 16(8) of the AOPR will need to be amended to mirror the proposed changes to section 14(3AA) - see comments on Article 9(1) above.

Transitional arrangements

2.43 Article 3(1) of the 2014 Directive provides transitional measures where an application for screening has been made before 16 May 2017. Article 3(2) of the 2014 Directive provides transitional measures for projects for which an environmental statement has been submitted or where a scoping opinion has been requested before 16 May 2017. In such cases, the provisions of the 2011 EIA Directive will apply.

2.44 We will include these transitional measures in the Statutory Instrument that introduces the Schedules which set out the changes to each of the regimes referred to in this Consultation Paper. In the context of the TWA process, the effect will be that where a request for a screening decision has been made under rule 7 of the AOPR before 16 May 2017, the provisions of the AOPR in relation to screening decisions will continue to apply without the amendments made to transpose the 2014 Directive. Where, before 16 May 2017, a request for a scoping opinion has been made under rule 8 of the AOPR or an application for an Order has been submitted under rule 9 of the AOPR, all of the provisions of the AOPR and the TWA will continue to apply without the amendments made to transpose the 2014 Directive.

Consultation Question

Question 1: Do you agree with our approach to transposing the requirements of the 2014 Directive into the Transport and Works Act 1992 and the procedure rules made under that Act, or have any other comments?

3. Changes to the Harbours Act 1964

*Please note that extracts from all the 2014 Directive articles referred to in this consultation paper can be found in **Annex B**.*

3.1 Schedule 3 of the Harbours Act 1964 (referred to as the 'Act' or 'HA64" or "Harbours Act" in this section unless otherwise stated) sets out the procedure for making Harbour Revision and Empowerment Orders.

3.2 Harbour Revision Orders (HROs) are used to change the legislation governing the management, maintenance and improvement of a harbour and to authorise development.

3.3 Harbour Empowerment Orders (HEOs) are mainly concerned with building new harbours and or creating harbour authorities responsible for improving, maintaining and managing them.

3.4 Harbour orders that have purely administrative effect are commonly called 'non-works orders'. Those which authorise a development are commonly called 'works orders'. This consultation is concerned with the latter as it is the development associated with works orders that can potentially trigger EIA requirements dependent on the significance of the effects of that development on the environment

3.5 When seeking a works order, a marine licence will also likely be required. The processes for works orders and marine licences are different and stem from different domestic legislation – a works order will be consented to under the Harbours Act 1964 and a marine licence through the Marine and Coastal Access Act 2009 and the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended).

3.6 The Marine Management Organisation (MMO) currently administers both regimes in England. In Wales the Welsh Government administers works under the HA64 for fisheries harbours only[6] and Natural Resources Wales determines marine licences. In Scotland[7], Transport Scotland administer HA64 works, but Marine Scotland takes forward marine licencing. In England though the role of MMO is different in each regime, MMO will seek to process the applications for the harbour order and the marine licence together. In Scotland and Wales there is a close degree of co-operation between the noted bodies.

3.7 Powers to administer the HA64 regime have been delegated to the MMO by the Harbours Act 1964 (Delegation of Functions) Order 2010, SI 2010/674 by the respective Secretary of State[8].

3.8 This consultation covers transposition of the 2014 Directive into the HA64 in England, Wales, and Scotland. Northern Ireland is undertaking a separate implementation process.

[6] In Wales, the Transfer of Functions Order SI 1999/672 transferred functions for fishery harbours to Welsh Ministers. Marine licensing in Wales is delegated/devolved to Welsh Ministers for the inshore area but the responsibility of MMO for offshore areas, though this is likely to change as a result of the Wales Bill currently progressing through Parliament.
[7] In terms of the Harbours Act, the Scotland Act 1998 devolved responsibility for making HROs and HEOs to Scottish Ministers;
[8] References to the Secretary of State therefore means variously The Secretary of State, Scottish Ministers or Welsh Ministers.

Definition of the environmental impact assessment process

3.9 The 2014 Directive introduces a definition of the environmental impact assessment process. In our view the definition reflects the existing practice of both developers and competent authorities and the activities that they already undertake.

3.10 Nevertheless, we believe that the inclusion of this definition in the HA64 will provide greater certainty of the process that is to be undertaken. We intend to copy out the definition into what is now the introduction of Schedule 3 of HA64.

3.11 We propose to retain the existing term 'environmental statement' as this is familiar to practitioners and not replace it with the term 'environmental impact assessment report' as used in the 2014 Directive. A combination of including the details of the new definition, and retaining the existing term, should mean that the requirements and purpose of the EIA process are clear.

Exemptions

3.12 Article 1(3) has been amended to restrict the existing exemption for defence projects so that it can only apply where a project, or part of a project, that has defence as its sole purpose. However, the exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose.

3.13 The HA64 does not currently include a defence or civil emergencies exemption, though many UK planning regimes, including the Town and Country Planning Act regime, and the National Nationally Significant Infrastructure Planning regime, do.

3.14 For purposes of continuity with other planning regimes, and to offer additional flexibility in this area, we propose to transpose this exemption into HA64.

3.15 Article 2(4) allows for Member States to exempt a project from the Directive provisions in exceptional circumstances, provided the objectives of the Directive are met and information derived from any other form of assessment, and the reasons for the exemption are made available to the public.

3.16 Whilst the exceptional circumstances exemption is unlikely to be used with any regularity in practice in its broad undefined context, the 2014 Directive does specifically confer this additional flexibility on Member States, and so we intend to include a provision to this effect into Schedule 3 of HA64. However, the inclusion of this exemption does mean that the flexibility and the exemption process can be utilised to provide for an additional function when considering projects that can potentially lead to a reduction in costs and duplication of work, by allowing deferral to another EIA regime. Please see paragraph 3.39 for further detail.

