Department for
Business, Energy
& Industrial Strategy

Government response to the technical consultation on Environmental Impact Assessment (Regulations on Electricity Works)

December 2017
Department for Business, Energy and Industrial Strategy

Department for
Business, Energy
& Industrial Strategy

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Exit from the European Union

1. 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

2. The Government invited comments via a four-week consultation (16 February to 16 March 2017) on proposals for implementing European Directive 2014/52/EU ('the 2014 Directive') 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 consents granted under section 36 and 37, and variations of consents under section 36C, of the Electricity Act 1989.

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

4. 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 lighten 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.

5. 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 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 the 2014 Directive, and to minimise additional regulatory burden whilst protecting the environment.

6. In transposing the amendments to the EIA Directive, our view at the outset was that there was merit in retaining, as far as practicable, the existing approach to environmental impact assessment in England and Wales as it is well understood by developers and others involved in the procedures. We therefore consulted on proposals which represented the minimum changes necessary to the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 ('the existing Regulations') in order to bring them into line with the 2014 Directive. This will also minimise familiarisation costs and business uncertainty.

7. A complete version of our draft Regulations was included in the consultation. In most cases the text of the Directive was 'copied-out' as far as practicable, but we proposed an alternative approach where this was considered beneficial. We took the opportunity to consolidate previous amendments to the existing Regulations and simplify them where possible. Comments were sought on our interpretation of the changes and how we proposed to implement them through Regulations. Consultees were invited to consider the draft Regulations in their totality and provide any comments.

8. The consultation asked twenty questions:

   Question 1: Do you agree that the coordinated procedure provides the most flexibility and that it is appropriate not to make it mandatory to apply joint or coordinated procedures to assessments under EU legislation other than the Habitats and Wild Birds Directives?

   Question 2: Do stakeholders have views as to whether provision should be made to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place?

   Question 3: Will you have to change your current practice to take account of the risk of major accidents and/or disasters or the change in terminology? If so, what do you consider the likely cost/benefits associated with this?

   Question 4: What are the current costs to you for submitting an application for a screening opinion under the Electricity Works (EIA) Regulations 2000 and is there a cost/benefit associated with any change to your current practice to meet the new screening requirements?

Question 5: Do you have any views on the proposed amendments to the timing for a screening opinion to be issued?

Question 6: Do you consider that including features and mitigation measures of the project envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment will lead to a reduction in the number of EIAs?

Question 7: What are the current costs to you for providing an environmental statement under the Electricity Works (EIA) Regulations 2000?

Question 8: Our preliminary view is that it is likely in practice that all of the issues listed in the amended Annex IV should already be included in an environmental statement, where it is considered to be relevant to an assessment of the likely significant effects of development. Do you agree with this or do you consider that there will be any additional cost/benefit to developers in meeting this requirement?

Question 9: Do you consider that the requirement for a person who is competent to do so to prepare the EIA report would result in extra cost to you? If so what do you expect these costs to be?

Question 10: Do you agree with our assumption that making information available electronically is already carried out and that this will not result in additional cost for developers? If you do not agree what do you consider the additional costs will likely be?

Question 11: Do you expect that transposition of Article 8a(4) will result in any additional costs to you?

Question 12: Overall, do you consider that our approach to transposition as set out in this document appropriately implements the requirements of the EIA Directive or have any points or relevant information to provide?

Question 13: Do you have any comments on the definition of ‘consultation body’ as set out in regulation 4 of the draft Regulations?

Question 14: Do you agree that the removal of the requirement for additional information to be publicised by a notice in a newspaper on the first occasion on which additional information is provided and the inclusion of a requirement for any information provided by the developer to supplement the EIA report to be publicised by a notice in a newspaper targets the need to publicise environmental information and invite representations more appropriately?

Question 15: Do you consider that the amendments to the publication requirements will result in any additional costs or benefits to you? If so, please provide details on how much you estimate these to be?

Question 16: Do you consider that this simplification will result in any additional costs/benefits to you? If so, please provide details on how much you estimate these to be?

Question 17: Do you consider that the competent authority's ability to decide that an EIA assessment under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 is not required where such an assessment has also or will be carried out under the Marine Works (Environmental Impact Assessment) Regulations 2007 is a useful provision and if so could this be extended to where an EIA has been carried out or will be carried under any other Regulations?

Question 18: Do you consider that the definition of 'sensitive' area is appropriate?

Question 19: Do you consider that we have consolidated the previous amendments to the Electricity Works (EIA) Regulations 2000 in to the updated Regulations in a way that is helpful?

Question 20: What do you consider to be the benefits of the existing arrangements and do you consider that the proposed changes will result in any additional costs/benefits to you? If so what do you expect these to be?

9. This document provides a summary of the responses to the technical consultation and the Government response to each of the twenty questions posed. It should be noted that in considering the responses, more weight has been given to the points put forward in support of, or against any particular proposal, rather than the absolute number who were for or against.

10. Respondents were invited to reply online using an internet survey package or to email or post written comments to the Department for Business, Energy and Industrial Strategy.

