Department for
Business, Energy
& Industrial Strategy

Environmental Impact Assessment: Technical consultation (regulations on Electricity Works)

February 2017

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& Industrial Strategy

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Scope of the consultation

Topic of this consultation:	The proposed approach to implementing European Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.
Scope of this consultation:	The consultation seeks views on draft Regulations which will replace the existing Regulations implementing the requirements of the Environmental Impact Assessment Directive insofar as they apply to consents under sections 36 and 37, and variations under section 36C, of the Electricity Act 1989.
Geographical scope:	These proposals relate to England and Wales, the territorial sea adjacent to England and Wales and the Renewable Energy Zone (other than an area in relation to which the Scottish Ministers have functions).
Impact Assessment:	As a European Union measure with no gold-plating, this is a Non-Qualifying Regulatory Provision (NQRP) under the Better Regulation Framework.

Basic Information

To:	This consultation is aimed at all those with an interest in the Environmental Impact Assessment Directive and how it relates to consents under sections 36 and 37, and variations under section36C, of the Electricity Act 1989.
Body/bodies responsible for the consultation:	Department for Business, Energy and Industrial Strategy
Duration:	This consultation will last for 4 weeks from 16 February 2017

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	Respond: By 16 March 2017
Enquiries:	For any enquiries about the consultation please contact: Gareth.leigh@beis.gov.uk, Tel: 0300 068 5677
How to respond:	You may respond by completing an online survey at: Alternatively you can email your response to the questions in this consultation to: *Gareth.leigh@beis.gov.uk* If you are responding in writing, please make it clear which questions you are responding to. Written responses should be sent to: Gareth Leigh Department for Business, Energy and Industrial Strategy 3 Whitehall Place London SW1A 3AW When you reply it would be useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include: - your name, - your position (if applicable), - the name of organisation (if applicable), - an address (including post-code), - an email address, and - a contact telephone number

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Exit from the European Union

1. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until negotiations to exit the EU 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 is inviting comments on the enclosed consultation which sets out proposals for implementing European Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (known as the "Environmental Impact Assessment" or "EIA" Directive and referred to in this document as the "EIA Directive") in so far as the EIA Directive applies to consents granted under section 36 and 37, and variations of consents under section 36C, of the Electricity Act 1989.

3. The EIA Directive's main aim is to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment.

4. The EIA Directive first came into force in 1985 as Council Directive 85/337/EEC (the "1985 Directive") and was amended in 1997, 2003 and 2009. The 1985 Directive and its three amendments were codified by Directive 2011/92/EU in advance of the European Commission adopting a proposal in October 2012 to amend the current Directive. Following negotiations in the European Parliament and Council a compromise text was agreed. The amending Directive entered into force on 15 May 2014 (as Directive 2014/52/EU – the "2014 Directive"). Member States have to transpose the amendments to the EIA Directive into domestic legislation by 16 May 2017.

5. The EIA Directive is currently integrated into the consenting system for generating stations and overhead electric lines in England and Wales through the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (amended by the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007) ("the

Electricity Works (EIA) Regulations 2000"). Environmental impact assessment is therefore well established in domestic legislation and planning practice for energy infrastructure for which consents, or variations of consents, are required under sections 36, 36C and 37 of the Electricity Act 1989.

6. The EIA Directive also applies to energy project types which fall outside of the Electricity Works (EIA) Regulations 2000 including those granted under the Planning Act 2008. These projects are subject to separate consenting regimes and Environmental Impact Assessment Regulations. The amendments to the EIA Directive must be implemented through each of these regimes, and other Government Departments[1] will lead on transposing the amendments to these regimes. The devolved administrations of Scotland, Wales and Northern Ireland are responsible for transposing the amendments in respect of matters which are devolved.

7. The EIA Directive, as amended by the 2014 Directive, can be seen via the following link;

   http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32011L0092&from=EN

8. The European Commission has produced an unofficial consolidated version of the EIA Directive which is available here: http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf.

[1] Department for Communities and Local Government (e.g., town and country planning, nationally significant infrastructure projects under the Planning Act 2008); Department for Environment, Food and Rural Affairs (e.g. agriculture and marine works); and Department for Transport (e.g. highways and transport).

Background

What is an Environmental Impact Assessment?

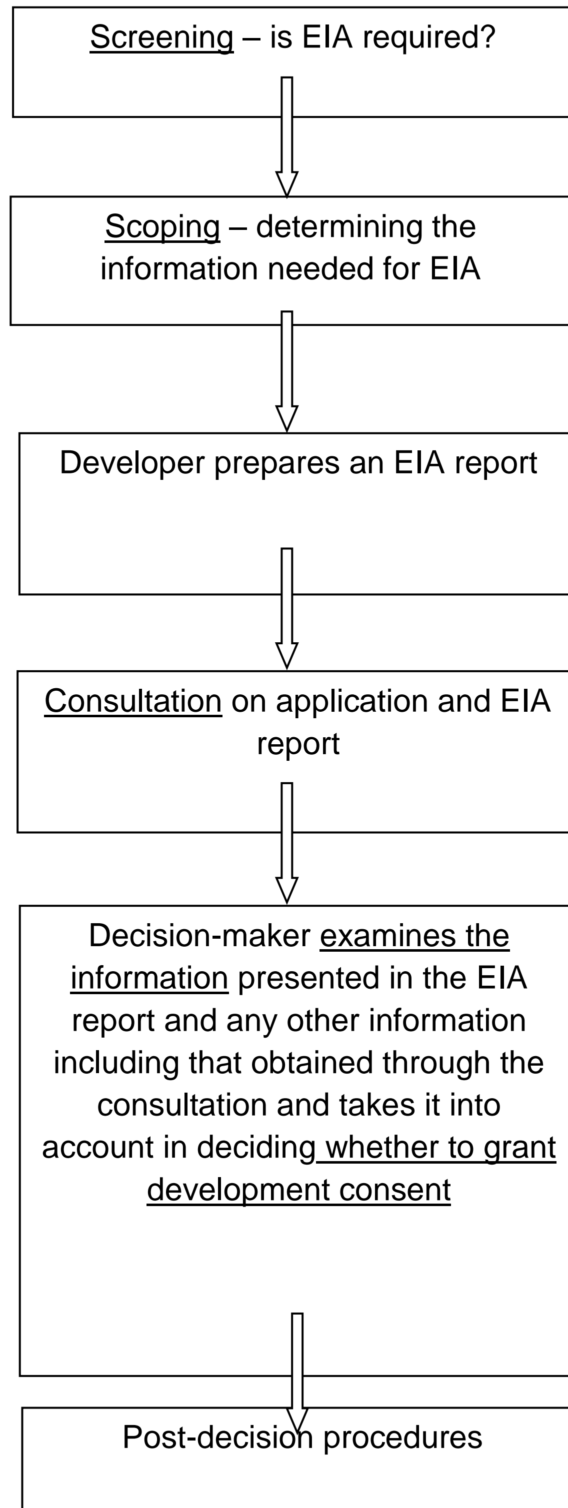
1. Environmental Impact Assessment ("EIA") is a process. It aims to provide a high level of protection to the environment and to help integrate environmental considerations into the preparation of projects to reduce their impact on the environment. It seeks to ensure that proposals for development (referred to as 'projects' in the EIA 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.

2. An EIA is a means of drawing together, in a systematic way, an assessment of a project's likely significant effects on the environment. This process helps to ensure that the public have an opportunity to provide their views and the relevant authority to which an application for consent for a project is made (the "competent authority") makes its decision in the knowledge of any likely significant effects on the environment prior to consent being given. The EIA Directive therefore sets out a procedure that must be followed for certain types of project before "development consent" may be granted.

3. Some project types are always considered likely to have significant effects on the environment and must be subject to environmental impact assessment in all cases. These project types are listed in Annex I to the EIA Directive. Other project types are only considered likely to have significant effects in some cases depending on their nature, size and location. These project types are listed in Annex II to the EIA Directive. Projects listed in Annex II must be subject to environmental impact assessment where it is determined that they are likely to have significant effects on the environment. Member States can decide whether a project listed in Annex II should be subject to environmental impact assessment through a case-by-case examination and/or by setting thresholds or criteria. Where a case-by-case examination is provided for, the process for determining whether a project listed in Annex II is likely to have significant effects on the environment is usually referred to as "screening".

4. Where an EIA is required, the developer must provide specified information to the relevant competent authority which enables the authority to make an informed decision on whether the project should proceed. It also requires that the public and other bodies are consulted and given an opportunity to participate in the

decision-making process. The EIA process is made up of several stages which are set out below.



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Implementation of the EIA Directive through the Electricity Act 1989 and the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000

5. The requirement in the EIA Directive for certain electricity-related projects to be subject to development consent is implemented through sections 36, 36C and 37 of the Electricity Act 1989.

6. In England and Wales[2] consent is granted under the Electricity Act 1989 by the Secretary of State or the Marine Management Organisation[3] ("MMO") for the following:
   - Applications under section 36 for consent for new offshore generating stations over 1MW and up to 100MW are granted by the MMO.
   - Applications under section 36C for variations to existing consents granted by the Secretary of State under section 36 of the Electricity Act for generating stations onshore over 50MW or offshore generating stations over 1MW are granted by the Secretary of State.
   - Applications under section 36C for variations to existing consents granted by the MMO for offshore generating stations over 1 MW and up to 100MW are granted by the MMO; and
   - Applications under section 37 for consent for overhead electric lines are granted by the Secretary of State.

7. The Electricity Works (EIA) Regulations 2000[4] set out the type of developments, for which consent, or a variation of consent, under section 36, 36C or 37 is required, that should be considered as requiring an EIA.

[2] It should be noted that legislation (The Wales Bill 2016-17) is currently going through the UK Parliament to devolve new electricity consenting responsibilities to Welsh Ministers. Should the Wales Bill 2016-17 receive Royal Assent, Welsh Ministers will be responsible for making consenting decisions under the Electricity Act 1989 in respect of applications for generating stations in Welsh waters with an installed capacity of 350MW or below and for applications to vary both onshore and offshore existing consents under section 36C not exceeding that 350MW threshold.

[3] Certain functions under section 36 of the Electricity Act 1989 were transferred to the Marine Management Organisation by section 12 of the Marine and Coastal Access Act 2009.

[4] Regulation 7 of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 applies the Electricity Works (EIA) Regulations 2000 to applications under section 36C of the Electricity Act 1989 to vary existing consents.

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Why is EIA Changing?

8. The European Commission website[5] states that the amended EIA Directive aims to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, aiming to lighten unnecessary administrative burdens. It states that the Directive also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term. The new approach also aims to be forward looking, by paying greater attention to threats and challenges that have emerged since the original rules came into force. This means more attention being given to areas like resource efficiency, climate change and disaster prevention, which will be better reflected in the assessment process.

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

Article 1(2)(g)	Definition of EIA process
Article 1(3)	Changes to the circumstances in which a project may be exempted from the requirements of the EIA Directive
Article 2(3)	Joint/coordinated procedures for projects that are subject to assessments under the Habitats or Wild Birds Directive as well as under the EIA Directive
Article 3	Changes to the list of factors, the effects of which are to be assessed as part of the EIA process
Article 4 (plus Annexes IIA and III)	Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the EIA Directive applies
Article 5 (plus Annex IV)	Amendments to the information to be provided to the competent authority (in a document known as an environmental impact assessment report ("EIA report")
Article 5(2)	A requirement for the EIA report to be 'based on' a scoping opinion, where one is issued
Article 5(3)	Requirements for the EIA report to be prepared by competent experts, for the competent authority to have access to sufficient expertise to examine the EIA report and for the competent authority to seek supplementary information
Articles 6(2) and (5)	Requirements to inform the public electronically
Article 8a	Requirements about the information to be given in decision notices

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

Article 8a(4)	Provision about the monitoring of significant adverse effects
Article 8a(5)	A requirement that decisions be made in a reasonable period of time
Article 9a	A requirement to avoid conflicts of interest in decision-making
Article 10a	Penalties for infringements of national provisions

Amendments to the EIA Directive and how we propose to implement them

10. 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[6] for transposition where it is available, except where doing so would adversely affect UK interests. We have sought to follow these principles in transposing the amendments made by the 2014 Directive, and to minimise additional regulatory burden whilst protecting the environment.

11. In transposing the amendments to the EIA Directive, our view at the outset is that there is 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. Our proposals for consultation therefore represent what we consider to be the minimum changes necessary to the existing Regulations in order to bring them into line with the 2014 Directive. This will also minimise familiarisation costs and business uncertainty.

