



Department for
Business, Energy
& Industrial Strategy

Government response to the consultation on draft legislative proposals for implementing amendments to the Environmental Impact Assessment Directive for offshore hydrocarbon-related developments and pipelines



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Business, Energy
& Industrial Strategy

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If you have any enquiries regarding this document/publication write to us at:

Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET



Contents

Exit from the European Union	4
Introduction	4
Summary of responses to the consultation	11
General comments / observations	12
Definition of the environmental impact assessment process - Article 1(2)(g)	16
Exemptions - Article 1(3)	16
Coordinated procedure - Article 2(3)	19
Exemptions - Articles 2(4) and 2(5)	20
Assessment process - Articles 3(1) and 3(2)	23
Determining whether an environmental impact assessment (including the need to prepare an Environmental Statement) is required (screening) - Articles 4(3) to 4(6)	27
Information to be provided in an Environmental Statement - Article 5(1)	37
Determining the scope / level of detail of the assessment (scoping) and competent experts - Articles 5(2) and 5(3)	39
Consultation - Article 6(1)	46
Electronic communications - Articles 6(2) and 6(5)	47
Consultation timeframes - Article 6(7)	47
Projects likely to have significant effects on the environment in another Member State - Article 7(5)	51
Taking into account in the consenting procedures the results of consultations and information gathered - Article 8	52
Decisions - Articles 8a(1) and 8a(2)	53
Monitoring of significant environmental effects - Article 8a(4)	54
Decisions in a reasonable time period - Article 8a(5)	60
Up-to-date reasoned conclusion - Article 8a(6)	60
Informing the public of the decision - Article 9(1)	63
Conflicts of interest - Article 9a	65
Penalties - Article 10a	65
Exchanges of Information - Article 12(2)	67
Transitional Arrangements - Article 3 of Directive 2014/52/EU	68
Analysis of Costs and Benefits	69
Supplemental 'post-consultation' legislative amendments	74
Next Steps	75



Exit from the European Union

In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. 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 outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Introduction

1. The Government invited comments via a 4 week consultation (16 February to 16 March 2017) on draft legislative proposals for implementing 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) insofar as the Directive applies to the consenting regimes for offshore hydrocarbon-related developments including pipe-lines (i.e. offshore oil and gas operations, offshore gas unloading and storage operations and offshore carbon dioxide storage operations) and onshore pipe-line projects (see paragraphs 5 and 7).
2. Environmental impact assessment is a process. It aims to provide a high level of protection to the environment and to integrate environmental considerations into the proposals for development 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 such effects before the development is allowed to proceed.
3. An important aim of the amended Directive is to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, and to avoid unnecessary administrative burdens. It should also improve 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.
4. The Government’s Better Regulation agenda includes the requirement 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



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adversely affect UK interests ('copy out' is where the implementing legislation adopts the same wording as the Directive or cross-refers to the Directive itself). We have sought to follow these principles in transposing the amendments made by Directive 2014/52/EU (hereinafter referred to as "the 2014 Directive" unless otherwise stated), and to minimise the additional regulatory burden whilst protecting the environment.

5. In transposing the 2014 Directive, our view at the outset was that there was merit in retaining, as far as practicable, the existing approach to environmental impact assessment for the offshore hydrocarbon and onshore pipe-line sectors as it is well understood by project developers and others involved in the procedures. In this context, the EIA Directive 2011/92/EU is integrated into the consenting regimes for offshore hydrocarbon-related developments and onshore pipe-line projects on the UK mainland (except where specified legislative functions in respect to onshore pipe-line projects in Scotland have been transferred to Scottish Ministers) through:

- (a) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/360) (as amended)¹ as modified by Article 2 of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 (S.I. 2010/1513);
- (b) the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (as amended) (S.I. 1999/1672);² and
- (c) the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (as amended) (S.I. 2000/1928)³.

As per the consultation document, these sets of Regulations are hereinafter referred to as "the existing Production and Pipelines (EIA) Regulations" unless otherwise stated.

¹ Key amending instruments are the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007 (S.I. 2007/933); the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015 (S.I. 2015/1431); and the Energy (Transfer of Functions, Consequential Amendments and Revocation) Regulations 2016 (S.I. 2016/912).

² Key amending instruments are section 76(7) of the Utilities Act 2000 (c. 27); section 73(2) of the Countryside and Rights of Way Act 2000 (c.37); and the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007 (S.I. 2007/ 1996).

³ Key amending instruments are section 73(2) of the Countryside and Rights of Way Act 2000 and the Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007 (S.I. 2007/1992).



6. In order to further inform our policy deliberations, we circulated - in August / September 2016 - questionnaires to the offshore hydrocarbon and onshore pipe-line sectors which:

(i) outlined the Department's proposals for transposing the 2014 Directive via amendments to the existing legislative frameworks; and

(ii) sought views on what the likely costs to industry would be as a result of complying with the amended / new requirements.

We received thirteen responses from the offshore sector and one from the onshore sector to those questionnaires. The views expressed were considered when preparing the consultation document.

7. We consulted on proposals considered to represent the minimum changes necessary in order to bring the existing Production and Pipe-lines (EIA) Regulations into line with the amended EIA Directive. This would also minimise familiarisation costs and business uncertainty. A draft of the proposed Offshore Production and Pipe-lines (Environmental Impact Assessment) (Amendment) Regulations 2017 (hereinafter referred to as "the OPP (EIA) Regulations 2017" or "transposing Regulations" unless otherwise stated) were included in the consultation document. The text of the amended EIA Directive was 'copied-out' as far as practicable, but we proposed an alternative approach where this was considered more appropriate considering the text we were amending.

8. The consultation asked twenty-nine questions on the proposals for transposing the Articles of the amended EIA Directive as set out in the table below:

Definition of the environmental impact assessment process - Article 1(2)(g)	Question 1: Do you have any comments on, or concerns with, BEIS's approach to incorporating the definition of EIA (Article 1(2)(g)) into the existing regulatory regimes and our proposals for the transposition of Article 1(3)?
Exemptions: Defence and civil emergencies - Article 1(3)	
Coordinated procedures - Article 2(3)	Question 2: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Articles 2(3); 2(4) and 2(5)?
Exemptions: Public Consultation - Article 2(4)	
Exemptions: Public Consultation - Article 2(5)	Question 3: Do you agree with BEIS's view that the transposition of Articles 2(3); 2(4) and 2(5) should not result in any extra burdens / costs for the onshore pipe-lines sector?
	If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation



	document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.
The Assessment Process: Assessment Scope - Articles 3(1) & 3(2)	<p>Question 4: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Articles 3(1) and 3(2)?</p> <p>Question 5: Do you agree with BEIS's view that the transposition of Articles 3(1) and 3(2) could result in extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors?</p> <p>If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Determining whether environmental impact assessment is required (screening): Thresholds and criteria for screening - Article 4(3)	See questions relating to Articles 4(5) and 4(6).
Determining whether environmental impact assessment is required (screening): Information to be provided for screening - Article 4(4)	<p>Question 6: Do you have any comments on, or concerns with, BEIS's proposals relating to the transposition of Article 4(4)?</p> <p>Question 7: Do you agree with BEIS's view that the transposition of Article 4(4) could result in a combination of relatively small additional burdens / costs plus some eventual cost reductions for the offshore hydrocarbon and onshore pipe-line sectors?</p> <p>If you agree, please provide estimates in respect to your particular operational activities of: (a) the likely increased burdens / costs; and (b) any potential cost reductions that might eventually be accrued. This data will further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Determining whether environmental impact assessment is required (screening): Screening Determination - Article 4(5)	<p>Question 8: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Articles 4(3); 4(5) and 4(6)?</p> <p>Question 9: Do you agree with BEIS's view that the transposition of Articles 4(3); 4(5) and 4(6) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p>
Determining whether environmental impact assessment is required	If you disagree, please supply estimates of any related cost



(screening): Timeframe for screening - Article 4(6)	implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.
Information to be provided in an Environmental Statement: Minimum information requirements - Article 5(1)	<p>Question 10: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Article 5(1)?</p> <p>Question 11: Do you agree with BEIS's view that the transposition of Article 5(1) could result in a combination of relatively low additional burdens / costs plus some eventual cost reductions for the offshore hydrocarbon and onshore pipe-line sectors?</p> <p>If you agree, please provide estimates in respect to your particular operational activities of: (a) the likely increased burdens / costs; and (b) any potential cost reductions that might eventually be accrued. This data will further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Determining the scope and level of detail of the assessment (scoping) - Article 5(2)	<p>Question 12: Do you have any comments on, or concerns with, BEIS's proposals appertaining to the transposition of Articles 5(2) and 5(3)?</p> <p>Question 13: Do you agree with BEIS's view that the transposition of Articles 5(2) and 5(3) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p>
Competent experts - Article 5(3)	<p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Consultation: Consultation bodies - Article 6(1)	<p>Question 14: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Articles 6(1); 6(2) & 6(5) and 6(7)?</p>
Electronic communication - Article 6(2) and 6(5)	<p>Question 15: Do you agree with BEIS's view that the transposition of Articles 6(1); 6(2) & 6(5) and 6(7) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p>
Consultation timeframes - Article 6(7)	<p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis</p>



	(paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.
Projects likely to have significant effects on the environment in another Member State - Article 7(5)	<p>Question 16: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 7(5)?</p> <p>Question 17: Do you agree with BEIS's view that the transposition of Article 7(5) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p> <p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Taking into account in the consenting procedures the results of consultations and information gathered - Article 8	<p>Question 18: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 8?</p> <p>Question 19: Do you agree with BEIS's view that the transposition of Article 8 should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p> <p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Decisions: Information to be included in a decision - Article 8a(1)	See questions relating to Articles 8a(5) and 8a(6).
Decisions: Information to be included in a decision - Article 8a(2)	
Monitoring of significant environmental effects - Article 8a(4)	<p>Question 20: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 8a(4)?</p> <p>Question 21: Do you agree with BEIS's view that the transposition of Article 8a(4) could result in extra burdens / costs for the offshore hydrocarbons sector?</p> <p>If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the</p>



	<p>updating of the Department’s Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Decisions in a reasonable time period - Article 8a(5)	<p>Question 22: Do you have any comments on, or concerns with, BEIS’s proposals regarding the transposition of Articles 8a(1) & 8a(2); 8a(5) and 8a(6)?</p> <p>Question 23: Do you agree with BEIS’s view that the transposition of Articles 8a(1) & 8a(2); 8a(5) and 8a(6) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p> <p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department’s Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Up-to-date reasoned conclusion - Article 8a(6)	
Informing the public of the decision - Article 9(1)	<p>Question 24: Do you have any comments on, or concerns with, BEIS’s proposals regarding the transposition of Article 9(1)?</p> <p>Question 25: Do you agree with BEIS’s view that the transposition of Article 9(1) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?</p> <p>If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department’s Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.</p>
Other issues: Conflicts of interest - Article 9a	<p>Question 26: Do you have any comments on, or concerns with, BEIS’s position in relation to Articles 9a and 10a?</p>
Other issues: Penalties - Article 10a	
Exchanges of Information - Article 12(2)	<p>Question 27: Do you agree with BEIS’s view that Article 12(2) would result in extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors?</p> <p>If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department’s Costs and Benefits Analysis (paragraphs</p>



	80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.
Transitional Arrangements – Article 3 of Directive 2014/52/EU	Question 28: Do you have any comments on, or concerns with, BEIS’s proposals regarding the transposition of Article 3?
Costs and Benefits Analysis	<p>Question 29: We would welcome your feedback on the assumptions (e.g. salary costs and predicted numbers of applications to be submitted under the three scenarios between 2017 and 2026) and methods used to calculate the respective estimated costs / savings to the offshore hydrocarbon and onshore pipe-line sectors as a result of BEIS’s proposals for transposing the EIA Directive 2014/52/EU.</p> <p>The information provided would be useful for the purposes of updating the Department’s Costs and Benefits Analysis as part of the implementation process.</p>

Summary of responses to the consultation

9. There were ten responses to the consultation. Responses were received from developers, industry trade associations, statutory consultees, non-governmental organisations (NGOs) and other Government Departments / Agencies. Respondents addressed some or all of the questions set out in the consultation document, offered comments on the draft changes, and in some cases made specific suggestions for revised wording.

Response by type of respondent	Number of responses
Developer	3
Industry Trade Association	1
Statutory Consultee	3
NGO	1
Other Government Department / Agency	2

10. The consultation document (accessible from: <https://www.gov.uk/government/consultations/consultation-on-transposition-of-environmental-impact-assessment-directive-regulations-on-offshore-hydrocarbon-related-developments-and-on-pipe-lines>) gave a detailed explanation of the



changes to the Directive. That level of detail has largely been replicated in this paper for ease of reference.

11. This paper also uses the terms “developer(s)” and “project developer(s)” which should be taken to mean “undertaker(s)”; “gas transporter(s)” or “applicant(s)” as referred to in the existing Production and Pipe-lines (EIA) Regulations. In addition, this paper mirrors the running order of the 2014 Directive’s Articles and the related questions as set out in the consultation document - hence, consultees responses and the Government response will not, in all instances, be positioned directly beneath the questions relating to a specific Article. Therefore, where consultees responses and the Government response in respect to a particular Article appear under a subsequent Article, then this is appropriately signposted to the reader.

General comments / observations

12. General comments / observations were provided by three respondents and these, plus the Government responses, are outlined below.

(A) Guidance and Implementation Issues

13. One respondent welcomed the Government’s intention to update regulatory guidance on the implementation of the 2014 Directive and asked that the guidance be prioritised / issued at the earliest opportunity post 16 May 2017.
14. Another respondent raised these points:
- (i) Consulting on the legislative changes only, without the supporting regulatory guidance was unsatisfactory. Directive 2014/52/EU came into effect on 16 April 2014. Other than workload associated with other major changes in offshore HSE legislation it’s difficult to understand how / why a draft of the required regulatory guidance was not available to be included in the consultation. What was the regulator’s intention on consultation regarding the regulatory guidance required to support this?
 - (ii) What was the current regulators’ and Government’s view on the likelihood of the changes being retained post Brexit?
 - (iii) Article 3(1) - Were any of the factors material to offshore oil and gas operations?
 - (iv) Article 3(2) - Based on what definition of major accident and/or disaster? Are the definitions aligned with the likes of Safety Case Regulations 2015?
 - (v) Article 5(1) (plus Annex IV) - How much more data? What additional costs?
 - (vi) Article 7(5) - What did this mean in the context of:



- Projects near the median line?
- Projects it could reasonably be assumed, on the basis of the ES, that spills could beach in another country?

(vii) Article 12(2) - Will this impose any additional requirements on operators beyond existing reporting?

(B) Government response to Part (A)

(i) The Government's usual practice is to prepare regulatory guidance after Regulations have been finalised. As far as the 2014 Directive was concerned, the main priority was for the transposing Regulations to be laid before Parliament in April so that they could enter into force by the implementation deadline of 16 May 2017 - see point (ii) below. The regulators have now published revised guidance - see paragraph 212 under 'Next Steps'.

(ii) The transposing Regulations entered into force on 16 May 2017 (see paragraph 211 under 'Next Steps'). Although they implement an EU Directive, the Regulations take the form of a domestic Statutory Instrument, which will continue to apply after the UK exits the EU. Any future changes in the law would be subject to Parliamentary scrutiny.

(iii) It is expected that some of the factors in Article 3(1) to be considered by project developers would be relevant to the offshore hydrocarbons sector e.g. assessment of the risks of disasters etc. With regard to Article 3(2), relevant definitions are included in the revised regulatory guidance. See further details below under the Section relating to the transposition of Articles 3(1) and 3(2) on the 'Assessment process'.

(iv) On Article 5(1) (plus Annex IV), the extra data requirements are covered in the updated legislative guidance - see also the Section appertaining to Article 5(1) on 'Information to be provided in an Environmental Statement'. In respect of additional costs, these were included in the Analysis of Costs and Benefits contained in the consultation document. This topic is also further examined in the Section below on the 'Analysis of Costs and Benefits'.

(v) Relevant 'transboundary' aspects associated with Article 7(5) are featured in the revised regulatory guidance.

(vi) The estimated costs for the provision by project developers of data to meet the requirements of Article 12(2) was included in the Analysis of Costs and Benefits contained in the consultation document. This topic is also further examined in the Sections below concerning Article 12(2) on 'Exchanges of Information' and the 'Analysis of Costs and Benefits'.