Determining whether Environmental Impact Assessment is required – screening

Information to be provided for screening

3.17 Paragraph 3 of Schedule 3 HA64 "Pre-application procedure" has already established a mandatory screening function for the HA64 regime. Whilst the 2014 Directive provides for an optional screening stage, we do not intend to remove the mandatory screening element currently within HA64.

3.18 We believe that this requirement is beneficial for both the deciding authority and the applicant, by establishing the EIA status of the development and ultimately the further information that they may be required to supply. This provides additional surety and direction that can both avoid potentially unnecessary environmental statements and focus the content of those that are required.

3.19 The 2014 Directive has sought to standardise the type of information to be provided by a developer in order for a competent authority to screen a proposal. The information to be provided is set out in a new Annex IIA of the 2014 Directive. It is hoped this will help focus environmental impact assessment on those cases where there really is a likelihood of significant effects.

3.20 The 2014 Directive also confirms that a developer may provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. While this reflects existing domestic case law (see, for example, *R(on the application of Champion v North Norfolk District Council*[9]) and practice, it is anticipated that more developers will seek to demonstrate that their project will not be likely to have significant environmental effects through earlier consideration of mitigation or avoidance measures.

3.21 While the extent to which mitigation measures can be taken into account at the screening stage will be fact specific, this should help reduce the number of projects subject to environmental impact assessment. Given the mandatory nature of the HA64 screening process, it is important that developers are aware of the need to consider Annex IIA obligations and we will ensure that a clear reference is included in the text.

Screening decision

3.22 The competent authority is now required to make its screening determination on the basis of the information provided by the developer under Article 4(4) and taking into account the results of 'preliminary verifications' or assessments of the effects on the environment carried out pursuant to other EU legislation.

3.23 When considering the information provided by the developer, the competent authority, as now, must take into account the criteria listed in Annex III[10]. The criteria in Annex III have been amended, largely to provide more clarity about the issues to be considered.

3.24 We are aware that some other parts of Government are proposing to include Annex III in full as a schedule to their legislation. Whilst we are keen to copy out as much of the 2014 Directive's text as possible for user convenience and certainty, we believe that replicating Annex III in the introductory section of Schedule 3 HA64 in full would in fact make the text more unwieldy.

3.25 For HA64 we are also practically constrained by the fact that we are already amending a schedule to an Act, and so there are difficulties in including it as separate schedule. On this basis we do not include Annex III in full. But instead reference it in relation to "selection criteria" in the introductory section of HA64 Schedule 3, and include the key requirements elsewhere in HA64 where they are directly relevant, e.g. the type of information required in an application.

[9] [2015] UKSC 52.
[10] See the Commission's unofficial consolidated version of the Directive referred to above for details.

3.26 However, the term 'preliminary assessment' referred to in Article 4(5) is not defined in the 2014 Directive and we are unaware of similar references in other relevant EU environmental legislation. We therefore do not intend to use the term in the regulations and do not consider that its omission will make a material difference in the implementation of the 2014 Directive.

3.27 Article 4(5) now also requires that the authority must state the main reasons for its determination, including, if the determination is that an assessment is not required, any features of the proposed development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. The Article also clarifies the matters that must be included in a decision that development does not require environmental impact assessment.

3.28 Paragraphs 6 (1) to 6 (4) of HA64 already broadly sets out the same information to be provided as is required by the updated EIA. However, for certainty and clarity we propose to require that the Secretary of State inform the proposed applicant in writing of his decision with reference to the *selection criteria*. The selection criteria are those set out in Annex III of the Directive. Article 4(5) also requires that the decision and reasons for it are similarly made available to the public and we also intend to introduce this requirement in the transposing regulations.

Timeframe for screening

3.29 The 2014 Directive introduces the requirement that the competent authority must make its screening determination 'as soon as possible' and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required. This period can be extended in exceptional circumstances.

3.30 There are no current timescales for this activity set out in HA64. MMO and Transport Scotland set out their internal targets that range from eight to thirteen weeks dependent on the assessment taking place (e.g. HA64 currently also provides for a combined screening/scoping procedure). The Welsh Government does not set an internal target for determining EIA applications in relation to Fishery Harbours. The type of HRO/HEO development that potentially triggers EIA requirements is likely to be complex and potentially also require consideration of other environmental regimes such as those applying to marine licencing. For this reason we propose to copy out the 90 day timescale and also include the provision allowing for an extension of that timeframe in exceptional circumstances.

The scope of the assessment process

3.31 Article 3 sets out the environmental factors that should be considered as part of the assessment where they are likely to be significantly affected by the project. The 2014 Directive clarifies that the assessment should be of likely significant effects of the project on the environment. It also amends some of the terminology used. For example, the term "Human Beings" has been replaced by "Population and Human Health" and "Flora & Fauna" with the term "Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC" (i.e. the Habitats and Wild Birds Directives respectively).

3.32 Article 3(2) of the 2014 Directive also introduces a new requirement to consider the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned for example including those caused by climate change.

3.33 Largely we believe that the changes are already factored into existing process, and though “human health” and “risks” are broader than the specifics of current practice but they are closely linked to similar issues that might already be considered and connected with a project. However, for clarity we intend to include the changes within the new definition for “EIA Process” in Schedule 3 of the HA64.

Coordinated procedures

3.34 A new requirement has been introduced at Article 2(3). Where a project is simultaneously subject to an assessment under the Environmental Impact Assessment Directive and also under the Habitats and/or Wild Birds Directives, the 2014 Directive requires that, where appropriate, either a coordinated procedure or a joint procedure should be used. The coordinated procedure requires designating an authority, or authorities, to endeavour to coordinate separate assessments. The joint procedure, on the other hand, requires Member States to endeavour to provide for a single assessment of a project’s impacts on the environment.