11. We were grateful for all the responses received. They have been given full consideration.

Summary of responses to the consultation

12. There were fourteen responses to the consultation. Responses were received from developers, devolved administrations, statutory consultees, non-governmental

organisations and representative organisations. Respondents addressed some or all of the questions set out in the consultation paper, 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	6
Representative body	3
Statutory Consultee	3
NGO	2
Devolved Administration	1

13. The consultation paper gave a detailed explanation of the changes to the Directive. That level of detail has not been repeated here except where it relates to a specific question posed in the consultation. Reference should therefore be made to the consultation document (http://www.gov.uk/government/consultations/consultation-on-transposition-of-the-environmental-impact-assessment-directive-regulations-on-electricity-works) where necessary.

Coordinated procedures - Article 2(3)

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

15. The Government considered that coordinated procedures provide the greatest flexibility for developers around the phasing and timing of environmental impact assessment and an 'appropriate assessment' under the Habitats or Wild Birds Directives. This is thought to reflect existing practice. The joint procedure would, however, require the information to inform both assessments to be dealt with in a single assessment.

16. The Directive also allows the Government to choose to also apply joint or coordinated procedures to any assessments required under other EU law, including the Water Framework Directive, the Industrial Emissions Directive and the Waste Framework Directive. The provision is not mandatory and we did not propose to include it in our Regulations. However, we sought views on the matter.

Question 1: Do you agree that the coordinated procedure provides the most flexibility and that it is appropriate not to make it mandatory to apply joint or coordinated procedures to assessments under EU legislation other than the Habitats and Wild Birds Directives?

17. Eleven respondents agreed that a coordinated procedure should be implemented; no responses suggested that a coordinated approach should not be implemented. No respondents said that a joint procedure should be implemented. Two responses also suggested that guidance on this topic would be useful.

18. Many respondents commented that the coordinated procedure would provide the greatest flexibility for developers around the phasing and timing of the environmental impact assessment and an 'appropriate assessment' under the Habitats Directive. It was suggested that a joint procedure could have unintended consequences, given the different purposes and outcomes of the two assessments.

19. One respondent suggested that the coordinated procedures could be used for the Water Framework Directive; one respondent suggested that it should not be used for other regimes.

Government response

20. The Government welcomed all the comments received and the general support for the coordinated approach in relation to the Habitats and Wild Birds Directives. Limited views were received on whether it is appropriate to make it mandatory to apply joint or coordinated procedures to assessments under EU legislation other than the Habitats and Wild Birds Directives and as such the Government considered it appropriate not to implement this as it would lead to a change to existing procedures. The Government will take this approach forward, and will require a co-ordinated approach in relation to the Habitats and Birds Directives, but will not make coordination of other assessments mandatory.

Consents and permits

21. The consultation asked for views on whether it was appropriate to make provision to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place.

Question 2: Do stakeholders have views as to whether provision should be made to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place?

22. Four respondents agreed that provision should be made to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place; eight respondents disagreed.

23. A number of the respondents that disagreed noted that a provision such as this would create delays and add cost to development. The respondents provided examples of permits and consents that would be required at different timescales of the development in support of the view that not all permits and consents are or should be sought prior to construction. One respondent also noted that it is not possible to issue some permits until consent for development has been secured. It was also suggested that such a provision could lead to duplication of work between the planning authority and environmental regulators. Respondents noted that the current process operates well.

Government response

24. The Government considered the responses both in favour and against this provision. The Government noted the responses which highlighted the different nature of the assessments the proposal wishes to combine and also that components of a number of them cannot be delivered until the development is constructed and passing through pre-operation commencement testing. As such, the proposal of all necessary consents and permits being secured before construction would act to stop any EIA development that required such post-construction permits from being progressed. Nevertheless the approach proposed by the Government makes it clear that operational effects must be identified, described and assessed as part of the EIA process. The Government therefore considered that it would not be appropriate to make a provision to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place.

The Assessment Process- Articles 3(1) and 3(2)

25. This 2014 Directive sets out the broad requirements of the EIA process and the environmental factors to be considered, as appropriate, in the assessment as well as the interaction between those factors. It also clarifies that the EIA should only be assessing **significant** effects of the project on the environment. The 2014 Directive

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'. Article 3(2) of the EIA Directive also introduces a new requirement to consider the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned. Views were sought on the proposed approach to transposing this requirement.

26. In addition Article 1(3) of the Directive 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. The exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose. This provision is not mandatory but is considered necessary to ensure projects falling within this category can be taken forward at the necessary pace.

Question 3: Will you have to change your current practice to take account of the risk of major accidents and/or disasters or the change in terminology? If so, what do you consider the likely cost/benefits associated with this?

27. Eight responses were received to this question. All eight responses said that their existing process is unlikely to change and as such this is unlikely to lead to a change in cost. Two responses noted that this would be dependent on a proportionate approach being carried out. Two responses stated that for section 37 132 kV wood pole projects over a short distance there is the potential for extra cost which could be up to £30,000 due to the need for a specialist risk assessment. One response noted that guidance will be needed to ensure that these new issues are considered consistently and robustly within the EIA (at all stages – screening, scoping and in the EIA report).

28. In relation to Article 1(3) and the proposed exemption for defence and civil emergencies, one response noted that exemptions should only be applied when the EIA process would have a demonstrable adverse effect on defence or the response to a civil emergency. The response suggested that the circumstances under which an exemption can be applied must be made clear in the Regulations. The response went on to say that if the Government is minded to make these exemptions it is recommend that accompanying guidance provides examples of the types of projects which are likely to be deemed 'national defence' and 'civil emergency' projects. The response noted that guidance should also set out what would be considered to be a 'demonstrable adverse effect' on the project. The response requested that provision should be made in the draft Regulations for retrospective assessment if required, for the provision of mitigation measures and for assessment information to be made available to the public.

