Department for
Business, Energy
& Industrial Strategy

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

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Any enquiries regarding this publication should be sent to us at: BST@beis.gov.uk

Contents

Exit from the European Union

1. 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, the Government plans to lay the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 ("the proposed 2020 Regulations") before Parliament in December 2020 to enter into force on 31 December 2020. This statutory instrument will be made using the powers of section 2(2) of the European Communities Act 1972, which continues to apply during the transition period. The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended) ("the 1999 Regulations") will continue to apply for some limited transitional purposes once the proposed 2020 Regulations are in force. The proposed 2020 Regulations apply to offshore oil and gas exploration and production, gas storage and unloading and carbon dioxide storage projects ("offshore projects").

Introduction

2. In late 2019, the Government launched a review of the 1999 Regulations. The review followed judicial review proceedings, in which the Government accepted that the 1999 Regulations did not fully transpose the Environmental Impact Assessment (EIA) Directive 2011/92/EU ("the EIA Directive"), and in particular did not provide for fair and timely access to justice. Having reviewed the 1999 Regulations, the Government formed the view that new Regulations were required. Taking this approach also gave the opportunity to simplify and enhance the offshore EIA legislative regime, whilst maintaining the same environmental standards.

3. The Government invited comments via a 10-week consultation (24 July to 2 October 2020) on the proposed 2020 Regulations. The consultation document is accessible from**:**

   https://www.gov.uk/government/consultations/amendments-to-the-environmental-impact-assessment-regime-for-offshore-oil-and-gas-projects

4. The consultation sought views on the changes proposed in the 2020 Regulations and asked thirty-two questions. The Government considered its position following evaluation of the responses and made relevant changes to the proposed 2020 Regulations.

Summary of responses to the consultation

5. There were 13 respondents to the consultation. Two respondents stated that they had no comments on the proposed 2020 Regulations.

6. There were 11 responses received which provided varying volumes of comments from developers, industry trade associations, Government bodies / agencies, non-governmental organisations (NGOs), other Government Departments / Public Bodies and independent individuals. Respondents addressed some or all the questions set out in the consultation document, offered comments on the proposals, and in some cases made specific suggestions for revised wording.

Response by type of respondent	**Number of responses**
Developer	2
Industry Trade Association	1
Government bodies / agencies	3 (one stated no comments)
NGO	3 (one stated no comments)
Other Government Departments / Public Bodies	2
Independent individual	2

Responses to the consultation questions and Government response

Q1. Do you agree that the terms "project", "development" and "developer" are appropriate?

Summary of responses

7. There were nine responses to this question, five of which agreed that the terms 'project', 'development' and 'developer' are appropriate. One respondent disagreed with the proposal and three respondents provided comments but did not state whether they agreed or not.

8. One respondent welcomed the alignment with the EIA Directive and the change to language used more broadly within industry, but queried the extent of scope for the term 'project', in particular whether assessment of the end use of hydrocarbons would continue not to be a factor to be explored in the preparation of the environmental statement. That respondent expressed a view that emissions from end use ought to continue to be assessed at a strategic level rather than individual project level.

9. Others suggested the definitions required further clarity. One respondent did not agree with the approach to implementation and was of the opinion that the definition of 'project' was too narrow and did not reflect the language of the EIA Directive; suggesting that it should include any intervention in the natural surroundings and landscape. This was a suggestion that was also reflected in another response. The respondent also commented that having a definition of 'development', as well as 'project', in the proposed 2020 Regulations was confusing.

Government response

10. The Government appreciates the responses received and following consideration of the comments made, has taken the decision to remove the definition of 'development' and any use of the term to avoid confusion. The definition of 'developer' will be retained as previously drafted, as it is the Government's opinion that it is important that this term also includes developers when they carry out the project, not just developers at the application stage. The definition of 'project' has also been amended to better reflect the EIA Directive wording.

11. The Government does not intend end-use emissions to be a matter for individual project environmental statements.

Q2. Do you agree with the proposal not to include a definition of "consent" and that regulation 4 clearly sets out the process for consent?

Summary of responses

12. There were eight responses to this question. Four of the eight respondents agreed with the proposal and four disagreed. One respondent commented that they agreed with the approach to implementation but did not agree with the approach to consenting projects where only the duration of the consent is extended (see question 8). Other respondents indicated they felt further clarity was needed on what consents were appropriate to the Oil and Gas Authority (OGA) consenting regime and questioned how the lack of a definition would relate to a legal challenge to the consent.

Government response

13. Having considered the responses, the Government can clarify that the proposed 2020 Regulations are specific to projects that fall under Schedules 1 to 3 and therefore it is only projects that fall under those Schedules that would be subject to OGA consent. The Government's view is that regulation 4 clearly states that a developer must not commence a project without the Secretary of State's agreement to the OGA's grant of consent and the consent of the OGA. The updated guidance will provide further information relating to the role of the OGA regarding the grant of consent and the Secretary of State's role regarding agreement to the grant of consent. Extensions to the duration of consent are addressed below – see Question 8.

Q3. 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?

Summary of responses

14. There were ten respondents to the question, five supported the approach, two provided no response and three provided comments but did not state clear support or disagreement to the proposal for implementation.

15. Respondents welcomed the intention to base conditions on the nature, location and size of the project. One respondent highlighted that conditions be given appropriate consideration where a project is planned in a marine protected area. Respondents queried whether the conditions attached could include considerations relating to future decommissioning, while others suggested that conditions should be consulted upon as they form part of the mitigation, noting that there should be a clear route to challenge the conditions.

Government response

16. The Government welcomes the general positive response to the proposal. We note that conditions can only be decided on after the consultation process has completed, so the Secretary of State can take consultation views into account in

deciding whether to agree to the grant of consent and whether to attach conditions. Conditions attached to the agreement to the grant of consent for projects that underwent the EIA process will align with the EIA Directive requirements and the objective of environmental protection. Should a proposed project potentially interact with a conservation site, species or habitat, the Secretary of State will give appropriate consideration to the likely environmental effects and any potential conditions which may be required. Further, should the agreement require inclusion of conditions related to decommissioning activities, these will be considered when reaching a decision on the environmental impacts of the project. The agreement to the grant of consent will be made available on the GOV.UK website. The route to challenge decisions taken under the proposed 2020 Regulations is addressed below at Question 24 – Question 26.

Q4. Do you agree with the current practice of undertaking coordinated procedures for HRA and EIAs / screening directions?

Summary of responses

17. There were nine responses to this question. Eight respondents agreed with the current practice of undertaking coordinated procedures for Habitats Regulations Assessment (HRA) and EIAs / screening directions. One respondent qualified their support with the caveat that this process should be transparent and available to the public.

