



Department for Environment, Food and Rural Affairs

Environmental Impact Assessment – Joint Technical Consultation

(planning changes to regulations on forestry, agriculture, water resources, land drainage and marine works)

14 December 2016

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Note - Exit from the European Union: On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Summary table

Topic of this consultation:	<p>1. The proposed approach to implementing European Directive 2014/52/EU, amending Directive 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment;</p> <p>2. Other changes to some of the regulations listed below.</p>
Scope of this consultation	<p>The consultation seeks views on changes to the following regulations implementing the requirements of the Environmental Impact Assessment Directive (Directive 2011/92/EU):</p> <ul style="list-style-type: none"> • The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended • The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006, as amended • The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, as amended • The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, as amended • The Marine Works (Environmental Impact Assessment) Regulations 2007, as amended <p>The consultation also seeks views on proposals to revoke the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, as amended, and subsume them under the Marine Works (Environmental Impact Assessment) Regulations 2007, as amended.</p>
Geographical scope:	<p>These proposals apply to:</p> <ol style="list-style-type: none"> a) Forestry – England & Wales b) Agriculture – England only c) Water resources – England & Wales d) Land drainage – England & Wales e) Marine works – England, Wales, Northern Ireland and Scotland-offshore (beyond 12 nautical miles). The Scottish Government have already consulted separately on proposals for regulations relating to the Scottish inshore region (0-12 nautical miles) f) Fin-Fish farming – England and Wales <p>except to the extent that they apply to projects serving national defence as their sole purpose, in which case they apply on a UK wide basis.</p>
Impact Assessment:	<p>The 2014 Directive's changes aim to reduce the burden on applicants and responsible authorities by cutting the number of cases that go through the EIA process. The benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report.</p>

	<p>Defra's economists have undertaken an initial assessment of cost to business of the proposed changes and this has shown that the cost level is considerably lower in each of Defra's consenting regimes covered by this consultation than the £1million limit required to trigger the need for an Impact Assessment. We welcome the views and evidence of direct costs to business of the changed proposed to Defra EIA regulations. These views and evidence will be used in making a further assessment of the direct costs to business following this consultation.</p> <p>This European Union measure is a Non-Qualifying Regulatory Provision (NQRP) under the Better Regulation Framework. An internal triage assessment has confirmed that the measures qualify for the Fast Track. As a consequence Impact Assessments have not been prepared.</p>
To:	This is a public consultation and anyone with an interest in the proposals is welcome to respond.
Body responsible for the consultation:	This consultation is being run by the Department for Environment, Food and Rural Affairs, the Welsh Government, the Scottish Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
Duration:	Consultation starts: 14 December 2016 Consultation ends: 31 January 2017
Enquiries:	<p>During the consultation, if you have any enquiries or wish to receive a paper copy of the document, please email: EIA.consultation@defra.gsi.gov.uk, tel: 03459 335577, post: Defra, EIA Consultation, Area 1E, Nobel House, 17 Smith Square, London SW1P 3JR.</p> <p>Further information can be found at: Defra consultations</p>
How to respond:	<p>Responses must be submitted by 31 January 2017.</p> <p>We would prefer to receive responses online via: https://consult.defra.gov.uk/housing-and-planning/environmental-impact-assessment-eia-changes</p> <p>As this is a combined consultation, the policy teams in England, Wales, Scotland and Northern Ireland will all have access to the responses submitted.</p> <p>If necessary, written responses can be submitted by:</p> <ol style="list-style-type: none"> a) email: EIA.consultation@defra.gsi.gov.uk (this includes emails from across the UK); or b) post: <ol style="list-style-type: none"> i. from England to the EIA Consultation, Defra, Land Use Housing and Planning Team, Area 1E, Nobel House, 17 Smith Square, London SW1P 3JR; ii. from Wales to Welsh Government Forestry Policy Team, Pillar H09 First Floor East Core, Cathays Park, Cardiff CF10 3NQ;

	<ul style="list-style-type: none"> iii. from Scotland to EIA consultation, Scottish Government, Marine Planning & Strategy, Area 1A South, Victoria Quay, Edinburgh, EH6 6QQ; or iv. from Northern Ireland to DAERA Marine Strategy and Licensing Team, Klondyke Building, Gasworks Business Park, Belfast, BT7 2JA. <p>If you are responding in by email or by post, please make it clear whether you are replying as an individual or submitting an official response on behalf of an organisation <i>and</i> include:</p> <ul style="list-style-type: none"> a) which country your response concerns (England, Wales, Scotland and Northern Ireland); b) your name; c) your position (if applicable); d) the name of your organisation (if applicable); e) an address (including post code); f) an email address; g) a contact telephone number; h) the number(s) of the question(s) you are answering; and i) which set of regulations (forestry, agriculture, land drainage, water resources or marine works) your comments concern.
<p>After the consultation:</p>	<p>At the end of the consultation period we will summarise the responses and place this summary on the website at: www.gov.uk/defra</p> <p>Copies of responses will be made available to the public on request. If you do not want your response – including your name, contact details and any other personal information – to be available publicly, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, this will not count as a confidentiality request.</p>
<p>Compliance with consultation:</p>	<p>This consultation is in line with the Government’s Consultation Principles. These can be found at: www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance</p>

Part 1: Explanation of the consultation – what this is about

Introduction

1.1 The EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) forms part of European law and has been implemented into national legislation by a number of implementing regulations. The EIA Directive has been amended by EU Directive 2014/52/EU (the 2014 Directive) and those amendments need to be incorporated into national legislation no later than 16 May 2017.