12. We have set out below the amendments from the 2014 Directive and our approach to transposing them. We have also taken this opportunity to consolidate previous amendments to the Electricity Works (EIA) Regulations 2000 and simplify them where possible (see page 33 onwards). A complete draft of our proposed revised Regulations, the draft Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (the "draft Regulations") are set out in Annex A. In many cases the text of the EIA Directive has been 'copied-out' as far as is practicable, but we have proposed an alternative approach where this is considered beneficial. A summary table of how the EIA Directive has been transposed in the draft Regulations is included at Annex B. We welcome comments on our interpretation of the changes and how we propose to implement them through

[6] Copy out: transposition should mirror as closely as possible the original wording of a directive and go no further than the requirements, except where there is a clear justification and authority to do otherwise.

the draft Regulations. Whilst, as noted above, we have sought to identify in this document the main changes made by the 2014 Directive, consultees are invited to consider the proposed draft Regulations in their totality and provide any comments.

Definition of the environmental impact assessment process

Article 1(2)(g)

"environmental impact assessment" means a process consisting of:

(i) the preparation of an environmental impact assessment report by the develop as referred to in Article 5(1) and (2);

(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;

(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3) and any relevant information received through the consultations under Articles 6 and 7;

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

(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.

13. The 2014 Directive introduces a definition of the environmental impact assessment. In our view the definition reflects existing practice in that the developer must prepare a report (referred to currently as an "environmental statement" and in the draft Regulations as an "EIA report") containing specified information on their proposed project (see Article 5 below); there should be consultation on the application for the proposed project and the report prepared by or on behalf of the 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 to grant consent.

14. The definition has been incorporated into the draft Regulations through regulation 7(1).

Exemptions

15. The EIA Directive provides a limited number of exemptions to the requirements of the EIA Directive.

Defence and civil emergencies - Article 1(3)

Article 1(3)

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

16. 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. This provision is not mandatory but is considered necessary to ensure projects falling within this category can be taken forward at the necessary pace. The exemption is therefore transposed in the draft Regulations through regulation 39.

Coordinated procedures - Article 2(3)

Article 2(3)

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

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union

legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

17. 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[7] and/or Wild Birds Directives[8], the EIA Directive requires that either a **coordinated procedure** or a **joint procedure** should be used. The **coordinated** procedure is undertaken by designating a lead authority to coordinate the individual assessments, whereas the **joint** procedure requires a single assessment.

18. We consider that coordinated procedures offer the greatest flexibility for developers around the phasing and timing of the EIA and assessments under regulation 61 of the Conservation of Habitats and Species Regulations 2010 or regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, known as Habitats Regulations Assessments. This also reflects existing practice. The joint procedure, however, would require the information to inform both assessments to be dealt with in a single assessment.

19. Currently, a consent for a project is issued by the Secretary of State (or the MMO) only after consideration of EIA and the Habitats Regulations (and consideration of the Habitats Regulations Assessment by various statutory advisers/environmental authorities and consultation bodies) - this “coordinated” assessment approach will continue and is transposed in the draft Regulations through regulation 8.

20. We would welcome views from consultees as to the practical impacts of this approach and whether they consider that additional provision on coordination of assessments would be helpful. For example, would it be helpful to make provision to deal expressly with the situation where more than one authority is involved in granting permission for a proposal? 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?

21. The EIA Directive also allows Member States, if they wish, to choose to also apply joint or coordinated procedures to any assessments required under other

[7] Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora
[8] Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009 on the conservation of wild birds

EU law, including the Water Framework Directive and the Industrial Emissions Directive. This provision is not mandatory and we do not propose to transpose it in the draft Regulations.

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?

Exemptions - Public Consultation

Article 2(5)

...in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.

22. This Article is optional for transposition. We consider that the Article is not relevant to the draft Regulations and so we do not propose transposing this.

The assessment process

Assessment scope – Article 3

Article 3(1)

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

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).

Article 3(2)

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

23. This Article 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.

24. 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".

25. 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.

26. The Electricity Works (EIA) Regulations 2000 already set out that the EIA should only be assessing **significant** effects of the project on the environment. We therefore do not consider that the clarification will have a detrimental impact on developers. With regards to the change in terminology we consider that this clarifies the information which developers need to provide and that providing it will therefore not result in additional cost to developers.

27. With regards to the introduction of 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 we consider that in most cases this is already being undertaken and will therefore not result in additional cost to developers.

28. The requirements of Article 3 are transposed in the draft Regulations through regulations 7(2) and (3).

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?

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Determining whether environmental impact assessment is required (screening)

Information to be provided for screening – Article 4(4)

Article 4(4)

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

29. The 2014 Directive has sought 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 to the EIA Directive, Annex IIA. 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 the developer including taking into account the available results of other relevant assessments.

30. The Article clarifies that the 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. This could negate the need to carry out an EIA and has the potential to reduce the number of EIAs.

31. **Annex IIA to the EIA Directive** sets out the information to be provided by the developer when a screening decision has to be made for Annex II developments.

32. We have incorporated these requirements through regulation 12 of the draft Regulations.

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Screening Determination – Article 4(5)

> **Article 4(5)**
> *The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:*
> *(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or*
> *(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.*

33. The main addition here is that the screening decision must be based on information provided by the developer and that the competent authority must give reasons justifying their decision. The screening decision must be made available to the public. Further when considering the information provided by the developer, the competent authority, as now, must take into account the criteria listed in Annex III to the EIA Directive.

34. The criteria in Annex III have also been amended, largely to provide more clarity about the issues to be considered. The changes to Annex III have been incorporated into Schedule 3 to the draft Regulations. We are required when setting the Schedule 2 screening thresholds and criteria to take the criteria in Annex III (Schedule 3) into account. Our initial assessment is that the amendments to Annex III do not require us to make any changes to the Schedule 2 thresholds or criteria.

35. With regards to the term “preliminary verifications” referred to in Article 4(5), this is not defined in the EIA Directive and we are unaware of similar references in other relevant EU environmental legislation. We have not therefore used the term in the draft regulations and do not consider that its omission will make a material difference in the implementation of the EIA Directive.

36. Transposition of this Article is required and has been incorporated into the draft Regulations through regulations 15 and 16.

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Timeframe for screening - Article 4(6)

> **Article 4(6)**
>
> *Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4.*
>
> *In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.*

37. This Article sets a maximum timeframe for the competent authority to provide a screening decision. This decision 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.

38. Regulations 5(6) and 6(1) of the Electricity Works (EIA) Regulations 2000 set out that a screening decision will be provided within 3 weeks of receiving all the relevant information or opinion of the local planning authority. To transpose the Directive, we propose 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 regulation 14). We also allow for a screening decision to be provided within a longer period in agreement with the developer, subject to a longer period outside of the deadline in exceptional cases.

39. Regulation 5(5) of the Electricity Works (EIA) Regulations 2000 stated that a local authority needed to provide views on any screening applications within 3 weeks of the date on which it was consulted or any such longer period as the relevant authority may determine. We propose to maintain this timing for local authorities to provide views but to limit the time the relevant authority can extend this response time to 28 days after the 3 week period (see regulation 13(4)(b) of the draft Regulations). This is to ensure determinations of screening applications are made within 90 days as required by the Directive.

> **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?**

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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?

Information to be provided in the EIA report

Minimum information requirements – Article 5(1)

Article 5(1)

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

(a) a description of the project comprising information on the site, design, size and other relevant features of the project;

(b) a description of the likely significant effects of the project on the environment;

(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;

(e) a non-technical summary of the information referred to in points (a) to (d); and

(f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued is pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned

> *conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.*
>
> *The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.*

40. This Article further clarifies the required content of the EIA report. 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.

41. Our view is 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. It is our view, therefore, that meeting this requirement will not likely result in any additional cost to developers. However, we would be interested to hear from consultees as to the impacts of the amendments.

42. In transposing the requirement that the EIA report be based on any scoping opinion, the draft Regulations refer to the EIA report being based on the "most recent scoping opinion (so far as the development remains materially the same as the development in respect of which the scoping opinion was given)". This addition is to take account of situations where the details of a project change after a scoping opinion has been given, for example, or where the initial assessment work demonstrates that the actual significant effects identified differ from those foreseen at the scoping stage.

43. The requirements of Article 5(1) are transposed through regulation 17 of the draft Regulations. Amended Annex IV is transposed through Schedule 4 to the draft Regulations.

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?

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Determining the scope and level of detail of the assessment (scoping) – Article 5(2)

Article 5(2)

Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article.

The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.

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

44. The EIA Directive retains the provision for a 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 the EIA report, taking into account the information provided by the developer on the specific characteristics of the project and its likely impact on the environment. It also introduces the requirement that where a scoping opinion has been requested, the EIA report should be “based on” that opinion.

45. 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.

46. The requirements of Article 5(2) are transposed through regulation 18 of the draft Regulations. We do not plan to incorporate a requirement for the relevant authority to give a scoping opinion irrespective of whether the developer requests it or not.

Competent experts – Article 5(3)

Article 5(3)

> *In order to ensure the completeness and quality of the environmental impact assessment report:*
>
> *(a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;*
>
> *(b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report;*
>
> *(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*

47. The EIA Directive states that the developer shall ensure that the EIA report is prepared by competent experts and the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the report. The EIA Directive also states that where necessary the competent authority shall seek supplementary information that is necessary to reach a reasoned conclusion.

48. Whilst these requirements are new, we consider that in practice, the majority of environmental impact assessments that have been submitted in the past with applications under the Act, have been produced by competent experts specialising in this area.

49. The competent authority currently seeks advice from the relevant Statutory Nature Conservation Bodies where necessary on environmental statements, and all environmental statements submitted for consents under the Electricity Act 1989 are currently considered by officials with relevant expertise before decisions are made.

50. We propose to include 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 propose 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 have not sought 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 are sought on this approach.

51. The requirement for the EIA report to be prepared by competent experts is transposed in the draft Regulations through regulations 17(5) and (6). In addition the requirement for the competent authority to ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report is transposed through regulation 7(4) of the draft Regulations.

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52. The requirement for the competent authority to 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 is transposed through regulation 25(1) of the draft Regulations (which largely reflects regulation 13(1) of the Electricity Works (EIA) Regulations 2000).

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?

Consultation

Consultation bodies – Article 6(1)

Article 6(1)

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

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

54. Article 6(1) of the EIA Directive would be substantially met by the existing provisions in the Electricity Works (EIA) Regulations 2000. Some minor modifications are made in the draft Regulations to ensure full transposition of this Article. The term “consultation body” is defined in regulation 4, and the requirements for consultation of “consultation bodies” and other “public authorities” are set out in regulations 23 and 26 of the draft Regulations.

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

Article 6(2)

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In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as the information can be reasonable provided.

Article 6(5)

The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

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

56. In practice, it is thought that environmental statements for applications submitted under the Electricity Act 1989 are generally made available on a website. The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 also already requires developers submitting an application under section 36C for a variation to an existing consent to publish their application and environmental statement on a website.

57. Article 6(5) of the EIA Directive would be substantially met by the existing provisions in Part 4 of the Electricity Works (EIA) Regulations 2000. However, to transpose Article 6(2) we have required 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.

58. The requirements of Articles 6(2) and (5) in relation to electronic access are transposed through regulations 22(5)(d), 26(3)(c) and 28 of the draft Regulations.

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?**

Consultation timeframes

Article 6(7)

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

59. Article 6(7) sets a new minimum time frame for public consultations on the EIA report. This should be no shorter than 30 days.

60. Regulation 9(2)(c) of the Electricity Works (EIA) Regulations 2000 sets out a time period of 4 weeks from the last public notice being published for comments to be received. We propose that this be increased to 30 days: see regulations 22(5)(g) and 33(1)(a) of the draft Regulations

61. We also propose increasing the time limits for consultations on further environmental information from 4 weeks to 30 days: see regulations 26(3)(f) and 33(1)(a) of the draft Regulations.

62. We do not consider that the extension to 30 days will have any impact on developers as the extension is only two days longer than current practice

63. We have also included in the draft Regulations provisions to ensure consultation bodies and other public authorities consulted also have 30 days from receiving a copy of an EIA or further environmental information to provide comments. Whilst this increases the period consultation bodies have to respond from 14 days to 30 days, we do not consider this will delay applications. If developers ensure that they provide consultation bodies with a copy of the EIA or further environmental information ahead of the last notice being published, the period for these bodies to comment will be the same or shorter as that provided for in the public consultation. This is achieved through regulations 23(1)(b) and 33(1)(b) of the draft Regulations.

Decisions

Information to be included in a decision – Article 8a (1) and (2)

Article 8a(1)

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

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

Article 8a(2)

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

64. This Article sets out requirements for information to be included in a decision to grant development consent. The first part reflects the requirement in Article 1(2)(g)(v) that the competent authority's reasoned conclusion must be integrated into any decision.

65. 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. This is already common practice.

66. 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.

67. The requirements of Articles 8a(1) and (2) have been transposed through regulation 34 of the draft Regulations.

Monitoring of significant environmental effects

Article 8a(4)

In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

68. 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.

69. It is for Member States to determine the procedures regarding the monitoring of significant adverse environmental effects. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication.

70. Under current legislation the competent authority can include monitoring measures within a consent for development. We therefore do not consider that the updated text will result in an additional burden to developers.