Government response

18. The Government will continue the current practice of publishing all appropriate assessments (AA) undertaken for the purpose of a HRA on the GOV.UK website. Where the AA relates to a project which is the subject of EIA, it will be located as a subsection for that specific project on the GOV.UK website.

Q5. 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?

Summary of responses

19. Of the seven responses to the question, three agreed with the proposal, two disagreed, one did not specify their agreement and one provided comment only.

20. The comments showed that one respondent felt the proposals did not clarify how the projects in Annex I and II of the EIA Directive were reflected in Schedule 1, 2 and 3 of the proposed 2020 Regulations. One respondent suggested that the threshold for one particular Annex I project should be reduced further to widen the scope for EIA. Another respondent suggested that an EIA should be applicable for all types of project.

Government response

21. The project descriptions alongside the definition of "project" have been further refined as a result of the consultation to align more closely with the EIA Directive wording. The descriptions of projects are largely similar to the language used in Annexes I and II of the EIA Directive. We have retained the thresholds for EIA projects set out in the EIA Directive, so as to align with the EIA Directive. The proposed 2020 Regulations also reflect the EIA Directive by way of determining whether projects should be subject to a mandatory EIA or to screening to determine if an EIA is needed. We consider that this is a proportionate approach that ensures strong levels of environmental protection.

Q6. 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 Portal Environmental Tracking System (PETS)?

Summary of responses

22. There were eight respondents to this question. Five agreed and one respondent sought clarification on whether the proposed screening direction application will replace the existing EIA direction application, and if so what were the expectations for the level of information to be included in an application and whether the regulatory review period of 28 days would be maintained.

23. The same respondent suggested that the Government consider whether an environmental statement which was submitted for an oil or gas extraction project would not require the same information to be reproduced in future screening direction applications for component aspects of the original environmental statement (i.e. screening applications for drilling and pipeline works).

24. Another respondent suggested that all decisions relating to the consents be captured in a single system, e.g. linking OGA and Secretary of State systems, adding further detailed comments, in particular requesting further clarification and guidance from the Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) on how the proposed methods of informing the developer and OGA of screening directions would work in practice. One respondent disagreed, suggesting there needs to be a central register administered by the Government where the public can see all relevant correspondence associated with the application.

Government response

25. The Government confirms that screening directions will be made available on the GOV.UK website, implementing the EIA Directive requirements that the main reasons for the determination must be made available to the public. Functional separation is required between the OGA and the Secretary of State, and therefore it would not be possible to have a single system. The PETS system will be enhanced to enable the OGA to receive notifications of when screening directions have been

determined, allowing the Secretary of State decision to agree or refuse to agree to the grant of consent and the OGA granting of consent process to run efficiently.

26. The Government intends to maintain its 28-day determination period for screening applications. However, it should also be borne in mind that the maximum statutory review period will continue to be 90 days from receiving the application, and that this can be extended.

27. Schedule 4 sets out what must be included as a minimum in an application for a screening direction. The Government does not anticipate that the level of detail required will differ significantly from that currently observed in applications. The guidance will be updated to provide further clarification on potential requests for further information.

28. The Government will elaborate in guidance, but intends to continue the current practice where developers must submit screening applications for particular aspects of the overarching project (drilling and pipeline works that fall under Schedule 2). This will ensure that the consenting process is underpinned by an environmental submission (where applicable) and ensure that any change which emerges from the time the overarching project had been consented is captured *via* the screening process.

Q7. 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?

Summary of responses

29. There were eight respondents to this question. Four agreed with the proposal. Two of these respondents requested additional clarity on how this process would work in practice, including the anticipated timescales associated with it. Two respondents disagreed with the proposal. One of these respondents did not believe this provision is required and was content with the current system. Another respondent believed a central register administered by the government should be established where the public and developers can access all relevant application documents including decisions.

Government response

30. The Government welcomes the positive responses to the proposal and intends to maintain the provision as set out in the consultation version. Further clarification will be provided within the guidance to outline how this process will function in practice. Although not required, the Secretary of State will maintain a register on its GOV.UK webpage for agreement decisions in relation to Schedule 3 projects (see Question 9).

Q8. 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?

Summary of responses

31. Eight responses were received in relation to the question, four of which agreed with the proposal and three disagreed. One response did not detail their preference but provided comments.

32. The comments provided indicated concerns surrounding the potential for ongoing environmental impacts from atmospheric emissions, noting that although there was no change in the project per se (by means of physical intervention in the natural landscape), there was a possibility of ongoing environmental impact from the project operating beyond its original expected duration. A respondent believed that the proposal would minimise the administrative burden; whilst recognising that in a minority of cases, additional environmental pressures may be exerted should the consent duration be extended.

Government response

33. Following consideration of the consultation responses the Government intends to remove what was regulation 4(6) in the version of the proposed 2020 Regulations that was consulted on, due to the changes made to the definition of "project". The new definition of "project" reflects the EIA Directive wording and makes clear there needs to be a physical intervention for something to qualify as a project. Therefore, the Secretary of State's agreement to the grant of consent would not be required where only the duration of the consent is increased for an offshore project, as there is no physical intervention. European Union EIA Directive guidance and case law is clear that, in the absence of any works or interventions involving augmentations to the site's physical aspects, the extension of a consent cannot be classified as a 'project'. This applies to applications for extensions regarding the extraction of oil or natural gas, the unloading and storage of combustible gas or the geological storage of carbon dioxide where only the duration of the consent is being extended. The guidance will set out further detail on this.

Q9. (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?

Summary of responses

34. There were ten responses to this question.

35. **Q9(a):** Two respondents were content with the procedure under regulation 7 for Schedule 3 projects and two were not. One of these respondents felt that the public

should be informed of any decision by the Secretary of State under regulation 7. Three respondents neither agreed nor disagreed but requested further clarity on the process of providing information on the project, the differentiation between this and a screening direction under Schedule 2 and whether specific public bodies and consultees would be informed directly.

36. Further explanation was also sought in relation to what period was envisaged when requiring the Secretary of State to serve the decision promptly on the developer. Two respondents made a general comment in response to 9(a) & (b). One respondent stated that it is crucial that there is always transparency. They recommended that the public are informed whether a project is to be screened or not and sought the ability to challenge the decision not to screen a project. The other respondent sought further clarity on whether specific public bodies and consultees would be informed directly.

37. **Q9(b):** Five respondents were content with the proposal to inform the public of decisions on Schedule 3 projects *via* an online register. One of these respondents requested that any such register should make clear that the decision has been made by the Secretary of State and that the developer should be informed before any projects are shared on the public online register. They also commented that any data shared on such a register should be conscious of developer's confidentiality rights. Two respondents were not content and one that felt there was insufficient information provided about the online register.