(C) Other Activities, Monitoring, Protected Areas and Screening

15. One respondent made the following points:

(a) Assessment of Unconventional Gas Proposals

There were a number of uncertainties related to the assessment of unconventional gas proposals. Based on the respondent's review of the potential impacts of unconventional gas extraction and the immature status of the industry in the UK, they recommend that unconventional gas be included in Schedule 1 of the transposing Regulations so that an EIA was required for all proposals - including all onshore pipe-lines that were linked to fracking sites.

Furthermore proposals should be excluded from designated sites at the surface (including SSSIs, Special Protection Areas, Special Areas of Conservation and Ramsar sites). This would ensure that any environmental impacts are understood and incorporated into planning and decision-making. It would also help build public confidence that environmental concerns were being treated objectively in the planning process.

New research suggests that the licences awarded for onshore oil and gas in England lie in areas of higher than average ecological richness. Taking account of more than 5,500 species, across 11 taxonomic groups, higher than average biodiversity levels were found in almost two thirds of the areas earmarked for onshore oil and gas extraction, which could result in large amounts of fracking. The respondent was currently concerned that the existing environmental regulatory framework for fracking did not provide adequate protection for the natural environment, and therefore this biodiversity, and the habitats on which it depended, could be at severe risk if fracking goes ahead.

(b) Implementing Mitigation Measures

The requirement for developers to implement mitigation measures should be fully transposed and implemented. This requirement should be specifically referenced in the transposing Regulations. Guidance on how authorities take steps to ensure these requirements are met, together with appropriate resourcing, would be essential. The expected outcome of mitigation (and the party responsible for ensuring it was delivered) should also be included within development consents so remedial action can be taken if it has not had the desired effect.

(c) Ramsar Sites and National Nature Reserves

Ramsar sites and National Nature Reserves are included within the definition of 'sensitive areas' in the relevant draft Regulations and schedules (including revised Schedules to updated Annexes IIA and III of the Directive) and in the relevant interpretation schedules. Although Ramsar sites are also SSSIs and / or



SPAs or SACs there may be species and habitats within that Ramsar site listing that are not covered by the other protected sites.

(d) Third Party Screening

Procedures for Third Party Screening must be clarified and maintained. These were an important part of the EIA process.

(D) Government response to Part (C)

- (i)** It was not feasible to include unconventional gas operations in the Schedules to the OPP (EIA) Regulations 2017 as that would amount to 'gold-plating' which is against Government policy on the transposition of EU Directives. The transposing Regulations will apply to any future onshore pipe-lines which were linked to fracking operations on the basis that the legislative definition of 'gas' does not rule out 'shale gas'.
- (ii)** The licensing of onshore oil and gas activity falls within the remit of the Oil & Gas Authority. The EIA obligations relating to onshore hydrocarbon developments, including those involving fracking operations, would be covered by the relevant legislation implemented by other Government Departments such as the DCLG, and administered by other Government Departments or Agencies (e.g. the Environment Agency). Therefore, apart from any pipe-lines that may, in the future, be linked to onshore hydrocarbon developments, the application of the EIA process to such projects will not be addressed by the existing EIA consenting regimes as amended via the OPP (EIA) Regulations 2017.
- (ii)** In the Government's opinion the mitigation measures of the Directive are appropriately transposed and enforced by the OPP (EIA) Regulations - for example, regulation 5 incorporates a new definition of "appropriate particulars" into regulation 3 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended) ("the 1999 Offshore (EIA) Regulations") which now may also include "any features of the project or measures envisaged to avoid or otherwise prevent what might otherwise have been significant adverse effects" to be considered in the screening process. Also see further details below under the Section relating to the implementation of Article 8a(4) on the 'Monitoring of significant environmental effects'.
- (iv)** The OPP (EIA) Regulations 2017 include Ramsar sites within the definition of a sensitive area in regulation 2 of the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (as amended) ("the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations").
- (v)** On the issue of Third Party Screenings, the regulators will always consult relevant bodies, including the Statutory Nature Conservation Bodies, for views on all EIA applications. Note that the requirement to consult environmental



agencies in the 1999 Offshore (EIA) Regulations has been updated to include authorities with local or regional competence.

Definition of the environmental impact assessment process - Article 1(2)(g)

16. Article 1(2)(g) of the 2014 Directive introduces an explanation of the “environmental impact assessment process”. In the Government’s view, the explanation reflects existing practice in that:

(a) a project developer must, if required, prepare an Environmental Statement containing specified information on their proposed project; and

(b) there should be consultation on the application and the Environmental Statement prepared by or on behalf of the project developer, before the competent authority examines the relevant information and comes to a reasoned conclusion on the likely significant effects of the project on the environment and integrates that conclusion into their decision as to whether or not to grant consent.

17. The Government confirmed its intention to incorporate - via the OPP (EIA) Regulations 2017 – this explanation into the existing Production and Pipelines (EIA) Regulations. Views were sought on this proposal.

See consultees responses and the Government response in respect to Article 1(2)(g) below Question 1 under Article 1(3).

Exemptions - Article 1(3)

18. The EIA Directive allows for a limited number of exemptions from its requirements and 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, 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.

19. Although Article 1(3) was not mandatory and was unlikely to have direct relevance to projects in the offshore hydrocarbon and onshore pipe-line sectors, the Government stated that, in order to ensure full transposition of the 2014 Directive, it intended to incorporate - through the OPP (EIA) Regulations 2017 - the provisions on ‘Exemptions’ into the existing Production and Pipelines (EIA) Regulations. Views were sought on the planned implementation of this Article.

Question 1: Do you have any comments on, or concerns with, BEIS’s approach to incorporating the definition of EIA (Article 1(2)(g)) into the existing regulatory regimes and our proposals for the transposition of Article 1(3)?



Consultation responses on Articles 1(2)(g) and 1(3)

20. There were **three** responses relating to the transposition of **Article 1(2)(g)**.
21. One respondent welcomed the inclusion of the definition of EIA within the existing Production and Pipelines (EIA) Regulations.
22. Another respondent had no concerns in principle with the proposed approach to implementing the Article, but suggested that the term 'Environmental Statement' should ideally be changed to 'EIA Report' for consistency with other national legislation for transposing the Directive.
23. One respondent made a number of points as outlined below:
- The definition of EIA should be expanded such that the wider role and value of EIA was recognised - seeking to integrate the environment into all stages of development design and decision-making.
 - In referring to the 'reasoned conclusion', the draft transposing Regulations should be amended so it was clear that this related to the reasoned conclusion on the significant effects of the project on the environment.
 - In transposing the definition of EIA, a sentence should be added to recognise that all stages of EIAs should be prepared by competent experts and that the competent authority should ensure it had or had access to sufficient expertise to examine the EIA as a whole.
24. **Five** responses were submitted in connection with the implementation of **Article 1(3)**.
25. Three respondents supported the incorporation (via the OPP (EIA) Regulations 2017) of the provisions on 'Exemptions' into the existing Production and Pipelines (EIA) Regulations, but two of them recommended that a definition of 'civil emergency' should be provided to make it clear what circumstances would equate to a civil emergency. Another respondent queried the extent to which derogations would apply under the consenting regimes once the OPP (EIA) Regulations 2017 entered into force on 16 May 2017.
26. One respondent did not support the implementation of Article 1(3) and questioned the need for it on the basis that it was not mandatory and was considered not to have direct relevance to projects in the offshore hydrocarbon and onshore pipe-line sectors. Recognising the Government's proposals appertaining to the transposition of Article 1(3), the respondent raised a number of additional issues which are detailed below:
- (i) If exemptions are to be brought forward it would be essential that they were only applied when the EIA process would have a demonstrable adverse effect



on defence or the response to a civil emergency and not used as a blanket exemption for those types of projects. Any exemption must: be considered on a case by case basis; be an exemption provided under national law; and only be applied when the EIA process would have an adverse effect on the purposes of a project (the circumstances under which an exemption could be applied should also be made clear in the transposing Regulations).

(ii) If the Government was minded to make these exemptions then accompanying guidance should provide examples of the types of projects which are likely to be deemed 'national defence' and 'civil emergency' projects and confirm that no additional project exemptions were expected (i.e. other than defence and civil emergencies). Guidance should clarify what would be considered a 'demonstrable adverse effect' on a project.

(iii) Provision should be made in the transposing Regulations for: retrospective assessment (if required); the provision of mitigation measures; and assessment information to be made publically available.

Government response on Articles 1(2)(g) and 1(3)

27. The Government welcomed all the responses received and the general support for the incorporation - via the OPP (EIA) Regulations 2017 - of the 'EIA definition' and provisions on 'exemptions' into the existing Production and Pipe-lines (EIA) Regulations.

28. Having considered the responses, the Government would like to confirm the following:

- (a)** In respect to the transposition of Article 1(2)(g) it was decided not to change the term 'Environmental Statement (ES)' to 'EIA Report' as the industrial sectors covered by the transposing Regulations (see paragraph 211 under 'Next Steps') are familiar with the current terminology. Given that the respective national implementing legislation utilises broadly similar definitions (albeit that in some instances 'EIA Report' is used as opposed to 'ES'), and the fact that the associated regulatory guidance (see paragraph 212 under 'Next Steps') provides further clarity along the same lines, the Government did not perceive that any confusion between different industry stakeholders would arise.
- (b)** For the purposes of translation into the existing Production and Pipe-lines (EIA) Regulations the definition of EIA in the OPP (EIA) Regulations 2017 is not, strictly speaking, 'copy out' but is, nonetheless, based clearly on the definition in the 2014 Directive. As legislation does not seek to set out policy concepts it would not be appropriate to expand on the proposed definition as recommended by one of the consultation respondents. It was also not possible to add a sentence to recognise that all stages of the EIA process should be prepared and assessed by competent experts as that would constitute 'gold-plating' which is against Government policy on the transposition of EU legislation. However, the



Government has provided additional advice (as apposite) appertaining to the EIA process in the revised regulatory guidance.

- (c) The transposing Regulations make it clear that the ‘reasoned conclusion’ relates to the reasoned conclusion on the significant effects of a project on the environment (i.e. regulation 5A(1)(b) and 11(7A)(b) of the 1999 Offshore (EIA) Regulations, regulation 14(1)(d) (as amended) of the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and regulation 3(2)(c) of the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (as amended) (“the 2000 Pipe-line Works (EIA) Regulations”).
- (d) The Government took the decision to transpose Article 1(3) in order to implement the 2014 Directive as fully as practical and thus avoid any potential criticisms from EU institutions and / or other stakeholders.
- (e) The exemptions provisions in the transposing Regulations make it clear that the defence / civil emergency exemption could only be used where, in the opinion of the Secretary of State, compliance would have an adverse effect on a project which had defence or civil emergency as its sole purpose (for example, see the amendments to regulation 13 of the 1999 Offshore (EIA) Regulations).
- (f) Aspects relating to the exemption of relevant projects and what would equate to a ‘civil emergency (Article 1(3))’ are further elaborated upon in the revised regulatory guidance, but it should be borne in mind that the exemption is unlikely to have any direct relevance to projects in the offshore hydrocarbon and onshore pipe-line sectors.

Coordinated procedure - Article 2(3)

29. A new requirement has been introduced at Article 2(3) of the Directive. In the case of projects for which there is an obligation to carry out an assessment under the EIA Directive and also under the Habitats and / or Wild Birds Directives, the EIA 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.
30. The Government considered that the coordinated procedure provided the greatest flexibility for developers around the phasing and timing of environmental impact assessment and an ‘appropriate assessment’ under the Habitats or Wild Birds Directives, bearing in mind that the environmental impact assessment is the responsibility of the developer and the appropriate assessment is the responsibility of the regulator. Information to inform both assessments would nevertheless be expected to be included in the developer’s assessment.



31. The Government highlighted the fact that at present consents for projects under the existing Production and Pipelines (EIA) Regulations were granted only after consideration by various Statutory Advisors / environmental authorities / consultation bodies and proposals were also subject to assessments undertaken in accordance with other EU legislation (e.g. the Industrial Emissions Directive). The Government therefore confirmed that it intended to continue applying the coordinated procedure which would formally be transposed into the existing Regulations through the OPP (EIA) Regulations 2017. The Government was also of the opinion that the proposed implementation of Article 2(3) should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on these transposition aspects.

See consultees responses and the Government response in respect to Article 2(3) below Questions 2 and 3 under Article 2(5).

Exemptions - Articles 2(4) and 2(5)

32. Article 2(4) introduces provisions for exempting, in exceptional circumstances, specific projects from the Directive's obligations where the application of those obligations would adversely affect the purpose of projects.

33. Article 2(5) introduces provisions whereby projects adopted by specific acts of national legislation may be exempted from the Directive's public consultation requirements.

34. The Government explained that Article 2(4) would be largely met by the existing exemption provisions in the 1999 Offshore (EIA) Regulations . However, the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and the 2000 Pipe-line Works (EIA) Regulations currently made no such provision. Accordingly, the OPP (EIA) Regulations 2017 would fully transpose the obligations of this Article. The Government also believed that the implementation of Article 2(4) should not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

35. The Government stated that Article 2(5) had no relevance to offshore hydrocarbon-related projects so no changes in this respect were required to the 1999 Offshore EIA Regulations. Nevertheless, the Government pointed out that the Article could be of relevance to onshore pipe-line projects and consequently it would be transposed into both of the other instruments.

36. Views were sought on the proposed implementation of Articles 2(4) and 2(5).

Question 2: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Articles 2(3); 2(4) and 2(5)?

Question 3: Do you agree with BEIS's view that the transposition of Articles 2(3); 2(4) and 2(5) should not result in any extra burdens / costs for the onshore pipe-



lines sector?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Articles 2(3), 2(4) and 2(5)

37. **Six** responses were received in respect to the Government's approach to implementing **Articles 2(3), 2(4) and 2(5)**.
38. One respondent did not agree that the coordinated approach was the best option and cited these reasons for this viewpoint:
- (i) The coordinated approach had, at times, been challenging from a Statutory Nature Conservation Body (SNCB) perspective as there can be a disparity between consent granted under the EIA Directive, and a requirement for further assessment to be conducted to fulfil the requirements of the Habitats Directive (92/43/EEC) or the Wild Birds Directive (Directive 2009/147/EC). Ensuring all the necessary environmental assessments were considered at once, would make the consultation process more cost effective, reduce the amount of staff time used and improve review quality.
 - (ii) If all environmental information could be assessed at the same time, it would be easier to understand how impact statements made in Environmental Statements related to impact statements concluded from a Habitats Regulations Assessment (HRA) or an informal assessment procedure covering potential impacts on a Nature Conservation Marine Protected Area (NCMPA) or a Marine Conservation Zone (MCZ). Having a joint procedure would also help align evidence gathering and analysis and ensure that all evidence necessary was presented in one consultation.
 - (iii) Nonetheless, acknowledging the favoured transposition proposals, the respondent stated that if the Government continued to opt for a coordinated procedure, then it was recommended that:
 - developers should be encouraged to submit applications for consultation only once all survey information was available and had been analysed; and
 - best practice should be that timings for Environmental Statements (or other documentation required under Directive 2014/52/EU) and reports based on environmental information required under other legislation are coordinated to allow best assessment of the full evidence available.
39. Another respondent had no concerns about which mechanism was used but, echoing the issues covered in the paragraph above, requested that all the



information required to consider / assess the impacts which may arise from a development be made available at the same time (e.g. the Environmental Statement and any HRA information), as this would enable SNCBs to fully understand the environmental implications of the proposal and provide advice accordingly to all relevant Regulators at the most appropriate time (thereby minimising delays to developers).

40. Three respondents strongly supported the use of the coordinated procedure - citing these reasons:

(a) The promotion of the co-ordinated procedure was the best way of implementing the Directive's aims of reducing regulatory burden and simplifying the consultation process. Whilst often overlapping, EIA and Habitats Regulation Assessment (HRA) ultimately served different purposes. The two different processes reflected the different legislative requirements. Combining the two processes risked the individual standards being incorrectly applied and the outputs being misinterpreted.

(b) It was also doubtful that the joint procedure would allow for the necessary legal screening processes for EIA and HRA legislative purposes. Notwithstanding these factors, there was the possibility for EIA and HRA assessments to make use of common data with potential for cost savings and streamlining of the overall evidence base.