29. In assessing the responses it was considered that current practice would not need to change for the majority of developments due to the need to take account of the risk of major accidents and/or disasters or the change in terminology. No changes to the wording of the Regulations was considered necessary. With regards to defence and civil emergencies it was noted that only one response was received on this topic. The Government considered that no changes to the wording of the Regulations was required on this because it would not be possible to cover every specific eventuality where this exemption might be necessary and that the proposed wording is sufficiently clear in respect of the type of development that might be covered by the exemption.

Timeframe for screening - Article 4(6)

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

31. To transpose the Directive, we proposed to amend this timing to as soon as possible after the later of the date on which all relevant information is received from the developer and the date by which a local planning authority provides, or should have provided, its views and in any event no more than 90 days after the information is received from the developer (see draft regulation 14). We also allowed for a screening opinion (called a 'screening decision' in the draft Regulations) to be provided within a longer period in agreement with the developer, subject to a longer period outside of the deadline in exceptional cases.

32. The consultation sought views on this and asked three questions in relation to this topic.

Question 4: What are the current costs to you for submitting an application for a screening opinion under the Electricity Works (EIA) Regulations 2000 and is there a cost/benefit associated with any change to your current practice to meet the new screening requirements?
Question 5: Do you have any views on the proposed amendments to the timing for a screening opinion to be issued?
Question 6: Do you consider that including features and mitigation measures of the project envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment will lead to a reduction in the number of EIAs?

33. There were five responses to question 4. One respondent noted that limited applications for screening opinions have been made to date and that these have contained minimal detail. The response suggested that the requirement to provide more detail may increase the number of EIAs. Another response also noted that the additions could increase costs. Three respondents noted that there would be no additional cost. It was noted in relation to this question that the equivalent of regulation 5(3) of the existing Regulations had not been included in the draft Regulations. This requires the Secretary of State to notify a developer within 3 weeks of receiving a request for a screening opinion if further information is needed. The response noted that a timeframe should be imposed.

34. In relation to question 5 six responses were received. One response supported the amendments to the timing for a screening opinion to be issued, four responses did not and one response requested clarity on the wording in the Regulations. The four responses noted that 90 days is not appropriate and that it should remain at the current time period of 3 weeks (unless in an exceptional case when it should be 90 days). The other response requested clarification on whether the drafting in the Regulations and the ability of the competent authority to agree with the developer to extend the screening period beyond 90 days transposes the Directive. The response noted that the Directive allows screening to extend beyond 90 days in 'exceptional circumstances' only and does not allow extension in other circumstances.

35. With regards to question 6, seven responses were received. Two responses noted that it was unlikely that there would be a reduction in the number of EIAs due to the inclusion of mitigation as there would not be enough information available at that stage to reach such a conclusion. Another response noted that the requirement to provide more detail may increase the number of EIAs. One response noted that the proposals could lead to a reduction in the number of EIAs but not the number of screening opinions. Three responses noted that the proposals could lead to a reduction in the number of EIAs.

Government response

36. The Government noted the difference of opinion of the likely cost of the new screening requirements. In relation to the requirement that the developer be notified within 3 weeks if the information required for a screening decision has not been provided, the Government considered this and the text of the Regulations has been changed to make provision for this.

37. With regards to the timing of a screening opinion being issued the Government considered the responses and decided to remove the provision that required a screening decision to be made no more than 90 days after the date on which the relevant authority receives the information referred to in regulation 12. The existing time frame of three weeks for a screening decision to be made has been maintained. The screening decision must be made within three weeks of the later of the date on which the information referred to in regulation 12 is received and the date on which a local planning authority is required to give its views (and provision has been included to ensure that this second date cannot extend the period beyond the 90-day maximum provided by the Directive). Extensions when agreed in writing with the developer of an unlimited period of time (which is considered to comply with the Directive) continue to be allowed. In accordance with the Directive, we have, however, included provision enabling the relevant authority to unilaterally extend the time further in an exceptional case.

38. The Government noted the difference of opinion in the change in the number of EIAs that might occur as result of including features and mitigation measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. The Government considered that as the text in the Regulations is largely a copy out of the Directive there was no need to make changes as no response raised issues regarding the method of transposition.

Information to be provided in the EIA Report - Articles 5(1) and 5(2)

39. This Article clarifies the required content of the EIA report (also referred to in this document as ‘environmental statement’). It sets out what should be included in an EIA report including mitigation measures, a non-technical summary and reasonable alternatives which the developer has considered and introduces a new provision requiring that where a scoping opinion is requested the EIA report must be ‘based on’ that opinion.

40. The Government’s preliminary view was that it is likely in practice that all of the issues listed in the amended Annex IV to the EIA Directive will already be included in an environmental statement currently, where it is considered to be relevant to an assessment of the likely significant effects of a development. Views were sought on this matter.

Question 7: What are the current costs to you for providing an environmental statement under the Electricity Works (EIA) Regulations 2000?

Question 8: Our preliminary view is that it is likely in practice that all of the issues listed in the amended Annex IV should already be included in an environmental statement, where it is considered to be relevant to an assessment of the likely significant effects of development. Do you agree with this or do you consider that there will be any additional cost/benefit to developers in meeting this requirement?