Government response

38. Guidance will be issued which will clarify the mechanism for submitting the information that is required, timescales for the process, and the differences from the screening direction process. The proposed 2020 Regulations do not require the decision for Schedule 3 offshore projects to be made available to the public, as this is not a requirement of the EIA Directive. However, the Government intends to provide an online register where agreements to the grant of consent for Schedule 3 projects will be listed. As this information is publicly available, we do not consider that it would also be necessary to inform anyone directly of the decision, aside from the developer. The developer would be informed before the decision is published and confidentiality would be borne in mind.

39. The online register will clearly state that it relates to projects that do not require a screening direction because they are not likely to have a significant effect on the environment, and that the Secretary of State has determined that there is no requirement for an EIA on the basis that the project is not likely to have a significant effect on the environment. The route to challenge decisions taken under the proposed 2020 Regulations is addressed below at Question 24 to Question 26.

Q10: Do you agree with the approach to publicity for a screening direction for a Schedule 2 offshore project?

Summary of responses

40. Ten responses were received. None disagreed, four agreed, one did not specify a preference and five made comments with no clear view on agreement.

41. Respondents queried the extent to which the requirements of the EIA Directive are being implemented, notably that only the screening determination reasons need to be made public. One respondent commented on a perceived lack of intention to make information available to the public in accordance with the Aarhus Convention. Other comments questioned whether the intention was to invite comment on the project which could lead to legal challenge. Finally, there were concerns around the nature of the information being made public, mostly relating to the requirement to ensure confidentiality and commercial sensitivity elements were not overlooked. Regarding the comments in support of the proposal, there was support for making the information available, and using electronic means to do so.

Government response

42. The Government considered all the responses and intends to make screening directions available in full on the GOV.UK website to ensure transparency, as proposed in the consultation. There will be no concerns surrounding the confidential or commercial sensitivity of the information to be made publicly available, but personal data relating to the names and telephone numbers of contacts will be redacted before screening directions are published. The proposals also enhance the availability of information for the public, and as such there are no concerns in relation to meeting the obligations of the Aarhus Convention.

Q11: Do you agree with the simplification of the information requirements for developers wishing to obtain a formal scoping opinion?

Summary of responses

43. There were nine responses to this question. One respondent did not agree with the simplification. They were concerned that proposal would allow the developer to avoid submitting full and accountable information, at a time when environmental legislation needs to be much stronger.

44. Seven respondents agreed with the proposal. One of these respondents expressed the view that the scoping request and response should be put on the central online register so that the public could inspect them. A further one of these respondents suggested that the developer needs to be aware that, without a scoping opinion which has taken in the views from multiple agencies, their EIA may not provide sufficient detail, which may cause delays. Another respondent noted that regulation 9 contains no reference to timescales for the Secretary of State to process requests for scoping opinions. Finally, the respondent sought confirmation on how any

scoping opinion from 'any authority which the Secretary of State considers likely to be interested in the project' will be funded.

Government response

45. It is the level of information provided to the Secretary of State when requesting a scoping opinion that is being simplified, not the level of detail that has to be included by the developer in its environmental statement. In fact, the practice of seeking a scoping opinion allows the Secretary of State, and those authorities the Secretary of State considers likely to be interested in the project (by reason of either its particular environmental responsibilities or its local or regional competence), the opportunity to ensure that the scope and level of detail to be included in the environmental statement is suitable. The environmental statement itself would be made public and is subject to consultation.

46. The Government also confirms that it does not anticipate the level of formal scoping requests to significantly increase, and as described in the consultation, there is no proposal to provide for formal scoping opinions where there is no request from a developer. The Secretary of State may charge the developer fees in relation to providing the scoping opinion as set out in the Regulations. Agreements are in place with some authorities in relation to various sets of Regulations, however responses in relation to scoping opinions for the proposed 2020 Regulations are not a component in most of them. The updated guidance will provide developers with further advice on the formal scoping process and will outline the Government's expectations in relation to timescales for providing a scoping opinion.

Q12: (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?

Summary of responses

47. There were seven responses to this question with one respondent making general comments in respect of Question 12.

48. **Q12(a):** Three respondents agreed that the implementation of Article 5(3)(c) and Article 6(3)(c) is effective and two did not. One respondent expressed the view that the wording of the EIA Directive has not been reflected in the proposed 2020 Regulations, in that the EIA Directive requires the information to be provided is that which is 'relevant for the decision', not 'directly relevant'. They went on to comment that in the interests of transparency, all the further information should be provided to the public and that failing to do so prevented the public from effectively participating in the decision-making procedures.

49. The respondent suggested that the sequence should be that the Secretary of State reviews the information in the environmental statement, decides whether further information is necessary, and if so, requires that the information is publicised and consulted upon. If the information were not relevant and necessary for the decision, the Secretary of State would not have asked for it. One respondent made general comments in relation to question 12, which included that the requirements for submission of information to support an environmental statement or screening direction could be clearly defined in supporting guidance, reducing the volume of requests for further information.

50. One respondent said that what constitutes 'directly relevant' information that is required to reach a reasoned conclusion should also be proportionate to the potential significance of the impacts, noting the importance of consistency in examination of submissions. The respondent proposed that to streamline the process, consideration be given to de-coupling the process of consulting the authorities from the public consultation process. De-coupling the consultation of authorities and consultees would ensure that any further information the authorities consider relevant to the decision is addressed in the environmental statement prior to public consultation.

51. **Q12(b):** Four respondents agreed that the criteria for requesting further information and making information available to the public meets with the requirements of the EIA Directive. One respondent did not agree.

52. **Q12(c):** One respondent did not agree and three respondents agreed with the proposed interpretation of "directly relevant" and that the test was clear, reasonable and appropriate. One of these respondents commented that they would appreciate, as part of any guidance issued by the Secretary of State in support of the proposed 2020 Regulations, an explanation of the meaning of "directly relevant" and any further clarification (including examples) that can be given.

53. Another of the respondents further commented that it is crucial that all information is made available at the appropriate time and should be fully open and transparent.

Government response

54. The Government will retain the current wording of the proposed 2020 Regulations, but will provide further clarity within the updated guidance on changes to the administrative process. This will set out that developers should seek to submit a near-final draft version of the environmental statement for review by the Secretary of State before submitting the environmental statement for public consultation. The draft version could then be updated to ensure that further information is included before the public consultation. This iterative process is similar to other regulatory processes and it is anticipated to significantly reduce the need for clarifications to be provided after consultation has started which do not relate to the potential significant effects of the project.