One of the three respondents also suggested that for onshore and coastal projects, the principle of effective coordinated assessments could be extended to include those required to ensure projects comply with the Water Framework Directive.

41. The consensus among a few of the six respondents was that guidance would be essential to help competent authorities coordinate EIA and HRA processes and ensure compliance with both procedures. It was advocated that updated guidance should also clarify who should be the lead authority in situations where an EIA fell under more than one Planning Authority or where more than one authority was involved in granting permission for a proposed project. In this regard, it was felt essential that the coordinating body had access to expertise of relevance to both EIA and HRA and that these facets should be set out in the transposing Regulations and provided for in practice.

42. One of the respondents agreed with the assumption that the implementation of Articles 2(3), 2(4) and 2(5) should not result in any extra burdens / costs for the onshore pipe-lines sector.

43. With respect to Articles 2(4) and 2(5), one of the respondents who strongly supported the coordinated procedure confirmed they were very concerned that such exemptions might be used as blanket exemptions from EIA and could therefore, not support the implementation proposals for those particular Articles without further clarification as to their purpose.



Government response on Articles 2(3), 2(4) and 2(5)

44. The Government appreciated all the responses submitted and the majority support shown for the proposal to continue using the coordinated procedure for assessments.
45. Following an evaluation of the consultation responses, the Government wishes to make these points:
- (i) Based on the level of support provided by virtually all respondents, the coordinated procedure has been maintained for assessments conducted under the consenting regimes appertaining to offshore hydrocarbon-related developments (including pipe-lines) and onshore pipe-line projects. As recommended, the revised regulatory guidance includes sufficient information to assist the developers, regulators and other interested parties (e.g. SNCBs) with the coordination of assessments under the EIA and other legislative processes (e.g. HRA processes etc.)
 - (ii) As a matter of policy, the Government has transposed all the exemptions available in the Directive but such exemptions would only be applied as / when considered appropriate (i.e. 'blanket exemptions' would not apply across the board). Therefore, the provisions of Article 2(4) have been implemented into all three instruments and Article 2(5) has been implemented into the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and the 2000 Pipe-line Works (EIA) Regulations through the OPP (EIA) Regulations 2017.

Assessment process - Articles 3(1) and 3(2)

46. Article 3(1) sets out the broad requirements of the EIA process and the environmental factors to be considered, as appropriate, in the assessment and the interaction between those factors. It clarifies that the EIA should only be assessing **significant** effects of the project on the environment. The Article also amends some of the terminology used. For example, the term "human beings" has been replaced by "population and human health" and "flora and fauna" with the term "biodiversity".
47. Article 3(2) 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.
48. The Government confirmed that under the existing Production and Pipe-lines (EIA) Regulations, applications for consent from project developers were already required to address the potential impacts of planned developments on most of the environmental factors listed in Article 3(1) and the elements in Article 3(2) concerning the vulnerability of developments to the risk of major accidents (e.g. those that could realistically occur during operational activities). To effect proper transposition, the Government indicated that it proposed to implement these Articles



Department for
Business, Energy
& Industrial Strategy

as legislative amendments to the existing Production and Pipe-lines (EIA) Regulations through the OPP (EIA) Regulations 2017. The Government also stated that it was probable that some of the factors to be assessed (e.g. effects on populations and human health and the vulnerability of projects to major disasters) could result in extra burdens / costs for the offshore hydrocarbon and onshore pipe-lines sectors.

49. The Government additionally mentioned that in order to assist project developers with the obligations of Articles 3(1) and 3(2) it would update regulatory guidance so as to provide clear advice on the sort of information / level of detail that should ideally be covered in future submissions for development consents. Views were sought on the transposition elements relating to Articles 3(1) and 3(2).

Question 4: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Articles 3(1) and 3(2)?

Question 5: Do you agree with BEIS's view that the transposition of Articles 3(1) and 3(2) could result in extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors?

If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Articles 3(1) and 3(2)

50. **Seven** responses were received on the Government's plans to implement **Articles 3(1) and 3(2)**.
51. One respondent welcomed that the majority of Articles 3(1) and 3(2) were being directly transposed into the existing Production and Pipe-lines (EIA) Regulations via the OPP (EIA) Regulations 2017. Notwithstanding this, the respondent questioned why it appeared that Article 3(2) had been expanded beyond the needs of the Directive to focus on operational effects of the project and recommended the Government should satisfy itself that the proposed legislative text still allowed the transposition to adequately cover major accidents that may arise from developments.

The respondent also said that they were not in a position to provide comments on how the implementation of Articles 3(1) and 3(2) could alter costs for the offshore hydrocarbon and onshore pipe-line sectors. However, the respondent mentioned that if the transposition of those Articles led to an increase in consultation materials, or an increase in the amount of time it would take SNCBs to review the consultation materials, then this could lead to an increase in consultation cost which might indirectly be passed onto to industry.



52. Another respondent supported the proposal to increase the emphasis on significant effects, which it considered would lead to more proportionate assessments. The respondent mentioned that it was working on a project to develop a smarter approach to scoping and EIA for the offshore wind sector. The respondent believed that this should help reduce the scale / volume of some Environmental Statements thereby ensuring attention was focussed on the important potential effects and that repetition was avoided. If successful, the respondent was of the view that it may be a model which could be rolled out to other sectors.

53. One of the respondents referred to above plus **two** others, noted that regulatory guidance would be updated to provide developers with clear advice on the sort of information / level of detail that should ideally be covered in future development consent applications. These respondents confirmed that they would be happy to provide advice on the content of the updated guidance.

54. Two respondents underlined the importance of revised guidance. One of these respondents identified that Articles 3(1) and 3(2) represented a change of emphasis from consideration of 'effects' to direct and in-direct significant effects within the Environmental Impact Assessment (EIA) and introduced new factors to be considered - namely 'population and human health', 'biodiversity and material assets', 'cultural assets and the landscape' and the requirement to consider effects from 'disasters'. This respondent consequently stressed that it would be greatly appreciated if the updated guidance included:

- further definitions of 'significance' and what constituted a 'disaster';
- clarification of the factor 'human health' (although, it was assumed that this meant public health and not worker health and safety which was covered by other pieces of legislation); and
- further explanation on the 'probability of impact' ('probability' was perceived to be a mathematical term and difficult to quantify in regard to a number of the potentially significant impacts).

55. One respondent did not agree with the assumption that it was 'probable' that some of the factors to be assessed could result in extra burdens / costs on industry, as they could not, based on current industrial practices, envisage any credible examples of effects on populations and human health and the vulnerability of projects to (major) disasters which would result in extra administrative or financial burdens. The respondent further implied that additional resource implications would only occur if the updated regulatory guidance was particularly over stringent and that without knowing, at this stage, what the guidance would say it was not feasible to provide meaningful estimates.

Government response on Articles 3(1) and 3(2)

56. The Government was grateful for the responses received in respect to the proposed transposition of Articles 3(1) and 3(2).



57. Having examined the responses, the Government would like to confirm the following:

- (a)** The transposition of Article 3(2) includes the ‘operational effects of a relevant project (where the project will have operational effects)’. The extra wording has been inserted into the OPP (EIA) Regulations 2017 to make it clear that Article 3(2) is fully implemented (whereas before administrative arrangements were relied on for its implementation) and will require assessments of the possible operational effects as well as other potential impacts of a project.
- (b)** The Government has in place three-year Service Level Agreements (SLAs) for the provision of advice on EIA applications and, as at present, any adjustments to the financial arrangements under those SLAs would not be passed directly on to industry.
- (c)** The updated regulatory guidance provides project developers with advice on the full range of details that should be included in future consent applications to meet the requirements in Articles 3(1) and 3(2). As requested by some respondents, the guidance includes references to ‘significance’ and the ‘probability of impact’, examples of what would constitute a relevant ‘disaster’ and acknowledgement of the fact that ‘human health’ relates to public health and not worker health and safety which is subject to the obligations of other national legislation.
- (d)** The Government would like to thank those respondents who kindly offered to provide advice on the content of the updated guidance. All interested / relevant parties were notified when the revised guidance was published and any comments received will be taken into account when drafting subsequent versions of the guidance. If necessary, the regulators could also arrange meetings with relevant stakeholders to discuss issues relating to the guidance.
- (e)** The Government would be interested in the conclusions of the project to develop a smarter approach to scoping and EIA for the offshore wind sector, so as to determine whether the model would have application for other sectors.
- (f)** The Government noted the views expressed on the potential extra burdens / costs for industry resulting from the implementation of Articles 3(1) and 3(2). As the revised guidance does not include any measures that go beyond the obligations of the Directive, and based on the fact that most of the provisions were covered by the extant Production and Pipe-lines (EIA) Regulations, it would seem reasonable to conclude that any additional burdens (administrative and / or financial) that would arise from the transposition of the 2014 Directive would be comparatively small.



Determining whether an environmental impact assessment (including the need to prepare an Environmental Statement) is required (screening) - Articles 4(3) to 4(6)

Article 4(3)

58. Article 4(3) of the 2014 Directive requires the relevant selection criteria in the revised Annex III to be taken into account where Annex II projects are assessed on either a case-by-case basis or where thresholds or criteria have been set.

59. The Government's view was that this Article would be effectively met by the provisions in the existing Production and Pipelines (EIA) Regulations. Nonetheless, to effect appropriate transposition, the Government explained that the OPP (EIA) Regulations 2017 would include some modifications to the existing Regulations to reflect the revised text in Article 4(3), the new Annex IIA (information to be provided by the developer – transposed as “the appropriate particulars”) and the updated Annex III (selection criteria to determine whether the projects listed in Annex II should be subject to an environmental impact assessment). The Government also said that the implementation of Article 4(3) should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the proposed implementation of Article 4(3).

See consultees responses and the Government response in respect to Article 4(3) below Questions 8 and 9 under Article 4(6).

Article 4(4)

60. Article 4(4) aims to standardise the type of information to be provided by a developer when asking the competent authority to screen a proposal. The information to be provided is set out in a new Annex IIA to the EIA Directive. The intention is that this will help focus environmental impact assessment on those cases where there really is a likelihood of significant effects. It describes the information to be provided by a developer taking into account the available results of other relevant assessments.

61. The Article clarifies that a project developer may provide a description of any features and mitigation measures of the project envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

62. In the Government's opinion, as Article 4(4) was new it would need to be transposed by the OPP (EIA) Regulations 2017. The Government considered that while the provisions of Article 4(4) would result in some relatively small additional burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors due to



Department for
Business, Energy
& Industrial Strategy

the extra information which project developers would be required to cover when preparing consent applications for Annex II projects, there was also the possibility of eventual cost reductions as the identification of any envisaged measures to mitigate potential significant adverse environmental impacts could simplify and expedite the EIA process.

Question 6: Do you have any comments on, or concerns with, BEIS's proposals relating to the transposition of Article 4(4)?

Question 7: Do you agree with BEIS's view that the transposition of Article 4(4) could result in a combination of relatively small additional burdens / costs plus some eventual cost reductions for the offshore hydrocarbon and onshore pipeline sectors?

If you agree, please provide estimates in respect to your particular operational activities of: (a) the likely increased burdens / costs; and (b) any potential cost reductions that might eventually be accrued. This data will further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 4(4)

63. **Five** responses were submitted on the Government's proposals to transpose **Article 4(4)**.

64. One respondent noted that the transposition of Article 4(4) required the developer to take into account, where relevant, the results of other assessments when undertaking screening. As assessments required under other legislation were currently carried out by the regulator after screening (for example the completion of a likely significant effects assessment), the respondent queried if there were plans to amend existing legislative practice so that information from other assessments was available to consider alongside that required under the EIA Directive.

The respondent also acknowledged that Article 4(4) and its transposition through the OPP (EIA) Regulations 2017 gave a project developer the opportunity to provide mitigation measures for potential effects on the environment. The respondent supported the increased consideration of mitigation, but pointed out that the transposing Regulations did not seem to require those mitigation measures to be included within the licence conditions and therefore they were not integral to the project design. The respondent said they would welcome discussions with the regulators to further understand the linkage between mitigation proposed by project developers, mitigation incorporated into marine licences and the justification provided for granting / withholding consent, and moreover, how mitigation would be agreed by consultees in situations where there was no need for a full Environmental Statement.

65. Another respondent felt that it would be very helpful if the updated regulatory guidance on the OPP (EIA) Regulations 2017 clarified which Annex II projects



would undergo a determination by the regulator and the type and level of information that would be expected from a project developer. The respondent stated that it would also be useful if the screening criteria used and the process to be undertaken within the regulatory consenting procedures were transparent to facilitate industry compliance with the process.

66. One respondent supplied a range of comments as described below:

(i) Application of Annex III Criteria

The relevant Schedules had been updated to implement the revised Annex III criteria. These should be amended so that under 'Characteristics of the relevant pipe-line works' reference is made to 'the size and design of the WHOLE project...' [1a] and the cumulation WITH OTHER EXISTING AND / OR APPROVED PROJECTS.

(ii) Inclusion of Mitigation as Part of Screening / Transposition of Annex IIA

There were concerns that authorities, regulators and statutory agencies were under-resourced and did not have adequate access to professional ecological expertise to support the extra screening requirements. As SNCBs took a proportionate approach to commenting on EIAs and in recognition of the intention to front-load the screening process, statutory agencies should be tasked with a new duty to comment on EIAs in full (including the provision of pre-screening advice).

Provision should also be made in the transposing Regulations to ensure that screening information was prepared by competent experts and that regulatory authorities had access to competent experts at the screening stage. The respondent additionally requested the opportunity to be consulted at the screening stage where biodiversity interests might be affected.

The respondent confirmed that they were concerned about the reliance on mitigation to inform screening decisions. Firstly, the detail of projects and mitigation measures were not generally well developed at the screening stage and a detailed assessment of effects would not take place until much later. Consequently, it was difficult to make an informed opinion on all likely significant effects and what mitigation may be required. Secondly, proposed mitigation could be new and untested leading to concerns over whether judgements on likely significant effects (and hence whether or not EIA was required) could be relied upon.

The respondent therefore recommended that untested or new mitigation measures should not be relied upon to inform screening decisions. If mitigation measures were relied upon for the screening decision then they must be clear, known to be effective and enforceable and be put forward in accordance with the mitigation hierarchy (proposals to offset / compensate were not acceptable at the screening stage). Mitigation measures and / or any amendments to



projects must become part of the project and / or be included within planning conditions. For certainty, the need for mitigation measures to be legally and financially secured should be included within the transposing Regulations.

Where a project had been screened out of the EIA process on the basis of mitigation measures, the proposal should be revisited and scrutinised, including on submission of the planning application, to ensure the principle project details remained the same (including any mitigation measures put forward). If they were not, then the application should not be accepted and the application should be required to go through a revised screening exercise before being allowed to proceed. The implementing Regulations should stress the importance of early re-screening should the project change, to provide opportunity for iterative mitigation and design to be integrated into the process. Ideally, each of these recommendations must be made clear in the transposing Regulations, or at least in updated legislative guidance.

If there was any uncertainty over screening (and thus additional time or information was required) then the default position must be that a full EIA process (i.e. Environmental Statement) would be required. In essence, this meant that in cases where the full EIA process might apply, the judgement as to whether this was required should be applied on a precautionary basis with a likely significant effect assumed unless it could be categorically ruled out. This would enable detailed design and mitigation to be developed and consulted on as part of the full EIA process.

The objective of the screening process should be to focus on the likely significant effects of a project with a view to delivery of more proportionate development consent applications rather than leading to fewer projects being taken through the EIA process. The respondent strongly recommended that supporting guidance was provided, particularly for screening.

In transposing Annex IIA (Information to be provided by developers on the projects listed in Annex II), the description of the physical characteristics of the project should include reference to the WHOLE project.

In order to comply with Articles 6(2) and 6(5) of the Directive (see details further below), the respondent recommended that the screening determination be made available to the public electronically.

67. One of the respondents agreed with the assumption regarding possible additional burdens / costs for some projects as a result of meeting the obligations of Article 4(4), although they were unable to provide any meaningful estimates of additional burdens without a better understanding in the absence of revised regulatory guidance. The respondent was also very dubious about any eventual cost reductions.



