



Department for
Business, Energy
& Industrial Strategy

The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020

Consultation on proposed amendments to the
Environmental Impact Assessment regulatory regime
for offshore oil and gas exploration, production,
unloading and storage projects

Closing date: 2 October 2020



OGIL

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Introduction

We (the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED)), a part of BEIS, are responsible for regulating the environmental activity of offshore oil and gas, gas unloading and storage, and storage of carbon dioxide projects (“offshore projects”) in the UK. The UK, along with other countries around the world, is facing unprecedented challenges in responding to coronavirus (COVID-19). As a result, we recognise that those wishing to respond to this consultation are likely to have other pressing issues and we will therefore monitor the consultation period, timelines and stakeholder engagement approach as the situation develops, whilst acknowledging that the proposed regulations would need to be brought into force by the end of the year, as explained below.

Following the UK’s exit from the European Union on 31 January 2020, the UK is in a Transition Period which will end on 31 December 2020. Under the transition arrangements, the UK is required to ensure that, where appropriate, EU Directives are fully transposed. Consequently, we are proceeding with this consultation at this time to ensure that the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (“the proposed 2020 Regulations”) can be laid before Parliament in December 2020 and enter into force on the 31 December 2020. This statutory instrument would be made using the powers of section 2(2) of the European Communities Act 1972, which remains valid during the transitional period. The proposed 2020 Regulations would revoke the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (as amended) (“the 1999 Regulations”).

For further information on BEIS / OPRED COVID-19 response in relation to the offshore oil and gas sector please refer to the COVID-19 Update Notices at:

<https://www.gov.uk/government/publications/oil-and-gas-opred-communications>.

The proposed 2020 Regulations address shortfalls within the 1999 Regulations that featured in two recent judicial review proceedings brought against the Secretary of State for BEIS by Mr Neil Garrick-Maidment (of The Seahorse Trust) and Greenpeace.

The judicial reviews challenged the environmental processes that were followed in respect to the consents which were issued for two offshore oil and gas projects, the Colter appraisal well and the Vorlich oil and gas field development. The grounds for the judicial reviews included that OPRED had failed to fully transpose the Environmental Impact Assessment (EIA) Directive 2011/92/EU (as amended by Directive 2014/52/EU) (“the EIA Directive”) and, in particular, that the 1999 Regulations did not provide fair and timely access to justice.

OPRED accepted that the 1999 Regulations did not provide a clear way to challenge consent decisions (primarily as a consequence of the fact that the relevant provisions did not take into account changes to the regulatory regime resulting from the split of functions of the Oil and Gas Authority (OGA) from the Secretary of State) and agreed: (i) as an interim measure, to amend current processes (i.e. so that the way to challenge decisions would be made clearer); and (ii) to review the 1999 Regulations with a view to consulting on amended regulations. These actions were conditions of the Consent Orders in respect of the judicial reviews. We have amended current processes on an interim basis in accordance with point (i), and we are now consulting on our proposals for regulatory reform in accordance with point (ii).

To this end, the proposed 2020 Regulations would:

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(a) change provisions required to fulfil the legal commitments arising from the judicial reviews, which include provision regarding access to Environmental Impact Assessment (EIA) information and provisions clarifying the EIA and consent decision making process;

(b) in line with Better Regulation principles, consolidate within one Statutory Instrument the provisions of the 1999 Regulations as previously amended in 2007, 2015, 2016, 2017, 2019 and earlier this year, subject to any proposed amendments (see details at: <https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation#offshore-petroleum-production-and-pipelines-assessment-of-environmental-effects-regulations-1999-as-amended>). This would improve clarity of the Regulations, which would ensure it is easier and more efficient for:

- (i) OPRED to administer and enforce the offshore Environmental Impact Assessment (EIA) legislative regime;
- (ii) developers to comply with environmental regulatory requirements related to offshore projects consent applications; and
- (iii) the public to understand their rights regarding access to information, participation and appeal.

(c) introduce provision to undertake inspection and investigation in relation to any offence committed by a developer;

(d) correct the existing offence provisions to ensure that the appropriate competent authorities' responsibilities are reflected, and introduce new offences related to the new provision for inspection;

(e) introduce changes to the Offshore Environmental Civil Sanctions Regulations 2018 so that civil sanctions could be applied to regulatory breaches of the proposed 2020 Regulations, whilst the existing criminal sanctions in the 1999 Regulations would be retained;

(f) incorporate changes to the fee provisions for the administrative and technical services provided by OPRED to developers, so the provision reflects the new structure of the proposed 2020 Regulations and ensures full cost recovery;

(g) simplify aspects of the EIA legislative regime for offshore projects, whilst maintaining the same environmental standards.

This consultation primarily seeks stakeholders' views on the amendments being introduced in the proposed 2020 Regulations (see draft of the Regulations at Annex A) as described in 'The proposals' section of this document. However, views on other elements of the proposed 2020 Regulations would also be welcome.

Additionally, any devolved matters affected by the consultation will be discussed with the devolved administrations before provisions relating to this are finalised.

The changes to be introduced by the proposed 2020 Regulations would primarily affect the obligations requiring the Secretary of State to publicise information relating to the application and decision-making processes that underpin the granting (or not) of consents for offshore projects. However, there could also be impacts on the sector resulting from the introduction of civil sanctions. The impacts on the sector are examined under the 'Assessing Impacts' section of this document.

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The intentions are to lay the proposed 2020 Regulations before Parliament around the 10 December 2020, so that the statutory instrument can come into force on the 31 December 2020. The proposed 2020 Regulations will follow a negative procedure through the parliamentary process. The proposed 2020 Regulations will be brought into force primarily using the power to make regulations under the European Communities Act 1972. Deficiencies in the 1999 Regulations resulting from EU Exit will be corrected using the powers in the European Union (Withdrawal) Act 2018. And provisions regarding fees use the power to do so in the Finance Act 1973. We consider the proposed 2020 Regulations to follow the negative procedure as they do not involve significant government expenditure, impose any onerous duties on developers, contain any unusual criminal provisions or unusual civil penalties, or include unusual powers to require information.

General information

Why we are consulting

This consultation invites stakeholders' comments on the proposed 2020 Regulations which would address shortfalls within the EIA legislative regime for offshore oil and gas developments.

The proposed 2020 Regulations would therefore enable OPRED to fulfil the legal commitments - included as conditions of the Consent Orders in respect of the judicial reviews referred to above - to evaluate and subsequently amend the 1999 Regulations so that the procedures for challenging consent decisions are made clearer. At the same time, OPRED would like to simplify and enhance the offshore EIA legislative regime, whilst maintaining the same environmental standards.

Consultation details

Issued: 24 July 2020

Respond by: 2 October 2020

Enquiries to: BST@beis.gov.uk

Consultation reference: The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020

Audiences: Seeking views from all interested persons including the offshore oil and gas sector; industry trade associations; Statutory Nature Conservation Bodies; environmental NGOs; devolved administrations and other Government Departments / Agencies.

Territorial extent:

The proposed 2020 Regulations extend to the UK, including its territorial waters; and the United Kingdom Continental Shelf. Any devolved matters affected by the consultation will be discussed with the devolved administrations before provisions relating to this are finalised.

How to respond

We encourage respondents to make use of the online e-Consultation platform, Citizen Space, to respond to this consultation wherever possible. This is the department's preferred method of receiving responses. However, responses submitted by email will be accepted.

Please do not send responses by post to the department as we will not be able to access them at this time.

Respond online at: <https://beisgovuk.citizenspace.com/energy-development/draft-eia-regs>

or

Email to: BST@beis.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Background

What is an Environmental Impact Assessment?

An 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 proposed projects to reduce their impact on the environment. It seeks to ensure that projects 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 an assessment of those effects before the proposals are allowed to proceed.

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: (a) the public have a chance to provide their views on a proposed project where it is likely to have a significant effect on the environment; and (b) that any likely significant effects on the environment are taken into account in the consent process. To ensure a consistent approach, the EIA Directive sets out a procedure that must be followed for certain types of project before they can be given consent.

Some project types are considered likely to have significant effects on the environment and must therefore be subject to an EIA, whereby the application for consent has to be supported by the submission of an Environmental Statement (i.e. a detailed assessment of the potential significant impacts) and the project has to undergo consultation. These project types are listed in Annex I of the EIA Directive. Although the EIA Directive refers to “environmental impact assessment report(s)”, for the purposes of this consultation document and the proposed 2020 Regulations, we are continuing to use the term “Environmental Statement(s)” as it is a term with which offshore oil and gas developers are familiar.

Other project types are only considered likely to have significant effects on the environment in some cases, depending on their nature, size and location. These project types are listed in Annex II of the EIA Directive. Projects listed in Annex II must be subject to an EIA where it is determined that they are likely to have significant effects on the environment. Member States must decide whether a project listed in Annex II should be subject to an EIA (i.e. the need to prepare an Environmental Statement and undergo consultation) through a case-by-case examination and / or by setting thresholds or criteria.