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

1.3 EU Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (the 2014 Directive) amended the EIA Directive simplifying the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation and a reduction in unnecessary administrative burdens. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

1.4 The EIA Directive, as amended by the 2014 Directive, can be seen via these links in either HTML format:

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

or in pdf format:

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

Abbreviations

1.5 The following abbreviations are used in this consultation:

2014 Directive	EU Directive 2014/52/EU, which amends Directive 2011/92/EU
Agriculture Regulations	The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 (SI 2006/2522)
Competent experts	The new definition (in the 2014 Directive) is: persons who, by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement
DAERA	Department of Agriculture, Environment and Rural Affairs in Northern Ireland
DCLG	Department for Communities and Local Government
Defra	The Department for Environment, Food and Rural Affairs
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIA Directive	EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
Fish Farming Regulations	The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (SI 1999/367) as amended
FCE	Forestry Commission England
Forestry Regulations	The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228) as amended
Land Drainage Regulations	The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (SI 1999/1783) as amended
Marine Works Regulations	The Marine Works (Environmental Impact Assessment) Regulations 2007 (SI 2007/1518) as amended
NI	Northern Ireland
NRW	Natural Resources Wales
Water Resources Regulations	The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (SI 2003/164) as amended

What is the purpose of this consultation?

1.6 The purpose of this consultation is to invite views on proposed changes to legislation that are needed to implement amendments introduced by the 2014 Directive.

1.7 Overall, our intention is to minimise any additional regulatory burden whilst ensuring our environment remains well-protected. In many cases, the 2014 Directive requires Member States to take particular action. Where this is the case, we have set out the changes that will be made but are not seeking views on implementation.

1.8 We are considering making some changes e.g. improvement of that part of the EIA procedure using public consultation. The improvement of public participation procedure relates to the Marine Works Regulations and we are seeking views on how the existing provisions might be improved.

1.9 In some areas the 2014 Directive lets Member States decide how to make the required changes. This consultation invites views on the proposed changes in the following specific areas: forestry; agriculture; water resources; land drainage; marine work/s and fish farming in marine waters.

1.10 We welcome comments on how we propose to implement the changes through regulations.

Who will be interested in responding?

1.11 We welcome views and evidence from anyone who is interested. We think that this consultation will be of particular interest to: local authorities; environmental bodies; land owners and managers; developers; farmers; foresters; land and forestry agents; internal drainage boards; local authorities; and users of the marine area.

Part 2: Background to Directive 2014/52/EU

History

2.1 The EIA Directive first came into force in 1985. It has been amended several times since then, including in October 2012 when the Directive and its amendments were brought together into one document – the EIA Directive. Further amendments were introduced in 2014 by the 2014 Directive. It is these changes that now require modifications to our implementing regulations.

2.2 The overall objective of the EIA Directive is to ensure that projects which are likely to have a significant effect on the environment by virtue of, among other things, their nature, size or location are required to obtain consent under the appropriate EIA regulations. This consent may only be given after an assessment has been undertaken of the project's potential environmental impact.

2.3 In 2014 Directive amended the EIA Directive, the aim of which remains the same: *to provide a high level of protection of the environment and help integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment.*

2.4 The broad intention of the 2014 amendments is deregulatory – to simplify and clarify requirements, by focusing on environmental factors that are significantly impacted by development, rather than on any potential impact.

Implementation

2.5 The EIA Directive has been implemented through a number of regulations administered by different government departments and, in some cases, by the different UK administrations for England, Wales, Northern Ireland and Scotland. The Department for Communities and Local Government (DCLG) has the overall lead for the EIA Directive. DCLG is holding a consultation on its legislation concerning environmental impact assessment [DCLG consultation](#).

2.6 The Department for Environment, Food and Rural Affairs (Defra) is responsible in England for regulations relating to forestry, agriculture, water resources, land drainage, marine works and fish farming in marine waters projects. These apply in England and Wales except for the agriculture regulations which apply in England only and the marine regulations, which apply across the UK (except the Scottish inshore region (0-12 nautical miles). For this reason, this consultation is being run jointly by Defra, the Welsh Government, the Scottish Government and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland. This is also required because of the proposed defence exemption provisions which are UK wide in their application.

2.7 In this consultation, ‘applicants’ are people, companies or organisations applying for consent for projects which require assessment under the EIA process, for instance, farmers, land/forestry managers, land owners, land/forestry agents, Internal Drainage Boards, local authorities and users of the marine environment involved in marine works for example, construction works, dredging activities and renewable energy devices.