55. The Government does not intend to mandate this procedure. However, it will be in the best interest of the developer to utilise this process. Where the developer chooses to pursue submitting an environmental statement without first providing a draft, then they need to appreciate that further information may be required and there may be a need for further public consultation in respect of that information if it is directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment. The EIA Directive requires that authorities are included in the consultation process for an environmental statement, and this requirement has been reflected in the proposed 2020 Regulations.

56. The Government maintains the view that retaining the current test in the proposed 2020 Regulations meets the requirements of the EIA Directive, and ensures that the public has access to any information that the Secretary of State considers is needed to reach a conclusion on the significant effects of the offshore project of the environment.

Q13: Do you agree with the simplification of the information requirements for developers wishing to obtain information to prepare an Environmental Statement?

Summary of responses

57. There were eight respondents to this question, six of whom were in favour of the proposal, with further respondents qualifying their response by requesting that a reasonable timeframe for provision of relevant information from the Secretary of State and/ or any relevant authority could be set at 30 days. One respondent was against the proposal, commenting that the environment is too important to ease burdens, and considered the process should be tightened.

Government response

58. The Government is of the opinion that it is overly burdensome to require a developer to submit the same level of information in an application for information, as is required for an application for a screening direction. It is the Government's view that simplifying the requirements of developers wishing to obtain information relevant to preparing an environmental statement will help to ensure a more thorough assessment of the likely impacts of a proposed project on the environment. The requirements for information to be provided in the environmental statement at regulation 8 and Schedule 6 would still apply to the publication of the environmental statement. The Government will provide further information on best practice, including timings, for responding to such requests within the guidance.

Q14: Do you agree that the proposed implementation of Article 6 will ensure the effective participation of the public concerned in the decision-making procedure?

Summary of responses

59. There were nine respondents to this question, two agreed with the proposals. One respondent expressed concerns in relation to the requirement for the developer to retain the information on their website only until the decision date, suggesting the

information should be retained until the challenge period under regulation 17(3) had lapsed.

60. Three further respondents were silent on whether they agreed, but requested clarification in relation to the process; namely a) whether consultees would be advised directly of decisions, b) how any responses received from public notice will be considered by the Secretary of State, and c) whether responses to the public consultation on further information would be restricted to that further information only.

61. A further respondent suggested there should be a public register of interested parties who are informed when proposals are considered and suggested there should also be a list of individuals and organisations whose skills and expertise should be called upon in the application process. They also suggested there should be availability within the website to appeal against the decision (see question 24 to 26). A respondent also commented that removing the need for developers to make EIA documentation available for public inspection would be detrimental (see question 16).

62. Two respondents disagreed, one on the grounds that the whole application for consent should be made available. That same respondent did not believe the 'summary' of the application is sufficient and was not supported by the wording of the Directive. The respondent believed it is unclear what aspects of an application would be commercially sensitive and that there should be a presumption to disclose the whole application. They believed the public cannot make sense of the environmental statement without knowing what is being applied for, including the detail of that.

Government response

63. The Government has decided to amend the Regulations to require the developer to publish the EIA documents on their website until at least three months has lapsed from the date on which the notice of the consent decisions is published.

64. The Government's intention is to display and retain the EIA documents on the GOV.UK website. Consultees will be advised directly of the decision as is the practice currently. The guidance will provide further clarity on the process to be followed by the Secretary of State when considering consultation responses. Regulation 14 requires the Secretary of State to take into account all consultation responses when deciding whether to agree to the grant of consent.

65. The proposed 2020 Regulations have been drafted in such a way that it gives the Secretary of State flexibility in which authorities it considers appropriate to be notified where the EIA process is engaged. In addition to the customary register of authorities contacted in respect of EIA submissions and depending on the nature of the proposed project, the Government will seek to ensure that other authorities are contacted where that authority would be likely to be interested in the project by reason of either its particular environmental responsibilities or its local or regional

competence. The Government intends to continue to review the authorities which it commonly advises developers to notify, to ensure that the list remains current.

66. Article 6(2)(a) of the EIA Directive requires the public to be informed of 'the request for development consent;', not for the content of the request to be made available. The Government has considered the views expressed by respondents and has decided to amend the proposed 2020 Regulations to require a 'summary of the project' to be made available, rather than a 'summary of the application for consent'. The proposed 2020 Regulations now require the summary of the project to include information on the proposed location of the project, proposed timeline of activities and a description of the proposed activities. The proposed 2020 Regulations also require the developer to state that it has made an application for consent. It is the Government's opinion that this approach satisfies the requirements of the EIA Directive. The requirements regarding the content of the summary of the project ensure sufficient detail for interested parties to adequately assess what is being applied for.

67. For clarity, responses to the public consultation following the provisions of further information are not restricted to commenting on the further information.

Q15: 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?

Summary of responses

68. There were 10 responses to this question, eight agreed with the proposals. Of those who agreed, three respondents commented that care should be taken to protect the confidential and commercially sensitive information of the developer and that the developer be informed of the intention to make the documents public. In addition, a respondent argued that notice of the EIA should be publicised on the GOV.UK website for up to six years at least.

69. Two respondents did not declare whether they agreed or disagreed but did provide comments. Another respondent argued that, by allowing operators to remove environmental statements from their websites and not making them available on the GOV.UK website, that the Government would be in contravention of the Aarhus convention. Clarification was also sought by respondents on how long documents would remain on the website and whether this will have an impact on the determination period. Respondents also asked whether this process would be similar to a Decommissioning Programme consultation process.

Government response

70. The Government has decided to retain the requirement for the developer to provide notice of the environmental statement and other EIA documentation on its website, and to maintain the enhancement outlined in the consultation, by introducing the requirements for publication of the notice of the environmental statement and the EIA documentation on a public website (i.e. GOV.UK website). The Government does not intend to remove documents from the GOV.UK website following

publication on that website, subject to any practical or technical considerations regarding amount of information stored.

71. The Government's proposal relates to publishing the public notice, the environmental statement, the summary of the project, and further information if relevant. As such, no information of a confidential and commercially sensitive nature would be published. The information would mirror the information published on the developer's own website for the purposes of public consultation. It is the Government's opinion that the requirements of the Aarhus Convention will be met.

72. The Government will only publish the public notice, the environmental statement, and the summary of the project on a public website once the developer has provided a copy of the notice to the Secretary of State. The Government confirms the availability of these documents on the public website is not relevant to the public consultation timeframe of 30 days. The public consultation process will be implemented according to the requirements of the EIA Directive.

73. The Government has also decided to amend the Regulations to require the developer to publish the EIA documents on their website until at least three months has lapsed from the date on which the notice of the consent decisions is published.

Q16: 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?