3.35 We understand that in terms of the MMO’s existing assessment practices it seeks to take forward assessments in a joined-up way, working with other consenting bodies as necessary. Or in particular, where a development for which an HRO is sought also requires a marine licence, as the body that administers both regimes, it will progress a singular assessment. In Scotland, whilst two different bodies are involved, Transport Scotland for HA64 and Marine Scotland for marine licences, they can undertake a joint screening and scoping exercise for a single assessment for both consents if the applicant wishes. Currently in Wales the MMO would administer HRO in Welsh waters for non-fisheries harbours, and Welsh Government for fisheries harbours, and Natural Resources Wales would administer the marine licence. They can also undertake a joint screening and scoping exercise for a single assessment.

3.36 The principles of co-ordinating and co-operating on EIA assessments are already established in practice, and therefore a requirement to endeavour to do so where a project is also subject to the Habitats and/or Wild Birds Directive, should not be additionally burdensome.

3.37 We consider that coordinated procedures provide the greatest flexibility for developers around the phasing and timing of environmental impact assessment and an ‘appropriate assessment’ under the Habitats Directive. The joint procedure would, however, require the information to inform both assessments to be dealt with in a single assessment. We therefore propose transposing the requirement by designating the authority responsible for taking the decision on an application as the authority that must ensure, where appropriate, that the relevant assessments are coordinated.

3.38 The 2014 Directive also allows Member States, if they wish, to choose to also apply joint or coordinated procedures to any assessments required under other EU law, including the Water Framework Directive, the Industrial Emissions Directive and the Waste Framework Directive. The provision is not mandatory and we do not propose to include it in our regulations.

3.39 Additionally, we note that similarly to the principles set out on co-ordination by the 2014 Directive, there is a facility within the Marine Works regime that allows for “deferral” of EIA assessment and decision making to other relevant regimes, where a project may be subject to EIA assessments under both systems.

3.40 In this way a full EIA assessment can be taken forward under the HA64 or Town & Country Act (TCPA) planning process and will not require a separate assessment under the Marine Works process. Such a "deferral" only takes place when the relevant authority is satisfied that the relevant considerations (and protections as necessary) have been taken into account under the other regime, e.g. MMO are content that marine environment issues are appropriately investigated and mitigated. Being able to undertake such a deferral avoids duplication of work and cost.

3.41 However, a comparable provision does not exist in HA64 we intend therefore to replicate the Marine Works ability into HA64, i.e. to allow deferral to the TCPA and Marine Works or other appropriate regimes where this is relevant with reference to process provided for by the "exceptional circumstances" exemptions (see paragraph 3.16).

Information to be provided in the environmental statement

Minimum information requirements

3.42 The Directive sets out the minimum information that a developer must provide in their environmental statement as part of the assessment process. The current Directive includes this in Annex IV together with a longer list of topics that should be covered where relevant. The 2014 Directive brings the minimum requirements into Article 5(1). There have been some other amendments to Annex IV[11].

3.43 However, our preliminary view is that it is likely in practice that all of the issues listed in the amended Annex should already be included in an environmental statement, where it is considered to be relevant to an assessment of the likely significant effects of development. However, for clarity we intend to include the changes, in paragraph 8 of HA64.

Determining the scope and level of detail of the assessment – scoping

3.44 The 2014 Directive retains the provision for a developer to seek a scoping opinion if they choose. The 2014 Directive now provides that the competent authority must issue an opinion on the scope and level of detail of the information required in the statement, taking into account the information provided by the developer on the specific characteristics of the project and its likely impact on the environment. It also introduces the requirement that where a scoping opinion has taken place, the environmental statement should be "based on" that opinion.

3.45 The current HA64 pre-application section effectively mandates screening and scoping by noting that a HRO application may not be submitted without the Secretary of State having provided a view under paragraphs 5 and 6(3). In effect this view provides the scoping opinion. When that opinion is issued it must now meet the requirements of the 2014 Directive.

3.46 We intend to primarily copy out the text of the 2014 Directive, but we also intend to refer to the environmental statement being "based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion or direction)". This addition is to take account of situations where the details of a project change after a scoping opinion has been made, for example, or where the initial

[11] See the Commission's unofficial consolidated version of the Directive referred to above for details

assessment work demonstrates that the actual significant effects identified differ from those foreseen at the scoping stage.

3.47 Due to the mandatory nature of screening in HA64, if "screened in", then the Secretary of State is already required to advise on what information should be included under HA64 paragraph 6(2), so the new requirements are not additionally burdensome.

Competent experts

3.48 The 2014 Directive includes a new Article 5(3). This requires the developer to ensure that the environmental statement is prepared by competent experts, while the competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

3.49 We propose to include a requirement in the regulations that the environmental statement must be prepared by persons who in the opinion of the competent authority, have sufficient expertise to ensure the completeness and quality of the environmental statement. This will be supported by a requirement for the environmental statement to include a statement setting out how the requirement for sufficient expertise has been met. We have not sought to define "competent expert" any further, both because it is considered to be a sufficiently clear term, but also because it is likely to depend on the individual circumstance of each case.

3.50 Our initial view is that at present most decision makers and competent authorities either have persons with sufficient expertise dedicated to examining environment statements as part of applications, or within their planning or wider teams, or could readily obtain access to such expertise. They will also have any comments of the statutory consultation bodies, including Natural England, Scottish Natural Heritage, Natural Resources Wales and the Environment Agency to assist them.

Consultation

Consultation bodies

3.51 The 2014 Directive requires Member States to designate certain authorities with environmental responsibilities which must be consulted, where relevant, where a request has been made for a scoping opinion or following the submission of an environmental statement.