2.8 The table below sets out the regulations considered in this consultation and the geographic area they cover.

Regulation	Information about Regulation	Geographic coverage
a) The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228) as amended (the Forestry	These EIA Regulations apply to afforestation (woodland creation), deforestation (conversion of woodland to a different land use but not development), forest roads and forest quarries (where materials are extracted to create forest roads). These Regulations apply to projects that exceed size thresholds, which differ depending on the project type and the sites’ sensitivities. They ensure forestry projects avoid or mitigate potential environmental harm. Where EIA consent is required the Regulations also ensure key stakeholders, including the public, have opportunity to comment.	England and Wales

Regulations)		
b) The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006 (SI 2006/2522) (the Agriculture Regulations)	<p>The Regulations apply to two different types of projects:</p> <p>a) projects which increase the productivity for agriculture of uncultivated land or semi-natural areas (e.g. increased levels of fertiliser, sowing seed or physically cultivating the soil); and</p> <p>b) projects which physically restructure rural land holdings.</p> <p>The regulations are designed to protect uncultivated land and semi-natural areas from being damaged by agricultural work. They also guard against possible negative environmental effects from the restructuring of rural land holdings.</p>	England
c) The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (SI 2003/164) as amended (the Water Resources Regulations)	<p>The Water Resources Regulations require an EIA to be carried out for water management projects for agriculture (including irrigation projects) which would be likely to have significant effects on the environment due to their nature, size or location. The Water Resources Regulations do not apply if the project is subject to any other EIA legislation.</p> <p>Projects involving the abstraction of water are only included if the amounts abstracted exceed 20 cubic metres in any 24 hours.</p>	England and Wales
d) The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 (SI 1999/1783) as amended (the Land Drainage Regulations)	<p>Under these Regulations, drainage bodies must prepare an EIA before carrying out any improvement works that are likely to cause significant effects on the environment. Drainage bodies are defined as the Environment Agency (EA), Natural Resources Wales (NRW), Internal Drainage Boards (IDBs) and Local Authorities. The Regulations cover not only land drainage but also include other defence against water i.e. flood defence. Improvement works include projects to deepen, widen, straighten or improve existing watercourses; or to remove or alter mill dams, weirs or other obstructions. Projects permitted under Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 are also included.</p>	England and Wales
e) The Marine Works (Environmental Impact Assessment) Regulations 2007 (SI 2007/1518) as amended (the Marine Works Regulations)	<p>The Marine Works Regulations set out the circumstances in which an EIA may be required in relation to certain marine works (referred to as “regulated activity”). The marine works to which the Regulations apply are those set out in the definition of regulatory approval in regulation 2(1). Broadly, this includes an application for a marine licence and/or certain approvals of consents for harbour works. There is some overlap with the EIA requirement under the Harbours Act 1964 for which EIA is required under the</p>	England, Wales, Northern Ireland and Scotland

	<p>Harbour Works (Environmental Impact Assessment) Regulations 1999, as amended. The Department of Transport is responsible for these Regulations and is conducting a separate consultation on changes proposed to Schedule 3 of the Harbours Act 1964, which is the section of the Act that sets out the procedure for making Harbour Revision and Empowerment Orders Department for Transport consultation</p> <p>Subject to certain exemptions (e.g. defence projects), the Marine Works Regulations require an EIA where the regulated activity is to be carried out in the course of an Annex I project. An EIA will be required for a regulated activity carried out in the course of an Annex II project where the appropriate authority determines that the project is likely because of its size, nature or location to have significant effects on the environment, having regard to the criteria set out in Schedule 1 of the Regulations. The applicant and appropriate authority may also agree that the regulated activity should be subject to an EIA.</p> <p>Where an EIA is required under the Marine Works Regulations, regulatory approval for the activity (e.g. a marine licence) cannot be granted until the EIA has been carried out and EIA consent given. The applicant must not commence the regulated activity until EIA consent has been given (regulation 4). The appropriate authority (as defined in regulation 2(1)) is responsible for giving EIA consent. If EIA consent is granted, the application for regulatory approval may proceed to determination, but the person determining that application (the regulator) must have regard to the EIA consent (regulation 24) and, in particular, to any considerations on which such consent was based (regulation 23(2) (b)) and any mitigation and monitoring measures set out in the written confirmation accompanying the EIA consent (regulation 23(2) (c)). If EIA consent is refused, the regulator may not grant regulatory approval and must treat the application for regulatory approval as having been withdrawn (regulation 24(2)).</p>	
<p>f) The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (SI 1999/367) as amended (the Fish Farming Regulations)</p>	<p>The Fish Farming in Marine Waters Regulations require an EIA to be carried out on any proposed intensive fish farming developments. The conditions apply only to finfish farms (not shellfish) which are to be located in sensitive areas, hold more than 100 tonnes of fish, or occupy more than 1 hectare of the surface area of the marine waters (including any proposed structures or excavations). The regulations also only apply to applications to The Crown Estate, as the landowner, for consents for fish farms in England and Wales.</p>	<p>England and Wales</p>

The Environmental Impact Assessment process

2.9 Environmental impact assessment (EIA) is a process that aims to provide a high level of protection to the environment by bringing environmental considerations into the preparation of projects, with a view to reducing their impact on the environment. It seeks to ensure that proposals for 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 project is allowed to proceed.