71. Where monitoring measures (including those envisaged to avoid, prevent or reduce and if possible offset significant adverse effects on the environment) are included as a condition to which a section 36 or section 37 consent is subject, the offences in section 36(6) and 37(4) of the Electricity Act 1989 provide a means by which the condition may be enforced. Where monitoring measures are included as a condition of deemed planning permission or of a marine licence granted in connection with a section 36 and 37 consent, there are enforcement mechanisms already in place under Part 7 of the Town and Country Planning Act 1990 and Chapter 3 of Part 4 of the Marine and Coastal Access Act 2009 to ensure that any conditions may be enforced.

72. This requirement is transposed in regulation 34 of the draft Regulations.

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

Decisions in a reasonable time period

Article 8a(5)

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

73. 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.

74. This requirement has been incorporated into regulation 33 of the draft Regulations.

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

Article 8a(6)

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

75. This Article concerns time frames for the validity of the reasoned conclusion to which a competent authority will come to as part of the EIA process. The reasoned conclusion must be "up-to-date" when a decision is taken to grant consent. In practice, we consider that it is likely that the period between an authority coming to a conclusion on the significant effects of a proposal and the decision as to whether permission or consent is to be granted will be a short time period. We propose that it will be for the relevant authority to ensure that a reasoned conclusion is up to date at the time that an application is granted and do not propose to set time frames for validity.

76. This requirement that the reasoned conclusion must be up to date has been incorporated into regulation 7(5) of the draft Regulations.

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

Article 9(1)

When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof, in accordance with national procedures, and shall ensure that the following information is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):a) the content of the decision and any conditions attached thereto ….;

(b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how these results have been incorporated or otherwise addressed, in particular the comments received from the affected Member states referred to in Article 7.

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

78. Article 9(1) of the EIA Directive would be met in part by the provisions in regulation 10 of the Electricity Works (EIA) Regulations 2000, which requires a copy of the decision sent to the developer to be sent to the Local Planning Authority and for the notice of the decision to be published in newspapers.

79. We propose to transpose the requirements of Article 9(1) by requiring the information referred to in Article 9(1) to be included in the decision referred to in Article 8(a) that is sent to the developer and by requiring the decision to be publicised. We propose that the relevant authority be required to send the decision not only to the Local Planning Authority but to every consultation body and public authority consulted on the EIA report and also be required to publish the decision on a website. The developer continues to be required to publish the notice of the decision in newspapers. The requirements are transposed through regulations 34 and 35 of the draft Regulations.

Other issues

Conflicts of interest – Article 9a

> **Article 9a**
>
> *Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.*
>
> *Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.*

80. 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 both the developer and the consultation body and/or competent authority. Where the competent authority is also the developer there must be an appropriate separation between functions.

81. We do not consider at this stage that this will have any new effects in practice. There has not been a case in relation to applications under sections 36, 36C or 37 of the Electricity Act 1989 where the developer has also been the competent authority and, should this situation arise, it would be treated in the way proposed.

82. The requirements of Article 9a are transposed through regulation 38 of the draft Regulations.

Penalties

Article 10a

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

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

84. The Electricity Act 1989 includes requirements for consents under sections 36, 36C and 37 before certain electricity works can take place, and the draft Regulations will require an EIA to be carried out where necessary.

85. It is currently a criminal offence to build a generating station and install overhead electric lines other than in accordance with section 36 or 37 consent, where such consent is required (see sections 36(6) and 37(4) of the Electricity Act 1989). Also when deemed planning permission is granted as part of section 36 and 37 consents, there are enforcement mechanisms already in place under Part 7 of the Town and Country Planning Act 1990. As we consider that penalty provisions are already in place, we do not propose adding any additional offences.

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

Article 3

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

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

before 16 May 2017: (a) the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated; or (b) the information referred to in Article 5(1) of Directive 2011/92/EU was provided.

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

87. The transitional measures have been transposed through regulations 2 and 43 of the draft Regulations.

General Questions on Transposition

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?

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

88. Consultees are invited to consider the proposed draft Regulations in their totality and provide any comments. The draft Regulations look to consolidate, simplify and update the Electricity Works (EIA) Regulations 2000 (including how they are applied to applications to vary existing section 36 consents by the the Electricity Generating Stations (Variations of Consents) (England and Wales) Regulations 2013) and to better reflect current practice. The main changes that have resulted from this are as follows:

Consultation Bodies

89. The definition of "consultative body" in regulation 2(1) of the Electricity Works (EIA) Regulations 2000 has been 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.

90. The existing reference in regulation 2(1)(e) of the Electricity Works (EIA) Regulations 2000 to "other bodies designated by statutory provision as having specific environmental responsibilities whom the Secretary of State considers are likely to have an interest in the application or proposed application" has also been removed from the definition. However, the reference in regulations 18(4)(b), 20(4)(a), 23(1)(a)(ii) and 36(1) of the draft Regulations to certain public authorities (in addition to "consultation bodies", as defined) makes equivalent provision.

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

Publicity requirements for further and additional environmental information

91. We propose removing the existing requirement in regulation 14A of the Electricity Works (EIA) Regulations 2000 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. It is currently possible for more "additional information" to be provided at or after the close of the representations period provided by the notice without any subsequent requirement for notices to be published in newspapers or a subsequent representations period to be provided. We consider that the existing requirement for a notice to be published on the first occasion that the developer is notified that "additional information" is received may not be appropriately targeted.

92. 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, we propose that the developer be required to publish notices in newspapers publicising the information and inviting representations: see regulation 26 of the draft Regulations. This reflects the existing requirement in regulation 14 of the Electricity Works (EIA) Regulations 2000.

93. However, we propose that the publicity requirements in regulation 26 should also apply where the developer provides voluntarily information to supplement the EIA report: see regulation 26(1)(b) of the draft Regulations. As the draft Regulations include provision (in accordance with Article 5(3) of the EIA Directive) to ensure the "completeness" of the EIA report, we think that the circumstances in which the developer will need to supplement the EIA report will be limited, but if this is necessary, regulation 26 of the draft Regulations will ensure that this further information is appropriately publicised. We consider that this is a more appropriate occasion for notices to be published and representations invited. Information provided by the developer pursuant to a request by the relevant authority and information provided by the developer to supplement the EIA report voluntarily is referred to as "further environmental information" in the draft Regulations.

94. We propose 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 (see regulations 26(5), 27(a) and 29 of the draft Regulations). In addition, we propose that such information be published on a website (see regulation 28 of the draft Regulations). We propose 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 (see regulations 30 and 31 of the draft Regulations). The initial notices required to be published under regulation 22 will set out how further and additional environmental information will be made available to the public.

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?

Publicity requirements generally

95. The requirements set out in the Electricity Works (EIA) Regulations 2000 relating to the publicity for applications relating to offshore generating stations (as defined) have been updated in the draft Regulations.

96. An additional requirement is set out in regulations 22, 26 and 35 of the draft Regulations requiring developers making an application for development in relevant waters (i.e., relating to offshore generating stations) that is subject to EIA to publish a notice of their application in:
    (i) Lloyd's List;
    (ii) a national newspaper or newspapers;
    (iii) an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such journal is in circulation).

97. This reflects current publication requirements in relation to the initial application for section 36 and section 36C applications for offshore generating stations set out in the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. We therefore consider that this will provide clarity for developers by ensuring the publication requirements under the draft Regulations, the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 are consistent. However, we propose that developers will also be required to follow these publication

procedures in relation to offshore generating stations where provisions relating to further environmental information apply and in relation to publication of the relevant authority's decision (see regulations 26 and 35). This is to ensure consistency in the consultation procedures.

98. Where the Electricity Works (EIA) Regulations 2000 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 propose reducing this requirement to publish once in the London Gazette but to maintain the requirement to publish for two successive weeks' editions of a newspaper or newspapers circulating in the locality in which a development is situated (see regulations 22, 26 and 35 of the draft Regulations). This is in line with the requirements for publication that are set out in the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013. We consider that reducing the publication in the London Gazette to once will reduce costs for developers.

99. The Electricity Works (EIA) Regulations currently require publication of notices in the London Gazette in all cases. Where the application relates to development in that part of the Renewable Energy Zone that is to be treated as adjacent to Northern Ireland, we propose that, instead, notification be published in the Belfast Gazette (see regulations 22, 26 and 35 of the draft Regulations). This is in line with the requirements for publication that are set out in the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013.

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?

Provision of EIA report to consultation bodies

100. Regulation 11 of the Electricity Works (EIA) Regulations 2000 currently provides for the developer to serve a copy of the environmental statement on the local planning authority; allows the developer to serve a copy of the environmental statement on other consultation bodies; and provides for the Secretary of State or the MMO to provide a notice to any other consultation bodies to which the developer has not provided a copy, to let them know that an environmental statement will be taken in to consideration in determining an application and elicit whether they would like to receive a copy. The Secretary of State or the MMO would then inform the developer of any consultation body that wanted to receive a copy and the developer is then required to provide it.

101. We are looking to simplify this in the draft Regulations 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). This is set out in regulation 23 of the draft Regulations.

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?

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

102. Regulation 40 of the draft Regulations is 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 enables a relevant authority to decide that an assessment under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 is 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. 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 (Environmental Impact Assessment) Regulations 2007.

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?

Sensitive area

103. 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. (The existing definition is in Schedule 2 to the Electricity Works (EIA) Regulations 2000.)

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

Additional Changes

104. The draft Regulations used slightly different terminology – "additional environmental information" instead of "additional information"; "EIA report" instead of "environmental statement"; "relevant authority" to mean either the Secretary of State or the Marine Management Organisation; and "screening decision" instead of "screening opinion". As the draft Regulations include provision (in accordance with Article 5(3) of the EIA Directive) to ensure the "completeness" of the EIA report, the definition of "EIA report" no longer encompasses environmental information sent within 14 days of receipt of the original environmental statement/EIA report.

105. Regulation 9 of the draft Regulations has been added to set out the procedure applicable when an application is made for i) development of a description set out in Schedule 1 or ii) development in respect of which the relevant authority has made a screening decision that the development is "EIA development" (as defined) but it is not accompanied by an EIA report. This provision sets out that the relevant authority will notify the developer of the need for such a report and it will be for the developer to notify the relevant authority within 21 days as to whether they will be providing this or the application will be refused.

106. Regulation 11(4) of the draft Regulations has been included to make it clear that a screening decision will not be made in every case where an application is received for development that does not fall within a description set out in Schedule 2.

107. Regulations 11(6) and 13 of the draft Regulations relate to consultation with the Local Planning Authority on screening decisions. The Electricity Works (EIA) Regulations 2000 require consultation with the Local Planning Authority only when the developer requests a screening decision before an application is made (and provides for discretionary consultation with the Local Planning Authority where a screening decision is required in the course of an application). The draft Regulations require consultation with the Local Planning Authority for every screening decision, except where the developer provides the Local Planning Authority's views to the relevant authority).

108. Regulations 16(3) and 19(3) of the draft Regulations give the relevant authority the power to publicise screening decisions and scoping opinions in any manner that the relevant authority thinks appropriate. The relevant authority is required to publicise screening decisions and scoping opinions in a case where they are not sent to a Local Planning Authority to be made publicly available in the place where the planning register is kept, e.g., in the case of offshore developments where there might not be a Local Planning Authority.

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109. Regulation 18 of the draft Regulations removes the existing requirement on the relevant authority in regulation 7(4)(a) of the Electricity Works (EIA) Regulations 2000 to consult the person who requested the scoping opinion.

110. Regulation 18(5) of the draft Regulations provides for consultation bodies and other public authorities consulted about a scoping opinion to provide representations (if any) within 21 days or any longer period notified by the relevant authority.

111. Regulations 22(7) and 26(4) of the draft Regulations have been included to ensure that the developer notifies the relevant authority as to when and where notices were published.

112. Regulation 25(2) of the draft Regulations is included to enable the relevant authority to treat an application as withdrawn if the developer fails within a reasonable period notified by the relevant authority to provide the further environmental information requested under regulation 25(1) that the relevant authority thinks is necessary to enable it to reach a reasoned conclusion on the significant effects of the development on the environment.

113. Regulation 26(6) of the draft Regulations requires the developer to inform the relevant authority of the date on which the developer sends further environmental information to the persons required to be consulted in accordance with regulation 26(5). This is consistent with regulation 23(2) of the draft Regulations (which reflects regulation 11(3) of the Electricity Works (EIA) Regulations 2000).

114. Regulation 27(a) of the draft Regulations requires the relevant authority to send a copy of any additional environmental information (as defined in regulation 3 of the draft Regulations) to the Local Planning Authority for the area in which the development is situated or, in relation to offshore development, any Local Planning Authority that the relevant authority thinks appropriate. This represents a slight modification of the requirement in existing regulation 14A(1)(a) of the Electricity Works (EIA) Regulations 2000).