41. Four responses provided detail of the current costs of providing an environmental statement under the existing Regulations. One response noted that costs would vary between £10,000 to £100,000 depending on the scheme and its location. Three other responses noted that they can cost between £300,000 to £500,000.

42. Eight responses were received to question 8. Seven respondents agreed that there would be no additional burden from meeting this requirement. One respondent noted that costs are likely to increase for 132 kV wood pole projects. Three of the responses suggested that clarity or guidance on the terms would be helpful to reduce uncertainty in the assessment process. One of the representative body responses noted that the members were split on this issue with some stating that this is already carried out with others suggesting that it is not.

Government Response

43. The responses to the consultation demonstrated that the issues listed in the amended Annex IV were already included in environmental statements where relevant. The Government noted the responses regarding 132 kV wood pole projects and will consider whether further consultation on the assessment of 132 kV wood pole lines would be useful. No changes will be made to the Regulations.

Competent experts - Article 5(3)

44. The Directive requires the developer to ensure that the EIA report is prepared by competent experts, while the competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report.

45. We included a requirement in the draft Regulations that, in order to ensure the completeness and quality of the EIA report, the EIA report must be prepared by a person who is competent to do so. To evidence this, we proposed that the EIA report must contain: the name of the person who prepared the EIA report; details of that person's competence to do so (for example the person's qualifications or experience); and a statement signed by the developer that the developer thinks the person is competent to do so. We did not seek to define 'competent' any further, both because it is considered to be a sufficiently clear term, but also because it is

likely to depend on the individual circumstance of each case. Views were sought on this approach.

Question 9: Do you consider that the requirement for a person who is competent to do so to prepare the EIA report would result in extra cost to you? If so what do you expect these costs to be?

46. There were eleven responses to this question, three responses suggested that this would likely result in extra cost, two suggested it would not and six responses did not provide a view on cost but did provide general thoughts on this requirement.

47. One response noted that regardless of cost this requirement should be included in the Regulations. One response also noted that 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 shall ensure it has or has access to sufficient expertise to examine the EIA as a whole.

48. One response questioned whether the Regulations make it clear to the developer how they can meet the competent expert requirement. The response noted that in the Directive the word 'expert' is qualified by 'competent' and this needs to be clearly set out so that everyone knows what it means. The response noted that other Regulations which are being altered to transpose the Directive have taken the lead on this issue from section 74(3) of the Environmental Protection Act 1990 and have left the issue of whether someone is a competent expert to the opinion of the competent authority.

49. Four responses noted that setting out some form of restrictive definition of accreditation or qualification in legislation is not sensible. The responses welcomed the indication in the consultation document that there is no intention to define a 'competent expert'. Three responses noted that a statement in the EIA report from the developer outlining how the requirement for sufficient expertise has been met is sufficient. However, one of these responses suggested that the proposed wording was too broad and would require all staff who worked on an environmental statement to demonstrate competence: the response suggested that this should be focussed on 'topic specialist leads' and/or 'EIA coordinators'.

50. Two responses noted that it will be important how the concept of 'competent expert' is implemented in practice to avoid unintended consequences such as questions about the validity of an EIA report. The responses noted that this could result in additional costs and delays being incurred by developers. It was noted in a number of responses that guidance would be useful in this respect. The responses noted that while the requirement to ensure that a competent authority has access to

sufficient expertise to examine a report is clearly set out, this should not be taken as implying that developers are obliged to provide funding for such expertise to either be retained or hired by competent authorities. Should this need arise, the proposed applicant should be forewarned of this and provided with justification of the reasonable nature of such cost.

51. One response noted that our suggested approach to transposition fails to fully transpose Article 5(3)(a) as it should refer to competent 'experts', not just to competent 'persons'.

Government response

52. The approach proposed by the Government in the consultation draft of the Regulations was intended to provide a procedure for determining the competence of those preparing environmental statements. The majority of respondents agreed with the principles of the proposed approach whilst calling for certainty on the interpretation of this provision. The Government decided to change the Regulations slightly to achieve greater consistency across the suite of EIA Regulations applying to other sectors, which should assist in achieving greater certainty.

Electronic communication – Articles 6(2) and 6(5)

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

54. To transpose Article 6(2) it was proposed that the details about the application, including the EIA report and any further environmental information considered necessary to properly assess the likely significant effects of a proposal and any notices, are published by the developer on a website or by the relevant authority on a website, if the relevant authority so notifies the developer that it will do so. Views were sought on this approach.

Question 10: Do you agree with our assumption that making information available electronically is already carried out and that this will not result in additional cost for developers? If you do not agree what do you consider the additional costs will likely be?

55. Eleven responses were received to this question. Six responses noted that this was already carried out and so would be unlikely to increase costs, two responses noted that it would likely increase costs for developers. Three further responses were received which did not provide views on costs but did provide thoughts on providing information electronically.

56. Of the responses which noted that there would be no (or minimal additional) costs, one noted that it may lead to a reduction in cost through not printing hard copies. Another of these responses noted that any extra costs would likely happen anyway with a move by developers to make all information available online.

57. The two responses which noted that this proposal would increase costs for developers suggested that the responsibility to make information available electronically should lie centrally with the relevant authority otherwise it will result in an increase in cost for developers. No quantified cost details were provided.