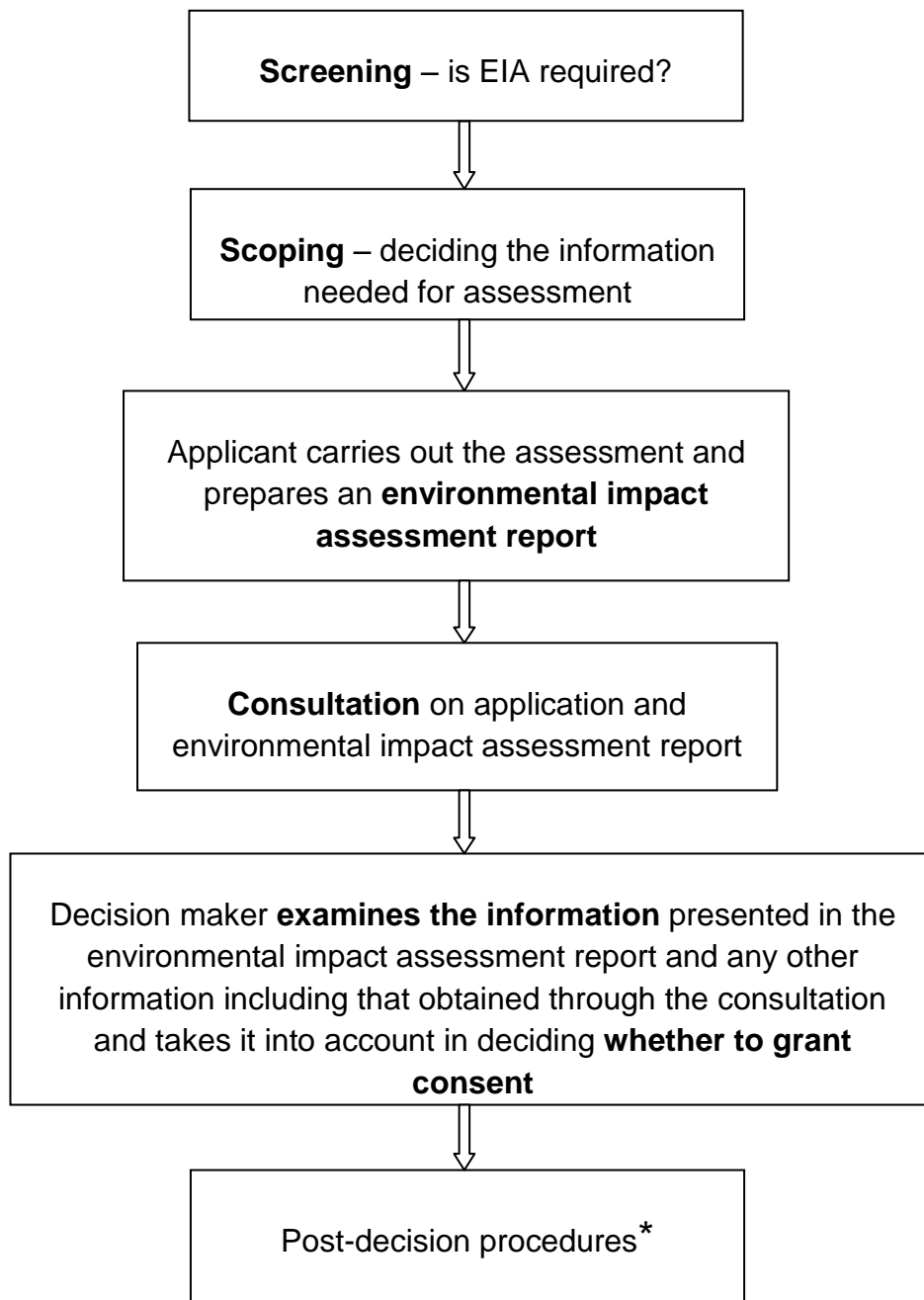
2.10 Some project types are always considered likely to have significant effects on the environment and must have an EIA in all cases. These project types are listed in Annex I of the EIA Directive. They include nuclear power stations, oil refineries and long distance railways.

2.11 Other project types are only considered likely to have significant effects in some cases depending on their nature, size and location. These project types are listed in Annex II of the EIA Directive. These include urban development and smaller energy projects. Projects listed in Annex II must be subject to an EIA only where it is considered they are likely to have significant effects on the environment.

2.12 The process for determining whether a project listed in Annex II is likely to have significant effects on the environment is usually referred to as 'screening'. Member States can decide whether a project listed in Annex II should be subject to EIA through a case-by-case examination and/or by setting thresholds or criteria.

2.13 Where an assessment is required, the applicant must provide specified information to the relevant competent authority. The information enables the competent authority to make an informed decision on whether the project should be given EIA consent to proceed. It also requires that public and other bodies are consulted and given an opportunity to participate in the decision making process.

The main steps in the process are illustrated below:



*The Marine Works Regulations provide for a slightly different two stage process. The decision on whether to grant consent for the regulated activity based on its environmental effects (EIA consent) is separate to the regulatory approval decision (e.g. marine licence decision). If EIA consent is granted by the appropriate authority, the regulator can proceed with the determination of that application for regulatory approval (e.g. the marine licence application). The regulatory approval will include any mitigation and post monitoring measures, having regard to the EIA consent decision when making the regulatory decision. If EIA consent is refused the regulator is required to treat the regulatory approval as withdrawn.

Part 3: Proposals for transposition

3.1 The Government's Better Regulation agenda includes the requirements that when transposing EU law the Government will ensure that the UK does not go beyond the minimum requirements of the measure which is being transposed and will use copy out for transposition where it is available, except where doing so would adversely affect UK interests. We have sought to follow these principles in transposing the amendments made by Directive 2014/52/EU, and to minimise additional regulatory burden whilst protecting the environment.

3.2 In transposing the amendments to the Directive, our view at the outset is that there is merit in retaining, as far as practical, the existing approach to environmental impact assessment as it is well understood by developers, local planning authorities and others involved in the procedures. Our proposals for consultation therefore represent what we consider to be the minimum changes necessary to the existing regulations in order to bring them into line with the amended Directive. This will also minimise familiarisation costs and business uncertainty.