Summary of responses

74. There were nine respondents to this question, seven of whom agreed with the proposal. The respondents outlined a preference for providing documentation electronically to avoid preparing large paper copies for postal requests. However, this also prompted concern around unreasonable requests. In addition, one respondent commented that their preference was for email and that they object to the provision of documentation by post and would prefer to make documentation available for physical inspection. Two other respondents also suggested that this provision remained. One respondent commented that the documentation should be openly available on the GOV.UK website.

Government response

75. Although the provision for public inspection is being removed, EIA documents can still be obtained online (on the developer website and on GOV.UK), by email or via post, so this does not prevent anyone accessing the documents.

76. During the time the 1999 Regulations have been in force, experience has shown that the primary means of obtaining the EIA information is via electronic means and information is very rarely obtained by public inspection or post. It is therefore believed that the provisions to acquire EIA information by postal means is unlikely to result in any significant additional burden on industry. The proposed 2020

Regulations will include provision so that developers are only required to provide one copy of the EIA documents in response to a request for the documents to avoid individuals unreasonably requesting many copies.

Q17: Do you agree with the proposal to extend transboundary consultation (where required) to all countries that may be affected?

Summary of responses

77. There were nine respondents to this question, seven of whom agreed with the proposals. Two respondents requested further clarity on how the proposal would work, in particular requesting clarification on the authorities in another country that would be involved in the process, the nature of the impacts which would be considered when deciding on consultation with other countries and at what point in the EIA process consultation would be undertaken with another country.

Government response

78. The Government maintains its proposals as set out in the consultation, in that the proposed 2020 Regulations will require the Secretary of State to offer "another country" the opportunity to participate in the EIA process where the project could have a significant effect on the environment of another country. This requirement will also apply where the other country notifies the Secretary of State that its environment is likely to be significantly affected by that project. The approach implements the requirements of the EIA Directive.

79. The Secretary of State is responsible for providing certain information to a country where there is a potential for a likely significant effect on that country. The Secretary of State would contact an authority in that country that has environmental regulatory responsibility for offshore projects. Where possible the Secretary of State would align timing of consultation with the other country with the period for consultation in the UK.

Q18: (a) Do you agree with the decision making process provided for by regulations 14 and 15 (decisions to agree to the grant of consent, and the grant of consent)?

(b) Do you agree with the process for confirming that the conclusion is up to date?

Summary of responses

80. There were eight respondents to this question.

81. **Q18(a):** Five out of eight respondents agreed with the proposals. One respondent disagreed, commenting that the SoS should not just set out his conclusions, but the reasons for that conclusion. Two respondents required clarification on the criteria for a decision that certain further information is directly relevant to the Secretary of State's conclusion on whether the project is likely to have a significant effect on the environment. They queried whether transboundary consultation would take place for planned activities only or would take place for risks from unplanned events e.g.

major accidents. Comments were provided on what is regarded as a "reasonable period of time" for decisions by Secretary of State and OGA in regulations 14 and 15.

82. **Q18(b):** Of the eight respondents, seven agreed with the proposal and one did not comment. One respondent requested that the process for reaching a reasoned conclusion be included in any guidance. Further to this, a respondent suggested that, in order to avoid multiple consultation rounds that may significantly prejudice a project, a safeguard should be provided, to ensure that any new information that comes to light after the public consultation is examined to determine why that information wasn't made available during the public consultation period.

Government proposals

83. After considering the responses, the Government has decided to retain the decision making process as set out in the consultation version of the proposed 2020 Regulations.

84. The Secretary of State's decision to agree to the grant of consent includes the Secretary of State's conclusion on the significant effects of the project on the environment, any conditions attached to the agreement to the grant of consent (including monitoring conditions), and a description of any features or measures envisaged to avoid, prevent or reduce or offset significant adverse effects on the environment. This content, in particular the Secretary of State's conclusion, makes clear the reasons for the decision, and the decision is made publicly available in full. The criteria for the decision making process aligns with the requirements of the EIA Directive. Any information that is directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment will require further consultation, in accordance with the EIA Directive

85. Guidance on the further information requirements, timings on making decisions and environmental statement expectations will be provided in the EIA guidance.

86. Competent authorities of other countries will be consulted and given an opportunity to participate in the decision-making process as explained in the response to question 17, and Schedule 6 to the proposed 2020 Regulations includes a requirement to assess risks to the environment of major accidents in the environmental statement.

Q19: (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)?

Summary of responses

87. There were 10 respondents to this question.

88. **Q19(a):** seven respondents agreed with the proposal of making the consultees and public aware of the decisions by placing notices in the Gazettes and on the GOV.UK website. However, one respondent's view was that consultees should be directly contacted and another did not agree with the proposal on the grounds that it should be the 'decisions' themselves that should be publicly available and not just the fact of the decision. A further respondent, who had no objection to the proposals, sought clarification on the reason for conditions being made publicly available and whether the developer would have an opportunity to review and potentially appeal the decision to publish content should they believe it to be inappropriate.

89. **Q19(b):** Of the 10 respondents, nine did not object to the methods for providing the information set out in Article 9(1)(a) and (b), however they commented that regulation 16(3)(b)(ii) does not expressly include all the information envisaged by Article 9(1) of the EIA Directive. For example, there is no mention of the conditions that may be attached to the decision. The respondents also commented that the information should primarily be available on a central register. One respondent disagreed but did not comment further.

Government response

90. After further reflection and consideration, the Government has decided to remove all forms of Gazette notification and rely on the notification of the Secretary of State's decision on whether to agree to the grant of consent and the OGA's decision on whether to grant consent to be placed on the GOV.UK website. Those without internet access can still obtain information by contacting the Secretary of State by phone or post, and this will be specified in the initial notice of the proposed project at the time of consultation. The Government will ensure that relevant government departments of devolved administrations are informed of projects within proximity of their territorial sea. As is currently the practice, authorities notified for participation in examination of the environmental statement, because of their particular environmental responsibilities or local or regional competence, will be contacted directly to notify them of the decision.

91. Further, the decision of the Secretary of State on whether to agree to the grant of consent is published in full on the GOV.UK website, reflecting the requirements of the EIA Directive. This would include the conditions attached to the agreement to the grant of consent and reasons for the decision.

Q20: Is the proposal to not make the OGA's consent decision content publicly available clear and acceptable, given the above rationale?

Summary of responses

92. There were eight responses to this question. Four were clearly in support of the proposal, two disagreed and two provided comments only.

93. Respondents in agreement with the proposal commented that the guidance should provide further detail on this specific matter and asked for clarification on why

conditions attached to the agreement to the grant of consent would also be made available to the public. Those responses which indicated disagreement with the proposal added that the rationale provided for not making the consent content available to the public was unclear and suggested it was contrary to Article 9(1) of the EIA Directive.