Government response on Article 4(4)

68. The Government evaluated the responses on the proposed implementation of Article 4(4) and would like to make these points:

- (a)** As helpfully recommended by one of the respondents, the relevant Schedules and provisions in the OPP (EIA) Regulations 2017 were updated to fully implement the criteria in Annexes IIA and III.
- (b)** The transposing Regulations require screening determinations to be made available to the public electronically (i.e. regulation 6(11) of the 1999 Offshore (EIA) Regulations; and regulation 8 (as amended) of the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations; and regulation 4(8) of the 2000 Pipe-line Works (EIA) Regulations).
- (c)** The Government noted the views about regulators and SNCBs being under-resourced and not having access to professional ecological expertise to support the additional screening requirements. However, the Government is of the view that regulators currently deal with EIA applications in an effective manner and that the SNCBs presently provide pertinent and helpful advice on such applications to facilitate the regulatory decision-making process. We would also point out that, in the case of the offshore hydrocarbons sector, the environmental regulator has access to a team of in-house technical specialists, and funds external bodies involved in the consultation on applications to ensure that critical stakeholders with appropriate expertise are adequately resourced. As the new / revised requirements are not expected to significantly increase the amount of information to be contained in future applications, we would therefore suggest that it is unlikely that the amended requirements will result in a major strain on the resources of regulators or SNCBs. Nonetheless, if there was an unacceptable impact, it is likely that arrangements would be put in place to source any supplemental resources that might be required to enable the EIA regulatory regimes to continue functioning efficiently / effectively.

With regard to the need for the transposing Regulations to ensure that screening information is prepared by competent experts and that regulatory authorities have access to competent experts at that stage, the transposing Regulations include suitable provisions concerning both parties' use of competent experts - see Government Response to consultees comments on the transposition of Article 5(3) below.

- (d)** On the basis that valid information relating to EIA applications is made publicly available, it is the Government's belief that all interested parties will have adequate opportunities to submit opinions to regulators at various stages of the EIA process.
- (e)** The Government agrees with the comments made about not relying solely on untested mitigation measures to inform screening decisions. The Government



also concurs with the other points made about the suitability of any mitigation methods which may be used to inform screening decisions and the need for mitigation measures to form part of the approval of a project and be a feature of the development consents (see item (g) below).

Should any uncertainties exist during the screening of a project then the regulator would liaise with the project developer to obtain extra information so that proper / justifiable decisions could be reached as to whether or not an Environmental Statement (ES) should be prepared / submitted for the project.

- (f) The Government would also like to make it clear that information relating to assessments that are carried out under national regulatory frameworks which transpose the obligations of other EU legislation (e.g. Strategic Environmental Assessments, Habitats Regulations Assessments and the Industrial Emissions Directive) would feed into the EIA process and final approval process - see the new definition of “appropriate particulars” in the OPP (EIA) Regulations 2017 which includes this requirement.
- (g) It is the Government’s contention that the transposing Regulations sufficiently address all aspects associated with the use of relevant information (e.g. appertaining to mitigation measures and assessments conducted in accordance with the requirements of other EU legislation) to inform screening decisions. The revised guidance also covers these elements.

The regulators would be happy to hold meetings with industry, SNCBs and other stakeholders to discuss issues concerning the transposing Regulations and associated guidance.

- (h) As the future focus of the EIA process will be on the significant effects of projects, the Government concurs with the view that this should, at least, lead to the preparation of more proportionate ESs (where required) in support of applications for consent. However, the Government would like to stress that it is committed to the principles of the EIA process and that there will be no scope for project applications to circumvent any of the relevant requirements of the EIA regimes.

Articles 4(5) and 4(6)

69. The main addition in Article 4(5) is that the screening decision must be based on information provided by a project developer and that the competent authority must give reasons justifying its decision. The screening decision must also be made available to the public. Furthermore, when considering the information provided by the project developer, the competent authority, as now, must take into account the criteria listed in Annex III of the EIA Directive. The criteria in Annex III have also been amended, largely to provide more clarity about the various issues to be considered.



70. Article 4(6) sets a maximum timeframe for the competent authority to provide a screening decision. This decision, known as the determination, must be made as soon as possible and within a period 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.

71. The Government indicated that there were already provisions in the existing Production and Pipelines (EIA) Regulations to assess applications on a case-by-case basis and to subsequently advise developers whether the full EIA process should apply (i.e. if an Environment Statement was required). Information about applications was also made available via either the GOV-UK or Planning Inspectorate (PINS) websites, and notices were also published on the abovementioned websites relating to decisions on applications - for example, the publication of notices confirming that no Environmental Statement needs to be prepared in relation to a particular project. Nevertheless, to effect proper transposition, the Government stated that the OPP (EIA) Regulations 2017 would include some modifications to the existing Regulations to fully reflect the requirements of Article 4(5). The Government also believed that the implementation of this Article should not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

72. With regard to Article 4(6), in the Government's opinion the main provisions were adequately covered under the existing Production and Pipelines (EIA) Regulations and, in the majority of cases, the regulators would aim to provide decisions as promptly as possible so as to minimise delay (and related costs) for project developers. However, the Government advised that to effect correct transposition, the provisions of Article 4(6) would be included in the OPP (EIA) Regulations 2017. It was also the Government's view that the transposition of Article 4(6) should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

73. Views were sought on the proposed approach to the implementation of Articles 4(5) and 4(6).

Question 8: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Articles 4(3); 4(5) and 4(6)?

Question 9: Do you agree with BEIS's view that the transposition of Articles 4(3); 4(5) and 4(6) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.



Consultation responses on Articles 4(3), 4(5) and 4(6)

74. **Seven** responses were received relating to the transposition of **Articles 4(3), 4(5) and 4(6)**.

75. One respondent appreciated that front-loading the decision-making process should ensure that only those projects which were deemed to have significant effects on the environment would be required to complete an Environmental Statement. The respondent wished to highlight that they often saw extra survey evidence collected after screening to inform impact decisions, and as such project developers might not always have enough environmental information to fulfil the transposed screening requirements. The respondent said that they would expect the regulators (or any relevant guidance produced) to encourage developers to engage with SNCBs early in this process. The respondent suggested that any screening should also consider nationally designated sites e.g. Nature Conservation Marine Protected Areas (NCMPAs) and Marine Conservation Zones (MCZs).

The respondent also:

- stated that they would welcome further discussion with the regulators on how best to adequately consider assessments against the conservative objectives of MPAs within the screening process;
- recommended that the Articles be transposed using wording / terminology appropriate to the EIA process, rather than that relevant to the HRA process, in order to reduce any confusion between the legal needs of the two processes; and
- noted that screening consultations would be allowed up to 90 days and that this approach was not consistent with the maximum of 30 days for consultations on full EIA applications (i.e. involving the preparation of Environmental Statements).

76. The above respondent plus **two** others indicated that they would appreciate some clarification about the new provisions in the OPP (EIA) Regulations 2017 which indicated that where the Secretary of State considers that a relevant project is highly likely to have a significant effect on the environment given the environmental sensitivity of the location of the project, the Secretary of State may direct that no application may be made for a direction that no Environmental Statement need be prepared for the project, and that an Environmental Statement would be required before the Secretary of State could agree to grant consent in respect to the project. In this context, the respondents wondered whether this prejudiced conclusions resulting from the current obligations whereby direction applications could not be submitted for projects which met / exceeded the thresholds concerning developments for which Environmental Statements were a mandatory requirement.

77. One of the three respondents referred to in the paragraph above thought that the transposing Regulations should be clear on how items (a) and (b) of Article 4(5)



would be implemented (i.e. stating the reason or not for determining whether EIA is required with reference to the criteria listed in Annex III). The same respondent was of the opinion that the transposing Regulations needed to be clear that the 90 day screening decision timeline would begin once a developer had submitted all the information required. The respondent also suggested that there needed to be provision in the transposing Regulations enabling a regulator to extend the determination period in exceptional circumstances.

78. Another respondent stated that they had significant concerns about any proposals to increase the maximum timeframe for screening decisions to a period not exceeding 90 days, which was significantly longer than the current requirement for a screening determination to be made for a proposed pipe-line project within 4 weeks subject to prescribed criteria. The respondent was of the view that the change would significantly increase the period of uncertainty about which consents regime applied (which affected forecast project costs and commissioning dates) for customer connections and network reinforcement projects. The respondent also believed the additional time period might result in undue delays to critical path deliverables and associated costs. The respondent raised another particular concern relating to the use of the wording “as soon as possible after” in the draft transposing Regulations, as they did not feel it offered enough clarity and focus on all relevant parties to ensure timely decisions were made and issued.
79. One respondent felt that the timeframes for the provision of screening decisions should be consistent across national EIA regulatory frameworks, especially where transboundary projects were concerned.
80. Another respondent provided the following comments / observations on the 90 days timeframe for the provision of screening decisions:
- (i) Screening decisions should be based upon sufficient information to identify whether or not significant environmental impacts may arise – this could depend on the location and complexity of the proposal. Updated regulatory guidance showing the minimum information requirements to inform screening decisions (possibly in the nature of a flowchart) would be useful.
 - (ii) Given recent environmental designations in the marine environment, consideration should also be given to national levels of designations including Marine Protected Areas (MPAs) in Scotland.
81. One respondent agreed with the assumption that the transposition of Articles 4(3), 4(5) and 4(6) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors.

Government response on Articles 4(3), 4(5) and 4(6)

82. The Government welcomed all the responses submitted in connection with the proposed implementation of Articles 4(3), 4(5) and 4(6).



83. Having considered the responses, the Government would like to confirm the following:

- (a) The legislative guidance encourages project developers to engage with regulators and, if appropriate, SNCBs early in the EIA process. The guidance also contains relevant details appertaining to the need for nationally designated sites (e.g. Marine Conservation Zones (MCZs) and Marine Protected Areas (MPAs) etc.) to be considered by project developers and the regulatory authorities.
- (b) Notwithstanding the 'post-consultation' changes identified in item (d) below, the Government is of the view that the OPP (EIA) Regulations 2017 do adopt appropriate wording / terminology for the purposes of transposing Articles 4(3), 4(5) and 4(6) and that the legislative guidance ensures there is no confusion between the legal needs of the EIA and HRA processes.

If necessary, the regulators could also arrange meetings with industry, SNCBs and other stakeholders to discuss issues relating to the transposing Regulations and supporting guidance.

- (c) The timelines included in the OPP (EIA) Regulations 2017 for making screening decisions (90 days) and for public notice consultation on full EIA applications / Environmental Statements (30 days) are based on the obligations in the Directive and have been transposed accordingly - although, note issue relating to the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations in item (d) below.

Nevertheless, in relation to the incorporation of the '90 days period for issuing screening decisions' within the 1999 Offshore (EIA) Regulations and 2000 Pipe-line Works (EIA) Regulations, the regulators will endeavour to provide determinations well in advance of the stipulated timescale in line with current procedures (this should be consistent with the approach being adopted by other national EIA implementing procedures). These facts, along with an indication of the minimum information requirements to be included in EIA applications, are also covered in the regulatory guidance.

- (d) Changes were incorporated in the transposing Regulations to:

- ❖ make it clear that any direction given by the Secretary of State to remove the option to apply for a direction that an Environmental Statement (ES) need not be prepared for an Annex II project (e.g. where it is in close proximity to a sensitive area and thus an ES would be required) does not affect the criteria that would apply to Annex I projects (i.e. where the need for an ES remains mandatory); and
- ❖ broadly retain in the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations the existing timeframes for making a determination about



whether or not an Environmental Statement is required. These are shorter than those set out in the 2014 Directive which requires such a determination to be made within 90 days. However, the reduced timeframes work in the favour of Industry and the Government took the view that to extend the time for the benefit of the Government would be controversial and counterproductive.

(e) In the Government's view, the OPP (EIA) Regulations 2017 are clear about:

- how items (a) and (b) of Article 4(5) are transposed (i.e. regulation 6(11) in the 1999 Offshore (EIA) Regulations; regulations 6(7) and 8 (as amended) in the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations; and regulation 4(8) of the 2000 Pipe-line Works (EIA) Regulations); and
- the commencement of the 90 days timeline for screening determinations (but note item (d) above in connection with the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations) and the extension of that timeline in exceptional situations (i.e. regulations 6(10A) and 6(10B) in the 1999 Offshore (EIA) Regulations; regulation 6(6) in the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and regulations 4(6A) and 4(6B) in the 2000 Pipe-line Works (EIA) Regulations).

Information to be provided in an Environmental Statement - Article 5(1)

84. Article 5(1) further clarifies the required content of an Environmental Statement. It sets out what should be included in an Environmental Statement including a non-technical summary, coverage of reasonable alternatives which the project developer has considered and any relevant mitigation measures. It also introduces a new provision requiring that where a scoping opinion is requested the Environmental Statement must be "based on" that opinion.

85. The Government takes the view that it was likely that most of the issues listed in the amended Annex IV of the EIA Directive would already be included in current Environmental Statements, where they are considered to be relevant to an assessment of the potential significant effects of a project. Nonetheless, to ensure appropriate transposition, the Government stated that the new requirements would be included as regulatory amendments in the OPP (EIA) Regulations 2017. The Government also considered that while the provisions of Article 5(1) and Annex IV would result in some relatively small extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors (i.e. where certain issues were not presently addressed in Environmental Statements), there was the possibility of cost reductions on the basis that future Environmental Statements would be more focused on the potential significant adverse environmental effects of proposed projects.



86. Views were sought on the planned transposition of Article 5(1),

Question 10: Do you have any comments on, or concerns with, BEIS's proposals pertaining to the transposition of Article 5(1)?

Question 11: Do you agree with BEIS's view that the transposition of Article 5(1) could result in a combination of relatively low additional burdens / costs plus some eventual cost reductions for the offshore hydrocarbon and onshore pipe-line sectors?

If you agree, please provide estimates in respect to your particular operational activities of: (a) the likely increased burdens / costs; and (b) any potential cost reductions that might eventually be accrued. This data will further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 5(1)

87. **Five** responses were submitted in respect to the implementation of **Article 5(1)**.

88. Four respondents had no comments on, or concerns with, the proposed transposition of Article 5(1).

89. One respondent explained that in the absence of any supporting regulatory guidance, and due to the fact that the consultation document did not map the existing Schedule 2 requirements in the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended) to the version provided in the draft OPP (EIA) Regulations 2017, it was difficult to be fully confident that the potential extra burdens / costs for some projects would be relatively low. Consequently, for these reasons the respondent was unable to provide any meaningful estimates of additional financial or other resource burdens. The respondent was also very dubious about eventual cost reductions.

Government response on Article 5(1)

90. In reply to the points raised by the one respondent, the Government would like to explain that the OPP (EIA) Regulations 2017 include a revised schedule transposing Annex IV (Information for the EIA Report) which has been incorporated into each of the existing sets of Regulations. It was also the case that the questionnaires circulated to the offshore hydrocarbons sector in August / September 2016 highlighted (in 'red text') the revisions to Annex IV of the EIA Directive so that it was clear what the new / amended requirements were. Nevertheless, all the relevant elements relating to the revised Annex IV are covered in the updated guidance. Aspects pertaining to the assessment of the costs and benefits that was included in the consultation document are addressed in the



Government response under the separate 'Analysis of Costs and Benefits' Section below.

Determining the scope and level of detail of the assessment (scoping) and Competent experts - Articles 5(2) and 5(3)

91. In Article 5(2), the EIA Directive retains the provision for a project developer to seek a scoping opinion if they choose. It now provides that the competent authority must issue an opinion on the scope and level of detail of the information required in an Environmental Statement, taking into account the information provided by the project developer on the specific characteristics of the project and its likely impact on the environment. This Article introduces the requirement that where a scoping opinion has been requested, the Environmental Statement should be “based on” that opinion.

The EIA Directive also provides that Member States can choose to make it mandatory that competent authorities have to give a scoping opinion irrespective of whether the developer so requests.

92. Article 5(3) requires a developer to ensure that an Environmental Statement is prepared by competent experts, while a competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the Environmental Statement. In line with this Article, a competent authority can also seek supplementary information from a developer, in accordance with Annex IV, which is directly relevant to reaching a reasoned conclusion on the significant effects of a project on the environment.