58. Of the responses which did not provide comment on costs, one noted that they considered that information was generally available online but that it was not always easy to find and developers should be encouraged to make it more accessible. Another response noted that environmental information should be available at all stages of the EIA process and that a central signposting hub for all EIA information should be provided. The third response noted that it was uncertain whether the approach taken in draft regulation 28 provides the central portal envisaged by the Directive, although the response recognised the benefits of using the same website as the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013.

Government Response

59. The Government noted that most respondents considered that there would not be an increase in cost as a result of this change to the Regulations as developers largely carry out this function already. The Government considered that if the Government took responsibility to make information available electronically, to avoid this cost falling on the taxpayer, the cost would likely have to be passed on to the industry through charging or additional charging for applications. As such the Government did not consider that making changes to the proposed Regulations was necessary.

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

60. The amended Directive states that 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.

61. Under current legislation the competent authority can include monitoring measures within a consent for development. The Government therefore considered that the updated text will not result in an additional burden to developers. Views were sought.

Question 11: Do you expect that transposition of Article 8a(4) will result in any additional costs to you?

62. Five responses were received to this question. Two responses noted that costs could not be estimated at this stage, two noted that there would not be extra costs to developers and one response did not provide cost details but did provide other comments.

63. Two responses noted that costs were not known. One of these responses noted that guidance would assist in ensuring that monitoring is not used as a general means of gathering environmental information and to ensure it does not duplicate any monitoring required for other reasons.

64. Two responses noted that there would not be extra costs for developers from transposition of this Article. One did note though that there might be greater implications for 132 kV wood pole overhead line projects. Another response stated that the only cost implications would relate to those arising from further negotiating with stakeholders at the pre-, rather than post-, consent stage.

65. The response which did not comment on the costs noted that they considered that transposition of the Article was necessary and as such any extra burden should not be used as a reason for not fully transposing the Article.

66. Additional comments were also received within these five responses. Two responses welcomed the requirement for clearly defined and full decision notices. Two responses noted that consideration of why monitoring is needed, alongside the

details of it, should be clearly set out to ensure that there are justifiable reasons for requiring monitoring.

Government Response

67. The Government noted the differences in opinion in relation to whether there would be increased costs due to transposition of this Article. The Government considered that the approach taken to drafting the Regulations reflects existing practice and, as such, the Government has not made changes to the text of the Regulations.

Approach to Transposition

68. The Government wanted to understand from the consultation whether the draft Regulations appropriately implemented the requirements of the EIA Directive. Views were sought on this.

Question 12: Overall, do you consider that our approach to transposition as set out in this document appropriately implements the requirements of the EIA Directive or have any points or relevant information to provide?

69. There were six responses received to this question. Four responses noted that the approach was adequate and appropriate. One response noted that the approach was in the main appropriate but highlighted a series of points which they felt should be considered through transposition. Two responses did not give a view on the approach to transposition but did set out a number of points which they felt should be considered in this transposition process.

70. The points raised in relation to the approach to transposition are set out below, (except those points covered by responses to other questions which are discussed elsewhere).

i) One response wanted to see the definition of EIA expanded such that the wider role and value of EIA is recognised - seeking to integrate the environment into all stages of development design and decision-making.
ii) One response requested that guidance on what ‘significant effects’ means is set out. Clarity was also requested on the terms ‘reasonable’ and ‘current knowledge’.
iii) It was noted that the draft Regulations should be amended to make it clear that the relevant authority must examine any relevant information received through the consultations under Articles 6 and 7.

iv) One response noted that in order to comply with Article 5(1), draft regulation 17(1) should include the words 'at least' noting the information specified is a minimum requirement.

v) One response noted that draft regulation 17(1)(d) should be amended by deleting 'studied by the developer' to encourage a broader consideration of all possible alternatives relevant to the project.

vi) One response noted that the changes to Annex III to the EIA Directive have been incorporated into Schedule 3 to the draft Regulations. The response noted that under 'Location of development' in paragraph 2(c)(v), reference must be made to areas classified or protected under national legislation as well.

vii) One response noted that procedures for third party screening must be clarified and maintained.

viii) One response suggested that the Government should demonstrate its commitment to a high quality process and a strong level of protection for the environment by ensuring that scoping is a mandatory part of the EIA process. It was recommended that in transposing the requirement in Article 5(2): 'The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion...' the list of consultees should also include 'any other organisation or interest group' and that such organisations can request to be consulted as a matter of course.

ix) A response stated that the 'Amended EIA Directive Transposition Checklist' produced by the European Commission[1] notes that in transposing Article 5(3) in full; Member States must cover points a-c (a cumulative obligation). The Regulations must fully transpose each of these points, including point (c) which relates to supplementary environmental information.

x) One response noted that Article 6(7) sets a new minimum time frame for public consultation on the environmental statement which should not be shorter than 30 days. The draft 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. It was also requested that any material consultation responses raised after the minimum period should be taken into account.

xi) It was recommended that draft regulation 34 be expanded such that the development determination information is also made available to the 'public' (rather than just the developer).

xii) One response suggested that the requirement to implement the mitigation measures must be properly transposed and implemented; the response noted that this requirement should be referenced specifically in the