3.52 The HA64 already contains provisions that require the Secretary of State to consult:

- 6(4) "such bodies with environmental responsibilities as he thinks appropriate."
- 15, " consult….such bodies likely to have an interest in the project by reason of their environmental responsibilities as appropriate"

3.53 This approach provides for maximum flexibility for target or wider consultations as necessary on a case by case basis. These are as follows:

- In England & Wales, the bodies typically include:
  - Natural England
  - Environment Agency
  - MCA
  - Trinity House

- Local planning authorities
- Other relevant harbour authorities
- Inshore fisheries conservation authority (IFCA)
- RYA
- Historic England

- Additional for Harbour Orders
  - DfT
  - BPA
  - UKMPG
  - Chamber of Shipping

- In Wales, for fisheries harbours they are typically:
  - Natural Resources Wales
  - The Centre for Environment, Fisheries and Aquaculture Science
  - relevant local authorities

- In Scotland the bodies include:
  - Scottish Natural Heritage
  - the Scottish Environment Protection Agency
  - relevant local authorities.

3.54 The 2014 Directive adds the phrase 'authorities with local and regional competencies' to the paragraph. We consider that such authorities are already included by existing practices and otherwise captured by the provisions at paragraph 15 of HA64 Schedule 3 of consulting:

"such bodies likely to have an interest in the project by reason of their environmental responsibilities as he thinks relevant."

However, to provide greater certainty and ensure compliance with the 2014 Directive we intend to include a copy out reference to 'authorities with local and regional competencies' alongside the existing provisions.

Electronic communication

3.55 The 2014 Directive adds the requirement that the public should be informed about an application and the matters set out in Article 6(2) electronically through "at least a central portal or easily accessible points of access". There are already provisions requiring local planning authorities to publish certain information relating to planning applications on their websites.

3.56 Under the HA64 there is currently no obligation for electronic publication of documents associated with the EIA process. Nevertheless there is already a degree of online publication for example MMO maintains an online register of HRO/HEO cases and their status, Transport Scotland publishes decisions on their website, and the Welsh Government can host summary information of EIA documents on their website. We believe those online portals meet the access requirements in the 2014 Directive.

3.57 The information currently provided may not be fully compliant in all instances but the impact of providing electronic access to additional information should be minimal. We do not intend to specify the exact format in which the information should be made

available as the electronic architecture and capabilities may differ between authorities and we wish to allow flexibility in meeting the 2014 Directive requirements.

3.58 We will require electronic access to be provided and as such we intend to copy out Article 6(2) and 6(5) in the section of the amended HA64 that will cover consultation, publicity and notices.

Consultation timeframes

3.59 Article 6(7) sets a new minimum time frame for public consultations on the environment statement. This should be no shorter than 30 days. The existing statutory period for consultation in the HA64 is 42 days, and we do not intend to reduce this.

Decisions

Information to be included in a decision

3.60 A new Article 8a(1) and (2) sets out requirements for information to be included in a decision to grant development consent. Article 8a(1)(a) reflects the requirement in Article 1(2)(g)(v) that the competent authority's reasoned conclusion must be integrated into any decision.

3.61 Article 8a(1)(b) requires that in addition to any environmental conditions attached to the decision, competent authorities must also ensure that any mitigation measures and, where appropriate, monitoring measures (see below) are identified in the consent.

3.62 Paragraphs 19 and 20 of HA64 Schedule 3 note the decision options open to the Secretary of State (19(2)) and sets out the type of information that should be published following that decision, with the latter broadly following the content of Article 8a (1) & (2).

3.63 Nevertheless it is not fully aligned as the current provisions do not clearly include the 2014 Directive's requirements in all areas. For certainty we intend to incorporate these requirements into this section of HA to specify the information that should be included when approving, or refusing an Order.

Monitoring of significant environmental effects

3.64 The decision to grant development consent should also now include, where appropriate, monitoring measures. It is for Member States to determine the procedures regarding the monitoring of significant adverse environmental effects. The type of parameters to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication.

Schedule 3 of HA64 already provides for the Secretary to apply conditions in a HRO:

- 19 (2)(c) "to make it with modifications";
- 20(2)(a) "the content of the decision……. and conditions attached to the decision";
- 20(2)(c) " a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects…"

3.65 Paragraph 48A of HA64 main text also underlines the environmental and conservation duties of harbour authorities.

3.66 We consider this requirement can be dealt with, where appropriate, by authorities through fully utilising these existing provisions to include such conditions or planning obligations within a HRO/HEO when appropriate.

3.67 In practice this already takes place, but it is not explicit in Schedule 3. As such, for certainty and clarity, we intend to incorporate the text of 8(a)4 into "The Order" section of Schedule 3 HA64 to ensure any necessary monitoring conditions are included in an Order when appropriate.

Decision timeframes

3.68 New Article 8a(5) requires that decisions are made within a reasonable period of time. HRO/HEOs are potentially subject to a number of additional procedures that can extend the time taken to finalise an Order, and its regulatory approval in Parliament, for example where compulsory purchases, or extinguishment of rights of way, form part of an application.

3.69 We propose to include a requirement in paragraph 19 that the Secretary of State must make a determination under that paragraph within a reasonable period of time, taking into account the nature and complexity of the application and proposed works, as well as any additional procedures required, from the date on which the Secretary of State has been provided with the environmental information provided.

Up-to-date reasoned conclusion

3.70 Article 8a(6) requires that the competent authority's reasoned conclusion on the significant impacts on a proposal is still "up-to-date" at the time a final decision is taken. In practice, our initial view is that, in the current HRO and HEO processes , it is likely that the period between an authority coming to a conclusion on the significant effects of a proposal, and the decision as to whether permission or consent is to be granted, will be limited. For that reason, the practical impacts of this provision will be limited

3.71 However, there may conceivably be rare occasions where information on a project's significant effects becomes available only at a late stage, and this needs to be taken into account in the decision making process.

3.72 We understand that this already happens in practice, but we propose that the reasoned conclusion should be considered up to date if the competent authority is satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the development on the environment.

3.73 We intend to include text to that effect in "The Decision" section of HA64 Schedule 3 to stipulate that the currency of the reasoned conclusion is determined as part of the decision process.