Government response

94. The Government welcomes the general support to the proposals. The EIA Directive's remit relates to the protection of the environment and assessment of projects regarding their potential impact on the environment. The relevant decision for the purpose of Article 9(1) is the Secretary of State's decision on whether to agree to the grant of consent – as this covers all the environmental aspects of the decision-making process. The OGA consent content is not related to this as it does not cover any environmental aspects. The OGA does not consider environmental factors in its decision making or carry out environmental functions. Its decision on whether to grant consent is based on other considerations, including commercial, technical and operational matters, so its content is not relevant to the EIA process. Therefore, the Government intends to retain its proposal to only make the content of the decision to agree or to refuse to agree to the grant of consent publicly available. However, both the outcome of the Secretary of State's and OGA's decisions must be made public. For information, the OGA have indicated that they are considering publishing consents once issued.

Q21: 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 implements the EIA Directive sufficiently?

Summary of responses

95. There were eight responses to the question, six in agreement and one in disagreement, there was one response that provided comment but no indication of preference.

96. The responses were predominantly in support of the approach, and where comments were provided, they highlighted that transparency was key to the process. The respondent against the proposal sited similar comments to those made in relation to question 20 – being that there was a lack of rationale for why the consent content is not to be made available to the public.

Government proposals

97. Again, as with the Government response to question 20, the EIA Directive's remit relates to the protection of the environment and environmental assessment of projects on the environment. The relevant decision for the purpose of Article 9(1) is the Secretary of State's decision on whether to agree to the grant of consent – as this covers all the environmental aspects of the decision-making process. It is for that reason that the OGA consent content is unconnected as it has no environmental linkage. Please see the response to question 20.

Q22: (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 28?

(b) Do you agree that the inclusion of provision for inspection powers to gather evidence is required?

Summary of responses

98. Eight responses were received. Four respondents agreed with proposals in relation to question 22(a) and six respondents agreed with proposals in relation to question 22(b). Only one respondent disagreed with proposals in relation to question 22(a). Some respondents only provided general comments and did not highlight whether they agreed or disagreed.

99. Q22(a): Respondents commented that the level of penalties was imbalanced against the level of earnings made by the developers and suggested an alternative approach to determining penalties. Another response detailed that for measures to be effective they need to be proportionate and dissuasive and that the public should have a role in ensuring compliance, noting there should be a public register detailing various stages of investigation and penalty application.

100. Q 22(b): The inclusion of inspection provision was substantially supported.

Government response

101. The Government welcomes the responses received and the overall support of the proposals. The civil sanctions which may be applied reflects the scale on which similar offences in other Regulations have been set, for consistency and proportionality. The Offshore Environmental Civil Sanctions Regulations 2018 guidance and BEIS OPRED enforcement guidance sets out obligations and expectations for making various data and information available to the public. Any offences and civil sanctions and the associated processes related to the inspection and investigation will be subject to a level of publicity as set out in those documents.

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

Q23: (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?

Summary of responses

102. There were eight responses to the questions. In general, the responses indicated support for the proposals. Seven responses agreed with the proposals relating to question 23(a) and four in relation to question 23(b). No responses disagreed with the proposals linked to question 23(a) and two responses signalled disagreement with the proposals connected with question 23(b). One general comment was made in answer to both subsections of question 23.

103. Q23(a): The respondents indicated in their comments that there was no clear process for mediation or mitigation between the developer and the Government and that without such steps any decision taken to revoke an agreement may be unfair. Others highlighted that they would wish for the revocations to be made available to the public, and that revocation was appropriate where the contravention had resulted in a significant effect on the environment.

104. Q23(b): The responses suggested that it was unclear what the ramifications for the consent would be if the agreement to the grant of consent was revoked. Respondents requested clarification on how an appeal could be made and what the impact to the consent would be.

Government response

105. Revocation would apply only where considered necessary. The Government would intend to maintain its current effective engagement with developers on projects, both prior to agreement to the grant of consent and post agreement to the grant of consent. The expectation is that, based on experience to date with other offshore environmental regulatory regimes, revocation will be rarely used. Publicity surrounding revocation would be subject to processes set out in the Government's enforcement policy relevant to the directorate, which can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857913/OPRED_ENFORCEMENT_POLICY_revised_-_03_Jan_2020.pdf

Guidance will cover this particular topic. The proposed 2020 Regulations make clear that the project cannot proceed without agreement to the grant of consent.

The route to challenge decisions taken under the proposed 2020 Regulations is addressed below at Question 24 to Question 26.

Q24: 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?

Summary of responses

106. There were eight responses to the question. Overall, there was clear support to the proposals linked to the subsections (a) to (e). There was only one disagreement to the proposals linked to subsections (b), (c) and (d). There was an array of specific and general comments made in response to the questions.

107. Respondents highlighted that the statutory appeal route brought a certain amount of certainty in terms of the grounds of appeal and the timings by which challenge can be made. Queries relating to the status of the OGA consent following quashing of the agreement to the grant of consent were made. Comments made in response to the questions highlighted that the process of challenge would benefit from being clearer to avoid excessive costs. A clear route to challenge was the focus of one particular respondent. The responses suggested the time frame for making an appeal was clear and supported the proposals that where agreement to the grant of consent is quashed the project should not continue. Comments also sought to clarify that an aggrieved person can be a person from industry or the public. One respondent indicated that the time to make a challenge should be extended.

Government response

108. The Government welcomes the detailed comments made in respect of the questions. The responses provided, were combined with those provided to question 25 and question 26 to form an overall decision on whether to draft the proposed 2020 Regulations with or without provision for statutory appeal. Comments made in relation to clarity on grounds to challenge, timing of challenge and the fate of the project where agreement to the grant of consent is quashed were considered in the decision to rely on judicial review as the only route to challenge a decision made by the Government. Judicial review would be open to anyone with sufficient interest, in accordance with the standard judicial review procedure.

Q25: Regarding option (ii), do you have any comments on judicial review applying regarding all grounds of challenge?

Summary of responses

109. Seven responses were received. Four respondents indicated they had no comments in relation to the option to rely on judicial review and four respondents provided comments on the option.

110. The respondents highlighted that the potential advantage to judicial review would be that it would simplify the route to challenge for any aggrieved persons. The respondent also highlighted that relying on judicial review would reduce the risk of both a statutory appeal and judicial review being pursued simultaneously. The respondent did counter the positive aspects by highlighting that there may be less certainty for the Government and developers in terms of grounds for challenge and remedy. The costs associated with judicial review were mentioned in the responses to the question, and the respondent indicated that simplification to the challenge routes should reduce cost as an effect.