93. In the Government’s opinion the obligations of Article 5(2) were already effectively met under the existing Production and Pipelines (EIA) Regulations. Nonetheless, to effect appropriate transposition, the Government advised that the relevant provisions in the existing Regulations had been tweaked by the OPP (EIA) Regulations 2017 - although, there were no plans to incorporate a requirement for the relevant authority to give a scoping opinion irrespective of whether a project developer requests it or not. It was also the Government’s view that the transposition of Article 5(2) should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

94. Whilst the requirements of Article 5(3) were new, the Government considered that in practice, Environmental Statements that were submitted (with EIA applications) by project developers in the offshore hydrocarbon and onshore pipe-line sectors would have been prepared by competent experts (either internal staff or external consultants) specialising in the relevant area. To submit an Environmental Statement that is false or misleading in a material particular is an offence under the Regulations, so it would be in the developer’s best interest to ensure that appropriate expertise is used in compiling the Statement. It was additionally the



Department for
Business, Energy
& Industrial Strategy

case that regulators currently sought advice from relevant expert authorities, including SNCBs and other bodies, where necessary before reaching any decisions. Moreover, under the existing Production and Pipelines (EIA) Regulations, the regulators could request supplementary information / evidence in respect to Environmental Statements from project developers where this was considered necessary for the purposes of reaching a decision on whether or not to grant consent.

95. The Government therefore proposed to transpose Article 5(3) through the OPP (EIA) Regulations 2017 - but instead of defining the term “competent” it was proposed to simply refer to the statement being compiled by someone with “appropriate expert knowledge” because it was likely to depend on the individual circumstances of each case. The Government’s expectation was that the implementation of this Article would not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

96. Views were sought on the implementation approach appertaining to Articles 5(2) and 5(3).

Question 12: Do you have any comments on, or concerns with, BEIS’s proposals appertaining to the transposition of Articles 5(2) and 5(3)?

Question 13: Do you agree with BEIS’s view that the transposition of Articles 5(2) and 5(3) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department’s Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Articles 5(2) and 5(3)

97. **Eight** responses were received in respect to the transposition of **Articles 5(2) and 5(3)**.

98. One respondent supplied the following comments in connection with the implementation of both Articles:

- ✚ The transposing Regulations or accompanying guidance should clearly describe the remit of SNCBs in the consultation process.
- ✚ The Government should satisfy itself that the proposed transposition of Article 5(2) provides regulators with the legislative control to consult on, and issue, scoping opinions in a way which assists in reducing their costs, consultee costs and developer costs.



- ✚ 'Competent' should be defined within the transposing Regulations as this implied a different level of ability to 'appropriate'.
- ✚ Developers should be required to include a statement within an Environmental Statement explaining how the obligations of Article 5(3) have been met. To improve transparency, it would also be beneficial for consultees and regulatory reviewers to briefly justify how they accessed the necessary expertise to provide their advice / determination. Therefore, Article 5(3) should be transposed in such a way so as to demonstrate that the requirements were being met.

99. Another respondent stated that it should be noted that competency would vary on a case-by-case basis. Therefore, whilst supporting guidance would be welcomed, it was recommended that a prescriptive approach to competency should be avoided. The respondent also said that the definition of 'competency' should be standardised across all national EIA Regulations, especially for trans-boundary projects and to reduce administrative burdens. In addition, it was suggested that the revised guidance should identify what was expected by both developers and regulators with regard to the use of competent experts for the preparation and subsequent evaluation of Environmental Statements, otherwise this was a potential area for future legal challenges.

100. One respondent welcomed the inclusion of the competent authorities' opinion on setting the scope of the EIA upfront and the flexibility that this would provide when requested by project developers. This respondent plus **another** also supported the use of the term "appropriate expert knowledge" for the transposition of Article 5(3) instead of "competent expert" as this implied that the current community of operators, contractors and consultancies who prepare Environmental Statements were considered to have the "appropriate knowledge" and it also better reflected the individual circumstances of each development proposal.

101. One respondent acknowledged the transposition proposal to use the term 'appropriate expert knowledge' as opposed to using 'competent experts' as per the Directive, but said that it might be clearer to include a definition or provide further guidance on what is meant by 'appropriate expert knowledge' (e.g. in terms of qualifications / experience or both and how the regulators would determine whether the advice and support provided was suitable).

102. Another respondent supplied a wide-range of comments as detailed below:

(a) Scoping

There was provision in the EIA Directive for scoping to be mandatory. Consulting on the scope of an Environmental Statement provided a key opportunity for the public and environmental organisations to engage early with the EIA process and supported mutual agreement on potential issues which could be scoped out of the assessment. Agreeing the scope early on would reduce delays further down the line, for example during the application



determination period, when supplementary environmental information is often provided to respond to new issues or where existing issues had not been previously considered in sufficient detail. The Government should demonstrate its commitment to a high quality process and a strong level of protection for the environment by ensuring that scoping was a mandatory part of the EIA process. Practice could be improved by drawing up a Scoping Statement of Common Ground which all interested parties could sign up to.

The list of authorities to be consulted as part of the EIA process should include 'any other organisation or interest group' and that such organisations could request to be consulted as a matter of course.

In implementing the changes in Article 5(2) reference should be made in the transposing Regulations to the information provided by the developer - including the specific characteristics of the project (location and technical capacity) and its likely impact on the environment.

To comply with Articles 6(2) and 6(5) of the EIA Directive, the transposing Regulations should include provisions to make scoping opinions available to the public electronically.

There were also concerns with the intention to omit regulation 7(2)(a)(iv) of the Public Gas Transporter Pipe-line Works (EIA) Regulations 1999 (as amended) and regulation 5(2)(a)(iv) of the Pipe-line Works (EIA) Regulations 2000 (as amended) which is a requirement for the Secretary of State to consider, when giving an opinion as to the content of the Environmental Statement, to take into account the extent to which the person who requested the opinion may reasonably be required to compile the information, having regard, to current knowledge and methods of assessment. Further clarification on the intention of this proposal was necessary in order to fully understand the implications.

(b) Competent Experts

Provision should be made for competent experts to be involved at all stages of the EIA process. This could be by way of an expansion to the definition of EIA. Critically, this should include the screening and scoping stages and should be specified in the transposing Regulations.

The intention to use the term 'appropriate expert knowledge' in the context of those preparing and examining Environmental Statements was noted. However, use of the definition of competent experts provided in the recent Defra EIA consultation (i.e. 'persons who by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement') might be more appropriate. This proposed definition could be supported by establishing a benchmark or standard in accompanying guidance. Demonstrating full membership of an appropriate professional body might be one test, alongside a description of relevant experience.



Resourcing issues, for example within local planning authorities and within statutory agencies must be addressed in order for regulatory authorities to fulfil the requirement to have or have access to sufficient expertise to examine Environmental Statements.

The Amended EIA Directive Transposition Checklist notes that in implementing Article 5(3) in full, Member States should cover points a-c (a cumulative obligation). Accordingly, the transposing Regulations must fully transpose each of these points, including point (c) which relates to supplementary environmental information.

103. Another respondent requested that the revised regulatory guidance includes further clarification on the need for an Environmental Statements to be based on (scoping) opinions provided by the Secretary of State. The respondent also emphasised that there were many instances where a project description detailed at the scoping stage would be different to that submitted within the Environmental Statement. According to the respondent, this would be reflected through design changes, stakeholder and public input and overall project development. The respondent went on to explain that these matters were dealt with post-scoping primarily on an informal basis through on-going stakeholder engagement, rather than the re-submission of (multiple) scoping requests which would incur extra costs and could result in programme delays and risks.

In the respondent's view, to draw the threshold of what constitutes 'based on' too low, would lead to unnecessary project delays, undue burdens on consultation bodies and authorities and incur additional costs and project risks at the back end of project development. There was an added risk that this could cause developers to by-pass the scoping stage and rely on more informal consultation methods and engagement. The respondent therefore recommended that further guidance was necessary to help create the efficiencies within the system that are required to enable certainty of decisions and the timely implementation of developments.

104. One respondent mentioned that offshore operating companies were bound by the requirements of OSPAR Recommendation 2003/5 (Promote the Use and Implementation of Environmental Management Systems by the Offshore Industry) which addresses competence plus auditing and provides assurance that the required competent experts should be available. The arrangements that regulators had for managing their competence were less transparent i.e. how and who would audit their approach to meeting Article 5(3)?

This respondent did agreed with the assumption that the implementation of Articles 5(2) and 5(3) should not result in additional burdens / costs - so long as Government did not identify this as creating a requirement for project developers to provide a specific form of proof of the competence or appropriate knowledge of the experts involved in the preparation of Environmental Statements.



Government response on Articles 5(2) and 5(3)

105. The Government appreciated the responses received in respect to the proposed transposition of Articles 5(2) and 5(3).
106. The Government evaluated the responses on the proposed implementation of these Articles and would like to make these points:
- (i) The Government is content that the implementation of Article 5(2) does meet the Directive's requirements (i.e. regulators to provide scoping opinions where requested by project developers) and demonstrates the Government's commitment to maintaining a high quality EIA process in respect to the consenting regimes for offshore hydrocarbon-related developments and onshore pipe-line projects.
 - (ii) The revised regulatory guidance suitably addresses issues concerning the role of consultees and advisors throughout the EIA process. The Government is also satisfied that the transposition of Article 5(2) will provide the necessary legislative controls (in a cost effective manner) for the issuing of 'scoping opinions' where they are requested by project developers.
 - (iii) In regard to the comment which recommended that the list of authorities to be consulted as part of the EIA process should include 'any other organisation or interest group' and that such organisations could request to be consulted as a matter of course, it is the Government's contention that the additional inclusion of 'authorities with local or regional competence' to those with environmental responsibilities in the 1999 Offshore (EIA) Regulations (e.g. regulation 9(1)) would sufficiently address the requirements of Article 5(2).

However, for the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and the 2000 Pipe-line Works (EIA) Regulations, the Government determined that it should stay with the definition of "Consultation bodies" (regulation 2 (interpretation)) as this already includes "authorities likely to be concerned about the project by reason of their specific environmental responsibilities or local or regional competence".

Nonetheless, on the basis that prominent information relating to EIA applications is made publicly available, all interested parties will have adequate opportunities to submit opinions to regulators at various stages of the EIA process.

- (iv) As far as the implementation of the first part of Article 5(2) is concerned (providing a scoping opinion), the transposing Regulations do contain references to the information that is to be provided by a project developer - including the specific characteristics of the project (e.g. location and technical capacity) and its likely impact on the environment (i.e. the amendments to regulation 7(1) plus the new regulation 7(2A) in the 1999 Offshore (EIA) Regulations; the amendments to regulations 7(1) and 7(2)(a) in the 1999 Public Gas Transporter



Department for
Business, Energy
& Industrial Strategy

Pipe-line Works (EIA) Regulations; and the amendments to regulations 5(1) and 5(2)(a) in the 2000 Pipe-line Works (EIA) Regulations).

- (v) Taking into account the views expressed by respondents on the definition of ‘competent experts’, and whilst respecting that some consultees (given the maturity of the industrial sectors concerned) supported the proposed transposition of Article 5(3)(a) in the OPP (EIA) Regulations 2017 (i.e. the reference to ‘persons with appropriate expert knowledge’), the Government felt that there was merit in modifying the proposed transposition of Article 5(3)(a) so that there was relative consistency with the approach being adopted by other Departments and devolved administrations in their EIA implementing legislation. Therefore, allowing for minor variations to reflect the subtle differences between the consenting regimes, the text incorporated into the existing Production and Pipe-lines (EIA) Regulations (via the transposing Regulations) was changed to:

“In order to ensure the completeness of the environmental statement, the project developer shall ensure that -

(a) the statement is prepared by competent experts; and

(b) the statement is accompanied by a statement from the project developer outlining the relevant expertise or qualifications of such experts.”

In addition, it is considered that the OPP (EIA) Regulations 2017 fully implement parts (b) and (c) of Article 5(3) as outlined below:

- + Article 5(3)(b) (“the competent authority shall ensure that it has, or has access to, sufficient expertise to examine the statement”) via regulations 5(4), 5(6) and 11(6) in the 1999 Offshore (EIA) Regulations; regulation 14(1)(b)(i) in the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations, and regulation 3(2)(b)(i) in the 2000 Pipe-line Works (EIA) Regulations.
- + Article 5(3)(c) (“where necessary the competent authority shall seek from the developer supplementary information in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment”) through regulation 10 in the 1999 Offshore (EIA) Regulations; regulation 11 in the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations; and regulation 8 in the 2000 Pipe-line Works (EIA) Regulations.

- (vi) With respect to the intention to omit regulation 7(2)(a)(iv) of the Public Gas Transporter Pipe-line Works (EIA) Regulations 1999 (as amended) and regulation 5(2)(a)(iv) of the Pipe-line Works (EIA) Regulations 2000 (as amended), the Government took the view that as such an approach was not permitted in the EIA Directive, keeping it in risked the UK being infracted by the Commission.



(vii) In relation to the suggestion that ‘scoping opinions’ should be made available to the public electronically in order to comply with Articles 6(2) and 6(5), the Government was not convinced that this was explicitly required by these Articles. Nevertheless, the Government confirms that, as a matter of policy, such opinions are made available via public notices and through relevant websites.

The Government noted the view submitted about resource issues within local planning authorities and statutory agencies. As inferred earlier (under the Section on Article 4(4)) the Government’s position, at this juncture, is that local authorities and statutory agencies would put in place arrangements to source any supplementary resources that may be required to enable them to continue to effectively perform their respective EIA functions.

(viii) The Government noted the comments made about the obligations on offshore operators under the OSPAR Recommendation 2003/5 on the Use and Implementation of Environmental Management Systems (EMS) by the Offshore Industry. On this particular factor, the Government wishes to clarify that the OSPAR EMS Recommendation is not related to the preparation of EIA applications or the quality and competence of staff involved in their preparation - albeit that such applications may include references to EMS as a means of maintaining the environmental integrity of a planned development. It is also plausible that the changes outlined in item (v) above (pertaining to Article 5(3)(a)) could entail extra costs for industry, but it is the Government’s view that they would be minimal.

(ix) Further advice concerning the expectations on regulators and other bodies (including the statutory duties of those involved in all stages of the EIA process) and project developers associated with the requirements of Articles 5(2) and 5(3) is provided in the revised regulatory guidance.

Consultation - Article 6(1)

107. This Article allows Member States to state which bodies shall be consulted, including local and regional authorities.

108. In the Government’s opinion, Article 6(1) would be substantially met by the existing Production and Pipelines (EIA) Regulations. The Government stated that no changes were required to the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (as amended) or the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (as amended) as the definition of “consultation bodies” in both sets of Regulations covered both planning authorities and environmental bodies.

109. However, to effectively transpose the 2014 Directive’s obligations, the Government advised that the OPP (EIA) Regulations 2017 would include some modifications to the Offshore Petroleum Production and Pipe-lines (Assessment of



Environmental Effects) Regulations 1999 (as amended) to reflect the revised text in Article 6(1). The Government's also believed that the transposition of Article 6(1) should not result in any extra burdens / costs for the offshore hydrocarbons sector. Views were sought on the transposition of this Article.

See consultees responses and the Government response in respect to Article 6(1) below Questions 14 and 15 under Article 6(7).

Electronic communications - Articles 6(2) and 6(5)

110. The 2014 Directive adds the requirement that the public should be informed about an application (Article 6(2)) and that information should be made available electronically through "at least a central portal or easily accessible points of access" (Article 6(5)). Publishing the information electronically will be mandatory for the first time and should make the process more transparent.

111. The Government's view was that, in practice, Environmental Statements submitted under the existing Production and Pipelines (EIA) Regulations were generally made available on project developers' websites. There were also comprehensive 'public participation' provisions which required project developers in the offshore hydrocarbon and onshore pipe-line sectors and the regulators to publish information concerning the submission of any applications supported by Environmental Statements.

112. Notwithstanding the above factors, the Government stated its intention to include changes via the OPP (EIA) Regulations 2017 to secure transposition of the revised text in Articles 6(2) and 6(5). However, in the Government's opinion, the implementation of those Articles should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

113. Views were sought on the transposition approach relating to Articles 6(2) and 6(5).

See consultees responses and the Government response in respect to Articles 6(2) and 6(5) below Questions 14 and 15 under Article 6(7).

Consultation timeframes - Article 6(7)

114. Article 6(7) sets a new minimum timeframe for public consultations on Environmental Statements. This should be no shorter than 30 days.