[1] http://ec.europa.eu/environment/eia/pdf/transposition_checklist.pdf

Regulations. Guidance on how authorities take steps to ensure these requirements happen, together with appropriate resourcing, would be needed. The response noted that the expected outcome of mitigation (and the party responsible for ensuring this is delivered), should also be included within development consents. Three further steps were also suggested these included:

a. Requiring developers to submit a schedule summarising the mitigation and monitoring requirements identified by the EIA Report.
b. Requiring 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 and setting minimum timeframes for the review of this programme.
c. Ensuring appropriate procedures and sufficient resources are in place to be able to identify any issues of non-compliance and for appropriate remedial action undertaken.

xiii) It was noted that with regards to decision timeframes referred to in Article 8a(5), the Regulations should set out which time frames are considered reasonable (e.g. by setting explicit time limits).

xiv) One response noted that the word ‘promptly’ should be added (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)). It was also noted that the decision should be made available electronically.

xv) Two responses considered that draft regulation 7(3)(a) exceeds what is required by the Directive. That is, it includes the requirement to identify ‘the operational effects of the development’. The responses noted that it is unclear at this point whether this requires something more than would ordinarily be required in order to meet the requirements of the Directive as transposed by draft regulation 7(2).

xvi) Two responses also raised concern in relation to the word ‘thinks’ being used in draft regulations 18(4) and 33(2). It was noted that both instances create an element of subjectivity, which the respondents considered may lead to the institution of legal proceedings.

xvii) A response noted that with regards to Article 10a they do not agree that penalty provisions are already in place, and the response noted that it is inappropriate not to add any additional offences.

xviii) Clarification as to why transposition of Article 7(5) (transboundary) is not considered necessary was requested.

Government Response

71. The Government was grateful for the detailed consideration of the draft Regulations. The Government response to each point made above is set out below.

72. With regards to point i), the Government considered that the definition of EIA has been accurately transposed from the Directive and as such proposes no changes to the definition in the Regulations.

73. With regards to point ii) and the request for guidance and clarity on terms, the Government will consider further whether this is needed.

74. The Government considered that the points raised regarding Articles 6 and 7 (point iii above) was covered in the Regulations as drafted: the examination of 'additional environmental information' was already provided for in regulation 7(1)(c). This term is defined in such a way as to include relevant information received as part of the consultation processes. As such the Government did not changed the wording of the Regulations.

75. With regards to point iv) above, regulation 17(1) has been reconsidered and now includes the words 'at least'.

76. With regards to point v) above, regulation 17(1)(d) is a copy out of the Directive, and the Government did not changed this.

77. In relation to point vi), the Government has added a reference to domestic legislation in paragraph 2(c)(v) of Schedule 3.

78. With regards to point vii) and procedures for third party screening, we considered that the Directive does not require this and so the Government opted to retain the existing wording.

79. With regards to point viii) above which refers to scoping being made a mandatory part of the EIA process, the Government considered that scoping should be a mandatory part of the process and as such did not change the wording of the Regulations.

80. With regards to point ix) which refers to transposing Article 5(3) in full, the Government considered that Article 5(3) has been fully transposed in the Regulations (see regulations 7(4), 17(5) and 25(1)) and as such did not consider that changes are needed.

81. In relation to point x) and the minimum period referred to in Article 6(7), the Government considered that the wording of regulations 22(5)(g) and 26(3)(f) make it clear that the public consultation period must be a minimum of 30 days and as such did not feel it necessary to include the words ‘at least’ in the Regulations.

82. With regards to point xi) which relates to publishing decisions, regulation 34 provides for these to be made publicly available.

83. With regards point xii) and implementing mitigation, we did not consider that it was necessary to provide for this in the Regulations, since there are existing provisions to enforce compliance with conditions of consents or conditions of deemed planning permission.

84. In relation to point xiii) above, whilst the Government included a requirement in regulation 32 that applications for EIA development should be determined within a reasonable time, it considered that the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 was not the appropriate place to include decision time frames for applications generally (i.e. including those which are not for EIA development). The Government considered that these were more appropriately dealt with in the Regulations dealing with the application process.

85. In relation to point xiv) and the request that the word ‘promptly’ be added in relation to the notification of the public of consent decisions, the Government amended regulation 34 to provide for notification ‘as soon as reasonably practicable’.

86. With regards to point xv), it was considered that regulation 7(3)(a) clarifies the intention and as such the Government did not find it necessary to alter the wording.

87. In relation to point xvi), the wording of regulations 18(4) and 33 has been reconsidered and changed in light of the response received.

88. With regards to point xvii) and Article 10a, the Government considered that the existing penalties were fit for purpose and no changes were required with regards to this.

89. With regards to point xviii) and Article 7(5), to the extent that it was not transposed by regulation 24, the Government considered that the detailed arrangements for the consultations referred to in that Article would be a matter for the relevant authority and the authorities of the relevant EEA state to decide in each particular case, and it was not appropriate to make detailed provision for this in the Regulations.

Redraft of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 ('the draft Regulations')

90. Consultees were invited to consider the draft Regulations in their totality and provide any comments. The draft Regulations look to consolidate, simplify and update the existing Regulations (including how they are applied to applications to vary existing section 36 consents by the Electricity Generating Stations (Variations of Consents) (England and Wales) Regulations 2013) and to better reflect current practice. Views were sought on particular elements of the draft Regulations.

Consultation Bodies

91. The definition of 'consultative body' in regulation 2(1) of the existing Regulations was updated in regulation 4 of the draft Regulations (and is now termed 'consultation body') to ensure the bodies referred to accurately reflect those bodies currently responsible for both the local, historic and natural environment in England and Wales. Views were sought on this.