Informing the public of the decision

3.74 Article 9(1) sets out the requirements for the competent authority to inform the public and the consultation bodies about the decision on whether to grant or refuse

development consent. It adds to the information to be included in the decision, including a summary of the consultation responses.

3.75 As noted above HA64 already includes provisions for notifying the public of decisions and the relevant content of these. In order to ensure accurate compliance, we therefore propose to incorporate Article 9(1) text into "The Decision" section of HA64.

Other issues

Conflicts of interest

3.76 A new Article 9a deals with avoiding conflicts of interest where an organisation is both the developer and the consultation body and/or competent authority. Where the competent authority is also the developer there must be an appropriate separation between functions. The competent authority or authorities must perform their duties arising from the Directive in an objective manner and not find themselves in a situation giving rise to a conflict of interest.

3.77 We do not consider at this stage that this will have any new effects in practice. Bias is already a ground for judicial review[12] and as a result relevant authorities will have systems in place to ensure that there is suitable administrative separation of activity and decision making, though these do not currently have a specific legislative basis.

3.78 For certainty the requirements have been transposed through a new regulation dealing with 'objectivity and bias' but that this should not have any effect in practice, other than to align with existing procedures.

Penalties

3.79 A new Article 10a requires that Member States must lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

3.80 Our view is that the existing penalty and enforcement regimes in place that can be utilised as necessary by Orders under HA64 can meet the requirements of the 2014 Directive.

3.81 A significant majority of Harbour Order applications will be taken forward in conjunction with a Marine Licence application. These are usually also processed in concert, with potentially only one environmental assessment being considered – and the certainty of this happening will also be increased through appropriate compliance with Article 2(3) of the 2014 Directive.

3.82 It is already the case that where the applications are taken forward together, any environmental requirements will be common to both, or provide high level and detailed components of the same issue. In such a way a breach of a marine licence condition is a de facto breach Harbour Order condition. The breach can be enforced, and ultimately subject to penalties, under the Marine Licence regime, and this also avoids a developer being prosecuted twice for the same offence.

3.83 Secondly, where a project is purely a landside development there can be a degree of "forum shopping" and a development might be given consent under either the Town & Country Planning Act system, the HA64 regime, or in some circumstances a

[12] See for example *Georgiou v Enfield LBC* [2004] LGR 497.

combination of both. It is the case that under either, where an inquiry is undertaken, an inspector can recommend appropriate planning obligations (including environmental conditions) are put in place in order to secure consent.

3.84 Ultimately, an Order imposes a statutory duty to undertake certain actions, or authorises certain parameters of a development. If these duties, or relevant conditions, are not undertaken appropriately then it is a breach the terms of the Order and a non-compliance with planning permissions, and in both cases potentially subject to court proceedings.

3.85 Our view is that this provides a suite of options available for enforcement of, and penalties applicable to, the breach of an EIA relevant consent condition for a harbour/port based project.

3.86 Given the options available we wish to ensure the most effective and dissuasive regime is employed to combat infringements, but that are proportionate to the conditions being required in any consent.

3.87 We believe that our proposals for transposition of Article 8a(4) now make it explicit that relevant conditions are set out in an Order. Additionally, we propose for the purposes of Article 10(a) that where those conditions are facilitated through functions of a linked planning regime that this is also referenced in an Order.

3.88 Additionally we are considering whether to include a provision that requires the Secretary of State to consider the most appropriate planning regime, or combination thereof, pertinent and proportionate to the project nature to secure compliance with the requirements and objectives of the 2014 Directive.

Transitional arrangements

3.89 Article 3(1) of the 2014 Directive provides transitional measures where an application for screening was made before 16 May 2017. Article 3(2) of the 2014 Directive provides transitional measures for projects for which an environmental statement was submitted or where a scoping opinion was requested before 16 May 2017.

3.90 We will include such transitional measures in the Statutory Instrument. The current HA64 pre-application section effectively mandates screening and scoping. Therefore, in the context of the HA64 process, the effect will be that where a pre-application procedure under paragraph 3 of Schedule 3 HA64 has been commenced before 16 May 2017, the provisions of the Schedule 3 process in will continue to apply without the amendments detailed in the 2014 Directive.

Consultation Question

Question 2: Do you agree with our approach to transposing the requirements of the 2014 Directive into the Harbours Act 1964, or have any other comments?

4. Changes to the Highways Act 1980

Please note that extracts from all the 2014 Directive articles referred to in this consultation paper can be found in ***Annex B****.*

4.1 The Highways Act 1980 applies the provisions of the EIA Directive to certain projects for constructing or improving a highway which forms part of the Strategic Road Network in England or Wales. Highways England is the Strategic Highway Authority for the Strategic Road Network in England. The Welsh Ministers have an equivalent role for strategic roads in Wales.

4.2 Some highways projects promoted by Highways England are likely to be covered instead by the Planning Act 2008, because they will be above the thresholds for a nationally significant infrastructure project (NSIP). The rest will be promoted using the environmental impact assessment provisions in Part VA of the Highways Act 1980. Additionally, it is used for all Strategic Road Network projects in Wales, for which Welsh Ministers are the highway authority, because under the Planning Act 2008 only projects relating to highways "wholly in England" are NSIPs.

4.3 The Secretary of State for Transport and Highways England, and Welsh Ministers in Wales are the only developers of projects covered by of the Highways Act 1980.

4.4 The following amendments to Part VA of the Highways Act 1980 are proposed:-

Definition of the environmental impact assessment process

4.5 The 2014 Directive introduces a definition of the environmental impact assessment process. We do not propose to include a definition of the environmental impact assessment process in Part VA of the Highways Act 1980, because the definition comes from the 2014 Directive itself. We propose to amend Section 105A (1) of the Act to refer to the amended Directives of 2011 and 2014, including the new definition of "environmental impact assessment".