115. Regulation 31 contains a new power for the relevant authority to charge for the provision of copies of additional environmental information to the public.

116. Regulation 41 relates to the service of documents. The updated text in the draft Regulations involves a relaxation of the current requirements (documents do not need to be sent by registered or recorded post) and there is now a provision for electronic service of documents.

Amendments to the Electricity (Applications for Consent) Regulations 1990 and the Electricity Generating Stations (Variations of Consents) (England and Wales) Regulations 2013

117. Schedule 5 to the draft Regulations amends the Electricity (Applications for Consent) Regulations 1990 and the Electricity Generating Stations (Variations of Consents) (England and Wales) Regulations 2013 (the “Variation Regulations”). Many of these are consequential on the replacement of the Electricity Works (EIA) Regulations 2000 by the draft Regulations, including the new terminology used.

118. Regulations 3 and 4 of the Variation Regulations are amended to make it clear that, although an EIA report is not required to accompany an application to vary a section 36 consent, if the application is for “EIA development” (as defined), the EIA report must be provided before the application is suitable for publication in accordance with regulation 5 of the Variation Regulations.

119. Regulation 5 of the Variation Regulations is amended to allow the “appropriate authority” to publish the documents referred to in the regulation instead of the developer and to remove a requirement to publish the EIA report on a website, since this is now a requirement of the draft Regulations.

120. Regulation 7 of the Variation Regulations is revoked. As the draft Regulations apply directly to applications to vary consents under section 36C of the Electricity Act 1989, regulation 7 is no longer necessary. The provision made by regulation 7(4) and (6) of the Variation Regulations is now contained in regulations 22(3) and 17(1)(e) of the draft Regulations.

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?

Assessing Impacts

Equalities

While developing these proposals we have had regard to the public sector equality duty. The duty requires public authorities, in exercising their functions to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not; and
- Foster good relations between people who share a protected characteristic and people who do not.

Our initial assessment is that there is limited scope for the draft Regulations to have significant impacts on persons with protected characteristics, and have taken the factors above into account so far as relevant when formulating our proposals (for example, in relation to consultation requirements). However, we would be interested in any views or information that consultees have on any potential equalities impacts.

Business

As a European Union measure with no gold-plating, this is a Non-Qualifying Regulatory Provision (NQRP) under the Better Regulation Framework.

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List of Annexes

Annex A – Draft Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

Annex B- Transposition Table

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About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department for Business, Energy and Industrial Strategy will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact BEIS Consultation Co-ordinator.

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Annex A

STATUTORY INSTRUMENTS

2017 No. 0000

ELECTRICITY, ENGLAND AND WALES

The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017

Made - - - -	***
Laid before Parliament	***
Coming into force - -	*16th May 2017*

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Department for Business, Energy & Industrial Strategy

SCHEDULE 1 — Development requiring environmental impact assessment in any event
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The Secretary of State is a Minister designated(**9**) for the purposes of section 2(2) of the European Communities Act 1972(**10**) in relation to the environment.

The Secretary of State has taken into account the selection criteria set out in Annex III to Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment(**11**).

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 36C(2) of, and paragraph 1(3) of Schedule 8 to, the Electricity Act 1989(**12**), makes the following Regulations:

PART 1

Preliminary

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

(2) These Regulations come into force on 16th May 2017.

(3) These Regulations extend to England and Wales.

Application

2.—(1) These Regulations apply to applications for—

(a) section 36 consents;

(b) section 37 consents; and

(c) section 36 variations,

for development in England or Wales or in relevant waters.

(2) This regulation is subject to—

(a) regulation 39 (exemptions for defence and civil emergencies);

(9) See article 2(a) of S.I. 2008/301.

(10) 1972 c.68. Section 2(2) is amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (c.7) and section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations created or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993.

(11) O.J. L 26, 28.1.2012, p. 1. The Directive has been amended by Directive 2014/52/EU of the European Parliament and of the Council of 16th April 2014, O.J. L 124, 25.4.2014, p. 1.

(12) 1989 c.29. Section 36C was inserted by section 20 of the Growth and Infrastructure Act 2013 (c.27). “Regulations” in subsection (2) of section 36C is defined in subsection (6) to include regulations made by the Secretary of State other than in the case of section 36 consents relating to generating stations (or proposed generating stations) in Scotland.

(b) regulation 40 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required);

(c) regulation 43 (transitional provision).

Interpretation

3. In these Regulations—

"additional environmental information", in relation to an application for a section 36 or 37 consent, or for a section 36 variation, for EIA development, means any information and representations (other than further environmental information) received by the relevant authority under the procedures provided by these Regulations after the date on which an EIA report is provided to the relevant authority and before the relevant authority determines the application that the relevant authority thinks is of material relevance to the matters set out in Schedule 4;

"application website" must be construed in accordance with regulation 28;

"consultation body" has the meaning given in regulation 4;

"development" means the carrying out of building, engineering or other operations in, on, over or under land or sea;

"EIA development" has the meaning given in regulation 5;

"EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment;

"EIA report" must be construed in accordance with regulation 17;

"electric line" has the meaning given in section 64 of the Electricity Act 1989;

"environmental impact assessment" must be construed in accordance with regulation 7;

"further environmental information" has the meaning given in regulation 26(1);

"generating station" has the meaning given in section 64 of the Electricity Act 1989;

"Habitats Directive" means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora(**13**);

"local planning authority" has the same meaning as is given to "relevant planning authority" by sub-paragraph (a), (aa) or (ab), as the case may be, of paragraph 2(6) of Schedule 8 to the Electricity Act 1989(**14**);

"planning register" means the register kept under section 69 of the Town and Country Planning Act 1990(**15**);

"relevant authority" means—

(a) the Secretary of State(**16**); or

(b) in relation to an application for a section 36 consent or for a section 36 variation made (or to be made) to the Marine Management Organisation, the Marine Management Organisation(**17**);

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(13) O.J. L 206, 22.7.1992, p. 7.

(14) Paragraph 2(6) was amended by paragraph 83 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11); paragraph 22 of Schedule 6, and Schedule 18, to the Local Government (Wales) Act 1994; and paragraph 30(3) of Schedule 10, and Schedule 24, to the Environment Act 1995 (c.25).

(15) Section 69 was substituted by paragraph 3 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c.5) and was subsequently amended by section 190 of the Planning Act 2008 (c.29); paragraph 7 of Schedule 12, and Part 18 of Schedule 25, to the Localism Act 2011 (c.20); paragraph 8 of Schedule 4 to the Infrastructure Act 2015 (c.7); and paragraph 10 of Schedule 12 to the Housing and Planning Act 2016 (c.22).

(16) Functions of the Secretary of State under sections 36 and 37 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland, have been transferred to the Scottish Ministers by S.I. 2006/1040 and 1999/1750 respectively.

(17) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c.23). Certain functions under section 36 of the Electricity Act 1989 were transferred to the Marine Management Organisation by section 12 of that Act.

"relevant waters" means—

(c) waters adjacent to England or Wales that are between the mean low water mark and the seaward limits of the territorial sea; and

(d) a Renewable Energy Zone within the meaning of section 84(4) of the Energy Act 2004(**18**) (other than an area in relation to which the Scottish Ministers have functions);

"screening decision", in relation to proposed development, means a decision about whether or not the development is EIA development;

"section 36 consent" means a consent under section 36 of the Electricity Act 1989;

"section 36 variation" means an application under section 36C of the Electricity Act 1989 to vary a section 36 consent;

"section 37 consent" means a consent under section 37 of the Electricity Act 1989;

"Wild Birds Directive" means Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009 on the conservation of wild birds(**19**).

Meaning of consultation body

4.—(1) Each of the following is a consultation body for the purposes of these Regulations—

(a) every local planning authority for the area in which the development will be carried out and every principal council for that area, if not the local planning authority;

(b) in relation to development in England or in relevant waters adjacent to England that are between the mean low water mark and the seaward limits of the territorial sea—

the Environment Agency(**20**);

the Historic Buildings and Monuments Commission for England(**21**);

Natural England(**22**);

(c) in relation to development in Wales or in relevant waters adjacent to Wales that are between the mean low water mark and the seaward limits of the territorial sea—

Cadw (that is to say, the executive agency responsible for administering the exercise of functions vested in the National Assembly for Wales relating to the historic environment);

the Natural Resources Body for Wales(**23**);

(d) in relation to development in relevant waters beyond the seaward limits of the territorial sea, the Joint Nature Conservation Committee(**24**).

(2) In this regulation, "principal council" has the same meaning as in section 270(1) of the Local Government Act 1972(**25**).

Meaning of EIA development

5. In these Regulations, "EIA development" means any of the following—

(a) development of a description set out in Schedule 1;

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(18) Section 84(4) was substituted by paragraph 4 of Schedule 4 to the Marine and Coastal Access Act 2009.
(19) O.J. L 20, 26.1.2010, p. 7.
(20) The Environment Agency was established by section 1 of the Environment Act 1995 (c.25).
(21) The Historic Buildings and Monuments Commission for England was established by section 32 of the National Heritage Act 1983 (c.47).
(22) Natural England was established by section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).
(23) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903.
(24) The Joint Nature Conservation Committee was re-constituted in accordance with Schedule 4 of the Natural Environment and Rural Communities Act 2006: see section 31(b) of that Act.
(25) "Principal council" is defined by reference to "principal area". The definition of "principal area" in section 270(1) has been amended by paragraph 8 of Schedule 16 to the Local Government Act 1985 (c.51) and section 1(8) of the Local Government (Wales) Act 1994 (c.19).

(b) development of a description set out in Schedule 2 if—

an EIA report is provided to the relevant authority in connection with an application for a section 36 or 37 consent, or a section 36 variation, for the development; or

the relevant authority makes a screening decision that the development is EIA development;

(c) development of any other description if the relevant authority makes a screening decision that the development is EIA development.

PART 2

Environmental impact assessment

CHAPTER 1

General

Environmental impact assessment required for EIA development

6. Where an application is made for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must not grant the application unless an environmental impact assessment has been undertaken in respect of the development.

Environmental impact assessment

7.—(1) An environmental impact assessment means a process consisting of—

(a) the preparation of an EIA report by a person (the "developer") applying for a section 36 or 37 consent, or a section 36 variation, for EIA development and the provision by the developer to the relevant authority of the EIA report and any further environmental information;

(b) the compliance with the obligations under regulations 22 to 31 that apply in the particular case by the developer and the other persons on whom those obligations are imposed;

(c) the examination by the relevant authority of—

the EIA report;

any further environmental information; and

any additional environmental information;.

(d) the reasoned conclusion by the relevant authority on the significant effects of the development on the environment, taking into account the results of—

the examination referred to in sub-paragraph (c); and

where appropriate, the relevant authority's own supplementary examination; and

(e) the inclusion of the relevant authority's reasoned conclusion in the decision notice required by regulation 34.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the development on the following factors—

(a) population and human health;

(b) biodiversity (for example, fauna and flora), with particular attention to habitats and species protected under the Habitats and Wild Birds Directive;

(c) land (for example, land take), soil (for example, organic matter, erosion, compaction, sealing), water (for example, hydromorphological changes, quantity and quality), air and climate (for example, greenhouse gas emissions, impacts relevant to adaptation);

(d) material assets, cultural heritage (including architectural and archaeological aspect) and the landscape;

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(3) The effects to be identified, described and assessed under paragraph (2) must include—

(a) the operational effects of the development, where the development will have operational effects;

(b) the expected effects arising from the vulnerability of the development to the risks of major accidents and disasters that are relevant to the development.

(4) The relevant authority must ensure that it has, or has access to, sufficient expertise for the purpose of conducting the examination referred to in paragraph (1)(c) or any supplementary examination.

(5) When granting an application referred to in paragraph (1)(a), the relevant authority must be satisfied that the reasoned conclusion referred to in paragraph (1)(d) is up to date.

Co-ordination of environmental impact assessment with Habitats Regulations assessment

8.—(1) Where in relation to EIA development there is, in addition to the requirement to undertake an environmental impact assessment under these Regulations, also a requirement to undertake a Habitats Regulations assessment, the relevant authority must, where appropriate, ensure that the environmental impact assessment and the Habitats Regulations assessment are co-ordinated.

(2) In this regulation, "Habitats Regulations assessment" means an assessment under regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**26**) or regulation 61 of the Conservation of Habitats and Species Regulations 2010(**27**).

Procedure when application for Schedule 1 development, etc. not accompanied by EIA report or request for scoping opinion

9.—(1) This regulation applies to an application for a section 36 or 37 consent, or a section 36 variation, for—

(a) development of a description set out in Schedule 1; or

(b) development in respect of which the relevant authority has made a screening decision that the development is EIA development.

(2) If an application to which this regulation applies is not accompanied by an EIA report or a request for a scoping opinion under regulation 18, the relevant authority must notify the person (the "developer") making the application in writing that, unless the developer within 21 days either informs the relevant authority in writing that the developer intends to provide an EIA report or requests a scoping opinion under regulation 18, the application will be refused.