Where an EIA is required for a project, the developer must provide specified information to the relevant competent authority via the Environmental Statement which enables the authority to make an informed decision on whether the project should proceed. It also requires that the public and bodies with relevant environmental or regional competence (including in other countries if a project is likely to have transboundary effects) are consulted and given an opportunity to participate in the decision-making process. The public must also be informed of the decision taken on the project following the EIA.

Current implementation of the EIA Directive

The obligations in the EIA Directive for relevant offshore projects are presently implemented through the 1999 Regulations, which are administered by OPRED.

Consents for offshore projects are granted by the Oil and Gas Authority (OGA). The OGA must not grant a consent without prior agreement to the grant by the Secretary of State.

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OPRED carries out this function on behalf of the Secretary of State. OPRED decides whether an EIA is required for offshore projects, ensures that the EIA is carried out where required, and conducts all environmental decision-making in relation to the offshore project. The OGA is not involved in any aspects of the environmental decision.

Why are new EIA Regulations being introduced?

The decision to make a new statutory instrument for EIAs of offshore projects is the most practical option. This allows the shortcomings of the 1999 Regulations to be addressed and provides an opportunity to consolidate the relevant provisions of the 1999 Regulations and their amendments. The proposed 2020 Regulations are restructured and simplified where appropriate, to provide a more logical and comprehensible format.

The table below details how each of the Articles of the EIA Directive have been implemented in the proposed 2020 Regulations.

The EU's informal consolidated version of the EIA Directive can be found here:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011L0092-20140515>.

EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
ARTICLE 1(1)	N/A
ARTICLE 1(2)(a) "project"	Regulation 3 - definition of project.
ARTICLE 1(2)(b) "developer"	Regulation 3 - definition of developer.
ARTICLE 1(2)(c) "development consent"	Not defined – “consent” takes its ordinary dictionary meaning
ARTICLE 1(2)(d) "public"	Not defined – “public” takes its ordinary dictionary meaning.
ARTICLE 1(2)(e) "public concerned"	As with the 1999 Regulations, we have chosen not to use this term, and instead use “public” throughout the draft Regulations.
ARTICLE 1(2)(f) "competent authority or authorities"	The draft Regulations make clear the functions for which the Secretary of State is responsible and the functions for which the OGA is responsible.

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
ARTICLE 1(2)(g) “environmental impact assessment”	Regulation 3 – definition of environmental impact assessment.
ARTICLE 1(3)	Regulation 18.
ARTICLE 2(1)	Regulations 4, 5, 6 and 7
ARTICLE 2(2)	Regulation 4.
ARTICLE 2(3)	Regulation 5(5).
ARTICLE 2(4)	Regulation 19.
ARTICLE 2(5)	No need to transpose first paragraph Second paragraph is not appropriate to retain – section 8 of the European Union (Withdrawal) Act 2018 applies
ARTICLE 3(1)	Regulation 8(2)(e).
ARTICLE 3(2)	Regulation 8(3)(b).
ARTICLE 4(1)	Regulation 5(1) and Schedule 1
ARTICLE 4(2)	Regulations 4(6), 5(2),5(3), 6 and 7 and Schedule 2 and Schedule 3
ARTICLE 4(3)	First sentence – regulation 6(3)(b), regulation 7(4)(b) and Schedule 5 Second sentence – regulations 5(2)(b), 5(3), and 7 and Schedule 3
ARTICLE 4(4)	Regulation 6(1) and Schedule 4
ARTICLE 4(5)	Opening paragraph - regulation 6(3) and regulation 6(8). Paragraph (a) – regulation 6(4) and 6(8)

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
	Paragraph (b) – regulation 6(4) and 6(8)
ARTICLE 4(6)	Regulations 6(5), 6(6) & 6(7)
ARTICLE 5(1)	5(1)(a)-(f) - regulation 3 (environmental statement definition) and regulation 8(2) 5(1) final paragraph - regulations 8(4) and 8(5)
ARTICLE 5(2)	First paragraph - regulation 9 Second paragraph – not applicable, this option would never be applied.
ARTICLE 5(3)(a)	Regulation 8(6).
ARTICLE 5(3)(b)	The Secretary of State fulfils this through having suitably qualified and competent staff, and by consulting relevant authorities. The Secretary of State would also obtain further expertise elsewhere if it considered this necessary.
ARTICLE 5(3)(c)	Regulation 12(1).
ARTICLE 5(4)	Regulation 10.
ARTICLE 6(1)	Regulations 11(1) and 11(2)(a) & (b) and 12(5)(a)
ARTICLE 6(2) opening paragraph	Regulation 11(2)(c) & (d), 11(3), 11(4) and 11(6). Regulation 12(5)(c) & (d), 12(6), 12(7) and 12(9).
ARTICLE 6(2)(a)	Regulation 11(2)(c)(i). Regulation 12(5)(c)(ii).
ARTICLE 6(2)(b)	Regulation 11(2)(c)(ii). Regulation 12(5)(c)(iii).

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
ARTICLE 6(2)(c)	Regulation 11(2)(c)(iii) & (vii). Regulation 12(5)(c)(iv) & (viii).
ARTICLE 6(2)(d)	Regulation 11(2)(c)(iv). Regulation 12(5)(c)(v).
ARTICLE 6(2)(e)	Regulation 11(2)(c)(v) & (vi). Regulation 12(5)(c)(vi) & (vii).
ARTICLE 6(2)(f)	Regulation 11(2)(c) (v) & (vi). Regulation 12(5)(c)(vi) & (vii).
ARTICLE 6(2)(g)	Regulation 11(2)(c)(vii) & (viii). Regulation 12(5)(c)(viii) & (ix).
ARTICLE 6(3)	(a) and (b)– regulations 11(2)(d), 11(4) and 11(6). (c) – regulation 12(5).
ARTICLE 6(4)	Regulation 11(2)(c)(vii) and regulation 12(5)(c)(viii).
ARTICLE 6(5)	Regulation 11 and regulation 12.
ARTICLE 6(6)	(a) – Regulation 11(2) and regulation 12(5). (b) - Regulation 11(2)(a)(iii) & 11(2)(c)(vii) and regulation 12(5)(a) & 12(5)(c)(viii).
ARTICLE 6(7)	(b) - Regulation 11(2)(a)(iii) & 11(2)(c)(vii) and regulation 12(5)(a) & 13(5)(c)(viii).
ARTICLE 7(1)	For UK projects: Opening paragraph – regulation 13(1), 13(3). (a) - Regulation 13(2)(a)

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
	<p>(b) – Regulation 13(2)(b)</p> <p>Closing paragraph – regulation 13(2)(c).</p> <p>For overseas projects:</p> <p>Regulation 20.</p>
ARTICLE 7(2)	<p>For UK projects:</p> <p>Regulation 13(4)(a).</p> <p>For overseas projects:</p> <p>Regulations 20(2) and 9(3).</p>
ARTICLE 7(3)	<p>For UK projects:</p> <p>(a) Would be for consultee country to carry out</p> <p>(b) – Regulation 13(4)(b) & (c).</p> <p>For overseas projects:</p> <p>Regulations 20(2), and 20(3).</p>
ARTICLE 7(4)	<p>For UK projects:</p> <p>Regulation 13(4)(b).</p> <p>For overseas projects:</p> <p>Regulation 20(2).</p>
ARTICLE 7(5)	Implemented administratively.
ARTICLE 8	Regulation 14(2)(a), (b) & (c).
ARTICLE 8a(1)	<p>Regulation 14(3).</p> <p>Regulation 15(2).</p>
ARTICLE 8a(2)	Regulation 14(6).

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
	Regulations 15(3) and 15(4).
ARTICLE 8a(3)	Not applicable.
ARTICLE 8a(4)	First paragraph - Regulations 14(3)(b) and 14(4). Second paragraph – regulation 14(4)(b). Third paragraph – regulation 14(4)(a).
ARTICLE 8a(5)	Regulation 14(7) and regulation 15(1).
ARTICLE 8a(6)	Regulation 12(1) to 12(5).
ARTICLE 9(1)	Regulation 16.
ARTICLE 9(2)	First paragraph - regulation 13(6). Second paragraph – regulation 20(4).
ARTICLE 9a	First paragraph - implemented administratively. Second paragraph – not applicable.
ARTICLE 10	First paragraph – confidentiality covered by regulation 21. Second paragraph – regulations 13 and 20 would allow for this.
ARTICLE 10a	Regulations 25 to 28.
ARTICLE 11(1)	Regulation 17/Judicial Review.
ARTICLE 11(2)	Regulation 17/Judicial Review.
ARTICLE 11(3)	Regulation 17/Judicial Review.
ARTICLE 11(4)	Regulation 17/Judicial Review.
ARTICLE 11(5)	Implemented administratively.

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EIA Directive Article	Relevant regulations in the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020
ARTICLE 12 - All	Not applicable and no longer appropriate given EU Exit.
ARTICLE 13	Not applicable, and no longer appropriate given EU Exit.
ARTICLE 14 to ARTICLE 16	Not applicable.
Annex I	Schedule 1.
Annex II	Schedules 2 and 3.
Annex II A	Schedule 4
Annex III	Schedule 5
Annex IV	Schedule 6
Annex V	Not applicable.