115. The Government outlined its intention for the OPP (EIA) Regulations 2017 to amend the consultation timeframes in the existing Production and Pipelines (EIA) Regulations to 30 days. The Government was also of the opinion that the implementation of this Article should not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the implementation of this Article.



Question 14: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Articles 6(1), 6(2) & 6(5) and 6(7)?

Question 15: Do you agree with BEIS's view that the transposition of Articles 6(1), 6(2) & 6(5) and 6(7) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Articles 6(1), 6(2) & 6(5) and 6(7)

116. **Six** responses were received relating to the implementation of **Articles 6(1), 6(2) & 6(5) and 6(7)**.
117. Two respondents had no reservations regarding the transposition of Articles 6(1), 6(2), 6(5) and 6(7). However, one of these respondents queried whether the minimum consultation timeframe (Article 6(7)) for Environmental Statements of 30 days was enough, and if it is explicitly 30 working days). Both respondents agreed that the transposition of the Articles should not entail any additional burdens / costs for industry.
118. Another respondent stressed that consultation was an important part of the EIA process and if properly conducted would lessen the risk of legal challenges at a later date. The respondent further stated that it was essential that all forms of communication were used to generate inclusivity of the potential audience, and that the timeframe should be consistent across all national EIA legislation (especially if there were transboundary projects).
119. One respondent welcomed the use of project developers' websites to meet the requirements of Article 6(2). The respondent also said that it would be useful if the reasonable timeframe for consulting the public was clearly defined in revised regulatory guidance on the OPP (EIA) Regulations 2017, so that the consultation timeline could be built into project timescales.
120. One respondent supplied numerous comments as outlined below:

(i) Consulting Authorities likely to be concerned by the project

The transposing Regulations should be amended to allow a wide range of interested parties to be consulted on the whole of the EIA process as a matter of course. This could be limited to organisations where the EIA Regulations impact on their area of interest and where they specifically requested to be consulted by default. A possible amendment to the draft transposing Regulations could be as follows:



'any other public body, organisation or interest group which the authority considers is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies.'

This would be particularly beneficial at the screening stage (recognising that screening would become much more front-loaded and regulatory authorities would be under pressure to make informed judgements on whether or not an Environmental Statement was required).

(ii) Electronic Information

A new provision should be included in the transposing Regulations to ensure easy access (including via electronic means) to environmental information at all stages in the EIA process. This should include screening, scoping and post-consent information (e.g. monitoring).

The Government should define a format for the provision of EIA information online that must be followed, so the public and others are able to engage with a consistent online structure. In addition, a central portal of information should be provided, establishing a central sign-posting hub for all EIA information.

There would be benefits to public engagement earlier in the process including ensuring that potential issues, necessary information and further assessment that might be required was identified thus reducing the potential for delays later on in the process. This would be particularly important now that screening would become front-loaded. This should not result in additional costs to developers or regulators.

(iii) Consultation Timeframes

The minimum timeframe (Article 6(7)) for public consultation on the Environmental Statement should not be shorter than 30 days. The draft transposing Regulations should be amended to include the words 'at least 30 days', so it is clear that 30 days is a minimum period which can be extended if required. This had not been included in all instances in the draft Regulations. Any material consultation responses submitted after the minimum period should also be taken into account.

121. Another respondent mentioned that in terms of better regulation and seeking to reduce administrative burdens it would be useful to identify either in the transposing Regulations or revised guidance that, whilst a minimum timeframe of 30 days applied, appropriate timeframes for responding would be notified to relevant parties. On this point, the respondent suggested that SNCBs might be able to assist in identifying timeframes based on generic types of applications and the likely timescales required in order to fully assess the contents of Environmental Statements.



Government response on Articles 6(1), 6(2), 6(5) and 6(7)

122. The Government was grateful for the responses submitted on the proposed transposition of Articles 6(1), 6(2), 6(5) and 6(7).

123. The Government assessed the responses in connection with the proposed implementation of these Articles and would like to confirm the following:

(a) In regard to the comments which stated that the transposing Regulations should be amended to allow a wide range of interested parties to be consulted on the whole of the EIA process as a matter of course, the relevant views expressed in the Government's response on Articles 5(2) and 5(3) would equally apply to that suggestion.

(b) With respect to the recommendation that the transposing Regulations should include a new provision to ensure easy access (including via electronic means) to environmental information at all stages in the EIA process, the Government believes that the OPP (EIA) Regulations 2017 do properly transpose the public participation requirements of the amended EIA Directive (i.e. the amendments to regulations 5A, 9, 10 and 13 of the 1999 Offshore (EIA) Regulations; the amendments to regulations 3A, 10, 11, 11A and 14 of the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and similar amendments to the 2000 Pipe-line Works (EIA) Regulations. In this context, the Government would like to reiterate that prominent information relating to EIA applications is - and will continue to be - made publicly available so that all interested parties will have the opportunity to submit opinions to regulators at various stages of the EIA process.

Due to the fact that various UK authorities are responsible for administering EIA regulatory consenting regimes for diverse developmental activities across numerous sectors, it would not necessarily be more efficient to have a completely standardised format for the submission of EIA applications given the unique characteristics of different types of projects, or to create a central sign-posting hub for EIA information. Accordingly, it is the Government's view that:

- use of the current websites established by each authority is 'fit-for-purpose' in the context of the regimes they administer, the affected sectors and those stakeholders who wish to obtain EIA information for the purpose of submitting comments to regulatory authorities; and
- the provision of information on project developers' websites, as currently employed for offshore hydrocarbon-related developments, would be another useful data source for interested parties.

(c) The comments relating to the 30 days consultation timeframe were taken on-board and the Government wishes to advise that:



- The transposing Regulations include consultation timeframes for the public of “at least 30 days”.

[Note: this is broadly similar to the approach being adopted in other national EIA implementing legislation.]

- Even though the abovementioned timeframe is deemed sufficient, should any material consultation responses be received after the 30 days consultation timeframe but before a ‘consenting decision’ is taken then it would still be considered under the EIA consenting regimes for offshore hydrocarbon-related developments and onshore pipe-line projects.

These elements and other germane factors appertaining to the EIA consultation procedures (including the expectations of those involved) are addressed in the revised regulatory guidance.

Projects likely to have significant effects on the environment in another Member State - Article 7(5)

124. Article 7(5) sets the public consultation requirements for projects affecting other Member States.
125. The Government confirmed its intention to transpose the revisions to this Article into the existing Production and Pipelines (EIA) Regulations through the OPP (EIA) Regulations 2017. The Government was also of the opinion that the implementation of Article 7(5) should not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the transposition approach pertaining to this Article.

Question 16: Do you have any comments on, or concerns with, BEIS’s proposals regarding the transposition of Article 7(5)?

Question 17: Do you agree with BEIS’s view that the transposition of Article 7(5) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department’s Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 7(5)

126. **Five** responses were submitted in respect to the transposition of **Article 7(5)**.



127. None of the five respondents had any concerns with the proposals to implement Article 7(5). One of the respondents also agreed with the assumption that the transposition of the Article should not result in any additional burdens / costs for industry.

Government response on Article 7(5)

128. The Government welcomed the positive responses received in relation to the transposition of Article 7(5).

Taking into account in the consenting procedures the results of consultations and information gathered - Article 8

129. This is a new provision elaborating on the information to be given in decision notices and making further provisions about decision-making.
130. The Government stated that Article 8 would be substantially met by the existing Production and Pipelines (EIA) Regulations. However, to effectively transpose this Article, the Government confirmed that the OPP (EIA) Regulations 2017 would include some modifications to the existing Regulations to reflect the revised text. The Government also considered that the transposition of Article 8 should not result in any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the implementation of this Article.

Question 18: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 8?

Question 19: Do you agree with BEIS's view that the transposition of Article 8 should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 8

131. **Six** responses were received on the transposition of **Article 8**.
132. One respondent recommended that the Government satisfies itself that the requirements of Article 8 (i.e. to duly take into account consultation responses) have been adequately transposed into all areas of OPP (EIA) Regulations 2017. The respondent went on to say that in order to accommodate consultee requirements, a



Department for
Business, Energy
& Industrial Strategy

project developer may have to carry out additional work or change the project design, which could incur an additional cost. Nevertheless, the respondent highlighted the fact that, as the existing regulatory consenting regimes already allowed for the consideration of consultee responses, they were of the view that the transposition of Article 8 was unlikely to result in an extra burden above that which was already considered within existing legislation for addressing consultee concerns.

133. Two respondents had no concerns with the implementation of Article 8.
134. Two respondents noted that Article 8 introduced a change from the requirement to consider consultation responses to having to take them into account. Whilst there was unlikely to be any additional burdens / costs for industry, this would ultimately depend on how the regulatory guidance interpreted the requirements of Article 8. Therefore, both responses requested that the revised guidance provides further clarity on this matter.
135. One respondent mentioned that the results of consultations and the information gathered pursuant to Articles 5 to 7 of the EIA Directive should be duly taken into account in the development consent procedure. Based on Article 6(8) of the Aarhus Convention "duly" had been added to the text. Accordingly, the respondent suggested that the transposing Regulations should ensure that Article 8 was properly transposed.

Government response on Article 8

136. The Government appreciated the responses received in relation to the transposition of Article 8.
137. Having evaluated the responses on this Article, the Government would like to make these points:
- (i) The Government considers that Article 8 has been appropriately implemented by the OPP (EIA) Regulations 2017.
 - (ii) The revised regulatory guidance further clarifies how the requirements of Article 8 should be interpreted by project developers.

Decisions - Articles 8a(1) and 8a(2)

138. Article 8a(1) sets out requirements for information to be included in a decision to grant development consent. The first part reflects the obligation in Article 1(2)(g)(v) that the competent authority's reasoned conclusion must be integrated into any decision. 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 next section) are identified in the consent. Article 8a(2) is based on European



Court of Justice case law (C-87/02 and C-75/08) and requires that where development consent has been refused the competent authority must state the reasons for the refusal.

139. In the Government's opinion, the obligations in Article 8a(1) would be largely met by the existing Production and Pipelines (EIA) Regulations, but the obligations had been brought together in the transposition of the new Article via the OPP (EIA) Regulations 2017. The Government stated that the implementation of Article 8a(1) should not result in any extra costs / burdens for the offshore hydrocarbon and onshore pipe-line sectors. However, the Government confirmed that the requirements of this Article would necessitate some amendment of procedures for BEIS and the Oil & Gas Authority (OGA) in relation to the granting of consents for offshore hydrocarbon-related developments.

140. The Government believed that the requirements of Article 8a(2) already represented common practice under the existing Production and Pipelines (EIA) Regulations. Nonetheless, as the requirement was new the Government confirmed that it would be appropriately transposed by the OPP (EIA) Regulations 2017. Again, the Government said that in its opinion the implementation of Article 8a(2) should not entail any extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.

141. Views were sought on the transposition of Articles 8a(1) and 8a(2).

See consultees' responses and the Government response in respect to Articles 8a(1) and 8a(2) below Questions 22 and 23 under Article 8a(6).

Monitoring of significant environmental effects - Article 8a(4)

142. In accordance with Article 8a(4), the decision to grant development consent should also now include, where appropriate, monitoring measures. 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.

143. It is for Member State competent authorities to determine the procedures regarding the monitoring of significant adverse environmental effects. Existing monitoring arrangements (e.g. monitoring conditions attached to permits issued under environmental legislation for specific operations) may be used if appropriate, with a view to avoiding duplication.

144. The Government indicated that the requirements of Article 8a(4) were new and would be appropriately transposed by the OPP (EIA) Regulations 2017 (the implementation of this Article would also include suitable arrangements pertaining to the separate consenting functions of BEIS and the OGA in respect of offshore hydrocarbon-related developments). Although project developers in the offshore



Department for
Business, Energy
& Industrial Strategy

hydrocarbon and onshore pipe-line sectors were already obliged to meet commitments detailed in their impact assessments, and conditions could be included in subsequent environmental approvals, the inclusion of monitoring measures in development consents was not presently a standard feature of the UK regime.

145. The Government confirmed that it was, at this stage, difficult to determine with any real certainty the extent to which monitoring measures would be attached to future consents for onshore pipe-line developments given that only a few applications for Annex I type projects are submitted over a ten year timescale and it was, in any event, highly likely that major pipe-lines were monitored on a regular basis to maintain operational performance and environmental integrity. As far as the offshore hydrocarbons sector was concerned, whilst it is not anticipated that monitoring measures would be routinely included in all EIA approvals, the Government advised that it should be assumed that there could be extra burdens / costs for the offshore sector where monitoring programmes formed part of the future consent conditions for particular developments. These could, for instance, comprise monitoring at a specified frequency for new field developments and 'localised' monitoring surveys for drilling operations in sensitive areas.

Question 20: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 8a(4)?

Question 21: Do you agree with BEIS's view that the transposition of Article 8a(4) could result in extra burdens / costs for the offshore hydrocarbons sector? If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 8a(4)

146. **Seven** responses were submitted in relation to the implementation of **Article 8a(4)**.
147. Three respondents raised a number of factors in respect to the transposition of Article 8a(4) and these are detailed below:
- ❖ The standardisation of monitoring requirements across the industry was welcomed however there were concerns with the potential requirement to determine a fixed monitoring frequency. Monitoring offshore was conducted on a risk based approach, using results to tailor the monitoring programme as required. If the field consent was to dictate a frequency for monitoring there was a risk that any requests to alter the frequency throughout the life of the field (e.g. as data collection became more sophisticated and more data could be collected) will come under public scrutiny. Offshore operating companies tended to have robust, scientifically based, monitoring programmes and it would be



advantageous to see reliance on science and data as being a key feeder into determining future monitoring requirements.

- ❖ There was also a risk that while the regulator might prescribe the frequency of monitoring (i.e. 5 years), this may subsequently be challenged by the public in cases where there was some uncertainty about the extent and nature of the impacts and the public may demand a more frequent cycle, which in some cases could be unrealistic given the planning and review cycle for an average survey (plus 1 year from execution to getting the report in most cases). The inclusion of monitoring requirements (such as frequency, scope and type) in any consent conditions must therefore be fully transparent and directly related to the pressure being considered, the likely effect, the species impacted and the location of the project. Fixed frequency monitoring regardless of the species or habitat or potential effect under consideration was not appropriate.
- ❖ There were additional reservations with the Member State determining the procedures for monitoring effects. The introduction of monitoring requirements for significant effects identified in the EIA has the potential to increase project costs particularly as the scale of the monitoring requirements was presently unknown. For instance, long term monitoring programmes (e.g. every 5 years) could incur significant costs of anywhere between £500k - £1 million for full environmental surveys (grab samples etc.).

If this were to be calculated over the life of a field this could be anywhere between £4 - 8 million. Consequently, flexibility was required within the transposing Regulations for using emerging / novel technologies to collect environmental data and not for techniques / procedures to be prescribed within consents. It would be important for limits to be established on whom and what determines the proportionality of the monitoring effort in order to better understand any future burden to project developers.

- ❖ Effective supporting regulatory guidance on this issue would be critical to ensure that monitoring requirements were realistic and proportional to the environmental risks. To this end, industry would appreciate further discussion with the regulator on how Article 8a(4) is to be implemented on the UKCS.

148. One respondent considered post-consent monitoring an important part of the consenting process and was encouraged that the amended EIA Directive 2014/52/EU now highlighted its importance within the EIA process. From their experience with industry, the respondent explained that post consent monitoring could:

- Reduce the scientific uncertainty around impact statements (limiting the consent risks).
- Improve overall understanding of long term impacts which could be used to improve the evidence base for subsequent applications.



- Assist in providing meaningful cumulative assessments.
- Provide a sound evidence base which could be used in future applications.
- Support existing EIA conclusions, demonstrating that the evidence base used was appropriate.

The respondent stated that it did not appear that the definition of post-consent monitoring in the draft transposing Regulations included the provision for monitoring significant adverse effects. The respondent consequently recommended that the definition in the transposing Regulations be amended to include the monitoring of significant adverse effects.

The respondent also noted that the draft transposing Regulations incorporated a requirement whereby when the Secretary of State (SoS) imposes a monitoring condition, the SoS must consider making a provision for potential remedial action. The respondent queried where the consideration to “make a provision for potential remedial action” originated from as it did not appear to be a consideration for monitoring in Article 8a(4). The respondent recommended that the Government satisfies itself that this was a necessary part of the transposition and did not go beyond the minimum requirements.