(3) If the developer does not so inform the relevant authority or make such a request within that period, the relevant authority must refuse the application.

CHAPTER 2

Screening decisions

Developer may request screening decision before making application

10.—(1) A person (the "developer") who is considering making an application for a section 36 or 37 consent, or a section 36 variation, for development may request the relevant authority to make a screening decision.

([26]) S.I. 2007/1842. Regulation 25 was amended by paragraph 7(4) of Schedule 6 to S.I. 2010/490; article 4(2) of S.I. 2010/1513; paragraph 278 of Schedule 4 to S.I. 2013/755; and regulation 12 of S.I. 2016/912.

([27]) S.I. 2010/490. Regulation 61 was amended by regulation 20 of S.I. 2012/1927.

(2) A request under paragraph (1) must be accompanied by—

(a) the information referred to in regulation 12; and

(b) a plan of the site of the development.

(3) On receiving a request under paragraph (1), the relevant authority must make a screening decision in respect of the development.

(4) Regulations 13 to 16 apply where a relevant authority is required to make a screening decision under this regulation.

When relevant authority must or may make screening decision after application made

11.—(1) This regulation applies where a person (the "developer") makes an application for a section 36 or 37 consent, or a section 36 variation, for the following development (other than development in respect of which the relevant authority has made a screening decision that the development is EIA development)—

(a) development of a description set out in Schedule 2;

(b) other development (but not development of a description set out in Schedule 1).

(2) If the application is for development referred to in paragraph (1)(a) and is not accompanied by an EIA report, the relevant authority must make a screening decision in respect of the development before dealing further with the application.

(3) But the relevant authority is not required to make a screening decision if, before the screening decision is made, the developer provides an EIA report to the relevant authority.

(4) If the application is for development referred to in paragraph (1)(b), the relevant authority may decide, having regard to the criteria set out in Schedule 3, to make a screening decision in respect of the development before determining the application.

(5) Where the relevant authority is required, or decides, to make a screening decision under this regulation, the relevant authority must—

(a) notify the developer in writing that the relevant authority will make a screening decision; and

(b) unless the developer has already done so, request the developer to provide the information referred to in regulation 12.

(6) Regulations 13 to 16 apply where a relevant authority is required, or decides, to make a screening decision under this regulation.

(7) If the relevant authority makes a screening decision under this regulation that the development is EIA development—

(a) when sending the screening decision to the developer, the relevant authority must notify the developer in writing that, unless the developer within 21 days either informs the relevant authority in writing that the developer intends to provide an EIA report or requests a scoping opinion under regulation 18, the application will be refused;

(b) if the developer does not so inform the relevant authority or make such a request within that period, the relevant authority must refuse the application.

Screening decisions: information to be provided by developer

12.—(1) The information to be provided by the developer is—

(a) a description of the development, including in particular—

a description of the physical characteristics of the whole development and, where relevant, of demolition works;

a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

(b) a description of the aspects of the environment likely to be significantly affected by the development;

(c) a description of any likely significant effects, to the extent of the information available on such effects, of the development resulting from—

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

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

(2) The developer must take into account the criteria set out in Schedule 3, where relevant, when compiling the information referred to in paragraph (1).

(3) When providing information under paragraph (1)—

(a) the developer must take into account, where relevant, the available results of other relevant assessments of the effects on the environment undertaken under requirements imposed in accordance with European Union legislation other than the EIA Directive;

(b) the developer may also provide a description of any features of the development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Screening decisions: consultation with local planning authority

13.—(1) This regulation and regulations 14 to 16 apply where the relevant authority—

(a) is required to make a screening decision following a request under regulation 10; or

(b) is required, or decides, to make a screening decision under regulation 11 on receipt of an application for a section 36 or 37 consent or a section 36 variation.

(2) The relevant authority must within 14 days after the date on which the relevant authority receives the information referred to in regulation 12 (and, where paragraph (1)(a) applies, a plan of the site of the development) consult every local planning authority for the area in which the development will be carried out (or, in relation to development in relevant waters, any local planning authority that the relevant authority thinks appropriate) as to its views on whether or not an environmental impact assessment should be undertaken in respect of the development.

(3) Paragraph (2) does not apply in relation to a local planning authority if the developer has already provided that local planning authority's views to the relevant authority.

(4) The local planning authority must give its views (if any) to the relevant authority within—

(a) 21 days after the date on which the local planning authority receives a request under paragraph (2); or

(b) any longer period notified in writing by the relevant authority, which must not end more than 28 days after date on which the 21-day period referred to in sub-paragraph (a) ends.

Screening decisions: timing

14.—(1) The relevant authority must make a screening decision as soon as possible after the later of—

(a) the date on which the relevant authority receives the information referred to in regulation 12 (and, where relevant, a plan of the site of the development); and

(b) the latest date by which a local planning authority is required to give its views under regulation 13 or, if earlier, the date on which the relevant authority receives the last of those views,

and, in any event, no more than 90 days after the date referred to in sub-paragraph (a) or any longer period that may be agreed in writing with the developer.

(2) But in an exceptional case (for example, relating to the nature, complexity, location or size of the development), the relevant authority may extend the date by which it is required to make a screening decision by notifying the developer in writing of the new date and the reason for the extension.

Screening decisions: general

15.—(1) The relevant authority must make a screening decision on the basis of the information provided by the developer, taking account, where relevant, of—

(a) the criteria set out in Schedule 3;

(b) the results of assessments of the effects of the environment of the development undertaken under requirements imposed in accordance with European Union legislation other than the EIA Directive; and

(c) the views (if any) of every local planning authority consulted.

(2) If the relevant authority thinks that the development is likely to have significant effects on the environment, the relevant authority must make a screening decision that the development is EIA development.

(3) The relevant authority must send the screening decision to the developer as soon as possible after it is made.

(4) If the screening decision is that the development is EIA development, the screening decision must state the main reasons for the decision by reference to the criteria set out in Schedule 3.

(5) If the screening decision is that the development is not EIA development, the screening decision must state—

(a) the main reasons for the decision by reference to the criteria set out in Schedule 3; and

(b) any features of the development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Screening decisions: publicity

16.—(1) The relevant authority must, as soon as possible after sending the screening decision to the developer, send a copy of the screening decision to—

(a) every local planning authority for the area in which the development will be carried out; or

(b) if the development is in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) The local planning authority must make the copy of the screening decision available for public inspection at all reasonable hours at the place where the planning register is kept.

(3) The relevant authority may publicise the screening decision in any manner that the relevant authority thinks appropriate and, where the development is in relevant waters and a copy of the screening decision is not sent to a local planning authority under paragraph (1)(b), the relevant authority must ensure that the screening decision is publicised in any manner that the relevant authority thinks appropriate.

CHAPTER 3

EIA reports

Meaning of EIA report

17.—(1) For the purposes of these Regulations, an EIA report is a report prepared by the person (the "developer") applying for a section 36 or 37 consent, or a section 36 variation, for development that includes the following information—

(a) a description of the development comprising information on the location, design, size and other relevant features of the development;

(b) a description of the likely significant effects of the development on the environment;

(c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(d) a description of the reasonable alternatives studied by the developer that are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;

(e) where the application is for a section 36 variation, the main respects in which the developer thinks that the likely significant effects on the environment of the development, as varied, will differ from those set out in any EIA report or environmental statement prepared in connection with the section 36 consent in respect of which the application for the variation is made or, if the section 36 consent has been varied by a section 36 variation, from those set out in any EIA report or environmental statement prepared in connection with the most recent section 36 variation;

(f) a non-technical summary of the information referred to in sub-paragraphs (a) to (e); and

(g) any other information set out in Schedule 4 relevant to the specific characteristics of the development and the environmental features likely to be affected.

(2) If the relevant authority has given a scoping opinion under regulation 18 in respect of the development, the EIA report must be based on the most recent scoping opinion (so far as the development remains materially the same as the development in respect of which the scoping opinion was given).

(3) The EIA report must include any information that may reasonably be required to reach a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

(4) In preparing the EIA report, the developer must, with a view to avoiding duplication of assessments, take into account any available results of other relevant assessments undertaken under requirements imposed in accordance with European Union legislation or under domestic legislation.

(5) 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.

(6) The EIA report must include—

(a) the name of every person who prepared the EIA report and details of the person's competence to do so (for example, the person's qualifications or experience); and

(b) a statement signed by the developer that the developer thinks the person is competent to prepare the EIA report; and

(c) a statement signed by the developer that, to the best of the developer's knowledge and belief, the EIA report is complete.

(7) In paragraph (1)(e), "environmental statement" means an environmental statement under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000(**28**).

Developer may request scoping opinion

18.—(1) A person (the "developer") who makes (or is considering making) an application for a section 36 or 37 consent or a section 36 variation may request the relevant authority to give an opinion in writing (a "scoping opinion") as to the scope and level of detail of the information to be included in the EIA report in respect of the development to which the application relates.

(2) A request for a scoping opinion must be accompanied by the following—

(a) a brief description of the nature and purpose of the development, including its specific characteristics, location and technical capacity;

(b) an explanation of the likely impact on the environment of the development;

(c) a plan of the site of the development.

(3) If, on receiving a request for a scoping opinion, the relevant authority thinks that the developer has not provided sufficient information to enable a scoping opinion to be given, the relevant authority must,

(28) S.I. 2000/1927, amended by S.I. 2007/1977.

within 21 days after the date on which the relevant authority receives the request, notify the developer in writing of the further information required.

(4) When the relevant authority thinks that sufficient information has been provided to enable a scoping opinion to be given, the relevant authority must within 21 days consult the following about the scoping opinion—

(a) every consultation body; and

(b) any other public authority on which legislation confers specific environmental responsibilities or local or regional competences that the relevant authority thinks is likely to have an interest in the development.

(5) A consultation body or public authority consulted under paragraph (4) must make its representations (if any) within—

(a) 21 days after the date on which the consultation body or public authority is consulted; or

(b) any longer period notified in writing by the relevant authority.

(6) Before giving a scoping opinion, the relevant authority must take into account—

(a) the information provided by the developer;

(b) any representations received from the consultation bodies and public authorities consulted under paragraph (4);

(c) the specific characteristics of the development;

(d) the specific characteristics of that type of development;

(e) the environmental features likely to be affected by the development.

(7) The relevant authority must give a scoping opinion to the developer within—

(a) 21 days after the latest date by which a consultation body or public authority consulted under paragraph (4) is required to make representations or, if earlier, the date on which the relevant authority receives the last of those representations; or

(b) any longer period that may be agreed in writing with the developer.

(8) Where the developer makes a request for a screening decision under regulation 10 and a request for a scoping opinion under this regulation in respect of the same development—

(a) the relevant authority must make a screening decision before giving a scoping opinion;

(b) if the screening decision is that the development is not EIA development, for the purposes of this regulation, the request for the scoping opinion must be treated as never having been made;

(c) if the screening decision is that the development is EIA development, for the purposes of this regulation, the request for the scoping opinion must be treated as having been made on the same day that the screening opinion is given.

(9) The fact that a relevant authority gives a scoping opinion under this regulation does not prevent the relevant authority from requiring information to be provided under regulation 25(1) in connection with an environmental impact assessment undertaken in respect of the development.

Scoping opinions: publicity

19.—(1) The relevant authority must, as soon as possible after sending the scoping opinion to the developer, send a copy of a scoping opinion to—

(a) every local planning authority for the area in which the development will be carried out; or

(b) if the development is in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) The local planning authority must make the copy of the scoping opinion available for public inspection at all reasonable hours at the place where the planning register is kept.

(3) The relevant authority may publicise the scoping opinion in any manner that the relevant authority thinks appropriate and, where the development is in relevant waters and a copy of the scoping opinion is not sent to a local planning authority under paragraph (1)(b), the relevant authority must ensure that the scoping opinion is publicised in any manner that the relevant authority thinks appropriate.

Procedure to facilitate preparation of EIA report

20.—(1) Where a person (the "developer") intends to make an application for a section 36 or 37 consent, or a section 36 variation, for development and to provide an EIA report in connection with the application, the developer may in writing request the relevant authority to comply with paragraph (4).

(2) A request under paragraph (1) must be accompanied by information about the location and the nature and purpose of the development and the main environmental consequences to which the developer proposes to refer in the EIA report.

(3) Where a person (the "developer") makes an application for a section 36 or 37 consent, or a section 36 variation, for development that is not accompanied by an EIA report and either—

(a) the relevant authority makes a screening decision that the development is EIA development; or

(b) the developer informs the relevant authority in writing that the developer intends to provide an EIA report in connection with the application,

the developer may in writing request the relevant authority to comply with paragraph (4).