We set out below where substantive changes have been made from the 1999 Regulations and our approach on how we intend to implement the respective Articles of the EIA Directive. A draft of the proposed 2020 Regulations is set out in Annex A. We propose an alternative approach from the 1999 Regulations where this is considered beneficial. We welcome comments on the proposed 2020 Regulations and how the EIA Directive is being implemented through specific regulations. Consultees are also invited to consider the proposed draft Regulations in their totality and provide any comments. To note, the below does not set out further detail on the proposed 2020 Regulations or how we have implemented the EIA Directive where no changes have been made to the substantive policy under the 1999 Regulations, and implementation is already clear from the table set out above.

The proposals

Article 1 - Definitions

“project”

Article 1(2)(a)

“Project” means:

- the execution of construction works or of other installations or schemes,
- other installations in the natural surrounding and landscape including those involving the extraction of mineral resources.

We are suggesting mirroring the EIA Directive by using the terms “project” and “development”.

The offshore projects are listed in Schedules 1 to 3, which confirm whether there would be a mandatory EIA requirement (Schedule 1 projects); whether the offshore project should be subject to screening to determine if an EIA would be required (Schedule 2 projects); or whether they satisfy criteria confirming that they need not be subject to screening or EIA (Schedule 3 projects). There is an exception for offshore projects covered by regulation 4(6), which do not require the Secretary of State’s agreement to the grant of consent.

The definition of “development” includes the “construction and operation” of an offshore project. By moving all the descriptions of the offshore projects to Schedules within the proposed 2020 Regulations, it provides a clear and obvious way to determine when an EIA might be required. An explanation of how Schedules 1 to 3 implement the Annexes of the EIA Directive is set out in the section on [Annex I and Annex II](#) below.

“developer”

Article 1(2)(b)

“Developer” means the applicant for authorisation for a private project or the public authority which initiates a project.

The 1999 Regulations use the term “undertaker” to refer to the applicant for a proposed offshore project. We have opted to use a term more familiar with industry and which aligns with the Directive language, and so have chosen to use “developer”, which is defined in regulation 3. The definition remains largely the same as the definition of “undertaker” in the 1999 Regulations.

Question 1

Do you agree that the terms “project”, “development” and “developer” are appropriate?

“consent”

Article 1(2)(c)

“Development consent” means the decision of the competent authority or authorities which entitles the developer to proceed with the project.

The proposed 2020 Regulations seek to clearly set out where the responsibilities regarding consent sit. A definition of “consent” has not been included as its meaning is clear in relation to the proposed 2020 Regulations.

Regulation 4 sets out that a developer must not commence an offshore project without the Secretary of State’s agreement to the grant of consent and the consent of the OGA. The OGA must not grant consent for an offshore project without the prior agreement of the Secretary of State.

The Secretary of State cannot agree to the grant of consent unless an EIA has been carried out, or the offshore project is subject to a screening direction and the Secretary of State decides that an EIA is not required (under regulation 6), or the Secretary of State decides that no screening direction and no EIA is needed (under regulation 7). This is intended to make clear that the Secretary of State is responsible for all aspects of environmental decision making regarding the consent.

The exception to the above requirements is that the Secretary of State’s agreement to the grant of consent is not required where the offshore project is an extension in the duration of a consent for (1) extraction of oil or natural gas, (2) geological storage of carbon dioxide or (3) unloading or storage of combustible gas, where there is no increase in the quantity to be extracted, unloaded or stored per day.

Regulation 4 also explicitly provides that where the Secretary of State notifies the developer of its agreement to the grant of consent, the Secretary of State may attach conditions to the agreement that the developer must comply with. The Secretary of State generally includes conditions where necessary to help ensure that the offshore project is carried out in a way that minimises its environmental impacts.

Question 2

Do you agree with the proposal not to include a definition of “consent”, and that regulation 4 clearly sets out the process for consent?

Question 3

Do you agree that the Secretary of State should be able to attach conditions to the agreement to the grant of consent that the developer must comply with?

Other definitions are self-explanatory, but it should be noted that we have removed the term “petroleum” from the Regulations, as it is routinely used to cover oil and natural gas in UK legislation but it is just used to mean “oil” (or liquid hydrocarbons) in the Directive. Its use in the 1999 Regulations could therefore have been confusing. We have used the terms “oil”, “natural gas” and “combustible gas” as relevant.

Article 2

Coordinated procedures

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.

Under the joint procedure referred to in the first and second subparagraphs, Member States shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

In the case of offshore projects for which there is an obligation to carry out an EIA under the EIA Directive and also under the Habitats and / or Wild Birds Directives, the EIA Directive requires that either a coordinated procedure or a joint procedure be used, where appropriate. The coordinated procedure is undertaken by designating a lead authority to coordinate the individual assessments, whereas the joint procedure requires a single assessment.

We intend to continue to use the coordinated procedure when considering EIAs and Habitats Regulations Assessments (HRAs). OPRED is the competent authority for both the EIA process and undertaking the HRAs, and this automatically ensures a coordinated procedure. This is covered by regulation 5(5) in the proposed 2020 Regulations. It is advantageous that OPRED is the competent authority for both types of assessments, as it is likely to reduce delays to the assessments, discrepancies and administrative uncertainty.

Further, although not required in the EIA Directive or the proposed 2020 Regulations, we propose that the Secretary of State would continue to coordinate HRA and screening direction procedures where applicable, which reflects current practice.

Question 4

Do you agree with the current practice of undertaking coordinated procedures for HRA and EIAs/ screening directions?

Article 4

Mandatory EIA – Article 4(1)

Article 4(1)

Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

EIA requirements are addressed in regulation 5 (Requirement for an Environmental Impact Assessment). Regulation 5 sets out that those offshore projects listed in Schedule 1 are subject to a mandatory EIA, and regulations 8 to 17 detail the specific provisions applicable to the EIA process.

Question 5

Do you agree the list of offshore projects subject to EIA accurately reflects the EIA Directive and that the EIA requirements are clear, sensible and satisfy the requirements of the Directive?

Determining if an EIA is required – Article 4(2)

Article 4(2)

Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

The Secretary of State proposes to maintain the transposition of this aspect of the EIA Directive by applying both case-by case examination and thresholds or criteria. Screening of offshore projects listed in Schedule 2 is required to determine if significant effects on the environment are likely.

Regulation 5 of the proposed 2020 Regulations makes clear how non-mandatory EIA offshore projects would be treated, i.e. those offshore projects in Schedules 2 and 3 of the proposed 2020 Regulations. For offshore projects listed in Schedule 2, the developer is required to submit an application under regulation 6 to the Secretary of State for a direction as to whether an EIA is required. This would be known as a “screening direction” and not an “EIA Direction” which is the terminology currently used. Under proposed regulation 5, the developer may also choose that the offshore project undergoes an EIA for an offshore project in Schedule 2 if they wish. This is to reflect the existing option for Schedule 2 offshore projects.

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For offshore projects in Schedule 3, the process set out in regulation 7 applies.

Where a screening direction that no EIA is required has been given by the Secretary of State under regulation 6 it will state that the Secretary of State is giving its agreement to the grant of consent for the offshore project. It would be our intention to ensure that the OGA is notified via the Portal Environmental Tracking System (PETS) where such a direction is given. The developer will continue to receive notification of the direction decision via the PETS system.

We are also planning to inform the developer of decisions that no screening direction is needed. Under the 1999 Regulations, the Secretary of State informs the OGA of its agreement or refusal to agree to the grant of consent for an offshore project which does not require screening, but we do not inform the developer. Under regulation 7 of the proposed 2020 Regulations, the Secretary of State would have to inform the developer of such a decision in addition to informing the OGA, again stating in the decision that the Secretary of State agrees to the grant of consent.

Where an offshore project relates to either (1) the extraction of oil or natural gas, (2) the unloading and storage of combustible gas or (3) the geological storage of carbon dioxide, and only the duration of the consent is being extended (with no increase in quantity to be extracted, unloaded or stored per day), the Secretary of State's agreement to the grant of consent is not required (see regulation 4(6)). This is because there would be no likely significant environmental impact from such a change. For these offshore projects the only aspect of the consent that is being changed is the duration of the consent, and activity levels remain the same or lower.

Question 6

Do you agree with the proposed methods of informing the developer and the OGA of the decision on the screening direction application made under regulation 6, i.e. the decision is notified through the PETS system?

Question 7

Do you agree with the proposal to inform the developer on decisions that no screening direction is needed (regulation 7) for projects listed in Schedule 3, or do you believe that such provision is not required?

Question 8

Do you agree with the proposal for the Secretary of State's agreement to the grant of consent not to be required for offshore projects where only the duration of the consent is increased?

The process for giving a screening direction – Article 4(3), 4(4) and 4(5)

Article 4(3)

Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

Where a developer submits a screening direction application for offshore projects in Schedule 2 or an offshore project meets the criteria of Schedule 3, the Secretary of State will consider the matters set out in Schedule 5, those being matters to be taken into account in deciding whether an offshore project is likely to have a significant effect on the environment. This matches current practice.