Government response

111. The Government welcomes the responses to this question. The responses were considered alongside those made in relation to question 24 and question 26 to form a policy decision and way forward for progressing the proposed 2020 Regulations, as detailed in the response to question 26. After careful consideration the Government intends to rely on judicial review as a means by which those with sufficient interest may challenge a decision made by the Secretary of State. By relying on judicial review, there will be a single clear route to challenge, clarity in the time by which a challenge can be lodged and the nature of the grounds by which a challenge can be made, as standard judicial review procedure would apply.

Q26: Do you have a preference for option (i) (statutory appeal) or (ii) (judicial review), and what are the reasons for your preference if so?

Summary of responses

112. There were seven responses to the question. Three respondents indicated they had no preference for either option, two indicated they had a preference for the option to include statutory appeals provision and one respondent preferred the option to rely on judicial review. One respondent had no comment.

113. Two comments received highlighted that statutory appeal would be preferred because there would likely be more certainty as to the grounds of appeal, the timing and any remedy. Another respondent felt that the grounds of appeal should be extended to include an ability to appeal the refusal to the agreement to the grant of consent and any decision to revoke an agreement to the grant of consent. Other respondents made clear that whatever system is used to pursue a challenge the route should be affordable and the timings for bringing a challenge must be certain.

Government response

114. The Government considered the responses alongside the responses to question 24 and question 25. After careful consideration the Government intends to rely solely on judicial review as a means by which persons may challenge a decision made by the Secretary of State. By relying on judicial review, any person with sufficient interest will have a clear route to challenge the Secretary of State's decisions based on the standard grounds of judicial review, in accordance with the standard timings for judicial review. The Government considers that this simplifies the process. Also, relying on judicial review would reduce the risk of both a statutory appeal and judicial review being pursued simultaneously. It would be for the court to determine the appropriate remedy. Judicial review also provides a route for developers to challenge the Secretary of State's decisions, including a decision to revoke agreement to the grant of consent.

Q27: 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?

Summary of responses

115. Eight responses were received. There were no responses that disagreed, four which agreed, one had no comment and three provided comments but no indication as to whether the agreed with the approach or not.

116. The responses to this question are linked to elements of the responses to question one. Respondents have stated that for the project set out in Schedule 3, there would be no way of assessing the impact on climate change from the project. The same respondent expanded further, suggesting that the requirement for EIA should be applied based on development size. Another respondent queried as to if the descriptions of the projects in the Schedules includes decommissioning.

Government response

117. The projects listed in the Schedules align with the EIA Directive, and the wording has been adjusted to reflect this more clearly. The project listed in Schedule 3 is a form of criteria applied whereby projects that conform to such a description need not undergo screening determination or an EIA, provided that there would be no significant effects on the environment from the project. The Secretary of State considers this before agreeing to the grant of consent - see regulation 7 of the proposed 2020 Regulations. This approach is aligned with the intentions of the EIA Directive and only covers projects where there is no perceived likely significant environmental effect. The application of the requirement for an EIA is clearly set out in the proposed 2020 Regulations and again reflects the EIA Directive – i.e. projects that meet the mandatory requirements for EIA fall under Schedule 1 and projects which are subject to a screening direction to determine if

an EIA is needed fall under Schedule 2. Decommissioning elements of proposed projects are discussed in the environmental statement currently, albeit at a relatively high level. We intend to maintain this expectation and guidance will elaborate further on this.

Q28: Do you think the approach regarding making information available to the public for proposed changes is reasonable?

Summary of responses

118. There were eight responses to this question. There were no responses that disagreed with the proposal and five responses that agreed. There were three responses that neither agreed or disagreed but did provide comments in response.

119. Respondents requested more information on the process and timeframes related to screening directions required where a change to the project is proposed. Further, the respondent requested more information on the types of changes that would merit the requirement for a screening direction. Other respondents commented that all information should be fully disclosed where the proposals to change the project are planned. They also noted that the process for consideration of changes to screening directions should be transparent.

Government response

120. The Government acknowledges the general trend in comments that suggests more information on the process is required. Guidance on the matter will be provided to support the proposed 2020 Regulations once they come into force. To summarise:

- Any change to a project that falls under Schedule 1 where such a change in itself meets the thresholds, if any, listed in that Schedule would require an EIA.
- Any change to a project that falls under Schedule 1, where the change itself is below the thresholds (if any) to automatically require an EIA would be subject to a screening direction to determine if an EIA is needed.
- Any change to a project that falls under Schedule 2 would be subject to a screening direction to determine if an EIA is needed.
- Any change to a Schedule 3 project would be dealt with under regulation 7, so the Secretary of State would decide if an EIA is required, without a screening direction application.

121. For a change to a project to be subject to the requirement for the Secretary of State's agreement to the grant of consent, the change must in itself meet the definition of a "project". In particular, this requires there to be a physical intervention in the natural surroundings and landscape.

122. We have set out in responses to earlier questions how screening directions, regulation 7 decisions, and decisions following an EIA will be made publicly available on the GOV.UK website.

Q29: Are the provisions relating to aspects of the 2020 Regulations for which fees can be charged clear and appropriate?

Summary of responses

123. Seven respondents submitted responses to the question. Five respondents showed support for the proposal and one did not. One other respondent submitted no preference or comment. The respondent's comments mainly related to the suggestion that invoices should detail how the fee relates to specific provisions in the proposed 2020 Regulations.

Government response

124. The Government welcomes support to the approach to inclusion of fees provisions in the proposed 2020 Regulations. Invoicing will be undertaken in the same manner to that of the process under the 1999 Regulations. The detail provided in the invoicing system to developers is considered to be sufficient to allow developers to identify the work that has been undertaken, but should further information be required, this is available on request.

Q30: Do you agree that regulation 11 (relating to exercise by OGA of powers under licences) was superfluous and so removal is appropriate, and that regulation 4 in the proposed 2020 Regulations is sufficient?

Summary of responses

125. Seven responses were received. Only one disagreed with the approach, four supported the proposal, one did not state a preference and one provided comment but no preference. The responses were positive overall and there were few comments in relation to the question. One comment stated that all projects need to be assessed via an EIA and the processes implemented should be fully transparent.

Government response

126. The Government notes the support for the proposals and will maintain drafting of the proposed 2020 Regulations based on the proposals set out in the consultation. The Government intends to implement the EIA Directive effectively and appropriately, and in doing so will ensure that projects are subject to the correct assessment procedure where environmental effects are to be considered. The EIA Directive is clear on the nature of projects to be subject to a mandatory EIA and those which are subject to screening, and those where screening is not required.

Q31: 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?

Summary of responses

127. There was a total of eight responses to this question, with two respondents indicating that they had no comment. Two respondents agreed with the question and one respondent disagreed providing no further comments. Two respondents were concerned that removing the provision for the developer to charge a fee may open the system up to abuse and generate requests by those acting in bad faith, rather than those seeking to participate in the consultation process. One respondent considered that the developer should be legally required to provide a copy of the EIA, in whatever form when requested by any party and agreed that an electronic copy should be available unless specifically a hard copy is required, where costs should be borne by the developer.