4.6 We propose to retain the existing term 'environmental statement' as this is familiar to practitioners and not replace it with the term 'environmental impact assessment report' as used in the 2014 Directive. A combination of including the details of the new definition, and retaining the existing term, should mean that the requirements and purpose of the EIA process are clear.

Exemptions for defence and civil emergencies

4.7 Article 1(3) has been amended to restrict the existing exemption for defence projects so that it can only apply where a project, or part of a project, that has defence as its sole purpose. However, the exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose.

4.8 The Highways Act 1980 does not currently include a defence or civil emergencies exemption, though many UK planning regimes, including the Town and Country Planning Act regime, and the National Nationally Significant Infrastructure Planning regime, do.

4.9 For purposes of continuity with other planning regimes, and to offer additional flexibility in this area, we propose to transpose this exemption into new section 105E of the Highways Act 1980.

4.10 Article 2(4) allows for Member States to exempt a project from the provisions of the Directive in exceptional circumstances, provided that the objectives of the Directive are met and that information derived from any other form of assessment and the reasons for the exemption are made available to the public.

4.11 Whilst unlikely to be used with any regularity in practice, the Directive does specifically confer this additional flexibility in exceptional circumstances on Member States, and so we intend to include a provision to this effect in new section 105E of the Highways Act 1980.

Determining whether Environmental Impact Assessment is required – screening

4.12 We propose to amend Section 105A (2) and (3) and add a new Section 105A (3A) to implement articles 4(4) and (5) of the 2014 Directive, setting out the procedures for determining whether an Environmental Impact Assessment is required for a highway project and the factors that must be taken into account in making that determination. We also propose to add a new Section 105B (1A) to (1C) to implement articles 4(5) and 4(6) of the 2014 Directive, setting out procedures for making a determination on whether or not an Environmental Impact Assessment is required.

4.13 In doing so, we will take into account that, for projects under this Act, the promoter and the competent authority are part of the same body, either Highways England or the Welsh Ministers. So we do not propose to use copy-out for all of the provisions of these articles.

4.14 In particular, Article 4(4) says that “the developer” must provide the information listed in Annex II.A and the results of other relevant assessments, and that Article 4(5) says the “competent authority” should then make its decision on the basis of that information. As the developer and competent authority are part of the same body in this case, it does not make sense to require it to provide itself with the information, so that aspect is not expressly transposed. However, the implication is that it would need to gather the information referred to in the new Section 105A (3A) in order to take it into account.

4.15 Also, we do not propose to transpose the 90 day requirement in Article 4(6), given that in this case the developer and competent authority are the same body. Instead, the new Section 105B (1C) will require the determination to be made “as soon as possible”.

The scope of the assessment process

4.16 Article 3 sets out the environmental factors that should be considered as part of the assessment where they are likely to be significantly affected by the project. The 2014 Directive clarifies that the assessment should be of likely significant effects of the

project on the environment. It also amends some of the terminology used. For example, the term “Human Beings” has been replaced by “Population and Human Health” and “Flora & Fauna” with the term “Biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC” (i.e. the Habitats and Wild Birds Directives respectively).

4.17 Article 3(2) of the 2014 Directive also introduces a new requirement to consider the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned for example including those caused by climate change.

4.18 We propose to copy-out articles 3(1) and 3(2) of the 2014 Directive as new Sections 105A (3B and 3C) of the Act.

Coordinated procedures

4.19 A new requirement has been introduced at Article 2(3). Where a project is simultaneously subject to an assessment under the Environmental Impact Assessment Directive and also under the Habitats and/or Wild Birds Directives, the 2014 Directive requires that, where appropriate, either a coordinated procedure or a joint procedure should be used. The coordinated procedure requires designating an authority, or authorities, to coordinate separate assessments. The joint procedure, on the other hand, requires Member States to endeavour to provide for a single assessment of a project’s impacts on the environment.

4.20 We propose to implement this requirement by the addition of a new Section 105A (3D) of the Act.

Information to be provided in the environmental impact assessment report

Minimum information requirements

4.21 The 2014 Directive sets out the minimum information that a developer must provide in their environmental impact assessment report as part of the assessment process. The current Directive includes this in Annex IV together with a longer list of topics that should be covered where relevant. The 2014 Directive brings the minimum requirements into Article 5(1). There have been some other amendments to Annex IV[13].

4.22 We propose that Section 105A (4) is amended to implement article 5(1) of the 2014 Directive, setting out the content of an environmental impact assessment report.

Determining the scope and level of detail of the assessment - scoping

4.23 The existing provision for scoping opinions in article 5(2) of the Directive is not expressly transposed in the Highways Act 1980 because in this case the developer and competent authority are the same body. Highways England already carries out a form of scoping opinion as part of its internal procedures and so the provision is implemented administratively. It is therefore not necessary to transpose the

[13] See the Commission’s unofficial consolidated version of the Directive referred to above for details

amendments to this provision. Highways England will prepare formal propriety guidance to show that there is a genuine separation.

4.24 The Welsh Government also implements this provision through its administrative arrangements, and will review these arrangements to ensure that they are compliant with the 2014 Directive. Any necessary adjustments will be made through these administrative arrangements and therefore it is not necessary to transpose the amendments to this provision in relation to Wales either.

Competent experts

4.25 The 2014 Directive includes a new Article 5(3). This requires the developer to ensure that the environmental statement is prepared by competent experts, while the competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report.

4.26 We propose that Section 105A (5) is amended to implement article 5(3).

Consultation

Consultation bodies

4.27 The text of this article is largely unchanged and the existing provisions in the Act are already in terms that accommodate the minor changes to the Directive. We do not therefore propose any amendments to the Act. In particular, Section 105B (4) already requires that consultation bodies are given an opportunity to express an opinion on the project and the environmental impact assessment report. Section 105B (8) already includes principal councils, i.e. county, district and unitary local authorities, in the definition of consultation bodies along with certain English and Welsh environmental bodies and any other public body with an environmental interest in the project. This appears to cover the amendment to the Directive to explicitly refer to “local and regional competencies”. In addition, Section 105B (3) already provides for members of the public who are likely to be concerned to be given a reasonable opportunity to express their opinion.