The EIA Directive does not prescribe that the public be informed of a decision in relation to an offshore project for which criteria are used to determine that such an offshore project need not undergo a screening direction. Therefore, the proposed 2020 Regulations do not require the decision for Schedule 3 offshore projects be made available to the public. However, the Secretary of State does intend to continue to provide an online register where agreements to the grant of consent for such offshore projects will be listed.

The proposed 2020 Regulations would also make clear that the Secretary of State may include conditions for the developer in its agreement to the grant of consent for Schedule 3 offshore projects. The decision regarding the Schedule 3 offshore project would also be served promptly on the developer and, where an EIA is not required, would state that the Secretary of State agrees to the grant of consent for the offshore project.

Question 9

- (a) Are you content with the procedure under regulation 7 for Schedule 3 projects?
- (b) Are you content with the proposal to inform the public of decisions on Schedule 3 projects via an online register?

Removing the provision that allows the Secretary of State to direct that an EIA is required for a Schedule 2 offshore project, bypassing the screening direction procedure

The proposed 2020 Regulations will remove the provision that allows the Secretary of State to determine that an EIA is required for a Schedule 2 offshore project without a screening direction application being required. Given experience to date in applying the 1999 Regulations and given the option for the developer to undergo the EIA process for a Schedule 2 offshore project, the provision is considered superfluous. Therefore, for all Schedule 2 offshore projects the developer will be required to submit a screening direction application to determine if an EIA is required, or if the developer so chooses, the offshore project would undergo the EIA process without a screening direction being given.

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.

As is currently the practice, the developer would submit applications for screening directions for offshore projects listed in Schedule 2, which must cover (as a minimum) the information detailed in Schedule 4. (Schedule 4 aligns with the information required under Annex IIA of the Directive.) The developer must also take account of the matters set out in Schedule 5 (matters to be taken into account in deciding whether an offshore project is likely to have a significant effect on the environment), as those matters will be taken into account by the Secretary of State when making a decision. Requirements for screening directions applications are set out in regulation 6.

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.

A change to the existing 1999 Regulation is proposed for publicity surrounding the determination of the screening direction. To enhance transparency, we propose to make the screening direction issued to the developer available to the public, rather than just the particulars relating to the determination of the screening direction. The proposed 2020 Regulations specify that this will be done by making the direction available on a public website. The Secretary of State intends to make the screening direction available to the public via the GOV.UK website. We propose that we no longer publicise the particulars relating to the determination of the screening direction by notice in the London, Edinburgh and Belfast Gazettes.

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The proposed 2020 Regulations make clear that the Secretary of State must make public the main reasons for the decision, with reference to the criteria listed in Schedule 5. Where the Secretary of State has decided that an EIA is not required:

- The screening direction will state that the Secretary of State agrees to the grant of consent for the project;
- The screening direction will include any conditions that the Secretary of State attaches to the agreement to the grant of consent; and
- The screening direction will state any features of the project or measures envisaged that the developer has proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Question 10

Do you agree with the approach to publicity for a screening direction for a Schedule 2 offshore project?

Article 5

Formal Scoping Requests – 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 developer and authorities referred to in Article 6(1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

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

To satisfy Article 5(2), we will continue to provide for formal scoping opinions where one is requested by the developer. There is no proposal to provide for formal scoping opinions where there is no request from a developer.

The information to be provided by the developer in a request for a formal scoping opinion on the content and level of detail to be included in an Environmental Statement is being refined in the proposed 2020 Regulations. We believed that it was overly burdensome to require that a developer submits the same information as that required for an application for a screening direction. Therefore, we have opted to refine the information required to be submitted to the Secretary of State by the developer where such a scoping opinion is sought. The provisions relating to formal scoping requests can be found in regulation 9.

Question 11

Do you agree with the simplification of the information requirements for developers wishing to obtain a formal scoping opinion?

Supplementary Information – Article 5(3)(c)

Article 5(3)(c)

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

Article 6(3)(c)

Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:...in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

Article 5(3)(c) relates to the ability for the Secretary of State to request supplementary information relevant to reaching a reasoned conclusion on the significant effects of the project on the environment and Article 6(3)(c) relates to the obligation to make such information available to the public where that information is received after the public has been notified of the project application and where the information is relevant to the decision to agree to the grant of consent.

The relevant decision for the purposes of Article 6(3)(c) is the Secretary of State's decision on whether to agree to the grant of consent. This decision is solely based on the Secretary of State's conclusion on the significant effects of the offshore project on the environment under regulation 14(2). This means that Article 6(3)(c) requires information that is relevant to reaching the conclusion on the significant effects of the offshore project on the environment to be made public. Therefore, regulation 12 requires publication of information which is "directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment".

Regulation 12 of the proposed 2020 Regulations sets out the provisions for requesting and processing further information received from the developer. It implements both Article 5(3)(c) and Article 6(3)(c) of the EIA Directive.

Where the information provided by the developer is directly relevant to reaching a conclusion on whether the offshore project is likely to have significant effects on the environment, the Secretary of State will instruct the developer to undertake further consultation as set out in regulation 12(5) to 12(8).

We view "directly relevant" information as being information that is needed to reach a conclusion on the significant effects of the offshore project on the environment under regulation 14(2). This would be information that needs to be taken into account to determine whether or not the offshore project has a significant effect on the environment. We would instruct the developer to make such information public and conduct further consultation under regulation 12 where the further information provided met such criteria.

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Sometimes the Secretary of State might request or receive information that provides clarification, confirmation, or additional detail, but this information is not needed to reach a conclusion on the significant effects of the offshore project on the environment. Similarly, the Secretary of State might receive information from stakeholders that provides suggestions which the Secretary of State would consider, but may not need to be taken into account to reach a conclusion on the significant effects of the offshore project on the environment. Such information would not need to be made public. We consider this approach to be a reasonable and appropriate one.

The ‘directly relevant’ test’ means that the EIA process is not unduly delayed by the need to conduct further consultations every time information related to the offshore project is provided to the Secretary of State regardless of its relevance to the Secretary of State’s conclusion on the significant effects of the project on the environment, whilst simultaneously ensuring that the public has access to any further information that the Secretary of State considers is needed to reach a conclusion on the significant effects of the offshore project of the environment. This means that authorities, stakeholders and anyone else interested has the information necessary to form a view on the offshore project, that there is further consultation time for the public to consider such information, and that the public can submit any representations they wish to make as a result of this information to the Secretary of State.

Question 12

- (a) Do you agree that the implementation of Article 5(3)(c) and Article 6(3)(c) is effective?
- (b) Do you agree that the criteria for requesting further information and making information available to the public meets with the requirements of the Directive?
- (c) What are your views on our interpretation of “directly relevant”? Is the test clear, reasonable and appropriate?

Obtaining information to aid preparation of Environmental Statement – Article 5(4)

Article 5(4)

Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.

Where a developer requires information that is not readily accessible to aid the preparation of an Environmental Statement, they may apply to the Secretary of State to request such information. The requirements for any application by a developer have been reduced. Those requirements are set out in regulation 10(2). This proposed change of requirements reflects our view that it was overly burdensome to require a developer to submit the same level of information in an application for information as that required for an application for a screening direction.

Question 13

Do you agree with the simplification of the information requirements for developers wishing to obtain information to prepare an Environmental Statement?

Article 6

Participation in the EIA process – Article 6

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. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

Article 6(2)(a)

In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed whether by public notices or by other appropriate means such as electronic media where available, 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 information can reasonably be provided:

(a) the request for development consent;

The proposed 2020 Regulations require a “summary of the application for consent” to be made public under regulation 11 (public consultation requirements – United Kingdom), regulation 12 (provision of further information) and regulation 13 (consultation requirements – other countries). We consider that this aligns with the requirements of the EIA Directive, where it specifies that the “public shall be informed of...the request for development consent”. The “summary of the application for consent” would make available the salient points regarding the proposed offshore project, whilst ensuring that the commercially sensitive aspects of the full application for consent are not compromised by being made public.

Article 6(2)(a) to (g)

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

Currently the onus is on the developer to notify the public of the EIA process and to invite public participation in the process. This continues to be the case in the proposed 2020 Regulations, but it is supplemented by information provided by the Secretary of State. The proposed 2020 Regulations require the developer to provide notice of the EIA in newspapers and electronically on a public website (usually the developer's website). However, the Secretary of State would also be required to publish the notice on a public website. The Secretary of State intends to use the GOV.UK website to enable easier access to information on EIAs. The public notice provisions for EIA submissions and submissions of further information for the UK are in regulation 11 and regulation 12 respectively.

Regulations 11 and 12 of the proposed 2020 Regulations also make clear that the developer must make available the public notice and the EIA documentation (the environmental statement, summary of the application for consent, and further information if relevant) on their website at least until the Secretary of State publishes notification of the decisions of the Secretary of State and the OGA regarding the offshore project.

The proposed 2020 Regulations would remove the requirement for developers to make the EIA documentation available for public inspection at an address in the UK. This would be replaced by a requirement for the developer to provide the EIA documentation by post or email to any person who requests the EIA documentation via telephone, post or email. We consider that this would make the EIA documentation more accessible.

Question 14

Do you agree that the proposed implementation of Article 6 will ensure the effective participation of the public concerned in the decision-making procedure?