(4) Where the relevant authority receives a request under paragraph (1) or (3), the relevant authority must, in writing—

(a) notify every consultation body and any other public authority on which legislation confers specific environmental responsibilities or local or regional competences that the relevant authority thinks is likely to have an interest in the development, of the name and address of the developer and the duty imposed by regulation 36 (provision of information by consultation bodies, etc.); and

(b) notify the developer of the name and address of every consultation body and any other public authority notified under sub-paragraph (a).

CHAPTER 4

Procedure

Application of Chapter

21. This Chapter applies where a person (the "developer")—

(a) makes an application (the "application") for a section 36 or 37 consent, or a section 36 variation, for EIA development (the "development"); and

(b) provides the relevant authority with an EIA report (the "EIA report").

EIA report: publicity

22.—(1) Subject to paragraphs (2) and (3), the developer must, as soon as possible after providing the relevant authority with the EIA report, publish a notice in accordance with paragraphs (4) and (5).

(2) If the relevant authority informs the developer that—

(a) the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state(**29**) (other than the United Kingdom); or

(b) an EEA state (other than the United Kingdom) has made a request under paragraph (1) of regulation 24 (development affecting other EEA states),

(29) "EEA state" is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

the developer must not publish the notice until after the relevant authority notifies the developer in writing that the relevant authority has sent the EEA state the information referred to in that paragraph.

(3) Where the application is for a section 36 variation, the developer must not publish the notice until after the developer is notified under regulation 4(6) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013(**30**) that the application is suitable for publication.

(4) The notice must be published—

(a) in the London Gazette or, if the application is for development in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002(**31**), in the Belfast Gazette; and

(b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development is situated or, if the development is in relevant waters—

in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;

in a national newspaper or newspapers;

in Lloyd’s List; and

in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(5) The notice must—

(a) describe the application;

(b) state that an environmental impact assessment will be undertaken in respect of the development and, where the relevant authority so informs the developer, that the development is likely to have significant effects on the environment in an EEA state (other than the United Kingdom);

(c) state the nature of the possible decisions that may be taken in relation to the application;

(d) state that the EIA report may be accessed at the application website free of charge and give the address of the application website;

(e) state that the EIA report may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development is situated or, if the development is in relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);

(f) state how a copy of the EIA report may be obtained and the amount of any payment required;

(g) state that representations about the EIA report and the application may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published);

(h) set out how any further environmental information subsequently provided by the developer will be made available to the public and the procedures for making representations about the further environmental information (see regulations 26, 28, 29 and 30);

(i) set out how any additional environmental information provided to the relevant authority will be made available to the public (see regulations 27, 28, 29 and 31);

(j) set out the circumstances in which a public inquiry into the application may be held under the Electricity Act 1989.

(6) The notice may be combined with any other notice that the developer is required to publish in connection with the application.

(7) The developer must send a copy of each notice published under paragraph (4) to the relevant authority together with evidence of the date and place of publication.

([30]) S.I. 2013/1570.
([31]) S.I. 2002/791.

(8) The relevant authority must, as soon as possible after publication, send a copy of the first notice published under paragraph (4) to—

(a) every local planning authority for the area in which the development will be carried out; or

(b) if the development is in relevant waters, any local planning authority that the relevant authority thinks appropriate.

EIA report: provision to consultation bodies, etc.

23.—(1) The developer must, as soon as possible after providing the relevant authority with the EIA report—

(a) send a copy of the EIA report (and a copy of the application and any plan submitted with the application, unless the developer has already done so) to—

every consultation body; and

any other public authority on which legislation confers specific environmental responsibilities or local or regional competences that the relevant authority directs (being a public authority that the relevant authority thinks is likely to have an interest in the development); and

(b) inform every consultation body and public authority in writing that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the EIA report and the application before the later of—

30 days after the date on which the consultation body or public authority receives a copy of the EIA report; and

the date stated in the notice published under regulation 22 as the date by which representations about the EIA report may be made.

(2) The developer must inform the relevant authority in writing of the date on which the developer complies with paragraph (1) as soon as possible after doing so.

Development affecting other EEA states

24.—(1) Where the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state (other than the United Kingdom), or where an EEA state (other than the United Kingdom) so requests, the relevant authority must, as soon as possible, send to the EEA state—

(a) a description of the development, together with any available information on its possible significant effect on the environment in EEA states other than the United Kingdom;

(b) a notice explaining the nature of the possible decisions that may be taken in relation to the application and informing the EEA state that it may, within such reasonable period as may be specified in the notice, inform the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(2) Paragraphs (3) to (5) apply where an EEA state informs the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(3) The relevant authority must, as soon as possible after being so informed, send to the EEA state (to the extent that the relevant authority has not already done so)—

(a) a copy of the notice published by the developer under regulation 22;

(b) a copy of the EIA report; and

(c) any other available information that is relevant to the development.

(4) The relevant authority must ensure that a reasonable period of time is given for the authorities of the EEA state referred to in Article 6(1) of the EIA Directive and the public concerned in the EEA state to make representations about the information sent under paragraphs (1) and (3) to the relevant authority before the application is determined.

(5) The relevant authority must enter into consultations with the EEA state, for a reasonable period of time agreed with the EEA state, regarding, amongst other things, the likely significant effect of the development on the environment of the EEA state and the measures envisaged to reduce or eliminate those effects.

(6) This regulation is subject to regulation 37 (confidential information, etc.).

When relevant authority must request further environmental information

25.—(1) Where the relevant authority thinks that it is necessary, for the purpose of reaching the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d), for the information in the EIA report to be supplemented by any other information that is required to be or may be included in the EIA report, the relevant authority must, by notice in writing, require the developer to provide the information.

(2) If the developer fails to provide the information required under paragraph (1) within such reasonable period or periods as the relevant authority may notify in writing, the relevant authority may treat the application as having been withdrawn; and, if so, the relevant authority must notify the developer of that fact in writing.

Further environmental information: publicity

26.—(1) Where the developer—

(a) provides the information required under regulation 25(1); or

(b) otherwise provides information to supplement the information in the EIA report,

the developer must, as soon as possible after providing the information (the "further environmental information"), publish a notice in accordance with paragraphs (2) and (3).

(2) The notice must be published—

(a) in the London Gazette or, if the application is for development in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, in the Belfast Gazette; and

(b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development is situated or, if the development is in relevant waters—

in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;

in a national newspaper or newspapers;

in Lloyd's List; and

in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(3) The notice must—

(a) describe the application;

(b) state that the developer has provided the further environmental information in connection with the environmental impact assessment that must be undertaken in respect of the development;

(c) state that the further environmental information may be accessed at the application website free of charge and give the address of the application website;

(d) state that the further environmental information may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development is situated or, if the development is in relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);

(e) state how a copy of the further environmental information may be obtained and the amount of any payment required;

(f) state that representations about the further environmental information may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published).

(4) The developer must send a copy of each notice published under paragraph (2) to the relevant authority together with evidence of the date and place of publication.

(5) The relevant authority must, as soon as possible after publication, send a copy of the first notice published under paragraph (2) to—

(a) every local planning authority for the area in which the development will be carried out; or

(b) if the development is in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(6) The developer must—

(a) send a copy of the further environmental information to every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23; and

(b) inform every such consultation body or public authority that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the further environmental information before the later of—

30 days after the date on which the consultation body or public authority receives a copy of the further environmental information; and

the date stated in the notice published under paragraph (2) as the date by which representations about the further information may be made.

(7) The developer must inform the relevant authority in writing of the date on which the developer complies with paragraph (6) as soon as possible after doing so.

Additional environmental information

27. Where additional environmental information is provided to the relevant authority, the relevant authority must send a copy of the additional environmental information to—

(a) every local planning authority for the area in which the development will be carried out (or, in relation to development in relevant waters, any local planning authority that the relevant authority thinks appropriate); and

(b) the developer.

Application website

28.—(1) The developer or, where paragraph (2) applies, the relevant authority must ensure that each of the following documents is able to be accessed by the public at a website (the "application website") free of charge from the date set out in relation to the document until the date on which the application is determined—

(a) the notice published under regulation 22 and the EIA report (from the date on which the first notice is published under paragraph (4) of that regulation);

(b) any notice published under regulation 26 and any further environmental information provided by the developer (from the date on which the first notice is published under paragraph (2) of that regulation);

(c) any additional environmental information (from as soon as possible after the date on which the additional environmental information is received by the developer or, where paragraph (2) applies, the relevant authority).

(2) This paragraph applies where the relevant authority notifies the developer in writing that the relevant authority will comply with the obligations in paragraph (1).

(3) Where the relevant authority notifies the developer under regulation 5(2A) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 that the relevant authority will, instead of the developer, comply with the obligations in paragraph (2) of that regulation to publish material on a website, the relevant authority must also notify the developer under paragraph (2) of this regulation that the relevant authority will comply with the obligations in paragraph (1) of this regulation.

(4) The application website must be the same website on which information is published under regulation 5(2) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013.

Local planning authority must place copy of EIA report, etc. on Part 1 of planning register

29.—(1) Where a local planning authority receives a copy of any of the following—

(a) an EIA report under regulation 23;

(b) further environmental information under regulation 26(6);

(c) additional environmental information under regulation 27(a);

(d) a notice under regulation 22(8) or 26(5),

the local planning authority must place the copy of the document on Part 1 of the planning register as soon as possible after receipt.

(2) Where a local planning authority has received a copy of—

(a) a screening decision in respect of the development under regulation 16; or

(b) a scoping opinion in relation to the EIA report under regulation 19,

the local planning authority must place the copy of the decision or opinion on Part 1 of the planning register as soon as possible after the local planning authority is informed that the application has been made.

Developer must provide copy of EIA report, etc. to public

30.—(1) Where before the application is determined a person requests the developer to provide a copy of any of the following, the developer must do so as soon as possible after receiving the request—

(a) the EIA report;

(b) any further environmental information.

(2) The developer may make a reasonable charge reflecting printing and distribution costs in relation to the provision a copy of the EIA report or any further environmental information (but any copy that the developer is required to send under regulation 23 or regulation 26(5) must be provided free of charge).

Relevant authority must provide copy of additional environmental information to public

31.—(1) Where before the application is determined a person requests the relevant authority to provide a copy of any additional environmental information, the relevant authority must do so as soon as possible after receiving the request.

(2) The relevant authority may make a reasonable charge reflecting printing and distribution costs in relation to the provision a copy of the additional environmental information (but any copy that the relevant authority is required to send under regulation 27 must be provided free of charge).

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Relevant authority may request evidence to verify EIA report, etc.

32. If the relevant authority so requires by notice in writing, the developer must produce such evidence as the relevant authority may reasonably call for to verify—

(a) any information contained in the EIA report;

(b) any further environmental information.

Determination of application: timing

33.—(1) The relevant authority must not determine the application before the latest of the following dates (the "relevant date")—

(a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act or regulations 22 or 26 of these Regulations, as the date by which objections or representations may be made in relation to the application;

(b) 30 days after the date on which every person to whom the developer is required to send a copy of the following documents receives a copy—

the EIA report (see regulation 23(1)(a));

any further environmental information (see regulation 27(5)(a));

(c) the date on which any reasonable period for the authorities and public of an EEA state to make representations referred to in regulation 24(4) ends or, if later, the date on which any consultations with an EEA state referred to in regulation 24(5) end.

(2) The relevant authority must determine the application within a reasonable time after the later of the relevant date and the date on which the relevant authority thinks it has all the information and evidence necessary to reach the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d) and to determine the application (including, where a public inquiry under the Electricity Act 1989 is held in relation to the application, the inspector's report).

Decision notice: content

34.—(1) On determining the application, the relevant authority must give notice in writing of the decision (the "decision notice") to the developer.

(2) The decision notice must include the following information—

(a) the terms of the decision;

(b) information about the public participation process, including a summary of the results of the consultations and the information gathered under regulations 22 to 26 and how these results have been incorporated or otherwise addressed, in particular the comments received from every EEA state that invoked the procedure provided by regulation 24;

(c) if the decision is to grant the application—

the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d);

any environmental conditions to which the decision is subject;

a description of any features or measures to be implemented by the developer that it is envisaged will avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment; and

a description of any measures to monitor significant adverse effects on the environment that the relevant authority thinks are appropriate;

(d) if the decision is to refuse the application, the main reasons for the refusal; and

(e) information about how the validity of the decision can be challenged and the procedures for doing so.

(3) Where the relevant authority thinks it is appropriate to include any monitoring measures referred to in paragraph (2)(c)(iv)—

(a) the type of parameters to be monitored and the duration of the monitoring must be proportionate to the nature, location and size of the development and the significance of its effects on the environment; and

(b) existing monitoring measures under other legislation may be used, if appropriate, with a view to avoiding duplication of monitoring.

Decision notice: publicity

35.—(1) The relevant authority must send a copy of the decision notice to—

(a) every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23;

(b) every EEA state that invoked the procedure provided by regulation 24.

(2) Where a local planning authority receives a copy of the decision notice, the local planning authority must make the document available for public inspection at all reasonable hours at the place where the planning register is kept.