Electronic communication

4.28 The 2014 Directive adds the requirement that the public should be informed about an application and the matters set out in Article 6(2) electronically through “at least a central portal or easily accessible points of access“. There are already provisions requiring local planning authorities to publish certain information relating to planning applications on their websites.

4.29 We propose to amend Section 105B (3A)(h) and Section 105B (3B)(c) to implement articles 6(2) and 6(5), by revising the wording on website publication of environmental impact assessment reports.

4.30 We propose to amend Section 105B (7)(c) to implement article 6(2) and 6(5) of the 2014 Directive, by revising the wording on website publication of decisions whether or not to proceed with a project that is subject to an environmental impact assessment report.

Consultation timeframes

4.31 Article 6(7) sets a new minimum time frame for public consultations on the environment statement. We propose to add new Section 105B (5ZA), setting a 30 day minimum for public consultation on the environmental impact assessment report.

Transboundary effects

4.32 Article 7(4) sets out procedures for projects that have transboundary effects across more than one Member State. The 2014 Directive adds a new provision at the end of Article 7(4) to say that consultations on such transboundary effects may be conducted through an appropriate joint body. We propose to include this new provision in the Highways Act 1980 by addition of new section 105C (6A).

Decisions

4.33 A new Article 8a(1) and (2) sets out requirements for information to be included in a decision to grant development consent. Article 8a(1)(a) reflects the requirement in Article 1(2)(g)(v) that the competent authority's reasoned conclusion must be integrated into any decision.

4.34 Article 8a(1)(b) requires that in addition to any environmental conditions attached to the decision, competent authorities must also ensure that any mitigation measures and, where appropriate, monitoring measures (see below) are identified in the consent.

4.35 Article 8a(4) requires that the decision to grant development consent should also now include, where appropriate, monitoring measures. It is for Member States to determine the procedures regarding the monitoring of significant adverse environmental effects. The type of parameters to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication.

4.36 Article 8a(5) requires that the competent authority takes any of the decisions referred to within a reasonable period of time.

4.37 We propose to add new Sections 105B (5ZB) to (5ZF) to the Act to implement articles 8a (1) to (5) of the 2014 Directive, setting out procedures for deciding whether or not to proceed with a project that is subject to an Environmental Impact Assessment.

Up-to-date reasoned conclusion

4.38 Article 8a(6) requires that the competent authority's reasoned conclusion on the significant impacts on a proposal is still "up-to-date" at the time a final decision is taken. In practice, it is likely that the period between the competent authority coming to a conclusion on the significant effects of a proposal, and the decision as to whether permission or consent is to be granted, will be limited. For that reason, the practical impacts of this provision will be limited. As the only competent authorities under the Highways Act are Highways England and the Welsh Ministers, we consider that this requirement can be implemented administratively, without needing any legislative amendments. Article 8a(6) says that "Member States may set time-

frames…", but does not require them to do so, and we do not consider it necessary in this case.

Informing the public of the decision

4.39 We propose to amend Section 105B (6) of the Act to implement the changes to article 9(1) of the 2014 Directive, regarding procedures and content for making known a decision whether or not to proceed with a project that is subject to an Environmental Impact Assessment.

Other issues

Conflicts of interest

4.40 As noted above, Highways England is both the competent authority and the developer for projects covered by the Highways Act 1980 in England. The Welsh Ministers are the competent authority and the developer for projects covered by the Highways Act 1980 in Wales. There are already procedures in place to ensure that the two functions are carried out by separate parts of these organisations. The Welsh Government will be reviewing their administrative arrangements in light of the 2014 Directive for roads schemes for 2017 and beyond, and will make any further adjustments required to their administrative arrangements to ensure compliance with the 2014 Directive. We therefore consider that the provision on conflicts of interest in article 9(a) of the 2014 Directive will be implemented administratively and does not require further transposition.

Penalties

4.41 We believe that existing enforcement provisions are sufficient to meet the requirements of article 10a of the 2014 Directive to adopt penalties that are effective, proportionate and dissuasive. These are set out in Section 105D of the Highways Act 1980, which provides for a person aggrieved by a decision of the Secretary of State, Highways England or the Welsh Ministers to apply to the courts, which can suspend and quash the decision or any part of it.

Consultation Question

Question 3: Do you agree with our approach to transposing the requirements of the 2014 Directive into the Highways Act 1980, or have any other comments?

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on https://www.gov.uk/dft#consultations. Paper copies will be available on request.

If you have questions about his consultation please contact:

The Environment Strategy Team

Address: 1/33, Great Minster House, 33 Horseferry Road, London, SW1P 4DR

Email address: EIAconsultation@dft.gsi.gov.uk

Annex A: Full list of consultation questions

Question 1 Do you agree with our approach to transposing the requirements of the 2014 Directive into the Transport and Works Act 1992 and the procedure rules made under that Act, or have any other comments?

Question 2 Do you agree with our approach to transposing the requirements of the 2014 Directive into the Harbours Act 1964, or have any other comments?

Question 3 Do you agree with our approach to transposing the requirements of the 2014 Directive into the Highways Act 1980, or have any other comments?

Please respond to this consultation using the template provided on the consultation web-page

Annex B: Extracts from European Directive 2014/52/EU

This annex provides the text of the amendments to Directive 2011/92/EU which are referenced in this consultation.

Article 1(2)(g)

"environmental impact assessment" means a process consisting of:

i. *the preparation of an environmental impact assessment report by the developer…*

ii. *the carrying out of consultations …;*

iii. *the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer … and any relevant information received through the consultations…;*

iv. *the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and*

v. *the integration of the competent authority's reasoned conclusion into any of the decisions ….*

Article 1(3)

Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

Article 2(3)

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union

legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Article 2(4)

Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.