Question 15

Do you agree with the proposal for the Secretary of State to additionally make the public notice and EIA documentation available on the Government website?

Question 16

Do you agree with the proposal to remove the provision requiring the developer to make the EIA documentation available for inspection at a UK address and to replace it with a provision to provide such documentation by post or email to anyone who requests it?

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.

We plan to continue to require the developer to publish notice of the proposals in newspapers and to make the EIA documentation available on a public website. Further, we propose that the Secretary of State would also make the EIA documentation available on a public website, likely to be the GOV.UK website, to enhance public access to EIA information. The relevant provisions in the proposed 2020 Regulations are contained in regulations 11 and 12. To ensure that participation in EIA offshore projects is as visible as possible, members of the public can register to receive alerts from the OPRED GOV.UK website. Anyone who subscribes to the alert system will be made aware when an update to the EIA offshore project page is made. Also, as is currently the case, to reflect that those local to an offshore project may be particularly interested in it, the Secretary of State requires publication of the notice in a local newspaper, as well as a national one.

Where further information is provided during the review of the EIA, and the Secretary of State determines that the information is directly relevant to reaching a conclusion on whether the offshore project is likely to have a significant effect on the environment, the Secretary of State would instruct the developer to make that information available to consultees and the public in the same way as the original EIA documentation. The Secretary of State would also supplement the availability of the information by placing it on a public website, again expected to be the GOV.UK website. The relevant provisions in the proposed 2020 Regulations are contained in regulation 12.

Article 7

Participation of other countries in the EIA procedure – Article 7

Article 7(1)

Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken.

The Member State in whose territory the project is intended to be carried out shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

The 1999 Regulations require the Secretary of State to offer any “EEA State” the opportunity to participate in the EIA process where it is thought that significant effects of the offshore project are likely on the environment of that State. We plan to replace “EEA State” with the term “another country”, in line with the power under the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law. This would treat all countries that may be affected by a proposed UK offshore project in the same way.

Question 17

Do you agree with the proposal to extend transboundary consultation (where required) to all countries that may be affected?

Article 8

Decisions to grant or refuse consent – Article 8a

Consents for offshore projects listed in Schedules 1, 2 and 3 of the proposed 2020 Regulations are granted by the OGA. The OGA cannot grant consent without the prior agreement of the Secretary of State. The Secretary of State agrees to the grant of consent or refuses to agree to the grant of consent after establishing whether the offshore project is likely to have a significant effect on the environment. The provisions that relate to these requirements are set out in regulation 4.

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.

In the 1999 Regulations and the proposed 2020 Regulations, the Secretary of State reaches a conclusion on any significant environmental effects of the offshore project and incorporates that conclusion into the decision on whether to agree to or refuse to agree to the grant of consent. These provisions are set out in regulation 14.

The Secretary of State must send the decision on whether to agree to the grant of consent to the developer. The Secretary of State would also forward the decision sent to the developer to the OGA. The proposed 2020 Regulations (regulation 15) would also require the OGA to attach the Secretary of State's decision to the OGA's decision, in addition to the Secretary of State sending the decision to agree or refuse to agree to the grant of consent directly to the developer.

Article 8a(5) and (6)

(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.

(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.

The Secretary of State must decide whether to agree to the grant of consent within a reasonable time from the end of the consultation. The OGA must make its decision on whether to grant consent within a reasonable period of time after the Secretary of State has given its decision on whether to agree or refuse to the grant of consent for the offshore project.

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The proposed practice is that the Secretary of State does not agree to the grant of consent until the OGA is ready to make its decision regarding the grant of consent. At this time, the Secretary of State considers whether the conclusion is up to date by confirming whether any new information on the offshore project has been supplied or obtained since the end of consultation. The Secretary of State might consider that the conclusion is not up to date, i.e. where new information has been made available by the developer or new information on the environment has come to light since the conclusion was reached, and this information is directly relevant to reaching a conclusion on whether the offshore project is likely to have a significant effect on the environment. If the Secretary of State is not satisfied that the conclusion is up to date, regulation 12(3) would apply, so this new information could be made public and be subject to consultation before the Secretary of State reaches a new conclusion in accordance with regulation 14.

Although this scenario is unlikely to arise, regulation 12(4) also makes provision for the possibility that new information directly relevant to the conclusion becomes available in the period between the Secretary of State agreeing to the grant of consent and the OGA granting consent. In such a scenario the Secretary of State would revoke its agreement to the grant of consent. Regulation 12(3) would apply, so this new information would be made public and be subject to consultation before the Secretary of State reaches a new conclusion in accordance with regulation 14.

Question 18

- (a) Do you agree with the decision-making process provided for by regulations 14 and 15?
- (b) Do you agree with the process for confirming that the conclusion is up to date?

Article 9

Publishing the decision – Article 9

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 the 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 as referred to in Article 8a(1) and (2);

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

We propose to continue to notify the consultees and the public of the decision on whether agreement to the grant of consent and the subsequent consent of the OGA is given. We would do so by sending a notice of the decisions directly to the consultees and by promptly publishing a notice in the London, Edinburgh, and Belfast Gazettes to inform the public. The Secretary of State would publish the notice of the decisions on a public website, which will likely be on the GOV.UK website. The relevant provisions which set out these requirements are contained in regulation 16.

Regulation 16 also specifies how the information set out in Article 9(1)(a) and (b) can be obtained. The decision notices would state the website address where such information can be obtained and provide a postal address and telephone number so that persons without access to the internet have easier access to the information.

Question 19

(a) Do you agree with the means of making the consultees and public aware of the decisions by placing notices in the Gazettes and on the GOV.UK website?

(b) Do you agree with the methods for providing the information set out in Article 9(1)(a) and (b)?

The content of the OGA decision to grant consent will not be made available. We take the view that the EIA Directive requirements regarding the content of the decision and making the content of the decision publicly available are relevant to the Secretary of State decision to agree to or refuse to agree to the grant of consent. This is because the EIA Directive is for the key purpose of environmental protection, and it is the Secretary of State that carries out the function of assessing offshore projects in relation to their effects on the environment. It is for the Secretary of State alone to determine whether the offshore project should not go ahead for environmental reasons, on the basis of its assessment. The OGA does not consider environmental factors in its decision making or carry out environmental functions. Its decision

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on whether to grant consent is based on other considerations, including commercial, technical and operational matters, so we do not consider that it would be relevant or appropriate to make the content of this decision public. The proposed 2020 Regulations therefore provide for the content of the Secretary of State's decision to be made public, and not the OGA's. However, both the outcome of the Secretary of State's and OGA's decisions must be made public. Additionally, information on the public participation process would be made available.

The proposed 2020 Regulations require the Secretary of State to publish a notice of the decisions on a public website and in the London, Edinburgh and Belfast Gazettes. The content of the Secretary of State decision and information about the public participation process would be obtained via the public website (likely to be the GOV.UK website), or requested by post, email or telephone. The decision would cover the reasons for the Secretary of State's decision, and any conditions that apply where the Secretary of State has agreed to the grant of consent.

Question 20

Is the proposal to not make the OGA's consent decision content publicly available clear and acceptable, given the above rationale?

Question 21

Do you agree that the proposed approach for notifying the public of the Secretary of State and OGA's decision, and publication of the content of Secretary of State's decision is implementing the EIA Directive sufficiently?

Article 10a

Penalty provisions – Article 10a

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.

Provisions relating to inspection, applications to the court by the Secretary of State regarding developer breaches, offences, revocation and civil penalties are contained in regulations 24 to 28 of the proposed 2020 Regulations.

We have included provision for inspection to monitor compliance with these Regulations and any environmental conditions attached to the Secretary of State's agreement to the grant of consent at regulation 24. This regulation 24 would allow for inspectors to gather any additional information required to be able to prove beyond all reasonable doubt that an offence had taken place, where the developer does not provide this information of its own accord.

The offences provisions of regulation 26 are carried over from the 1999 Regulations but have been corrected to clarify that the offences relate to breaches of the requirement to obtain the Secretary of State's agreement to the grant of consent, and breaches of any conditions attached to the Secretary of State's agreement to the grant of consent. The proposed 2020 Regulations also continue to provide that it is an offence to intentionally or recklessly submit false or misleading information to the Secretary of State. Lastly, new offences have been proposed regarding non-compliance with the new inspection provisions at regulation 24.

The offences of regulation 26 provide that a person is guilty of an offence where the person:

- intentionally or recklessly submits to the Secretary of State information required to be provided under the Regulations which is false or misleading in a material way;
- fails to provide any record required under regulation 24(2)(a);
- fails to provide information relevant to the investigation as required under regulation 24(2)(c);
- wilfully obstructs an inspector appointed under regulation 24(1).

A developer is also guilty of an offence where it carries out an offshore project in breach of a requirement to obtain the Secretary of State's agreement to the grant of consent or in breach of a condition attached to the Secretary of State's agreement to the grant of consent.

The proposed 2020 Regulations also introduce provisions for civil sanctions to be applied in the case of an offence (regulation 28), via amendments to the Offshore Environmental Civil Sanctions Regulations 2018. The amendment would ensure that OPRED has a full range of enforcement responses available to them which would be consistent with those of other environmental regulatory regimes operated by OPRED and with those of other UK environmental regulators.