A general description of common changes

Forestry

3.3 The main change to the Forestry Regulations, required by the amended Directive, is for applicants to provide more information upfront on their proposal's potential environmental impacts. This will inform regulators' decisions on whether EIA consent is required. While this may increase the costs to some applicants, due to the extra information required and the potential need for expert advice, it aims to give applicants the opportunity to address potentially significant impacts upfront in their scheme design so avoiding the greater cost and time associated with taking a project through the EIA process. Implementation of the common changes also presents an opportunity to review the screening thresholds for afforestation projects. This consultation seeks views on proposals to adjust the thresholds for such projects.

Agriculture and Water Resources

3.4 The main change proposed to the Agriculture Regulations and Water Resources Regulations is that information currently required at the end of the EIA process (consent stage) is required upfront (screening stage). This may lead to an increase in the use of agents/experts from the start by applicants, because of this initial increase in information at the start of the process. Although this will increase the costs in the initial stages of the process, as currently very few applications result in a consent application, it should mean that the screening decision can be dealt with more effectively as there will be more detailed information available at this early stage. As no assessments have yet been conducted under the Water Resource Regulations any costs incurred by applicants for that will be on a first-time basis.

Land Drainage

3.5 The main changes proposed to the Land Drainage Regulations are that decisions on whether works can proceed must be made within 90 days; and a new minimum time frame for public consultations on the environmental impact assessment report should be no shorter than 30 days of publication of the notice.

Marine Works

3.6 In order to transpose requirements in the EIA Directive as amended by the 2014 Directive, the main changes proposed to the Marine Works Regulations are to:

- a) insert a definition of “environmental impact assessment” within the Marine Works Regulations and make consequential amendments to the Regulations to reflect this definition;
- b) clarify that the exemption for projects serving national defence purposes: (i) must have defence as their **sole** purpose in order to qualify for the exemption; and (ii) extend the exemption to apply to projects which have response to civil emergencies as their sole purpose;
- c) transpose the provision allowing a project, which is adopted by a specific act of national legislation, to be made exempt from the public participation requirements set out in the amended EIA Directive (where the objectives of the Directive are met). We envisage that this provision will also need to apply to projects adopted by legislation made by the Devolved Administrations;
- d) include the 2014 Directive requirements for a project’s environmental statement to be prepared by a competent expert who has sufficient expertise to ensure the completeness and quality of the statement;
- e) transpose the requirement for the appropriate authority to have, or have access to, sufficient expertise to examine a project’s environmental statement;
- f) make existing obligations - to publicise the application (or direct the applicant to do so) and to supply certain information about the application to consultation bodies (or direct the applicant to do so) - subject to a requirement to do so “as soon as reasonably possible”;
- g) clarify the time frame for consulting the public on a project’s environmental statement - so this will be 42 days from the first publication of the application notice in a newspaper (the existing provision is rather unclear as to when the 42 days starts to run);
- h) amend the Marine Works Regulations to exclude their application to the Scottish inshore region (i.e. out to 12 nautical miles) since Scottish Ministers will be making their own legislation for the area; the Marine Works Regulations will continue to apply in the Scottish offshore region;
- i) make provision for co-ordination between the relevant authorities where both an appropriate assessment (under the Habitats or Wild Bird Directives) and an environmental impact assessment are required. In practice we think that the appropriate authority under the Marine Works Regulation and the competent authority under the Habitats/Wild Birds regime will usually be the same authority, but there may be situations where this is not the case;
- j) amend existing provision under the Marine Works Regulations to require that further information requested by the appropriate authority from the applicant must be directly relevant to the environmental impact assessment consent decision;
- k) amend the Marine Works Regulations to require the appropriate authority to consider whether to impose any conditions in confirming environmental impact assessment consent, and set such out clearly in confirming consent including reference to specific mitigation or monitoring conditions;

- l) supplement existing provisions relating to “screening opinions” (an opinion as to whether or not an environmental impact assessment is required for a regulated activity). In particular, the proposed changes oblige an appropriate authority to make their screening determination on the basis of (i) information provided by the applicant; (ii) other environmental assessments and (iii) the selection criteria in Schedule 1 of the Regulations (such criteria to be revised to reflect amendments to criteria in Annex III of the revised 2011 EIA Directive);
- m) include provision for a written statement of reasons to be published with a screening opinion and to require that, if the screening opinion is that an EIA is not needed, the opinion should state any features and measures envisaged to avoid or prevent what might otherwise have been any significant adverse effects on the environment;
- n) amend the Regulations to require that an appropriate authority must notify a screening opinion and statement of reasons as soon as possible after the applicant has submitted a screening request and within a period not exceeding 90 days, with provision for extension by agreement in exceptional cases; and
- o) the Marine Works Regulations will revoke the Fish Farming Regulations; fish farming requires a marine licence under the Marine and Coastal Access Act 2009 and would become a regulated activity covered by the Marine Works Regulations. This would simplify current arrangements under a single regime.

Fin-Fish Farming in Marine Waters

3.7 There are currently no fin-fish farms in marine waters around the coast of England and Wales. We therefore propose to take this opportunity to revoke these regulations. Any proposed fish farm developments subject to EIA requirements would instead be covered under the Marine Works Regulations. DAERA in Northern Ireland will make amendments to the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland 2007) which apply to Northern Ireland.