149. Two respondents strongly supported the intention to include in the transposing Regulations provisions that would enable the regulators to attach monitoring conditions - where deemed apposite - to development consents.

150. One respondent made a number of points as detailed below:

- (a)** The Wales (Town and Country Planning) EIA consultation proposed to introduce a general requirement on the competent authority to include monitoring measures. Such a duty in other EIA transposing legislation would be supported, so long as it was clear that monitoring was likely to be required in most cases.
- (b)** It was essential that the objectives of monitoring were clear and that regulatory authorities were properly resourced to deliver on it - this should be made explicit, ideally in the transposing Regulations (i.e. to monitor the effects of the project, particularly where judgements on effects were based on a high degree of uncertainty and / or where judgements were based on modelling or projections and to identify any unforeseen significant environmental effects; evaluating whether mitigation measures were working effectively and ensuring required mitigation measures were being implemented). This should be made clear (e.g. explicitly explained in regulatory guidance) when considering if it was appropriate to make use of existing monitoring arrangements. Existing monitoring arrangements should not become the default option and proper consideration should be given to what needs to be monitored.



- (c) Regulatory authorities must ensure that they had the resources to follow-up any monitoring action, for example, implementing remedial action if mitigation was not effective and curtailing aspects of a project until issues were rectified.
- (d) Guidance would be essential to ensure regulatory authorities (including Local Planning Authorities) fully understand their responsibilities in respect of monitoring. For example, there should be a clear expectation that authorities visit the site to ensure the project has been completed as outlined in the Environmental Statement. The Government should also establish a central support team to provide advice to regulatory authorities and audit monitoring requirements, such as publishing of information relating to the decision notice on a central portal.
- (e) The requirement to implement the mitigation measures must also be properly transposed / implemented with the obligations specifically referenced in the transposing Regulations. The expected outcome of mitigation (and the party responsible for ensuring this was delivered) should be included within development consents so further remedial action can be taken if it has not had the desired effect. If mitigation was used to screen out developments from the EIA process then this mitigation must also be secured and implemented and included in development consents.
- (f) In addition, the Government should take steps to:
- Require developers to submit a schedule summarising the mitigation and monitoring requirements identified by the Environmental Statement. These requirements should be part of the consent conditions to ensure that they were appropriately tied into that consent.
 - Require a standard condition to be applied to EIA developments requiring a monitoring programme and if necessary further mitigation to be submitted and approved prior to development commencing. Set minimum timeframes for the review of this programme e.g. years 1,2,5,10 etc.
 - Ensure appropriate procedures and sufficient resources were in place to be able to identify any issues of non-compliance and for appropriate remedial action to be undertaken.

Government response on Article 8a(4)

151. The Government was grateful for the responses submitted in respect to the implementation of Article 8a(4).
152. The Government assessed the responses concerning the transposition of Article 8a(4) and would like to confirm the following:



- (i) The Government will only include monitoring measures in consents where deemed necessary (e.g. in circumstances where projects were located in close proximity to environmentally sensitive areas that could be adversely impacted by the proposed activities). Any monitoring applied to consents in the future would:
- be proportionate to the nature and scale of a development (including reviews and updates of the monitoring requirements as apposite to the characteristics of the project);
 - be confined to an area appropriate to the proposed activity;
 - take account of any requirements on monitoring which are imposed under the existing legislative framework for regulating operational activities (e.g. to avoid any duplication of effort). This did not mean that including monitoring obligations would become the 'default option' but rather that consideration would be focussed on where any extra monitoring was definitively needed; and
 - incorporate, where apposite, provision for suitable remedial action. This mirrors the implementation approach of other Government Departments whereby remedial action could, at the discretion of a regulatory authority, be a feature of the monitoring conditions attached to development consents.

The 'five-yearly' monitoring cycle mentioned in the consultation document was purely indicative and, in acknowledgement of the comments received, the Government can confirm that EIA-related monitoring would be determined on a 'case by case' basis and not defined on a 'fixed frequency' basis.

- (ii) Taking into account the planned proportionate approach to monitoring, the Government considered:
- that the costs to industry should not be as high as the £500k to £1 million range quoted and would be nearer the £200k to £300k per monitoring programme as estimated in the analysis of costs and benefits that was contained in the consultation document; and
 - the regulators' present resources committed to monitoring should be adequate to effectively enforce the obligations of any monitoring conditions that are attached to development consents.
- (iii) With respect to the recommendation about the establishment of a central support team for the purposes of providing advice to regulatory authorities and to audit monitoring requirements (including publishing of information on a central portal), it is the Government's opinion that the EIA consenting authorities for the offshore hydrocarbon and onshore pipe-line sectors are competent to provide advice, audit the execution of programmes and review the monitoring data, and that existing arrangements for the dissemination of information, including the



use of associated websites of the various UK regulatory authorities, are sufficiently fit-for-purpose and familiar to project developers / other relevant stakeholders.

It is also important to note that many of the provisions proposed by respondents would represent significant enhancement of the Directive's requirements. The Government therefore believes that the OPP (EIA) Regulations 2017 correctly implement Article 8a(4) (including provisions for the monitoring of potential significant adverse effects) and that no further legislative changes are required.

- (iv) The revised regulatory guidance covers the relevant aspects (e.g. expectations on both project developers and the regulators) associated with monitoring that could form part of future development consents. If necessary, the regulators could also hold meetings with industry and other interested stakeholders to further discuss the implementation of the monitoring requirements and how this issue should best be addressed.

Decisions in a reasonable time period - Article 8a(5)

153. This Article concerns the time taken by the competent authority to make decisions, to ensure that they are taken within a reasonable period of time.

154. The Government confirmed that even though consenting decisions under the existing Production and Pipelines (EIA) Regulations were taken within reasonable timeframes, the requirements were new and Article 8a(5) would be transposed via the OPP (EIA) Regulations 2017. However, in the Government's opinion, the implementation of this Article should not result in any extra burdens / costs for BEIS or the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the implementation of Article 8a(5).

See consultees' responses and the Government response in respect to Article 8a(5) below Questions 22 and 23 under Article 8a(6).

Up-to-date reasoned conclusion - Article 8a(6)

155. This Article concerns timeframes for the validity of a competent authority's reasoned conclusion as part of the EIA process. The reasoned conclusion must be "up-to-date" when a decision is taken to grant consent.

156. The Government considered that, in practice, it was likely that the period between a regulator reaching a conclusion on the significant effects of a proposed project and the decision as to whether permission or consent should be granted would be a relatively short one. The Government indicated that as Article 8a(6) was new it would be transposed by the OPP (EIA) Regulations 2017. It was also the Government's opinion that the implementation of this Article should not entail any



Department for
Business, Energy
& Industrial Strategy

extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors.
Views were sought on the transposition of Article 8a(6).

Question 22: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Articles 8a(1) & 8a(2); 8a(5) and 8a(6)?

Question 23: Do you agree with BEIS's view that the transposition of Articles 8(a)(1) & 8(a)(2); 8(a)(5) and 8(a)(6) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Articles 8(a)(1) & 8(a)(2), 8(a)(5) and 8(a)(6)

157. **Four** responses were received in respect to the transposition of **Articles 8a(1) & 8a(2), 8a(5) and 8a(6)**.

158. One respondent supported the requirements and their transposition into the existing Production and Pipelines (EIA) Regulations via the OPP (EIA) Regulations 2017.

159. Another respondent had no concerns with the proposed implementation of these Articles.

160. One respondent raised a number of points relating to each of the three Articles which are outlined below:

Article 8a(1)

The following alterations to the draft transposing Regulations were recommended:

- *Regulation 9 of the OPP (EIA) Regulations 2017* - change regulation 5A(2)(b) as follows: 'any features of the relevant project designed AND / or measures envisaged to avoid, PREVENT, OR REDUCE or AND if possible offset significant adverse effects ON THE ENVIRONMENT'.
- *Regulation 36(a)(iii) & (b) of the OPP (EIA) Regulations 2017* - Amend as for Regulation 9 above. Change regulation 36(c) to just refer to 'monitoring conditions'.
- *Regulation 47(b) and (c) of the OPP (EIA) Regulations 2017* - Amend as for Regulation 9 above. Change regulation 47(c) to just refer to 'monitoring conditions'.



The respondent also stated that Article 8a(1) was clear that the decision to grant development consent should incorporate the reasoned conclusion. The respondent therefore thought it was unclear why draft regulation 47 of the OPP (EIA) Regulations 2017 included circumstances where this may not happen.

Article 8a(5)

In order to fully comply with Article 8a(5), the transposing Regulations should set out which timeframes were considered reasonable (e.g. by setting explicit time-limits). This was not currently provided for in the draft Regulations.

Article 8a(6)

It was important that the transposing Regulations include a reference to the decision being up-to-date having regard to 'current knowledge and methods of assessment'. The term 'current knowledge' should be defined in guidance and should include provision of up to date survey work.

161. Another respondent had reservations with the transposition of Article 8a(6) in relation to future developments. The respondent was concerned that in the future the regulator might seek to remove consent where it had been obtained, based on a set of current / up to date reasoned conclusions (e.g. where delays resulted in work on a project not starting and the reasoned conclusions were found to be out of date prior to the commencement of works etc.).

The respondent nevertheless agreed with the assumptions that the implementation of the Articles should not entail any extra burdens / costs for industry, but on the proviso that there were no attempts to extend the requirements of Article 8(a)(6) to situations where consent had been granted but the "reasoned conclusions" were found to be out of date before actual work on the project started.

Government response on Articles 8a(1) & 8a(2), 8a(5) and 8a(6)

162. The Government welcomed the responses received in relation to the transposition of Articles 8a(1) & 8a(2); 8a(5) and 8a(6).

163. Having evaluated the responses pertaining to the implementation of these Articles, the Government wishes to make the following points:

- (a) Regulation 5A(2)(b) to the 1999 Offshore (EIA) Regulations has been modified to a certain extent in line with the suggested amendments.

However, the Government was of the opinion that the other recommended changes were not necessary as the provisions already properly transpose Article 8a(1).



- (b) In connection with the comments regarding the implementation of Articles 8a(5) and 8a(6), the Government's view is that the transposing Regulations correctly implement the requirements on 'reasonable timeframes for the taking of decisions' and 'reasoned conclusions being up-to-date when decisions are made'.
- (c) With respect to the concerns raised by one of the respondents about the potential for consents to be withdrawn if the reasoned conclusions were found to be out of date prior to work on a project commencing, the Government would like to confirm that further information could be requested by regulators at a later stage for further analysis and, if needs be, this could result in the subsequent revision of an existing consent. However, the risk of any consent being withdrawn should more up-to-date information come to light which had a bearing on the initial reasoned conclusions would be extremely small.
- (d) Detailed advice relating to the obligations of Articles 8a(1) & 8a(2); 8a(5) and 8a(6) is included in the revised regulatory guidance.

Informing the public of the decision - Article 9(1)

164. This Article requires decisions and additional information about decisions, including results of the consultations undertaken, to be notified to the public and consultation bodies.

165. The Government considered that the obligations of Article 9(1) would be broadly met by the existing Production and Pipelines (EIA) Regulations. Nevertheless, the Government confirmed that there were additional information requirements which would be appropriately transposed through the OPP (EIA) Regulations 2017. The Government also stated that the new requirements would only result in additional administrative burdens for Government, and that there should be no extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. Views were sought on the transposition of Article 9(1).

Question 24: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 9(1)?

Question 25: Do you agree with BEIS's view that the transposition of Article 9(1) should not result in any extra burdens / costs for either the offshore hydrocarbon or onshore pipe-line sectors?

If you disagree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.



Consultation responses on Article 9(1)

166. **Five** responses were submitted in relation to the implementation of **Article 9(1)**.
167. One respondent supported the transposition of Article 9(1) - based on the fact that the public should be informed of any decision made.
168. Two respondents had no concerns with the proposed transposition of this Article.
169. Another respondent suggested that the word ‘promptly’ should be added to the transposing Regulations in line with Article 9(1) (i.e. 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)) as this would ensure that the public was informed promptly once a decision was taken. Furthermore, the respondent said that in order to ensure compliance with Articles 6(2) and 6(5), the decision should also be made available electronically.
170. One respondent wondered whether the costs of the additional administrative burdens for regulators associated with Article 9(1) would be passed on to industry. If not, then the respondent agreed with the assumption that the implementation of Article 9(1) should not result in any extra burdens / costs for industry.

Government response on Article 9(1)

171. The Government appreciated the responses received on the implementation of Article 9(1).
172. The Government assessed the responses concerning the transposition of this Article and would like to confirm the following:
- (i) The word “promptly” is included in the OPP (EIA) Regulations 2017 in respect to the 1999 Offshore (EIA) Regulations (i.e. regulations 5A(7) and 11(9)). However, with respect to the onshore Pipe-lines Regulations, it is left to the gas transporter to inform the public within 14 days - see regulations 14(4) and 14(5) of the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and regulations 3(4) and 3(5) of the 2000 Pipe-line Works (EIA) Regulations. The Government took the view that 14 days was sufficiently ‘prompt’ and consequently no further legislative changes were necessary.
 - (ii) In relation to the suggestion that ‘decisions’ should be made available to the public electronically, the transposing Regulations require the decisions to be made available on a public website - for example, regulations 5A(7) and 11(9) of the 1999 Offshore (EIA) Regulations; regulation 14(5) of the 1999 Public Gas Transporter Pipe-line Works (EIA) Regulations and regulation 3(5) of the 2000 Pipe-line Works (EIA) Regulations.



- (iii) As indicated earlier in this paper and in the consultation document, the Government is not intending to pass on to industry any additional costs that may be incurred by regulators as a result of undertaking functions associated with the amended EIA Directive.

Conflicts of interest - Article 9a

173. This new Article is based on European Court of Justice case-law (C-474/10) and deals with a conflict of interest where an organisation is the developer as well as the consultation body and / or competent authority. Where the competent authority is also the developer there must be an appropriate separation between functions.
174. The Government explained that it had been established that no 'conflicts of interest' would ever arise in connection with the performance of the Government's regulatory duties under the consenting regimes for onshore pipe-line projects. Therefore, Article 9a did not need to be transposed in respect to the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (as amended) or the Pipe-line Works (Environmental Impact Assessment) Regulations 2000 (as amended).
175. With regard to the consenting regime for offshore hydrocarbon-related developments, the Oil and Gas Authority (OGA) took over as the consenting authority from the Secretary of State for such developments in autumn 2016. Therefore, it had been established that no 'conflicts of interest' would ever arise in connection with the performance of the Government's regulatory duties under the consenting regimes for offshore petroleum and pipe-line projects..

See consultees' responses and the Government response in respect to Article 9a below Question 26 under Article 10a.

Penalties - Article 10a

176. The 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.
177. The Government stated that the existing Production and Pipe-line (EIA) Regulations already had provisions on offences and penalties which would sufficiently cover the amendments being introduced by the OPP (EIA) Regulations 2017, and as a consequence the Government did not propose creating any additional offences. However, the Government confirmed that regulation 37 of the proposed OPP (EIA) Regulations 2017 contained one very minor adjustment to regulation 18 of the Public Gas Transporter Pipe-line Works (Environmental Impact



Department for
Business, Energy
& Industrial Strategy

Assessment) Regulations 1999 (as amended) to reflect that “imposing conditions” now featured in regulation 14(1A) rather than 14(1). Views were sought on the proposals appertaining to Article 10a.

Question 26: Do you have any comments on, or concerns with, BEIS’s position in relation to Articles 9a and 10a?