Question 13: Do you have any comments on the definition of 'consultation body' as set out in regulation 4 of the draft Regulations?

92. Three responses were received in total to this question. Two responses were received which agreed to and welcomed the changes. One response sought a wider definition to allow a wide range of interested parties to be consulted on the EIA process as a matter of course. The response suggested text to replace the draft text consulted on.

Government Response

93. The Government considered that the text as consulted on contained flexibility to decide which public authorities (if not included in the definition of 'consultation body') should be consulted in each specific case and as such did not consider that any changes to the text were needed.

Publicity requirements for further and additional environmental information

94. The consultation proposed removing the existing requirement in regulation 14A of the existing Regulations for notices to be published in newspapers to publicise and invite representations on the first occasion on which the developer is notified that 'additional information' (as defined in those Regulations) has been provided. However, where the developer is required to provide further information pursuant to a request by the relevant authority under regulation 25(1) of the draft Regulations (or voluntarily provides information to supplement the EIA report), we proposed that the developer be required to publish notices in newspapers publicising the information and inviting representations.

95. We proposed that further environmental information and any additional environmental information (as defined in regulation 3 of the draft Regulations) should continue to be publicised by being sent to the Local Planning Authority for the area in which the development is situated for inclusion in Part 1 of the planning register. In addition, we proposed that such information be published on a website. We proposed that a copy of the further environmental information should continue to be available from the developer and a copy of the additional environmental information should continue to be available from the relevant authority. The initial notices required to be published under regulation 22 should set out how further and additional environmental information will be made available to the public. Views were sought on this approach.

Question 14: Do you agree that the removal of the requirement for additional information to be publicised by a notice in a newspaper on the first occasion on which additional information is provided and the inclusion of a requirement for any information provided by the developer to supplement the EIA report to be publicised by a notice in a newspaper targets the need to publicise environmental information and invite representations more appropriately?

96. Seven responses were received in total to this question. Five responses agreed with the changes. Three of these responses noted that it is appropriate that further or supplementary information continues to be adequately published, advertised and shared with necessary bodies. One response noted that 'additional environmental information' and 'further environmental information' need clarifying to explain the difference between them.

97. One response noted that all information should be made available electronically.

98. One response noted that this approach could be confusing as there could be multiple advertisements should there be multiple additional information. The response suggested that there should still be a requirement to advertise on the first occasion with a note that any future additional amendments will be available via the internet. The response noted that if necessary, there could be an obligation to advertise that the final document is available.

Government Response

99. The Government considered that most respondents agreed with the proposed changes and as such did not propose changes to the text of the draft Regulations.

Publicity requirements generally

100. Where the existing Regulations currently require publication of notices in the London Gazette, there is a requirement for notices to be published in two successive weeks' editions of that publication. We proposed reducing this requirement to publish once in the London Gazette (or Belfast Gazette, where relevant) but to maintain the requirement to publish for two successive weeks in editions of a newspaper or newspapers circulating in the locality in which a development is situated. Views were sought on this.

Question 15: Do you consider that the amendments to the publication requirements will result in any additional costs or benefits to you? If so, please provide details on how much you estimate these to be?

101. Six responses were received to this question.

102. One response noted that any changes to costs were not known.

103. Four responses noted that there would likely be a small increase in costs as a result of this amendment.

104. Two responses noted that there would be a reduction in cost due to a reduction in the number of times publication was required in the London Gazette. One response welcomed the reduction in publication requirements but questioned whether publication in the London Gazette should be required at all.

Government Response

105. Limited quantitative information was provided in the responses to this question. Based on the responses provided the Government did not consider that any changes were needed to the text of the Regulations.

Provision of EIA report to consultation bodies

106. The draft Regulations sought to simplify the current process of providing an EIA report to consultation bodies by requiring the developer to provide a copy of the EIA report to all consultation bodies and any other public authority notified by the relevant authority. It will be for the developer to determine what form this is provided in (e.g., hard copy or electronically). Views were sought on this.

Question 16: Do you consider that this simplification will result in any additional costs/benefits to you? If so, please provide details on how much you estimate these to be?

107. Seven responses to this question were received. One response noted that the costs resulting from this change were not known. Four responses noted that the changes were likely to be cost neutral. One response noted that this could lead to cost and time impacts for developers.

108. Two of the responses provided suggestions as to how this simplification could be improved. The responses noted that the wording of draft regulation 23(1)(b) was loose. The response noted that as drafted, the developer would be required to inform every consultation body and *every* public authority; whereas the respondent considered that only those public authorities that have been identified by the relevant authority under regulation 23(1)(a)(ii) need to be informed. The response stated that draft regulation 23(1)(a)(ii) that requires the relevant authority to direct the developer to send copies of the EIA report to certain other public authorities must stipulate a timeframe within which this direction must be given and the means by which it will be provided. One response noted that all information should be made available electronically.

Government Response

109. The Government considered the responses and decided to make slight changes to the text of the regulation to provide clarity. This included setting out that as soon as reasonably practicable after receiving the EIA report, the relevant authority must notify the developer in writing of any public authority (other than a consultation body) that, by reason of its specific environmental responsibilities or local or regional competences, the relevant authority thinks is likely to have an interest in the development.