We acknowledge that the offshore oil and gas industry has had a very good EIA Regulations compliance record since 1999 and as such we anticipate that the offences provision or the new inspection or civil sanctions provisions would be rarely utilised.

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The proposed 2020 Regulations provide OPRED with a more flexible, proportionate, and timely enforcement response by including the option of civil sanctions, in respect of breaches that currently amount to criminal offences and would otherwise be considered for prosecution. This is in line with the Government's commitment to move away from unnecessary criminal prosecutions and in appropriate circumstances shift to civil sanctions in accordance with the Macrory principles on regulatory enforcement.

Introducing civil sanctions would allow for the Secretary of State to pursue fixed and variable monetary penalties for the offences outlined in regulation 26. Whether a fixed monetary or variable monetary penalty is appropriate would depend on the seriousness of the offence. Fixed monetary penalties could be applied for all offences and the amount would be set at £1,000 for offences in regulation 26(1) and £2,500 for offences in regulation 26(3)(a) and (b). Variable monetary penalties could also be applied for offences relating to a breach of the requirement to obtain the Secretary of State's agreement to the grant of consent or a breach of a condition attached to the agreement to the grant of consent.

Civil sanctions would only be determined appropriate where the Secretary of State is satisfied that there is sufficient evidence to prove beyond reasonable doubt that an offence giving rise to a civil sanction has occurred. When considering the imposition of a civil sanction, OPRED will apply the general criteria for prosecution detailed within OPRED's enforcement policy. More information on civil sanctions and what OPRED considers when deciding if the imposition of a civil sanction is appropriate can be found at the following link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789869/The Offshore Environmental Civil Sanctions Regulations 2018 - Guidance Document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789869/The_Offshore_Environmental_Civil_Sanctions_Regulations_2018_-_Guidance_Document.pdf)

Question 22

- (a) Do you agree with the offences prescribed in regulation 26, the proposal for civil sanctions and the level of monetary penalties specified in regulation 27?
- (b) Do you agree that the inclusion of provision for inspection to gather evidence is required?

Revocation of the Secretary of State's agreement to the grant of consent

The proposed 2020 Regulations include the option to revoke an agreement to the grant of consent for any offshore projects. The provision is provided for in regulation 27 of the proposed 2020 Regulations. Revoking an agreement to the grant of consent could only be undertaken where the developer had carried out, or is carrying out a offshore project in breach of a condition attached to the Secretary of State's agreement to the grant of consent or where the developer had submitted to the Secretary of State relevant information which is false or misleading in a material way. The resulting impact of revocation of the agreement to the grant of consent would be that the developer may not continue with the offshore project. Given the offshore oil and gas industry has a very good compliance record, we anticipate that the revocation provision would be rarely utilised.

Question 23

(a) Do you agree that providing provision for revocation of the Secretary of State's agreement to the grant of consent is required and appropriate?

(b) Do you agree that the consequence of revoking an agreement to the grant of consent is clear?

Article 11

Application to the court by persons aggrieved – Article 11

Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Regulation 16 of the 1999 Regulations sets out a procedure for aggrieved persons to bring a challenge on the grounds set out in that regulation. Such provisions are generally known as “statutory appeal” procedures. Where the grounds set out in the statutory appeal procedure do not apply, a right of judicial review would apply in accordance with usual judicial review procedure.

For the proposed 2020 Regulations we are considering two options:

(i) including a statutory appeal procedure that sets out the grounds for appeal, with rights of judicial review applying regarding any other ground of challenge; or

(ii) not including a statutory appeal procedure, meaning that all challenges would proceed via a judicial review.

Option (i)

Our proposed wording for Option (i) is included in the draft regulations at regulation 17. This provides that where consent is granted for an offshore project that was subject to an EIA, an aggrieved person can challenge the decision on the grounds set out in regulation 17(1)(a), (b), (c) and (d). The grounds are that:

- the requirements of regulations 11 and 12 (public consultation requirements) have not been substantially met;
- the Secretary of State has failed to examine the environmental statement, including any further information provided;
- the Secretary of State has failed to consider any representations made regarding the project; or
- the interests of the applicant have been substantially prejudiced by any failure of the Secretary of State or the developer to comply with any other requirement of the Regulations.

The court may quash the Secretary of State's agreement to the grant of consent on these grounds. Where agreement to the grant of consent is quashed the developer must not continue with the offshore project.

Regulation 17(3) makes the publication of the notice of the decisions of the Secretary of State and the OGA regarding the consent the point from which a statutory appeal can be brought. An application to the court must be made within six weeks from this date. We consider that the procedures for making the notice public, as detailed in regulation 16, would ensure that interested parties are aware of the grant of consent.

As with the 1999 Regulations, the proposed 2020 Regulations provide that the appropriate court to hear the statutory appeal would be determined by the location of the project.

Any ground of claim not covered by the statutory appeal provisions in regulation 17, such as any decision, action or omission of the OGA, may be able to proceed via judicial review. The timings for judicial reviews are set out under Option (ii).

Option (ii)

If we were to proceed with Option (ii), no provision would need to be made for this in the proposed 2020 Regulations, as the right to judicial review applies without any legislative provision being required. Regulation 17 would be removed from the proposed 2020 Regulations.

A judicial review in England and Wales must be brought promptly and in any event within three months of the making of the decision that is the subject of challenge. Judicial reviews in Scotland must, ordinarily, be brought within three months of the making of the decision that is the subject of the challenge. Judicial reviews in Northern Ireland must, ordinarily, be made promptly and in any event within three months of the making of the decision that is the subject of challenge.

The main differences between the proposed statutory appeal procedure and judicial review are:

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- For a statutory appeal, an application to the court would need to be made within six weeks from the date the Secretary of State and OGA decisions are published. For a judicial review the standard timings for judicial review would apply.
- For judicial review, the applicant must generally apply for permission to bring a judicial review. This stage is not required for a statutory appeal.
- The statutory appeal provisions set out the remedy the court must grant if the appeal is successful. In the proposed regulation 17 the Secretary of State's agreement to the grant of consent is quashed and the developer must not continue with the project. If a judicial review were successful, the court would determine the appropriate remedy.
- The statutory appeal provision sets out which court would hear the statutory appeal. This would be the High Court in England, the Court of Session in Scotland or the High Court in Northern Ireland, depending on the location of the project. For judicial review, a court would determine whether it has jurisdiction to hear the judicial review.

One potential advantage of Option (ii) is that if an applicant wished to raise a claim on judicial review grounds and grounds that would otherwise be covered by a statutory appeal, the claim could be dealt with via one court and one process, whereas there is the risk of a statutory appeal and judicial review proceeding in different courts.

However, an advantage of Option (i) is that a statutory appeal route, in relation to the grounds it applies to, may offer advantages in terms of certainty regarding timings for bringing a challenge and remedies.

To note, if a developer were to proceed with a project where agreement to the grant of consent had been quashed, action could be taken under regulation 25 of the proposed 2020 Regulations to enforce the judgment. (This is broadly similar to regulation 17 of the 1999 Regulations.)

Question 24

Regarding the proposed statutory appeal route in option (i):

- (a) Do you have any comments on having a statutory appeal route?
- (b) Do you agree that the stage at which a challenge can be brought is clear and appropriate?
- (c) Do you agree with the grounds on which a challenge can be brought?
- (d) Do you agree with the time period set for making a challenge?
- (e) Do you agree that it is appropriate an offshore project cannot continue where the agreement to the grant of consent is quashed?

Question 25

Regarding option (ii), do you have any comments on judicial review applying regarding all grounds of challenge?

Question 26

Do you have a preference for option (i) or (ii), and what are the reasons for your preference if so?

Annex I and Annex II

Applicable offshore projects for the proposed 2020 Regulations - Annex I and II Projects

The proposed 2020 Regulations seek to relate the EIA Directive Annex I and II projects more clearly to the UK offshore projects. The offshore projects covered, and the corresponding requirements for EIAs or screening directions, or neither, are largely the same as under the 1999 Regulations. The proposed 2020 Regulations seek to clearly outline the offshore projects relevant to the proposed 2020 Regulations by including them in three Schedules to the Regulations. The three Schedules relate to whether the offshore project requires an EIA (Schedule 1), requires screening to determine if an EIA is needed (Schedule 2) or whether an EIA or screening need not be required, on the basis of criteria (Schedule 3). Key proposed changes are:

- i. Regarding (a) offshore projects for the use of a mobile installation for the extraction of oil or natural gas where the principal purpose of the extraction is the testing of any well and (b) the use of a mobile installation for the purposes of carrying out test injections of carbon dioxide or combustible gas, these offshore projects are not reflected directly in the EIA Directive, but they are covered as deep drilling offshore projects, which are listed in Annex II of the EIA Directive. Similarly, these offshore projects would be covered by paragraph 1 of Schedule 2 to the proposed 2020 Regulations, so they have not been listed separately.
- ii. Capture of carbon dioxide has also been included for offshore projects. This offshore project is represented in Schedule 1 and 2 and reflects the thresholds set out in Annex I and II of the EIA Directive. Capture of carbon dioxide offshore has not yet occurred in UK waters but it was deemed important to include as an offshore project in the proposed 2020 Regulations given the evolution of these types of offshore projects.
- iii. Projects that are captured by Annex II point 13(a) of the EIA Directive are explicitly covered by Schedule 2, paragraphs 8 and 9, of the proposed 2020 Regulations. Therefore, changes to Schedule 1 projects that do not exceed the Schedule 1 thresholds, and changes to Schedule 2 projects, would require a screening direction. The exception is where there is a proposed extension in the duration of a consent related to the below projects. Regulation 4(6) of the proposed 2020 Regulations provide that the Secretary of State's agreement to the grant of consent is not required for such extensions. Such projects need not be subject to a screening direction as criteria have been applied instead, in accordance with Article 4(3) of the Directive. The projects and criteria are:

An increase in the duration of a consent for-

- the extraction of oil or natural gas under Schedule 1, paragraph 1 or Schedule 2, paragraph 3 where there is no increase in the quantity to be produced per day; or
- the geological storage of carbon dioxide under Schedule 1, paragraph 3 where there is no increase in the quantity to be stored per day;
- the unloading or storage of combustible gas under Schedule 2, paragraph 7 where there is no increase in the quantity to be unloaded or stored per day.