Consultation responses on Articles 9a and 10a

178. **Five** responses were received in respect to **Articles 9a and 10a**.
179. Three respondents had no concerns with the proposed approach on these Articles.
180. One respondent disagreed with the proposed approach in relation to Article 10a as they were of the view that penalties and enforcement action must apply when applicants or regulatory authorities did not comply with the EIA Directive’s objectives / requirements - hence they believed that an explicit duty should be placed on regulatory authorities to have regard, when exercising their enforcement duties, to the need to secure compliance with EIA requirements, The respondent thought this should be set out in the transposing Regulations and that penalties had to be high enough to act as a deterrent. The respondent saw this as essential to ensuring compliance with Article 10a.
- The respondent felt that the transposing Regulations should specify which aspects of the EIA process would be subject to enforcement action and the application of penalties (e.g. if mitigation or monitoring measures were not implemented, or for knowingly or recklessly providing false information in relation to any part of the EIA process, or in respect of unlawful development) and what would happen if measures were not implemented including remedial action. The respondent strongly recommended that the full provisions of Article 10a should be reproduced within the transposing Regulations to ensure adequate transposition and implementation of the requirements. The respondent additionally stressed that regulatory authorities should be adequately resourced in order to undertake enforcement action and apply penalties.
181. Another respondent indicated that the proposed approach on Article 9(a) should be acceptable providing the Government did not nationalise the offshore oil and gas industry.

Government response on Articles 9a and 10a

182. The Government welcomed the responses submitted in relation to the proposed implementation approaches to Articles 9a and 10a.
183. The Government evaluated the responses concerning these Articles and would like to make these points:



- (a) The Government is of the opinion that the extant provisions on offences and penalties in the existing Production and Pipe-lines (EIA) Regulations are sufficient for the purposes of enforcing the obligations of the EIA Directive and hence no further legislative changes were necessary.
- (b) The Government currently has no plans to nationalise the offshore hydrocarbons sector.

Exchanges of Information - Article 12(2)

184. This Article requires the provision by Member States of 'six yearly' reports providing specified information to the Commission on the implementation of the EIA Directive.
185. The Government confirmed that this Article would be transposed by administrative means and would result in additional burdens / costs for regulators as they would have to collate the necessary information. There would also be extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors, as the regulators would need to consult the sectors to request details of the costs relating to the EIA processes. Views were sought on this issue.

Question 27: Do you agree with BEIS's view that Article 12(2) would result in extra burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors?

If you agree, please supply estimates of any related cost implications for your particular operational activities so as to further inform the updating of the Department's Costs and Benefits Analysis (paragraphs 80 to 97 and Annexes A to F of the consultation document). When formulating your response to the above question, please also consider the specific information contained within the Costs and Benefits Analysis.

Consultation responses on Article 12(2)

186. **Four** responses were submitted in relation to **Article 12(2)**.
187. One respondent had no concerns with the proposals on this Article.
188. One respondent said that it was difficult to estimate the potential cost impacts from Article 12(2) without understanding what data would be needed - above that already supplied by industry - to meet this requirement. The respondent mentioned that further discussions with the regulator on what, when and how this data was to be collected from industry would be appreciated.
189. Another respondent stated that the main issue was the provision of information to satisfy item (e) of Article 12(2). The respondent highlighted that the regulator should be able to generate the information to address items (a) - (d)



unless the 'average duration of the EIA process' was intended to include the time required to develop an Environmental Statement for a project. The respondent noted that the Directive did not define what was meant by "average duration of the EIA process" nor did the draft transposing Regulations. The respondent also suggested that a key question to be asked was why the regulator appeared to believe that there was a requirement for project developers to submit a report to them containing data that they would largely already have.

190. One respondent stated that whilst they understand that regulators would now have a duty to report to the Commission on activities pertinent to the EIA process, they suggested that developers should indicate the costs of preparing applications within any Environmental Statement. As the respondent understood it, developers regularly kept a record of costs of surveys / contracts in preparing Environmental Statements and this should at least ensure that for the collation of costs this information was readily available for regulators to report back to the Commission.

Government response on Article 12(2)

191. The Government was grateful for the responses received in relation to the proposed approach on Article 12(2).
192. Having assessed the responses relating to this Article, the Government would like to confirm the following:
- (i) The regulators would primarily be seeking information on the costs relating to the EIA process from project developers.
 - (ii) Taking into account respondents' comments, and in order to meet the requirements of Article 12(2) in an effective / efficient manner, the regulators could ask project developers to provide data on costs towards the end of the EIA process i.e. when requesting CD ROMS of all the information / supplemental exchanges pertaining to an EIA application. In this regard, the regulators will consider liaising with relevant industry contacts to determine the best approach for obtaining details on costs.
 - (iii) The expectations on industry under Article 12(2) are also covered in the revised regulatory guidance (which would be further updated in the light of any deliberations with industry).

Transitional Arrangements - Article 3 of Directive 2014/52/EU

193. Article 3(1) of the 2014 Directive provides transitional measures where screening was initiated before 16 May 2017. Article 3(2) provides transitional measures for projects for which an environmental statement was submitted or



Department for
Business, Energy
& Industrial Strategy

where a scoping opinion has been sought before 16 May 2017. In such cases, certain provisions of the 2011 Directive will apply.

194. The Government advised that the transitional measures would be transposed by the OPP (EIA) Regulations 2017.

Question 28: Do you have any comments on, or concerns with, BEIS's proposals regarding the transposition of Article 3?

Consultation responses on Article 3

195. **Four** responses were received in respect to the transposition of **Article 3**.
196. None of the four respondents had any concerns with the proposals to implement Article 3.

Government response on Article 3

197. The Government welcomed the positive responses submitted in relation to the transposition of Article 3.

Analysis of Costs and Benefits

198. The Government stated that even though the 2014 Directive revised several elements of the existing EIA Directive and incorporated new requirements, it was nevertheless the case that most of the obligations in question reflected current practice under the existing Production and Pipe-lines (EIA) Regulations and, in some instances, the new requirements would have limited - or possibly no - discernible impact on the offshore hydrocarbon and onshore pipe-line sectors. This was primarily due to the manner in which the Directive and existing regulatory process had evolved over time.
199. By way of further explanations to support the Government's position on the impacts to the offshore hydrocarbon and onshore pipe-line sectors of transposing the 2014 Directive, it was considered useful to highlight the following points (many of which were reflected throughout the earlier sections of the consultation document):
- ✚ The existing EIA legislative regimes currently adopt a 'coordinated procedure' for assessing applications as it offers the greatest flexibility for project developers around the phasing / timing of an environmental impact assessment and other requirements, such as an Appropriate Assessment (if necessary) under the Habitats Directive. It was therefore, the Government's intention to continue applying the coordinated procedure as it was well understood by industry, regulators and other relevant stakeholders.



- ✚ The amended and new factors set out in the Directive's Articles and Annexes that need to be assessed under the EIA process are, in many instances, largely covered by project developers in applications submitted in line with the existing Production and Pipe-lines (EIA) Regulations which, incidentally, include suitable arrangements for screening projects (i.e. to determine whether Environmental Statements (ESs) should be submitted) and providing scoping opinions as to the contents of ESs. Accordingly, any extra burdens on the offshore hydrocarbon and onshore pipe-line sectors should not be substantial.
- ✚ Project developers already utilise competent experts (either in-house or consultancies) for preparing ESs, and the regulators always consult relevant stakeholders when evaluating applications for the purpose of reaching formal decisions.
- ✚ It is anticipated that any additional monitoring requirements in relation to offshore hydrocarbon-related developments would be proportionate and would probably be infrequent and / or restricted to specific developments or areas.
- ✚ In reality there would be no conflicts of interest as there has not been, and was very unlikely to be, any situations where the regulator would be a project developer.
- ✚ The offence and penalty provisions in the existing Production and Pipe-lines (EIA) Regulations are considered more than sufficient for dealing with any issues of non-compliance with the amended EIA Directive's obligations and on that basis they would be retained unaltered.
- ✚ The collation and provision of data (e.g. on costs) by project developers to the regulators for onward transmission to the Commission (probably via DCLG as the lead Government Department on general EIA-related topics) would place insignificant extra burdens on the offshore hydrocarbon and onshore pipe-line sectors.
- ✚ The existing Production and Pipe-line (EIA) Regulations include comprehensive public participation requirements which would meet virtually all of the amended Directive's provisions. The change to the timeframe for consulting the public on ESs would also have no real impact on the offshore and onshore sectors as it represented a minor extension from 28 to 30 days.

200. The Government indicated that it was also evident that the amended / new obligations of the Directive were aimed at reducing regulatory burdens on business by providing more clarity on the parameters that should form the basis of the environmental impact assessment process. That meant that there could be eventual savings (benefits) for the offshore and onshore sectors as future applications would focus on significant environmental effects as opposed to providing detailed assessments of other incidental / less serious impacts.



201. When considering the above points, the Government believed that it was apparent that a relatively small proportion of the amended / new requirements would actually result in additional burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors. In this regard, and to further inform policy deliberations, questionnaires were circulated - in August / September 2016 - to the offshore and onshore sectors which outlined the legislative proposals for transposing the 2014 Directive and sought views on what the likely costs to industry would be as a result of complying with the amended / new requirements. Thirteen responses were received from the offshore hydrocarbons sector and one from the onshore pipe-lines sector.
202. Whilst the responses included useful comments from a policy / administrative perspective (e.g. on the extra factors that will need to be assessed / considered under the EIA regulatory process), many of the estimates of additional costs to be incurred by industry were, in the regulator's opinion, disproportionately high in relation to the scale of the extra burdens that the offshore hydrocarbon and onshore pipe-line sectors would incur.
203. Therefore, utilising historical data / trends pertaining to EIA applications from 2009 to 2016, the regulator undertook an analysis of the anticipated costs plus savings (benefits) to the offshore hydrocarbon and onshore pipe-line sectors resulting from the transposition of the 2014 Directive. The analysis of the '**undiscounted**' costs and savings (benefits) were included in the consultation document.

Question 29: We would welcome your feedback on the assumptions (e.g. salary costs and predicted numbers of applications to be submitted under the three scenarios between 2017 and 2026) and methods used to calculate the respective estimated costs / savings to the offshore hydrocarbon and onshore pipe-line sectors as a result of BEIS's proposals for transposing the EIA Directive 2014/52/EU.

The information provided would be useful for the purposes of updating the Department's Costs and Benefits Analysis as part of the implementation process.

Consultation responses on the Analysis of Costs and Benefits

204. **Three** responses were received on the Analysis of Costs and Benefits.
205. One respondent had no comments on the analysis of costs and benefits included in the consultation document.
206. Two respondents provided the following comments:



- The consultation did not make clear why the industry responses to the questionnaires were not used by the regulator and why they were considered 'disproportionately' high.
- It was difficult to estimate costs without the draft supporting guidance on the OPP (EIA) Regulations 2017 which would indicate the regulator's expectations of project developers.
- The methodology used in the impact assessment was clear and easy to follow. However, it was not clear how the extra number of hours had been derived for compliance with the new requirements of the EIA Directive.
- Similarly, the savings accrued by industry were based on indicative ratios of 10%, 15% and 20% - it was unclear how these ratios were derived.
- The monitoring costs included in the impact assessment allowed for monitoring of one Annex 1 project per year every 5 years. This might be an under estimate of activity as the industry responses to the impact assessment suggested that project developers may expect between 1 and 10 Annex 1 projects to be submitted per year per developer.
- The monitoring costs ranged from £200,000 to £300,000. The scope of the monitoring considered had not been described in the impact assessment. However, industry estimated that baseline environmental surveys offshore were around £500,000.
- The cost benefit analysis assumed that Environmental Statements were prepared by a single person, whereas more usually, technical input and quality review was required from many different experts.
- It would have been useful if the total cost (ES's, directions, monitoring etc.) to industry were displayed in the impact assessment.
- The hourly rate used to calculate the Full Economic Cost (FEC) for an Environmental Manager working for either an offshore or onshore project developer of £75 per hour were approximately 33% low. A typical hourly rate for a Principal Environmental consultant working on an ES would be circa £100/hr.
- Why would regulators require the submission of information in relation to Article 12(2) when a lot of the basic data was provided by industry under the EIA process?

Government response on the Analysis of Costs and Benefits

207. The Government appreciated the responses submitted in respect to the Analysis of Costs and Benefits.



208. Having assessed the responses, the Government would like to confirm the following:

(a) Whilst the responses included useful comments from a policy / administrative perspective (e.g. on the extra factors that will need to be assessed / considered under the EIA regulatory process), many of the suggested levels of additional costs expected to be incurred by industry through complying with the Directive's amended / new obligations were still, in the Government's opinion, disproportionately high in relation to the scale of extra burdens that the offshore hydrocarbon and onshore pipe-line sectors would realistically face. For example:

- some project developers indicated that the costs for assessing the extra factors when preparing an Environmental Statement would be, on average, between £40k and £100k;
- a few developers implied that the additional costs for preparing a 'direction application' could be between £26k and £50k; and
- one developer stated that the cost for providing data under Article 12(2) would be between £10k and £20k.

The Government felt that these estimated costs were not proportionate to the actual scale of additional burdens that were likely to be placed on industry, as confirmed in the Analysis of Costs and Benefits included in the consultation document which provided indicative estimates of what the regulators' believed the costs to industry might be.

(b) The issue relating to regulatory guidance has been fully covered in the Government responses under the Sections on 'General comments / observations' and the 'Assessment process (Articles 3(1) and 3(2))' and also in paragraph 212 under 'Next Steps'.

(c) The number of hours used to determine compliance with the Directive's amended / new requirements were broadly based on the industry responses to the initial questionnaires, which implied that the amount of time that would be spent on the preparation of an EIA application (with or without an Environmental Statement) could be between 5 and 20 days.

Talking into account that a relatively small proportion of the Directive's amended / new obligations would actually result in additional burdens / costs for the offshore hydrocarbon and onshore pipe-line sectors, the regulators decided to use a number of hours slightly in excess of a 5 day working week, with minor reductions after a couple of years due to industry familiarisation with the requirements, as a key element of the cost calculation methods.

(d) The indicative ratios of 10%, 15% and 20% savings (benefits) were essentially estimations by the regulators which seemed reasonable given that future EIA



applications would be expected to focus on the significant environmental effects of proposed developments, with the savings applying to the existing EIA requirements that will still apply to the preparation of applications after the 2014 Directive's obligations took legal effect in the UK (i.e. from 16 May 2017 onwards).

- (e) Relevant aspects associated with monitoring frequencies / costs have been fully addressed under the Section on 'Monitoring of significant environmental effects (Article 8a(4))'. In terms of the number of Environmental Statements (ESs) to be submitted each year, the regulators assessed the number of ESs received over the last 3 years to arrive at the averages used in the consultation's Analysis of Costs and Benefits. The suggestion that every developer would submit at least one ES every year is clearly incorrect given the maturity of the UK offshore sector and the limited number of potential new developments.
- (f) Due to the lack of detail provided by industry on the breakdown of resource efforts required to prepare Environmental Statement (ESs), it was difficult for the regulators to do anything other than split the preparation of ESs between an in-house Environmental Manager and an external Consultant, whilst accepting that there could be more than one person in each category involved in the preparation.
- (g) The total costs to both the offshore and onshore industry sectors were provided in Annex C of the Analysis of Costs and Benefits.
- (h) The hourly rate used by the regulators to calculate the Full Economic Cost (FEC) for an Environmental Manager working for either an offshore or onshore project developer was based on a legitimate source (i.e. the Hayes Oil & Gas Salaries Guide).
- (i) Issues relating to the provision of data by project developers on the costs of the EIA process are fully covered under the Section on 'Exchanges of Information (Article 12(2))'.

Supplemental 'post-consultation' legislative amendments

209. In addition to the changes to the extant Regulations (as consulted on), and following internal 'post-consultation' deliberations, the transposing Regulations also:

- ❖ correct an omission in the implementation of the Habitats Directive as it applies offshore to petroleum production (and to CCS and gas storage) through the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (S.I. 2001/1754); and
- ❖ make minor corrections (as advised by the JCSI) to the Offshore Petroleum Licensing (Offshore Safety Directive) Regulations 2015 (S.I. 2015/385).



210. As a consequence of these extra elements the title of the transposing Regulations was changed to 'The Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017'.

Next Steps

211. The Government was grateful for the responses received to the consultation and updated the transposing Regulations as described in this paper. On 16 May 2017, the Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017 (details at: <http://www.legislation.gov.uk/uksi/2017/582/made>) entered into force. A correction slip (details at: http://www.legislation.gov.uk/uksi/2017/582/pdfs/uksics_20170582_en.pdf) was also subsequently issued to correct a minor error in the Regulations.
212. On 7 September 2017, the Government published the revised guidance document for the offshore hydrocarbons sector on the amended offshore EIA consenting regime which is accessible via: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642713/OPRED_EIA_Guidance_-_0917.pdf.