(3) The developer must, as soon as possible after receiving a copy of the decision notice, publish a notice in accordance with paragraphs (4) and (5).

(4) The notice must be published—

(a) in the London Gazette or, if the application is for development in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, in the Belfast Gazette; and

(b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development is situated or, if the development is in relevant waters—

in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;

in a national newspaper or newspapers;

in Lloyd's List; and

in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(5) The notice must state—

(a) that the application has been determined;

(b) that a section 36 or 37 consent has been granted or refused or that a section 36 variation has been made or not, as the case may be;

(c) where a copy of the decision notice is sent to a local planning authority, that a copy of the decision notice is available for public inspection at the place where the planning register is kept and give the address;

(d) that the decision notice may be accessed at a website maintained by or on behalf of the relevant authority and give the address of the website.

(6) The relevant authority must ensure that the decision notice is able to be accessed free of charge at the website referred to in paragraph (5)(d).

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PART 3

Miscellaneous

Provision of information by consultation bodies, etc.

36.—(1) A relevant body must, if requested by a person (the "developer") who has made (or intends to make) an application for a section 36 or 37 consent, or a section 36 variation, for development, or may without such a request—

(a) enter into consultation with the developer to determine whether the relevant body has in its possession any information that either it or the developer thinks is relevant to the preparation of an EIA report or the undertaking of an environmental impact assessment in respect of the development; and

(b) if the relevant body has such information, make it available to the developer.

(2) In paragraph (1), "relevant body" means—

(a) a consultation body;

(b) any other public authority notified under regulation 20(4)(a).

(3) This regulation is subject to regulation 37 (confidential information, etc.)

Confidential information, etc.

37. Nothing in these Regulations requires the disclosure of—

(a) information that is subject to a duty of confidentiality under the law of England and Wales;

(b) information that must not be disclosed, or in respect of which disclosure may be refused, under regulation 12 of the Environmental Information Regulations 2004(**32**) (exceptions to the duty to disclose environmental information).

Applications made by relevant authority: separation of functions

38. Where the relevant authority is also the person making an application for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must ensure that, in order to avoid any conflict of interest, employees who take part in making the application do not also—

(a) advise on the exercise of the relevant authority's functions under these Regulations or the Electricity Act 1989 in relation to the application; or

(b) exercise those functions on behalf of the relevant authority in relation to the application.

Exemptions for defence and civil emergencies

39.—(1) The Secretary of State may direct in writing that Part 2 of these Regulations or, in the case of a transitional application, the requirements of the 2000 Regulations cease to have effect in relation to an application or a proposed application for a section 36 or 37 consent or a section 36 variation for development where—

(a) the sole purpose of the development is defence or the response to civil emergencies (or both); and

(b) the Secretary of State thinks that the application of the procedures in these Regulations or, as the case may be, the 2000 Regulations would have an adverse effect on that purpose or those purposes.

(2) In this regulation—

([32]) S.I. 2004/3391.

"2000 Regulations" means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

"transitional application" means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 43 (transitional provision)).

Exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required

40.—(1) This regulation applies where—

(a) a person (the "developer") makes an application for a section 36 consent, or a section 36 variation, for development that is EIA development or, in the case of a transitional application, EIA development within the meaning of the 2000 Regulations; and

(b) a marine licence or a variation of a marine licence is also required (in addition to the section 36 consent or the section 36 variation) for the development.

(2) If the relevant authority is satisfied that—

(a) the licensing authority has undertaken (or will undertake) under the Marine Works (Environmental Impact Assessment) Regulations 2007(**33**) an assessment (the "marine works assessment") of any significant effects on the environment of the development in connection with deciding whether or not to grant or vary the marine licence;

(b) the marine works assessment is (or will be) sufficient to meet the requirements of the EIA Directive; and

(c) except where the relevant authority is also the licensing authority, the licensing authority has made (or will make) available to the relevant authority, for the purposes of determining the application, the results of the marine works assessment and any information relating to the marine works assessment that the relevant authority may reasonably require,

the relevant authority may decide that an environmental impact assessment under these Regulations does not need to be undertaken in respect of the development (or, in the case of a transitional application, there is no need to assess the environmental effects of the development under the 2000 Regulations); and, if the relevant authority so decides, paragraphs (3) to (10) apply.

(3) The relevant authority must notify the developer in writing of the decision.

(4) Subject to paragraphs (8) to (10), Part 2 of these Regulations or, in the case of a transitional application, the requirements of the 2000 Regulations cease to have effect in relation to the application.

(5) Except where the relevant authority is also the licensing authority, the relevant authority must consult the licensing authority before determining the application and must not grant the application unless it is satisfied that to do so would be compatible with the licensing authority's measures to comply with the EIA Directive.

(6) The relevant authority must not determine the application before the later of the following dates (the "relevant date")—

(a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act, as the date by which objections or representations may be made in relation to the application; and

(b) the conclusion of the marine works assessment.

(7) The relevant authority must determine the application within a reasonable time after the later of the relevant date and the date on which the relevant authority thinks it has all the information and evidence necessary to determine the application (including, where a public inquiry under the Electricity Act 1989 is held in relation to the application, the inspector's report).

(33) S.I. 2007/1518, amended by S.I. 2011/735, 2011/1046, 2013/755 and 2015/446.

(8) Except where the application is a transitional application, regulation 34 (decision notice: content) has effect in relation to the application with the following modifications—

(a) in paragraph (2)(b), the reference to the public participation process, consultations and information gathered and comments received under these Regulations must be taken to be references to public participation process under, and to consultations and information gathered and comments received during, the marine works assessment;

(b) in paragraph (2)(c)(i), the reference to the reasoned conclusion under these Regulations must be taken to be a reference to the reasoned conclusion of the licensing authority following the marine works assessment.

(9) Except where the application is a transitional application, regulation 35 (decision notice: publicity) has effect in relation to the application as though it had been amended by omitting paragraph (1) and substituting the following—

"(1) The relevant authority must send a copy of the decision notice to every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.".

(10) Where the application is a transitional application, the relevant authority must on determining the application send a statement containing the information referred to in regulation 10(3A) of the 2000 Regulations(**34**) (publicity of determinations and provision of information to the local planning authority) to—

(a) the developer; and

(b) every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.

(11) In this regulation—

"2000 Regulations" means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

"licensing authority", in relation a marine licence, means the person to whom an application to grant or vary the licence has been or will be made;

"marine licence" means a marine licence under Part 4 of the Marine and Coastal Access Act 2009;

"transitional application" means an application for a section 36 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 43 (transitional provision)).

Service of notices, etc.

41.—(1) Any notice or other document that is required to be given, provided or sent to a person under these Regulations may be given, provided or sent—

(a) in a manner specified in section 109 of the Electricity Act 1989;

(b) in a case where an address for correspondence using electronic communications is given by the person, by sending it using electronic communications to the person at that address, provided that the condition referred to in paragraph (2) is satisfied.

(2) The condition is that the notice or other document is—

(a) capable of being accessed by the person;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference.

([34]) Section 12(5) of the Marine and Coastal Access Act 2009 provides that any reference in S.I. 2000/1927 to the Secretary of State is to be read, so far as relating to the exercise of an electricity consent function (as defined in section 12(2)) of the Secretary of State, as a reference to the Marine Management Organisation.

(3) Paragraph (1)(b) does not apply if the person indicates that the person does not wish the notice or other document to be sent using electronic communications.

(4) In this regulation—

"address", in relation to electronic communications, means any number or address used for the purposes of such communications;

"electronic communication" has the same meaning as in the Electronic Communications Act 2000(**35**);

"legible in all material respects", in relation to a notice or other document, means that the information contained in the notice or document is available to the person to whom it is sent to no lesser extent than it would be if given, provided or sent by means of a notice or document in printed form.

Revocation and savings

42.—(1) The following Regulations are revoked—

(a) the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

(b) the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007(**36**).

(2) Despite paragraph (1), the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 continue to have effect as set out in regulation 43 (transitional provision).

Transitional provision

43.—(1) The following applications for a section 36 or 37 consent or a section 36 variation must be dealt with under the 2000 Regulations as if they had not been revoked (and not under these Regulations)—

(a) an application received by a relevant authority before 16th May 2017 if an environmental statement (within the meaning of the 2000 Regulations) is also received by the relevant authority before that date;

(b) an application for development in respect of which the relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May.

(2) Where a relevant authority receives a request for a screening opinion under regulation 5 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(3) Where, before 16th May 2017, a relevant authority receives an application for a section 36 or 37 consent or a section 36 variation and the question of whether or not the application is for EIA development (within the meaning of the 2000 Regulations) falls to be determined under regulation 6 of those Regulations, that question must be determined under those Regulations as if they had not been revoked.

(4) Where a relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(5) For the purposes of these Regulations, a determination under regulation 5 or 6 of the 2000 Regulations that an application for a section 36 or 37 consent, or a section 36 variation, is for EIA development (within the meaning of the 2000 Regulations) must be treated as a screening decision under these Regulations that the application is for EIA development (within the meaning of these Regulations).

(6) In this regulation, "2000 Regulations" means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000.

(7) This regulation is subject to—

([35]) 2000 c.7. The definition of "electronic communication" is in section 15(1). The definition was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).
([36]) S.I. 2007/1977.

(a) regulation 39 (exemptions for defence and civil emergencies);

(b) regulation 40 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required).

Amendments to other Regulations

44.—(1) The Electricity (Applications for Consent) Regulations 1990 and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (the "2013 Regulations") are amended in accordance with Schedule 5 (amendments to other Regulations).

(2) Despite paragraph (1), the 2013 Regulations continue to apply to a transitional application as if the amendments made by Schedule 5 had not been made.

(3) In this regulation, "transitional application" means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 43 (transitional provision)).

Review

45.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) In carrying out the review, the Secretary of State must have regard to how the EIA Directive (which these Regulations implement) is implemented in other member States.

(3) The report must, in particular—

(a) set out the objectives intended to be achieved by these Regulations;

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(4) The first report must be published on or before 15th May 2022.

(5) Subsequent reports must be published at intervals not exceeding 5 years.

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SCHEDULE 1

Regulations 5, 9 and 11

Development requiring environmental impact assessment in any event

46. Development to provide any of the following—

(a) a nuclear generating station;

(b) a thermal generating station with a heat output of 300 megawatts or more;

(c) an electric line installed above ground with—

a voltage of 220 kilovolts or more; and

a length of more than 15 kilometres.

47. Development to provide a change to, or extension of, a generating station or an electric line installed above ground where the change or extension in itself meets the thresholds, if any, or description set out in paragraph 1.

SCHEDULE 2

Regulations 5 and 11

Development requiring screening if no EIA report provided

48. Development to provide a generating station (other than a generating station of a description set out in paragraph 1 of Schedule 1).

49. Development to provide either of the following electric lines (other than an electric line of a description set out in paragraph 1 of Schedule 1)—

(a) an electric line installed above ground with a voltage of 132 kilovolts or more;

(b) an electric line installed above ground in a sensitive area.

50. Development to provide a change to, or extension of—

(a) a generating station (other than a change or extension set out in paragraph 2 of Schedule 1); or

(b) an electric line of a description set out—

in paragraph 1 of Schedule 1(other than a change or extension set out in paragraph 2 of that Schedule); or

in paragraph 2 of this Schedule,

where the generating station or electric line is already authorised, executed or in the process of being executed and the change or extension may have significant adverse effects on the environment.

51. In this Schedule, "sensitive area" means any of the following—

(a) a site of special scientific interest within the meaning of Part 2 of the Wildlife and Countryside Act 1981(**37**);

(b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(**38**);

(c) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988(**39**);

(d) a site or other place or other thing which is cultural heritage or natural heritage within the meaning of the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16th November 1972(**40**) and is included in the World Heritage List mentioned in Article 11 of that Convention;

(e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(**41**);

(f) an area of outstanding natural beauty within the meaning of Part 4 of the Countryside and Rights of Way Act 2000(**42**);

(g) a European site as defined in regulation 8(1) of the Conservation of Habitats and Species Regulations 2010;

(37) 1981 c.69. "Site of special scientific interest" is defined is section 52(1).
(38) 1949 c.97. See the definition in section 5(3).
(39) 1988 c.4. "The Broads" is defined in section 2(3).
(40) See Command Paper 9424.
(41) 1979 c.46. "Scheduled monument" is defined in section 1(11).
(42) 2000 c.37. "Area of outstanding natural beauty" is defined in section 82(3).

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(h) a Ramsar site (that is to say, a wetland designated under paragraph 1 of Article 2 of the Ramsar Convention (as defined in section 37A of the Wildlife and Countryside Act 1981(**43**)) for inclusion in the list of wetlands of international importance referred to in that Article).