The proposals we are consulting on / amendments to the regulations

Section 1 - Common Provisions

Definitions (Article 1(1)(a) and 1(3) of the 2014 Directive – amendment to Article 1(2)(g) and 3 of the EIA Directive)

3.8 The 2014 Directive has introduced a new definition of the “environmental impact assessment”. Namely it is:

“a process consisting of:

- a) the preparation of an environmental impact assessment report by the applicant, as referred to in Article 5(1) and (2);
- b) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
- c) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the applicant in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;

- d) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
- e) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a”.

3.9 Article 1(3) of the 2014 Directive has changed the matters that the environmental impact assessment should identify, describe and assess in an appropriate manner, in the light of each individual case the direct and indirect *significant* effects of a project. The list of factors to consider has been amended to:

- a) population and human health;
- b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and wild birds protected under Directive 2009/147/EC;
- c) land, soil, water, air and climate;
- d) material assets, cultural heritage and the landscape;
- e) the interaction between the factors referred to in points (a) to (d).

3.10 The EIA should also include, where relevant, the expected effects on the factors listed above, deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

3.11 We propose to copy out this new definition and changes in to the regulations.

3.12 However, in the case of the Marine Works Regulations we propose that some elements of the definition can be copied out from the Directive but some tailoring is required for consistency with existing definitions in the Marine Works Regulations. We also envisage that some consequential amendments will need to be made to other provisions in the Marine Works Regulations, including regulation 22 (the environmental impact assessment consent decision) and regulation 24 (effect of environmental impact assessment consent decision on application and regulatory decision), to provide for consistency with the wording of the new definition of EIA (as well as other Directive requirements such as article 8a(1)).

Exemptions (Article 1(1)(b) of the 2014 Directive – amendment to Article 1(3) of the EIA Directive)

3.13 Article 1(3) has been amended to restrict the existing exemption for defence projects so that it can only apply where a project, or part of a project, has defence as its sole purpose. However, the exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose.

3.14 We propose to copy this out in all of the regulations.

3.15 The Marine Works Regulations provide for an exemption for a project serving national defence purposes but we propose to amend this exemption to follow the limitation in the amendment to article 1(3) of the EIA Directive so that it will only apply where defence is the sole purpose. We also propose to transpose the extension of the exemption to civil emergencies.

3.16 The exemption in respect of projects which have defence as their sole purpose will apply on a UK wide basis as this function is not devolved.

Co-ordinated and joint procedures (Article 1(2)(a) of the 2014 Directive – amendment to Article 2(3) of the EIA Directive)

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

3.18 We consider that coordinated procedures provide the greatest flexibility for developers around the phasing and timing of environmental impact assessment and an 'appropriate assessment' under the Habitats Directive. This is thought to reflect existing practice in England. The joint procedure would, however, require the information to inform both assessments to be dealt with in a single assessment and we have sought to apply this in a number of the regulations below.

3.19 For the Forestry Regulations we propose to include provision for both co-ordinated and joint assessments. Joint assessments would apply where either Forestry Commission England or Natural Resources Wales is the competent authority for both environmental impact assessment and Habitats and/or Wild Birds Directives. Co-ordinated assessments would apply where another regulator undertakes the assessment under the Habitats and/or Wild Birds Directives.

3.20 For the Agriculture Regulations we propose to implement a joint procedure which requires a single assessment, as Natural England is the only competent authority.

3.21 The Water Resources Regulations need no change. The Environment Agency, or Natural Resources Wales (as appropriate), will be the competent authority for both the EIA and Habitats Directives and will make the assessments.

3.22 The Land Drainage Regulations already allow drainage bodies (which are usually the competent authority for the purposes of the EIA, Habitats and the Wild Birds Directives) to adopt either the co-ordinated procedure or joint assessment procedure. We do not propose to make any further changes to the regulations, as we would like to retain this flexibility.

3.23 For the Marine Works Regulations, in most cases, we anticipate that the appropriate authority under the Marine Works Regulations and the competent authority under the Habitats and Wild Birds regimes would be the same authority. However, to cover instances where this is not the case, we propose to include provision in the Marine Works Regulations for co-ordination where both an appropriate assessment and an EIA are required. We do not think that this would result in any significant change to current procedures adopted in practice.

3.24 The Directive also allows Member States, if they wish, to choose to also apply joint or coordinated procedures to any assessments required under other EU law, including the

Water Framework Directive, the Industrial Emissions Directive and the Waste Framework Directive. The provision is not mandatory and we do not propose to include it in our regulations.

Question 1. Do you agree with these proposals?

Screening (Article 1(4) of the 2014 Directive – amends Article 4 of the EIA Directive)

3.25 ‘Screening’ describes the process where a competent authority decides if a proposed project is likely to have significant environmental effects and, therefore, if an EIA is required. The 2014 Directive has introduced a new detailed list of the information that the applicant provides to the competent authority to help it screen the application.

3.26 A change also introduced by the 2014 Directive is that applicants provide results of other assessments relating to the project’s effects on the environment at the screening stage. Currently these are provided later in the EIA process. This could include assessments under the Water Framework Directive (2000/60/EC), the Strategic Environmental Assessment Directive (2001/42/EC) and the Habitats Directive (92/43/EEC). The applicant can also provide details of any features of the project designed to avoid or prevent significant adverse effects on the environment. Article 4(5) of the EIA Directive requires the competent authority to make its screening decision on the basis of the information provided by the applicant, taking into account, where relevant, the results of preliminary verifications or assessments carried out pursuant to Union legislation other than the EIA Directive.