Exemptions where EIA development requires a marine licence for which environmental impact assessment is also required

110. Regulation 40 of the draft Regulations (regulation 39 of the Regulations as made) was designed to remove the need for two environmental impact assessments to be carried out in certain cases under two different sets of EIA Regulations in circumstances where an application for a section 36 consent for an offshore generating station, or a section 36C variation that relates to an offshore generating station is made and a marine licence under Part 4 of the Marine and Coastal Access Act 2009 or a variation of a marine licence for EIA development is also required. Regulation 40 enabled the relevant authority to decide that an assessment under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (the 'Electricity Works Regulations') was not required in relation to the application for the section 36 consent or section 36C variation where the authority responsible for granting the marine licence has also undertaken (or will undertake) an assessment under the Marine Works (Environmental Impact Assessment) Regulations 2007 (the 'Marine Works Regulations'). This would only apply where the relevant authority considered that the requirements of the EIA Directive were sufficiently met by the assessment carried out under the Marine Works Regulations. Views were sought on this approach.

Question 17: Do you consider that the competent authority's ability to decide that an EIA assessment under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 is not required where such an assessment has also or will be carried out under the Marine Works (Environmental Impact Assessment) Regulations 2007 is a useful provision and if so could this be extended to where an EIA has been carried out or will be carried under any other Regulations?

111. Nine responses were received to this question.

112. Six respondents agreed that it would be appropriate for a relevant authority to decide that an EIA assessment under the Electricity Works Regulations is not required where such an assessment has also or will be carried out under the Marine Works Regulations. Four respondents agreed with the idea of extending the provision to where an EIA has been carried out or will be carried under any other Regulations.

113. One response stated that avoiding duplication would be useful but that safeguards must be in place to ensure nothing is missed.

114. One response noted that a general principle of EIA is that only one environmental report should be produced; the response noted that by highlighting one area of duplication it may require a whole list to be included.

115. One response was concerned about the unintended consequences about this proposal - that making provision to exempt EIA under the Electricity Works Regulations and deferring assessment to the Marine Works Regulations or other appropriate regimes could result in inadequate and incomplete assessment and failure to consider the impacts of the 'whole' project.

Government Response

116. The Government noted that most respondents were happy with the suggestion and four respondents agreed with the idea of extending the provision to where an EIA has been carried out or will be carried under any other Regulations. The Government felt that extending this proposal beyond the Marine Works Regulations would not be appropriate due to the risk of inadequate and incomplete assessment and failure to consider the impacts of the 'whole' project. As such the Government proposes to maintain that an EIA assessment under the Electricity Works Regulations is not required where such an assessment has also or will be carried out under the Marine Works Regulations but will not extend this provision to other regimes.

Sensitive Area

117. The provision of an overhead electric line in a 'sensitive' area is Schedule 2 development, and the development must be screened to see if it is 'EIA development' if an EIA report is not provided with the application. The definition of 'sensitive area' in paragraph 4 of Schedule 2 to the draft Regulations has been updated. It now includes a reference to a 'Ramsar site' and excludes paragraphs (b) and (c) of the existing definition, since the provisions referred to in those paragraphs have been repealed. Views were sought on this.

Question 18: Do you consider that the definition of 'sensitive' area is appropriate?

118. Nine responses to this question were received. Seven respondents confirmed that the definition of sensitive area was appropriate. One respondent suggested that National Nature Reserves (NNRs) should be included in the definition. One respondent suggested that Air Quality Management Areas and equivalent air pollution designations should be included in the definition.

Government Response

119. As ‘sensitive’ areas are only relevant to overhead electric lines, the Government considered that it was not necessary to include Air Quality Management Areas and equivalent air pollution designations in the definition. In addition, as NNRs would be underpinned by designations as sites of special scientific interest, the Government did not consider it necessary to include these within the definition of ‘sensitive’ areas.

General Approach

120. The consultation also sought views on the general approach to consolidating the previous amendments to the existing Regulations in to the updated Regulations. It also sought views on the benefits of the existing arrangements and whether the proposed changes will result in any additional costs/benefits.

Question 19: Do you consider that we have consolidated the previous amendments to the Electricity Works (EIA) Regulations 2000 in to the updated Regulations in a way that is helpful?
Question 20: What do you consider to be the benefits of the existing arrangements and do you consider that the proposed changes will result in any additional costs/benefits to you? If so what do you expect these to be?

121. With regards to question 19, five responses were received. One response noted that they were comfortable with the amendments. Another three noted that the consolidation was helpful. One response noted that a timeframe should be included within which the relevant authority must notify the developer that a report is needed.

122. With regards to question 20, four responses were received. One response noted that the suggested changes largely mirror the current requirements and as such are likely to be cost neutral. Another three responses noted that the existing arrangements work well. Two responses noted that some of the proposed changes are not suitable for 132 kV wood pole overhead lines and will increase costs for promoters and local planning authorities.

Government Response

123. No responses were received to these questions which suggested a significant change in approach was required. Aside from the changes noted in

earlier sections the Government did not propose making other substantive changes to the Regulations.

Next Steps

124. The Government was grateful for the responses received to the consultation and updated the Regulations as described above. On 16 May 2017, the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (details at: http://www.legislation.gov.uk/uksi/2017/580/made) entered into force. The Government will also consider preparing a guidance document in respect to the Regulations and will appropriately liaise with stakeholders on the content of the guidance.