SCHEDULE 3

Regulations 11, 12 and 15

Selection criteria for screening development

Characteristics of development

52. The characteristics of the development must be considered, having regard in particular to—

(a) the size and design of the whole development;

(b) cumulation with other existing and approved developments;

(c) the use of natural resources, in particular land, soil, water and biodiversity;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of major accidents and disasters that are relevant to the development, including those caused by climate change, in accordance with scientific knowledge;

(g) the risks to human health (for example, due to water contamination or air pollution).

Location of development

53. The environmental sensitivity of geographical areas likely to be affected by the development must be considered, having regard in particular to—

(a) the existing and approved land use;

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas—

wetlands, riparian areas and river mouths;

coastal zones and the marine environment;

mountain and forest areas;

nature reserves and parks;

areas classified or protected under the legislation of EEA states and European sites (as defined in regulation 8(1) of the Conservation of Habitats and Species Regulations 2010);

areas in which there has already been a failure to meet environmental quality standards that are set out in European Union legislation and are relevant to the development, or in which it is considered that there is such a failure;

densely-populated areas;

landscapes and sites of historical, cultural or archaeological significance.

(43) Section 37A was inserted by paragraph 84 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16) and was subsequently amended by paragraph 175 of Schedule 2 to S.I. 2013/755.

Type and characteristics of potential impact

54. The likely significant effect of the development on the environment must be considered in relation to the criteria set out in paragraphs 1 and 2, with regard to the impact of the development on the factors set out in regulation 7(2), taking into account—

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

(b) the nature of the impact;

(c) the transboundary nature of the impact;

(d) the intensity and complexity of the impact;

(e) the probability of the impact;

(f) the expected onset, duration, frequency and reversibility of the impact;

(g) the cumulation of the impact with the impact of other existing and approved developments;

(h) the possibility of effectively reducing the impact.

SCHEDULE 4

Regulations 3 and 17

Information for EIA reports

55. A description of the development, including in particular—

(a) a description of the location of the development;

(b) a description of the physical characteristics of the whole development, including where relevant, requisite demolition works and the land use requirements during the construction and operational phases;

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

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

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

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

58. A description of the factors set out in regulation 7(2) likely to be significantly affected by the development.

59.—(1) A description of the likely significant effects of the development on the environment resulting from, amongst other things—

(a) the construction and existence of the development, including, where relevant, demolition works;

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

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

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

(e) the cumulation of effects with other existing and approved developments, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected and the use of natural resources;

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

(g) the technologies and the substances used.

(2) The description of the likely significant effects on the factors set out in regulation 7(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development, taking account of the environmental protection objectives established at the European Union or national level that are relevant to the development, including in particular those established under the Habitats and Wild Birds Directive.

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

61.—(1) A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example, the preparation of a post-development analysis).

(2) The description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset and must cover both the construction and operational phases.

62.—(1) A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and disasters that are relevant to the development.

(2) Relevant information available and obtained through risk assessments under requirements imposed in accordance with European Union legislation such as the Seveso III Directive or the Nuclear Safety Directive and relevant assessments undertaken under domestic legislation may be used for this purpose provided that the requirements of the EIA Directive are met.

(3) Where appropriate, the description must include measures envisaged to prevent or mitigate the significant adverse effects of accidents and disasters referred to in sub-paragraph (1) on the environment and details of the preparedness for and proposed response to such emergencies.

(4) In this paragraph—

"Nuclear Safety Directive" means Council Directive 2009/71/Euratom of 25th June 2009 establishing a Community framework for the nuclear safety of nuclear installations(**44**);

"Seveso III Directive" means Directive 2012/18/EU of the European Parliament and of the Council of 4th July 2012 on the control of major-accident hazards involving dangerous substances(**45**).

63. A non-technical summary of the information provided under paragraphs 1 to 8.

64. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

(44) O.J. L 172, 2.7.2009, p. 18.
(45) O.J. L 197, 24.7.2012, p. 1.

SCHEDULE 5

Regulation 44

Amendments to other Regulations

Electricity (Applications for Consent) Regulations 1990 amended

65. The Electricity (Applications for Consent) Regulations 1990(**46**) are amended in accordance with paragraphs 2 and 3.

66.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of "EIA development", for "regulation 2(1) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000" substitute "regulation 5 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017";

(b) for the definition of "screening opinion" substitute—

""screening decision" has the meaning given in regulation 3 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017;".

67.—(1) Regulation 11A (fees payable on request for screening decision) is amended as follows.

(2) In the heading, for "screening opinion" substitute "screening decision".

(3) In the text of the regulation, for "screening opinion" substitute "screening decision".

Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 amended

68. The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 are amended in accordance with paragraphs 5 to 10.

69.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of "the EIA Regulations", for "the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000" substitute "the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017";

(b) for the definition of "environmental statement" substitute—

""EIA report" has the meaning given in the EIA Regulations;".

70.—(1) Regulation 3 (content of variation applications) is amended as follows.

(2) Omit paragraph (4).

71.—(1) Regulation 4 (assessment of suitability for publication) is amended as follows.

(2) For paragraph (8) substitute—

"(8) For the purposes of this regulation, a variation application is suitable for publication in accordance with regulation 5 if—

(a) in a case where an EIA report is required to be prepared in connection with the variation application under the EIA Regulations (because the application is for EIA development within the meaning of those Regulations), an EIA report has been provided to the appropriate authority; and

(b) it appears to the appropriate authority that—

(46) S.I. 1990/455, amended by S.I. 2013/495.

(i) the applicant wishes to construct, operate or extend a generating station in a way which the relevant section 36 consent does not authorise it to do; and

(ii) the proposed development does not differ from the generating station to which the relevant section 36 consent refers to such an extent (in its construction, extension, operation or likely environmental effects) that it requires authorisation by—

(aa) an order granting development consent within the meaning of section 31 of the Planning Act 2008; or

(bb) where the appropriate authority is the MMO, a new section 36 consent (rather than a variation to the relevant section 36 consent).".

72.—(1) Regulation 5 (publication) is amended as follows.

(2) For paragraph (2) substitute—

"(2) The applicant or, where paragraph (2A) applies, the appropriate authority must publish on a website (the "application website")—

(a) a summary of the variation application;

(b) the application;

(c) a link to the relevant section 36 consent, any section 90 direction given on granting the relevant section 36 consent and any statement (in the form of a decision letter, decision notice or otherwise) given by the appropriate authority under regulation 9(3) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 or regulation 34 of the EIA Regulations on granting the relevant section 36 consent.

(2A) This paragraph applies where the appropriate authority notifies the developer in writing that the appropriate authority will comply with the obligations in paragraph (2).

(2B) The applicant must serve a copy of the application on the relevant planning authority (if any).".

(3) In paragraph (5)(a), for "paragraph (2)" substitute "paragraphs (2) (where relevant) and (2B)".

(4) In paragraph (5)(c), omit "and any environmental statement prepared in connection with the application".

73. Regulation 7 (application of the EIA Regulations with modifications) is revoked.

74.—(1) Regulation 9 (withdrawal of variation applications) is amended as follows.

(2) In paragraph (2), for "consultative bodies" substitute "consultation bodies".

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Annex B

Transposition Table

This sets out how each Article in the Directive has been transposed in to the draft Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017

Provision of Directive 2011/92/EU	By what provision of draft Regulations transposed	Comment
Article 1		
1(1)		Transposition not considered necessary.
1(2)(a) – definition of “project”	Reg. 3 – definition of “development”	
1(2)(b) – definition of “developer”		Transposition not considered necessary.
1(2)(c) – “definition of development consent”		Transposition not considered necessary. Reg. 2(1)) defines “section 36 consent”, “section 37 consent” and “section 36 variation” and where these terms are used in a relevant context, the draft Regulations provide that they are for “development” or “EIA development” as defined.
1(2)(d) – definition of “public”		Transposition not considered necessary.
1(2)(e) – definition of “public concerned”		Transposition not considered necessary.
1(2)(f) – definition of “competent authority or authorities”	Reg. 3 – definition of “relevant authority”	
1(2)(g) – definition of “environmental impact assessment”	Reg. 7(1)	
1(3)	Reg. 39	
Article 2		
2(1)	Reg. 6	Reg. 6 provides for the EIA. Sections 36, 36C and 37 of the Electricity Act 1989 provide for the requirement that projects be subject to a requirement for “development consent”.

2(2)		Transposition not considered necessary.
2(3)	Reg. 8	
2(4)		Transposition not considered necessary.
2(5)		Transposition not considered necessary.
Article 3		
3(1)	Reg. 7(2)	Reg. 7(2) also includes the examples of the factors given in paragraph 1(4) of Annex IV.
3(2)	Reg. 7(3)(b)	
Article 4		
4(1)	Reg. 6	"EIA development" is defined in reg. 5 to include development of a description set out in Schedule 1.
4(2)	Regs. 6 and 11	Reg. 11 provides for screening decisions (which are required in the case of development of a description set out in Schedule 2 where an application is not accompanied by an EIA report). If it is decided that development is "EIA development", reg. 6 requires there to be an EIA.
4(3)	Reg. 15(1)(a)	Reg. 15(1)(a) provides that the criteria set out in Schedule 3 (which reflect the criteria set out in Annex III to the Directive) should be taken into account in case-by-case screening decisions. The Secretary of State has taken into account the criteria set out in Annex III in proposing the draft Regulations.
4(4)	Reg. 12	Reg. 12 also includes the information set out in Annex IIA of the Directive.
4(5)	Regs. 15 and 16	
4(6)	Regs. 13(4) and 14	
Article 5		
5(1)	Regs. 7(1)(a) and 17(1) to (4)	Reg. 7(1)(a) provides for the preparation and submission of the EIA report as part of the EIA.
5(2)	Reg. 18	
5(3)(a)	Reg. 17(5) and (6)	
5(3)(b)	Reg. 7(4)	
5(3)(c)	Reg. 25(1)	
5(4)	Regs. 20 and 36	

Article 6		
6(1)	Regs. 23 and 26(5)	Reg. 4 defines “consultation body”.
6(2)	Regs. 22 and 28	
6(3)	Regs. 22, 26, 27, 28, 29, 30 and 31	
6(4)	Regs. 22, 26 and 33	
6(5)	Regs. 28 and 29	
6(6)	Regs. 22, 23, 26 and 33	
6(7)	Reg. 22(5)(g)	
Article 7		
7(1)	Reg. 24(1)	
7(2)	Reg. 24(3)	
7(3)(a)		Transposition not considered necessary through the draft Regulations. This is an obligation on the receiving member State.
7(3)(b)	Reg. 24(4)	
7(4)	Reg. 24(5)	
7(5)		Transposition not considered necessary.
Article 8	Reg. 7(1)(c)	
Article 8a		
8a(1)	Reg. 34(2)(c)	Reg. 40(8) to (10) transpose Article 8a for applications that are exempted from an EIA under reg 40.
8a(2)	Reg. 34(2)(d)	
8a(3)		Transposition not considered necessary.
8a(4)	Reg. 34(3)	
8a(5)	Reg. 33	
8a(6)	Reg. 7(5)	
Article 9		
9(1)	Regs. 34(2)(b) and 35	Reg. 34(2)(b) requires the decision letter referred to in that regulation to contain the information referred to in Article 9(1). Reg. 35 requires the decision letter to be publicised. Reg. 40(8) to (10) transpose Article 9 for applications that are exempted from an EIA under reg 40.
9(2)	Regs. 34(2)(b) and 35	As above
Article 9a	Reg. 38	
Article 10	Reg. 37	
Article 10a		Sections 36(6) and 37(4) of the Electricity Act 1989 contains

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		offences for contravening the provisions of those sections relation to the requirement for consents for generating stations and overhead electric lines.
Article 11		
11(1)		Transposition not considered necessary through the draft Regulations. Decisions to grant or refuse consents under the Electricity Act 1989 are subject to judicial review.
11(2)		As above.
11(3)		As above.
11(4)		As above.
11(5)	Regs. 34(2)(e) and 35	
Articles 12, 13, 14, 15 and 16		Transposition not considered necessary.
Annex I	Schedule 1	Paragraphs 2, 20 and 24 of Annex I are included in Schedule 1
Annex II	Schedule 2	Paragraphs 3(a) and (b) and 13(a) of Annex II are relevant to development which may be authorised by consents under the Electricity Act 1989
Annex IIA	Reg. 12	
Annex III	Schedule 3	
Annex IV	Schedule 4	The examples of the factors given in paragraph 1(4) of Annex IV are included in reg. 7(2).
Provision of Directive 2014/52/EU	**How transposed in draft Regulations**	**Comment**
Article 1		Transposition not considered necessary as the provision amends Directive 2011/92/EU
Article 2		
2(1)		The explanatory note will contain a reference to Directive 2014/52/EU
2(2)		Transposition not considered necessary.
Article 3		
3(1)	Reg. 43(3)	
3(2)	Reg. 43(1) and (5)	
Articles 4 and 5		Transposition not considered necessary.

Annex		Transposition not considered necessary as the Annex amends Directive 2011/92/EU