3.27 The 2014 Directive has introduced a requirement that the competent authorities should publish their screening decisions and explain the main reasons why an EIA is needed or not. When an EIA is not needed, the published decision must list any features of the project and/or action to be taken to avoid or prevent what might otherwise be negative effects on the environment.

3.28 Where an application is made before 17 May 2017, Article 3(1) of the 2014 Directive says that application should be screened under the provisions in the EIA Directive.

3.29 We propose to ‘copy out’ these new requirements in the Forestry, Agriculture, Water Resources and Land Drainage Regulations. For the Marine Works Regulations, we expect to copy out most elements of these requirements but some tailoring is likely to be required to reflect current wording of the regulations. In England, Wales, Northern Ireland and Scotland, where applicants seek a screening decision, they can already refer to other relevant assessments when describing the impact of a proposed project on the environment.

Question 2. Do you need information on this and, if so, what would you need from us to help you comply with these new requirements?

Thresholds (Article 1(4) of the 2014 Directive – amendments to Articles 4(3), (4) and (5) of the EIA Directive)

3.30 The 2014 Directive amends the process that allows Member States discretion to set thresholds beneath which projects listed in Annex II are not required to undertake an EIA or the level to be met before an application needs to go through the screening stage of the EIA process. The amendments also allow for absolute thresholds to apply, i.e. if a threshold is exceeded EIA consent is automatically required.

3.31 Article 4(3) of the EIA Directive requires the relevant selection criteria in Annex III to be taken into account where Annex II projects are assessed on either a case-by-case basis or where thresholds or criteria have been set by Member States. The selection criteria in Annex III have been revised.

3.32 There are no proposals to change existing provisions in respect of thresholds in the Agriculture, Water Resources, Land Drainage and Marine Works Regulations. We propose only to amend the Forestry Regulations.

3.33 The Forestry Regulations already include thresholds to help determine when a project is likely to have a significant impact on the environment. These thresholds act as guidelines: exceeding the threshold does not automatically mean a project requires an EIA - a decision is made through the screening process. Similarly, projects below the threshold may require EIA consent. We will retain this flexibility for forestry projects which enables reasoned decisions to be made on whether a project requires consent.

Thresholds for Afforestation Projects

3.34 The UK Government and Welsh Government share the forestry sector's aspiration to create more woodland in England^[1] and Wales. To support this we are considering how changes to EIA thresholds for afforestation projects could encourage woodland creation by providing land managers with greater certainty over the EIA process. In doing so environmental protection will **not** be compromised.

3.35 We would therefore like to seek your views on proposed changes to the thresholds for afforestation projects. These include planting new woods and forests, direct seeding or natural regeneration and planting Christmas trees or short rotation coppice.

3.36 The current thresholds for afforestation projects in England and Wales are:

Sensitive areas:	2 hectares where the land is in a National Park, Area of Outstanding Natural Beauty. 0 hectares in all other sensitive area, i.e.: National Nature Reserves, Sites of Special Scientific Interest, World Heritage Sites, Scheduled Ancient Monuments, Special Area of Conservation (including candidate sites), the New Forest Heritage Area, and sites classified or proposed as a Special Protection Area.
Non-sensitive areas:	5 hectares

[1] The UK and Welsh Government share aspirations with the forestry sector to increase woodland cover in England from 10% to 12% by 2060. This would require 5,800ha of woodland creation per year.

Thresholds for Afforestation Projects in England

3.37 Using spatial data showing where there are features which may limit the potential for woodland creation, we have developed maps of 'low risk areas'¹ in England. We believe there is potential to increase the threshold for afforestation projects within these low risk areas while ensuring environmental protection is not compromised.

3.38 The current thresholds in sensitive areas (2 hectares in National Parks and the Broads and Areas of Outstanding Natural Beauty; otherwise² 0 hectares) would not change under any proposal. Our evidence base to support these proposals is available here: www.forestry.gov.uk/england-eiaconsultation

3.39 The proposed changes in England include a further option to those proposed in Wales (set out below). This accounts for England's lower proportion of woodland cover (10% compared to 15% in Wales) and feedback from stakeholders that 100 hectares is the minimum area to create commercially viable woodland.

Question 3. Please give us your views on the following proposals for increasing afforestation thresholds in England:

- a) Retain the current thresholds in non-sensitive areas (5 hectares) but, in the low risk areas, increase the threshold from 5 to 20 hectares.**
- b) Retain the current thresholds in non-sensitive areas (5 hectares) but, in the low risk areas, increase the threshold from 5 to 50 hectares.**
- c) Retain the current thresholds in non-sensitive areas (5 hectares) but, in the low risk areas, increase the threshold from 5 to 100 hectares.**

Question 4. Please give us your views for the following proposals for ensuring environmental protection if the threshold in England is increased:

- a) Retain the current approach: no requirement to notify Forestry Commission England of proposals under threshold before starting work.**
- b) Notify Forestry Commission England of the proposal and provide information that confirms it complies with the UK Forest Standard – demonstrating how woodland design will mitigate any adverse environmental impact – and allow 28 working days for Forestry Commission England to review this before starting work.**
- c) Notify Forestry Commission England of the proposal and provide information that confirms it complies with the UK Forestry Standard – demonstrating how woodland design will mitigate any adverse environmental impact - and allow**

¹ Low risk areas are land in England where the following do not apply: RSPB Important Bird Areas, Acid Vulnerable Catchments, National Parks, Areas of Outstanding Natural Beauty, Local Nature Reserves, Common Land, Higher Level Stewardship agreements, Best and Most Versatile Agricultural Land (Land Classes 1-3a), Sites of Special Scientific Interest (SSSI); Special Area of Conservation (SAC), Special Protected Area (SPA), National Nature Reserve (NNR), World Heritage Sites, priority habitat shown on the Priority Habitat Inventory, Registered battlefields, Registered parks and gardens and deep peat.