Government response

128. On considering the responses, the Government has decided that retaining the £2 optional charge was not appropriate, and that it would be acceptable for a developer to reject unreasonable requests for environmental statements where it is believed that the request is vexatious. The proposed 2020 Regulations will include provision so that developers are only required to provide one copy of EIA documents in response to a request for the documents to avoid individuals unreasonably requesting many copies.

Q32: Do you have any comments on the transitional and savings provisions?

Summary of responses

129. Three of the six responses to the question had no comments on the proposals. Three respondents provided comments. Of those that provided comments, one respondent highlighted the importance of the transitional and savings provisions. Another respondent reiterated the importance of projects being subject to EIA (this comment was general in nature and unrelated to the question). Comments from one other respondent were unrelated to the question but highlighted the importance of a public register to be installed to allow effective public participation.

Government response

130. The Government intends to maintain its approach to transitional and savings provisions as set out in the consultation.

Overall conclusion

131. The Government welcomed the views expressed in response to the consultation. The key amendments to the proposed 2020 Regulations, or changes to the underlying policy, as specified are:

Removal of proposed regulation 4(6) – agreement to consent not required for extensions in duration of consent (ref. question 8 and regulation 4(6) in the consultation version of the proposed 2020 Regulations)

132. The Government has removed this provision due to the changes made to the definition of "project". The definition of "project" reflects the EIA Directive wording and makes clear that there needs to be a physical intervention for something to qualify as a project. Therefore, the Secretary of State's agreement to the grant of consent would not be required where only the duration of the consent is increased for an offshore project.

Further information requests where an environmental statement is concerned (ref. question 12 and regulation 12)

133. The wording proposed at consultation for regulation 12 is being retained. However, the Government proposes to introduce guidance on the matter, and in future will recommend that developers seek to submit a near-final draft version of the environmental statement before engaging the formal EIA process, to avoid the need for further information requests wherever possible.

Publication of the consent application (ref question 14 and regulation 11)

134. The Government considered the views expressed by respondents that the full application for consent should be published, rather than a summary of the application for consent. After further consideration, the Government has substituted the requirement in the proposed 2020 Regulations so that now a summary of the project must be provided. The developer must also state that it has made an application for consent. The proposed 2020 Regulations require the summary of the project to include information on the proposed location of the project, proposed timeline of activities and a description of the proposed activities. The requirements regarding the content of the summary of the project ensure sufficient detail for interested parties to adequately assess what is being applied for.

Route to appeal a decision made by the Secretary of State (question 24, 25 and 26, previous regulation 17)

135. Following consideration of the responses provided to questions 24, 25 and 26 the Government has decided to simplify the appeal process by relying on a single route of challenge *via* judicial review.

136. The Government will remove the statutory appeal provision contained in the consultation version of the proposed 2020 Regulations at regulation 17. This decision was taken as it was felt that the reliance on judicial review would allay the majority of the concerns made by the respondents. By relying on judicial review, any person with sufficient interest will have a clear route to challenge the Secretary

of State's decisions based on the standard grounds of judicial review, in accordance with the standard timings for judicial review. The Government considers that this simplifies the process. Also, relying on judicial review would reduce the risk of both a statutory appeal and judicial review being pursued simultaneously. It would be for the court to determine the appropriate remedy.

137. Judicial review also provides a route for developers to challenge the Secretary of State's decisions, including a decision to revoke agreement to the grant of consent.

Interpretation for 'project', 'development' and 'developer' (question 1, regulation 3)

138. The Government will remove the definition of development (in the consultation version of the proposed 2020 Regulations) as the Government recognises that there was confusion caused by its use, and it is not necessary to use that term. In light of the comments, the term 'development' has been removed from Schedules 1, and 2 so the term is no longer used. The language used in the project descriptions in Schedules 1 to 3 now reflects that of the EIA Directive more closely.

139. The definition of 'developer' will be retained as drafted, as it is the Government's opinion that it is important that this term includes those who carry out the project, not just the applicants.

140. The definition of 'project' has also been amended to better reflect the intentions of the EIA Directive.

Public Consultation Requirements (question 10, 19 & 31, regulation 11 and 12)

141. The proposed 2020 Regulations will include provision so that developers are only required to provide one copy of the EIA documents in response to a request for the documents.

142. The Government has decided to remove the requirement for notification of the Secretary of State's decision regarding whether to agree to the grant of consent and the OGA's decision on whether to grant consent *via* the Gazettes. Notification would be provided on the GOV.UK website. Those without internet access can still obtain information by contacting the Secretary of State by phone or post, and this will be specified in the initial notice of the proposed project at the time of consultation.

Publication of EIA documents on developer's website (question 14 regulation 11(5))

143. The Government has amended drafting of the proposed 2020 Regulations to state that the developer must publish the EIA documents (comprising a copy of the environmental statement, summary of the project, public consultation notice and any further information provided which was subject to further public consultation) on their website until at least three months from the date on which the notice of the consent decisions is published

Further changes that have no policy implications

144. For information, we have also redrafted regulation 8 and Schedule 6 to avoid duplication. This is intended to improve clarity but does not entail any policy change.

145. Consequential amendments have been made to update other legislation which references the 1999 Regulations, but this does not entail any policy change.

146. We have reworded the application provision at regulation 1 of the proposed 2020 Regulations to ensure that there is no regulatory overlap between the Secretary of State's regulatory functions under these Regulations, and the regulatory functions of the Devolved Administrations under the Marine Works (Environmental Impact Assessment) Regulations 2007 and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

147. The Government's view is that on reflection, there is no need to rely on the primary power under section 8(1) of the European Union (Withdrawal) Act 2018 to make these Regulations, as section 2(2) of the European Communities Act 1972 provides sufficient powers to make these Regulations, noting that section 56(1) and (2) of the Finance Act 1973 is used as the primary power to implement fees provisions.

Next Steps

The Government is grateful for the responses received to the consultation and updated the proposed 2020 Regulations as described in this Government response. Following the end of the Transition Period, the Government has committed to review the appropriateness of the objectives of the proposed 2020 Regulations and the extent to which the objectives could be achieved in a less burdensome way. These provisions are provided for in the proposed 2020 Regulations.

The Government intends to lay the proposed 2020 Regulations before Parliament in December 2020, with the Regulations to enter into force at 2300 hrs on the 31 December 2020. The Government intends to publish revised guidance on or soon after 31 December 2020, to support the new Regulations coming into force. The revised guidance will be available at:

https://www.gov.uk/guidance/oil-and-gas-offshore-environmental-legislation

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

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