In that event, the Member States shall:

a. *consider whether another form of assessment would be appropriate;*
b. *make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;*
c. *inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.*

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the European Parliament and to the Council on the application of this paragraph

Article 3(1)

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

a. *population and human health;*
b. *biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;*
c. *land, soil, water, air and climate;*
d. *material assets, cultural heritage and the landscape;*
e. *the interaction between the factors referred to in points (a) to (d).*

Article 3(2)

The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from 'the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned'.

Article 4(4)

Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Article 4(5)

The competent authority shall make its determination, on the basis of the information provided by the developer…taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

a. *where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or*
b. *where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.*

Article 4(6)

Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required...

In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

Article 5(1)

Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:

a. *a description of the project comprising information on the site, design, size and other relevant features of the project;*
b. *a description of the likely significant effects of the project on the environment;*
c. *a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;*
d. *a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;*
e. *a non-technical summary of the information referred to in points (a) to (d); and*
f. *any additional information … relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.*

Where an opinion is issued… the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required

for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.

The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

Article 5(2)

Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report ....

The competent authority shall consult the authorities… before it gives its opinion.

Member States may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.

Article 5(3)

In order to ensure the completeness and quality of the environmental impact assessment report:

a. *the developer shall ensure that the environmental impact assessment report is prepared by competent experts;*
b. *the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report;*

Article 6(1)

Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by- case basis.

Article 6(2)

In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and whether by public notices or by other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures …

Article 6(5)

… Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

Article 6(7)

The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

Article 7(4)

The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time- frame for the duration of the consultation period.

Such consultations may be conducted through an appropriate joint body.

Article 8a(1)

The decision to grant development consent shall incorporate at least the following information:

a. *the reasoned conclusion referred to in Article 1(2)(g)(iv);*
b. *any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.*

Article 8a(2)

The decision to refuse development consent shall state the main reasons for the refusal.

Article 8a(4)

In accordance with the requirements referred to in paragraph 1(b), Member States shall …. determine the procedures regarding the monitoring of significant adverse effects on the environment. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

Article 8a(5)

Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.

Article 8a(6)

The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

Article 9(1)

When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1)… ensure that the following information is available …

a. *the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2);*
b. *the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the*

summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State referred to in Article 7.

Article 9a

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Article 10a

Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

New Article 3(1) (2014/52/EU)

Projects in respect of which the determination referred to in Article 4(2) of Directive 2011/92/EU was initiated before 16 May 2017 shall be subject to the obligations referred to in Article 4 of Directive 2011/92/EU prior to its amendment by this Directive.

New Article 3(2) (2014/52/EU)

Projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of Directive 2011/92/EU prior to its amendment by this Directive where, before 16 May 2017:

a. *the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated; or*

b. *the information referred to in Article 5(1) of Directive 2011/92/EU was provided.*

'ANNEX II.A - *Information referred to in Article 4(4)*

Information to be provided by the developer on the projects listed in Annex II

1 *A description of the project, including in particular:*

   a. *a description of the physical characteristics of the whole project and, where relevant, of demolition works;*

   b. *a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected*

2 *A description of the aspects of the environment likely to be significantly affected by the project.*

3 *A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:*

   a. *the expected residues and emissions and the production of waste, where relevant;*

   b. *the use of natural resources, in particular soil, land, water and biodiversity*

4 The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.';

'Annex III - Selection criteria referred to in Article 4(3)

1 Characteristics of projects

The characteristics of projects must be considered, with particular regard to:

- *a. the size and design of the whole project;*
- *b. cumulation with other existing and/or approved projects;*
- *c. the use of natural resources, in particular land, soil, water and biodiversity;*
- *d. the production of waste;*
- *e. pollution and nuisances;*
- *f. the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;*
- *g. the risks to human health (for example due to water contamination or air pollution).*

2 Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

- *a. the existing and approved land use;*
- *b. the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;*
- *c. the absorption capacity of the natural environment, paying particular attention to the following areas:*
  - *i. wetlands, riparian areas, river mouths;*
  - *ii. coastal zones and the marine environment;*
  - *iii. mountain and forest areas;*
  - *iv. nature reserves and parks;*
  - *v. areas classified or protected under national legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;*
  - *vi. areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;*
  - *vii. densely populated areas;*
  - *viii. landscapes and sites of historical, cultural or archaeological significance.*

3 Type and characteristics of the potential impact

The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:

a. *the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);*

b. *the nature of the impact;*

c. *the transboundary nature of the impact;*

d. *the intensity and complexity of the impact;*

e. *the probability of the impact;*

f. *the expected onset, duration, frequency and reversibility of the impact;*

g. *the cumulation of the impact with the impact of other existing and/or approved projects;*

h. *the possibility of effectively reducing the impact.*

Annex IV (information referred to in Article 5(1)

1 *Description of the project, including in particular:*

a. *a description of the location of the project;*

b. *a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;*

c. *a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;*

d. *an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.*

2 *A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*

3 *A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.*

4 *A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.*

5 *A description of the likely significant effects of the project on the environment resulting from, inter alia:*

a. *the construction and existence of the project, including, where relevant, demolition works;*

b. *the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;*

c. *the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;*

d. *the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);*

e. *the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;*

f. *the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;*

g. *the technologies and the substances used.*

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6 *A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.*

7 *A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.*

8 *A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council (1) or Council Directive 2009/71/Euratom (2) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.*

9 *A non-technical summary of the information provided under points 1 to 8.*

10 *A reference list detailing the sources used for the descriptions and assessments included in the report.*

Annex C: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at https://www.gov.uk/government/publications/consultation-principles-guidance

If you have any comments about the consultation process please contact:

Consultation Co-ordinator
Department for Transport
Zone 1/29 Great Minster House
London SW1P 4DR
Email consultation@dft.gsi.gov.uk