We have set out below how the relevant offshore projects listed in Schedules 1 and 2 to the proposed 2020 Regulations relate to the projects listed in Annex I and II of the EIA Directive.

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Offshore projects for which an EIA is required (i.e. Schedule 1 projects) as such projects are likely to have significant effects on the environment are:

- Developments for the extraction of oil and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of oil and 500,000 cubic metres per day in the case of natural gas.

This project reflects Annex I point 14 of the EIA Directive;

- Developments for the storage of oil with a capacity of 200,000 tonnes or more.

This project reflects Annex I point 21 of the EIA Directive;

- Developments for activities captured by section 17(2)(a) or (b) of the Energy Act 2008 (developments for the geological storage of carbon dioxide).

This project reflects Annex I point 22 of the EIA Directive;

- Developments for the capture of carbon dioxide streams for the purposes of geological storage of carbon dioxide where—
 - (a) the carbon dioxide is captured from an installation forming part of a development under paragraph (1); or
 - (b) the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

This project reflects Annex I point 23 of the EIA Directive;

- Pipelines with a diameter of more than 800 mm and a length of more than 40 km for the transport of oil, combustible gas or chemicals.

This project reflects Annex I point 16(a) of the EIA Directive;

- Pipelines with a diameter of more than 800 mm and a length of more than 40 km for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide.

This project reflects Annex I point 16(b) of the EIA Directive;

- Any change to or extension of a project listed in this Schedule where such a change or extension in itself meets the thresholds, if any, set out in this Schedule.

This project reflects Annex I point 24 of the EIA Directive.

Offshore projects for which a screening direction is required to determine if an EIA is needed or for which the developer can opt to undergo an EIA (i.e. Schedule 2 projects), as such projects may have a significant effect on the environment, are:

- (1) Subject to sub-paragraph (2), drilling a well or borehole for the purpose of—

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- (a) exploring for oil or natural gas, establishing the existence of oil or natural gas, appraising the quantity, characteristics, or quality of oil or natural gas, or getting oil or natural gas; or
- (b) activities within section 2(3) or section 17(2) of the Energy Act 2008 (activities related to unloading or storage of combustible gas or the geological storage of carbon dioxide).

(2) Sub-paragraph (1) does not include—

- (a) a well or borehole drilled to a depth of 350 metres or less below the surface of the seabed for the purpose of obtaining geological information about strata; or
- (b) a drilling operation where the main purpose is the testing of the stability of the seabed.

These projects reflect Annex II point 2(d) of the EIA Directive.

- Surface installations for the extraction of oil or natural gas;

This project reflects Annex II point 2(e).

- Developments for the extraction of oil or natural gas for commercial purposes where the amount extracted is equal to or less than 500 tonnes per day in the case of oil and equal to or less than 500,000 cubic metres per day in the case of natural gas.

This project is where the criteria of the related Annex I point 14 is not exceeded and so is treated as an Annex II project of the EIA Directive.

- Developments for the storage of oil with a capacity of less than 200,000 tonnes.

This project is where the criteria of the related Annex I point 21 is not exceeded and so is treated as an Annex II project of the EIA Directive.

- Developments for activities captured by section 2(3)(a) to (d) of the Energy Act 2008 (the unloading or storage of combustible gas).

This project reflects Annex II point 3(d) of the EIA Directive and Annex II point 3(c) of the EIA Directive.

- Developments for the capture of carbon dioxide streams for the purposes of geological storage of carbon dioxide where—
 - (a) the carbon dioxide is captured from an installation forming part of a development under paragraph (3); and
 - (b) the total yearly capture of carbon dioxide is less than 1.5 megatonnes.

This project reflects Annex II point 3(j) of the EIA Directive.

- Pipelines that are—
 - (a) for the transport of oil, combustible gas, or chemicals, or for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide; and

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(b) do not fall under paragraphs 5 or 6 of Schedule 1 or paragraph 1 of Schedule 3.

This project reflects Annex II point 10(i) of the EIA Directive.

- Any change to or extension of a project listed in Schedule 1 that does not fall under paragraph 7 of Schedule 1.

This project reflects Annex II point 13(a).

- Any change to or extension of a project listed in this Schedule.

This project reflects Annex II point 13(a).

Offshore projects for which the Secretary of State may decide an EIA is not needed without a screening direction being required on the basis that significant effects on the environment are not likely (i.e. Schedule 3 projects):

- The construction of a pipeline for the transport of oil, combustible gas, or chemicals, or for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide, or the maintenance, repair, replacement, protection or extension of an existing pipeline constructed for those purposes where no part of the pipeline or related works would extend more than 500 metres from a well or any part of an installation to which that pipeline would be directly or indirectly attached.

This project applies criteria to the project listed in Annex II point 10(i) of the EIA Directive.

Question 27

Do you agree that the projects listed in Schedules 1, 2 and 3 accurately reflect the applicable offshore oil and gas exploration, production, gas unloading and storage, and carbon dioxide storage projects listed in Annex I and II of the EIA Directive?

Proposed changes to Projects – Annex II

Annex II(13)

(a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);

Proposed changes to offshore projects in Schedules 1 and 2 that do not engage Schedule 1(7) criteria, would engage Schedule 2, paragraph 9 or Schedule 2, paragraph 10 (unless regulation 4(6) applies). A screening direction would therefore be required, and the Secretary of State's decision would be made public as for any other screening direction, in accordance with regulation 6.

Question 28

Do you think the approach regarding making information available to the public for proposed changes is reasonable?

Other provisions and changes

Fees

The fees proposals mirror the principles applied in the 1999 Regulations of full cost recovery. Minor amendments have been made to reflect changes in the requirements of the proposed 2020 Regulations, and to remove references to the grant of consent where appropriate and replace it with references to the decision regarding agreement to the grant of consent. The intention would be to recover the Secretary of State's costs for all work undertaken under the 2020 Regulations for the developer.

Question 29

Are the provisions relating to aspects of the EIA Regulations for which fees can be charged clear and appropriate?

Removing regulations pertaining to the exercise by the OGA of powers under licences – regulations 11 of SI 1999/360

Regulation 11 of the 1999 Regulations was superfluous, as all offshore projects covered by regulation 11 would require OGA consent, and Secretary of State agreement to the grant of consent, in accordance with proposed 2020 Regulations - regulation 4, so there does not need to be specific provision for such offshore projects.

Question 30

Do you agree that regulation 11 was superfluous and so removal is appropriate, and that regulation 4 in the proposed 2020 Regulations is sufficient?

Removing the option to charge the public for obtaining a copy of the EIA

The proposed 2020 Regulations do not contain a provision for the developer to charge a fee in relation to the provision of a hard copy of the Environmental Statement. We have noted that it is extremely rare that developers have charged for providing an Environmental Statement. This observation, coupled with the likelihood that interested parties will be more inclined to acquire the Environmental Statement by electronic means, suggests that the option to charge would not be needed.

Question 31

Do you agree that it is reasonable to remove the provision that allows the developer to charge a fee (up to a maximum of £2) to the public to acquire a hard copy of the Environmental Statement?

Transitional and saving provisions relating to the 1999 Regulations

The proposed 2020 Regulations also contain transitional provisions. These provisions are intended to ensure that there is a smooth transition from the 1999 Regulations to the proposed 2020 Regulations, and that ongoing processes are handled fairly. The transitional provisions provide that:

For projects pending a decision from the OGA regarding consent when the proposed 2020 Regulations come into force, regulations 4, 5 and 6 to 12 of the 1999 Regulations apply, rather than regulations 4 to 13 of the proposed 2020 Regulations. This would cover all projects, namely those that do not require a screening direction or EIA, those that require a screening direction and those that require an EIA. However, the 2020 Regulations would apply regarding the Secretary of State decision following an EIA as to whether to agree to the grant of consent, the OGA decision as to whether to grant consent, publication of the decisions made and route of challenge.

