



Department  
of Energy &  
Climate Change

# Guidelines on the assessment of transboundary impacts of energy developments on Natura 2000 sites outside the UK

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# Summary

This document sets out the Department of Energy and Climate Change's (DECC's) guidelines on how the Secretary of State intends to take into account the impact of energy developments on Natura 2000 Network<sup>1</sup> sites in other Member States.

## SCOPE

It is expected that these guidelines will be most relevant to applicants for development consent for large-scale offshore wind developments under the Planning Act 2008, as well as being helpful to other interested parties in such applications; as such developments have the potential to affect highly mobile marine species such as seabirds and marine mammals. They may also be relevant to other applications made to the Secretary of State for Energy and Climate Change for development consent under the Planning Act 2008 or to construct or operate a generating station in England or Wales under the Electricity Act 1989, or to applications to vary such consents, if such projects are identified as having likely significant effects on the environment of another Member State (although such cases are expected to be rare).

## BACKGROUND

Article 6(3) of the Habitats Directive requires Member States to consider the likely effects of proposed plans and projects before agreeing to them. For the purposes of developments consented under the Planning Act 2008, the obligation is transposed in UK legislation through the Conservation of Habitats and Species Regulations 2010 and the Offshore Marine Conservation (Natural Habitats etc.) Regulations 2007 (as amended) (collectively referred to below as the 'Habitats Regulations'). These require that all plans and projects likely to have a significant effect on a UK Natura 2000 site must be subject to an appropriate assessment of the implications for that site in view of the conservation objectives set for it.

In view of the increasing proximity of offshore wind farms to other Member States' territories, developers of such projects are in some cases finding that their projects have the potential to affect Natura 2000 sites in other Member States, and that other Member States or interested parties may wish to make representations about those effects as part of the development consent process. Such issues might be raised as part of the transboundary environmental impacts assessment process which may be required under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. To date there have been no clear guidelines as to how such effects should be taken into account in the development consent process.

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<sup>1</sup> The Natura 2000 Network is the EU-wide network of nature protection areas established under Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna ("the Habitats Directive").

## CONSIDERATION OF TRANSBOUNDARY EFFECTS IN DECISION-MAKING

The Secretary of State for Energy and Climate Change recognises the importance of cooperating to support the protection of Natura 2000 sites in other Member States. He has therefore decided that the principles set out in the Habitats Directive should be applied to any energy development where significant effects on Natura 2000 sites or candidate sites on other Member States are likely. This will contribute to the protection of the integrity of the Natura 2000 network and ensure that all matters relevant to the determination of development consent applications can be properly taken into account. References to Natura 2000 sites should be read to include candidate sites, in line with the Government's policy on the protection of UK Natura 2000 sites<sup>2</sup>.

In cases where a plan or project is likely to have a significant effect (either alone or in combination) on a Natura 2000 site in another Member State, applicants for consent for energy developments should obtain all relevant information as reasonably practicable, about those effects so that the Secretary of State can consider the likely impacts of their proposals on such sites when deciding whether or not to grant development consent.

The format and extent of transboundary consultation is for the applicant to agree with the Planning Inspectorate (or for section 36 consent, DECC). DECC suggests that applicants consider streamlining their consultation on impacts on sites in other Member States, with other transboundary consultation requirements e.g. under the appropriate domestic regulation implementing the Environmental Impact Assessment (EIA) Directive<sup>3</sup> and Espoo Convention<sup>4</sup>.

DECC recognises that there may be practical difficulties in obtaining information from the relevant Member State and in a timely manner. For this reason, it will be important to engage other Member States early on where potential effects on their sites are identified, as the Examining Authority and the Secretary of State will require objective information to understand risks to those sites and to build these considerations into their conclusions.

DECC will take account of information on impacts on Natura 2000 sites in other Member States provided by the applicant and interested parties, and undertake an assessment of those impacts alongside the appropriate assessment required by the Habitats Regulations.

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<sup>2</sup> In England: National Planning Policy Framework paragraph 118. In Wales: TAN5 paragraphs 5.2.2 and 5.2.3.

<sup>3</sup> Directive 2011/92/EU.

<sup>4</sup> United Nations Economic Commission for Europe Convention on Environmental Impact Assessment in a Transboundary Context.

# Annex A: Business Engagement Assessment

<b>Title of Proposal</b>	<b>Issuing of guidelines on the assessment of transboundary impacts for energy projects</b>
Lead Regulator	Department of Energy and Climate Change
Contact for enquiries	<a href="mailto:deccnic@decc.gsi.gov.uk">deccnic@decc.gsi.gov.uk</a>

Date of assessment	Jan 2015	Stage of assessment	Final
Net Cost to Business (EANCB):	£0.03m	Commencement date	March 2015
Which area of the UK will be affected by the change(s)?	England and Wales	Price and Present value base years	Price year = 2014 Present year = 2015
Does this include implementation of Red Tape Challenge commitments?	No	Is this directly applicable to EU or other international legislation?	EU

## Brief outline of proposed change in action

DECC wishes to issue guidelines to clarify how the Secretary of State will take transboundary impacts into account when determining whether to consent new energy projects. This will be applicable to projects in England and Wales. For the purposes of these guidelines, 'transboundary impacts' are those which affect Natura 2000 sites (sites designated under the Habitats Directive) outside of the UK in other EU Member States.

The purpose of the Habitats Directive is to prevent the loss of biodiversity across Europe through the designation and management of Natura 2000 sites. Projects with the potential to harm Natura 2000 sites must not be permitted unless there are reasons of overriding public interest and the provision of compensatory measures.