Where consent for an offshore project which was subject to an EIA has been granted under the 1999 Regulations before the proposed 2020 Regulations come into force, if the statutory appeal route is retained, a person would be able to make an application to the court on the grounds under regulation 17(1) of the proposed 2020 Regulations during the time period specified in regulation 17(3). If the statutory appeal route is replaced with the option of judicial review, a person may be able to proceed via judicial review. Where an application to the court under regulation 16 of the 1999 Regulations is pending an order from the court when the proposed 2020 Regulations come into force, regulation 16 of the 1999 Regulations continues to apply, rather than regulation 17 of the proposed 2020 Regulations.

Regarding any acts or omissions by a person that occurred prior to the proposed 2020 Regulations coming into force, regulations 17 and 18 of the 1999 Regulations apply, rather than regulations 25, 26 and 27 and the amendments to the Offshore Environmental Civil Sanctions Regulations 2018 in regulation 28 of the proposed 2020 Regulations.

Question 32

Do you have any comments on the transitional and savings provisions?

Amendment of related Regulations

The proposed 2020 Regulations will also make updates to legislation that cross-references the 1999 Regulations to refer to the proposed 2020 Regulations. These amendments will not entail any changes in policy and therefore are not covered in this consultation.

There are other minor drafting changes that also need to be made, such as providing footnotes for all legislation referenced.

Assessing Impacts

It is considered that the financial impact of the proposed 2020 Regulations on the offshore oil and gas sector will be extremely limited, as it is not anticipated that there will be any significant additional costs relating to their implementation, as compared to the 1999 Regulations.

Amending the provisions for public participation, by removing the requirement for public inspection of Environmental Statements and related documents at an address identified by the developer and replacing it with the provision of hard copies by post (or courier) could have a financial impact, noting that the change is proposed to be accompanied by the removal of the provision allowing developers to charge a maximum of £2 for each copy of the Environmental Statement. However, most (if not all) interested persons now download electronic copies of Environmental Statements, or receive electronic copies by email, and we are not aware of any developers previously making use of the charging provision. We therefore consider that any additional costs relating to providing hard copies of Environmental Statements by post (or courier) at no cost to the enquirer will be trivial.

The charging of fees for OPRED functions relating to the 1999 Regulations were introduced by the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015, which came into force on 22 July 2015. The provisions have been regularly amended since they came into force, mainly to accommodate changes in the hourly rates that are applied, and developers are aware of the charging system. The charging provisions in the proposed 2020 Regulations mirror the approach currently applied of ensuring full cost recovery, and the original impact assessment relating to the introduction of the fees is still valid, see below:

<https://www.legislation.gov.uk/ukxi/2015/1431/impacts>

The hourly rates have not changed.

There will be additional activities and costs for OPRED in relation to new administrative procedures and making greater use of the GOV.UK website to ensure effective public participation. These additional activities may result in some additional charging, but this is unlikely to be significant.

The introduction of civil sanction provisions could impact developers, but only if offences are committed. Such costs are therefore not relevant to the financial impact of implementing the proposed 2020 Regulations. Also, it is not anticipated that enforcement will automatically result in civil penalties as the level of proof required will be the same as that required for a prosecution. It is also considered likely that in the event of the issue of a civil penalty, this would be a more cost-effective option for both the developer and OPRED than prosecution. It is also relevant to point out that the sector's compliance record to date has been excellent, and there have been no prosecutions for offences since the introduction of the 1999 Regulations.

It is therefore concluded that the proposed 2020 Regulations will have a negligible financial impact on developers.

Consultation questions

1. Do you agree that the terms “project”, “development” and “developer” are appropriate?
2. Do you agree with the proposal not to include a definition of “consent” and that regulation 4 clearly sets out the process for consent?
3. Do you agree that the Secretary of State should be able to attach conditions to the agreement to the grant of consent that the developer must comply with?
4. Do you agree with the current practice of undertaking coordinated procedures for HRA and EIAs/ screening directions?
5. Do you agree the list of offshore projects subject to EIA accurately reflects the EIA Directive and that the EIA requirements are clear, sensible and satisfy the requirements of the Directive?
6. Do you agree with the proposed methods of informing the developer and the OGA of the decision on the screening direction application made under regulation 6, i.e. the decision is notified through the PETS system?
7. Do you agree with the proposal to inform the developer on decisions that no screening direction is needed (regulation 7) for projects listed in Schedule 3, or do you believe that such provision is not required?
8. Do you agree with the proposal for the Secretary of State’s agreement to the grant of consent not to be required for offshore projects where only the duration of the consent is increased?
9. (a) Are you content with the procedure under regulation 7 for Schedule 3 projects?

(b) Are you content with the proposal to inform the public of decisions on Schedule 3 projects via an online register?
10. Do you agree with the approach to publicity for a screening direction for a Schedule 2 offshore project?
11. Do you agree with the simplification of the information requirements for developers wishing to obtain a formal scoping opinion?
12. (a) Do you agree that the implementation of Article 5(3)(c) and Article 6(3)(c) is effective?

(b) Do you agree that the criteria for requesting further information and making information available to the public meets with the requirements of the Directive?

(c) What are your views on our interpretation of “directly relevant”? Is the test clear, reasonable and appropriate?

- 13. Do you agree with the simplification of the information requirements for developers wishing to obtain information to prepare an Environmental Statement?**
- 14. Do you agree that the proposed implementation of Article 6 will ensure the effective participation of the public concerned in the decision-making procedure?**
- 15. Do you agree with the proposal for the Secretary of State to additionally make the public notice and EIA documentation available on the Government website?**
- 16. Do you agree with the proposal to remove the provision requiring the developer to make the EIA documentation available for inspection at a UK address and to replace it with a provision to provide such documentation by post or email to anyone who requests it?**
- 17. Do you agree with the proposal to extend transboundary consultation (where required) to all countries that may be affected?**
- 18. (a) Do you agree with the decision-making process provided for by regulations 14 and 15?**
(b) Do you agree with the process for confirming that the conclusion is up to date?
- 19. (a) Do you agree with the means of making the consultees and public aware of the decisions by placing notices in the Gazettes and on the GOV.UK website?**
(b) Do you agree with the methods for providing the information set out in Article 9(1)(a) and (b)?
- 20. Is the proposal to not make the OGA's consent decision content publicly available clear and acceptable, given the above rationale?**
- 21. Do you agree that the proposed approach for notifying the public of the Secretary of State and OGA's decision, and publication of the content of Secretary of State's decision is implementing the EIA Directive sufficiently?**
- 22. (a) Do you agree with the offences prescribed in regulation 26, the proposal for civil sanctions and the level of monetary penalties specified in regulation 27?**
(b) Do you agree that the inclusion of provision for inspection to gather evidence is required?
- 23. (a) Do you agree that providing provision for revocation of the Secretary of States agreement to the grant of consent is required and appropriate?**
(b) Do you agree that the consequence of revoking an agreement to the grant of consent is clear?
- 24. Regarding the proposed statutory appeal route in option (i):**
(a) Do you have any comments on having a statutory appeal route?

(b) Do you agree that the stage at which a challenge can be brought is clear and appropriate?

(c) Do you agree with the grounds on which a challenge can be brought?

(d) Do you agree with the time period set for making a challenge?

(e) Do you agree that it is appropriate an offshore project cannot continue where the agreement to the grant of consent is quashed?

- 25. Regarding option (ii), do you have any comments on judicial review applying regarding all grounds of challenge?**
- 26. Do you have a preference for option (i) or (ii), and what are the reasons for your preference if so?**
- 27. Do you agree that the projects listed in Schedules 1, 2 and 3 accurately reflect the applicable offshore oil and gas exploration, production, gas unloading and storage, and carbon dioxide storage projects listed in Annex I and II of the EIA Directive?**
- 28. Do you think the approach regarding making information available to the public for proposed changes is reasonable?**
- 29. Are the provisions relating to aspects of the EIA Regulations for which fees can be charged clear and appropriate?**
- 30. Do you agree that regulation 11 was superfluous and so removal is appropriate, and that regulation 4 in the proposed 2020 Regulations is sufficient?**
- 31. Do you agree that it is reasonable to remove the provision that allows the developer to charge a fee (up to a maximum of £2) to the public to acquire a hard copy of the Environmental Statement?**
- 32. Do you have any comments on the transitional and savings provisions?**

Next steps

This consultation will close on 2 October 2020, after which responses will be analysed and a government response published as soon as possible on [GOV.UK](https://www.gov.uk) - subject to developments with regard to the coronavirus (COVID-19). We will consider any changes to the draft Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 that may be suggested in stakeholders' responses to the consultation and, if necessary, appropriately revise the proposed Regulations.

Once the government response has been published, we will circulate a notification to all stakeholders who were invited to respond to the consultation and those that submitted responses. Following the publication of the government response, we anticipate laying the Regulations before Parliament so that they can enter into force on 31 December 2020. We will also ensure that stakeholders are notified about the laying of the Regulations in Parliament and when revised regulatory guidance has been published.

This consultation is available from: www.gov.uk/government/consultations/amendments-to-the-environmental-impact-assessment-regime-for-offshore-oil-and-gas-projects

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