The guidelines state that the principles of the Habitats Directive will be applied to transboundary impacts when considered by the Secretary of State. Developers will be expected to collect sufficient data, as is reasonably practicable, to enable the Secretary of State to consider these impacts in line with his duties as the Competent Authority.

## Why is the change proposed? Evidence of the current problem?

The guidelines are applicable to new energy projects but have been developed primarily in response to the increasing size and scale of offshore wind farms which are being developed further offshore. These projects are likely to affect interest features of Natura 2000 sites designated in other European Member States. Mobile species, such as marine mammals and sea birds are particularly vulnerable to the construction and operation of offshore wind farms.

The aim of the proposed guidelines is to clarify how and whether transboundary impacts will be considered in consent, for Developers and other interested parties.

Each nationally significant offshore wind farm represents billions of pounds of investment that would be lost if consent were subject to successful legal challenges on the grounds that transboundary impacts had not been properly taken into account. This is in addition to the financial impact of delays caused by the legal process, even in the event of an unsuccessful challenge. There are therefore significant indirect benefits in taking relatively low cost steps now to avoid potentially successful legal challenges.

### **Which types of business will be affected? How many are affected?**

It is expected that the guidelines will have a limited impact on businesses due to the small number of projects likely to be affected and in the context of the extensive investments in Environmental Impact Assessments (EIAs) that are already made by offshore wind farm developers. There are currently 6 major offshore wind farm projects in the planning pipeline<sup>5</sup> (i.e applications registered with the Planning Inspectorate) where these guidelines would apply, although further offshore wind farms may be developed in the future. We estimate that the proposed guidelines will affect approximately 20 businesses; these are typically large national or multinational consultancies employing a range of specialist environmental staff who work for the energy companies, undertaking environmental assessment work.

Given the evolving nature of environmental legislation, best practice guidance and case law, these businesses have considerable experience adapting their current processes to meet new expectations. We understand from the Planning Inspectorate that a number of offshore wind farm applicants have already sought advice from them on how to treat the transboundary impacts of their projects, indicating that they are already aware of this issue. On this basis, we do not expect that there will be significant adaptation costs for businesses.

We have met with RenewableUK (the industry' trade body), and its members, to discuss the proposed guidelines. Discussions were positive, with RenewableUK and its members providing feedback to DECC on the draft guidelines and stating that they were broadly satisfied with proposals. We expect that the additional clarity on this issue would be welcomed by the industry on the whole.

### **How will the change impact these businesses?**

As part of their application under the Planning Act 2008 (or the Electricity Act 1989), Developers undertake Environmental Impact Assessments (EIAs). It is expected that the proposed guidelines would require businesses to present their EIA results slightly differently. We do not believe that this would be a substantial alteration to current practices and is unlikely to require the collection of additional primary data to support the analysis. Much of the information required to determine transboundary impacts is already collected by businesses to satisfy the requirements of other environmental legislation under the EIA Directive.

#### **One-off Costs**

The introduction of the proposed guidelines has the potential to increase businesses costs by marginally increasing the number of staff hours needed to produce the EIAs. This is likely to affect all of the 6 offshore wind farm projects currently in the pipeline.

<sup>5</sup> Navitus Bay, Dogger Bank Teeside A & B, Hornsea Project 2, East Anglia 3, Dogger Bank Teeside C & D and East Anglia 4. This represents 9.97 GW of capacity, if fully developed.

Based on these 6 projects, the annual net cost to business (EANCB) is estimated at being £26,890 (£0.03m).

The hourly rate used to derive the cost estimate is £16.85, this is the median average hourly rate for the 'Engineering activities and related technical consultancy' category as published in the Office for National Statistics Annual Survey of Hours and Earnings provisional results for 2014. The EANCB based on an estimate of 4 FTE taking 4 weeks (37 hour week) to make the required changes, per project. 2 projects are expected to be affected in 2015, 3 projects in 2016 and 1 project in 2017. This data has been used in the absence of any other appropriate data for which to base cost estimates.

To account for costs associated with becoming familiar with the guidelines, the EANCB also includes estimated transitional costs of £10,000 (£0.01m) in 2015 and in 2016. This cost is based on an estimate of 4 FTE taking 4 weeks (37 hour week) to become familiar with the changes.

The net cost to business is not thought to be significant given the overall costs of developing and seeking consent for offshore wind farms<sup>6</sup>.

### **Benefits**

The proposed guidelines will not produce any direct financial benefits. The reason for developing the guidelines is to reduce the risk of a successful legal challenge to a consent for an offshore wind farm on the basis that transboundary impacts have not been addressed, or not in a satisfactory way.

It is also expected that the guidelines will provide additional clarity and certainty which will be of value to businesses and other interested parties (including regulators).

### **Impact on small businesses**

Most of the businesses affected by the proposed guidelines will be large multinational organisations; however it is also likely to affect several smaller businesses. These businesses are typically consultancies, providing bespoke specialist skills in support of the project. Any increase in staff resource requirements will disproportionately affect small businesses. Despite this, we believe that the impacts on small businesses will be minimal given the minor level of additional staff resources required.

Given the evolving nature of environmental legislation, best practice guidance and case law, these businesses have considerable experience of adapting their current processes to meet new expectations so we do not expect that there will be significant adaptation costs for businesses.

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<sup>6</sup> *Development and consent costs account for approximately 4% of capital costs, around £60 million for a 500 MW offshore wind farm (Crown Estate: A guide to an offshore wind farm).*



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