² Within National Nature Reserve or Site of Special Scientific Interest; World Heritage Site; Scheduled Ancient Monument; Special Area of Conservation (including candidate sites); the New Forest Heritage Area, or a site classified or proposed as a Special Protection Area.

42 working days for Forestry Commission England to review this, including placing on a public register for local stakeholders to comment before starting work.

Thresholds for Afforestation Projects in Wales

3.40 In Wales, the Welsh Government has worked with stakeholders to develop the woodland opportunities map. The woodland opportunities map can be accessed at: <http://lle.gov.wales/apps/woodlandopportunities>. This map excludes all sensitive sites and shows that approximately 35% of Wales is not environmentally sensitive and is capable of supporting woodland creation proposals. Woodland creation in Wales is principally supported by the Glastir Woodland Creation Scheme, part of the Rural Communities Rural Development Plan. Glastir supports mixed and native planting rather than outright conifer planting and requires woodland planting to comply with the UK Forestry Standard, the benchmark for sustainable forest management in the UK.

3.41 A zero or very low threshold in sensitive areas is appropriate to protect the special environmental characteristics of those areas. The current 5 hectare threshold for non-sensitive areas is low, particularly as most woodland creation in Wales comes through a controlled or regulated channel, such as Glastir, and the environmental sensitivities associated with such planting are low. There is scope to increase the threshold level for non-sensitive areas to encourage woodland creation whilst ensuring that larger planting projects with greater environmental sensitivities are still appropriately screened.

Question 5. Please give your views on increasing the thresholds in non-sensitive areas in Wales to one of two levels:

- (a) increase the afforestation threshold for non-sensitive areas from 5 hectares to 20 hectares;**
- (b) increase the afforestation threshold for non-sensitive areas from 5 hectares to 50 hectares.**

Time period for making screening decisions (Article 1(4) of the 2014 Directive – amendment to Article 4 of the EIA Directive)

3.42 The 2014 Directive has introduced a requirement that the competent authority must make its screening decision as soon as possible and within 90 days from the date the developer providing all the information required. This period can be extended in exceptional circumstances with the authority explaining the reason for the extension.

3.43 Under the existing Forestry Regulations two different time periods can apply to EIA screening decisions:

- a) Where Forestry Commission England (FCE) or Natural Resources Wales (NRW) receive an application for a screening decision they currently have to give their decision or agree an extension within 28 days. We propose a change to allow FCE and NRW up to 90 days to give these screening decisions. This proposed change is to provide FCE and NRW time to review the extra information applicants have to provide at the screening stage and to document decisions. FCE and NRW will work as efficiently as they can and will still aim to work to the original 28 days' time period where possible.

b) In contrast where no application is received and FCE or NRW choose to give screening decisions under their own initiative, no time period applies. No change is proposed to this arrangement.

3.44 For the Agriculture Regulations we propose to copy the new paragraph out into the Regulations, but Natural England will continue to be required to make their determination as soon as possible.

3.45 The Water Resources Regulations currently provide a three week period for screening opinion from initial request or submission of further information, unless extended by agreement with the applicant. If the authority wishes to extend this deadline for making a determination they would inform the applicant in writing giving the reasons for the extension and the date when its determination will be made, which we propose to retain. We will copy out the requirements to conclude a decision within 90 days.

3.46 In the current Land Drainage Regulations there are no time limits on when a decision must be made (either by the drainage body or by the Minister). We propose to change this to ensure that the decision by the competent authority must be concluded within 90 days. We propose to 'copy out' the change from the 2014 Directive.

3.47 The Marine Works Regulations currently require a screening opinion to be notified to specified parties as soon as reasonably practicable and also provides that publication must take place as soon as possible after notification to applicant. There are no requirements on the appropriate authority to make determination within a fixed time period. We propose to amend the existing requirements so that an appropriate authority must notify a screening opinion and statement of reasons to specified parties as soon as possible after the applicant has submitted a screening request (which contains all required information) within a period not exceeding 90 days from submission of such a request. We intend to allow extension of this period in exceptional cases.

<p>Question 6. Do you agree with our proposals on changing the time for making screening decisions?</p>
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Scoping (Article 1(5) of the 2014 Directive – amending Article 5(1) and (2) of the EIA Directive)

3.48 After the screening stage, if a proposed project needs an Environmental Impact Assessment, it can go through the 'scoping' stage. This is voluntary and allows an applicant to request an opinion from the competent authority to list the scope and level of detail of the information to be included in their environmental impact assessment report (sometimes referred to as an environmental statement).

3.49 Before issuing a scoping opinion the competent authority must consult with other defined authorities that may have an interest in the proposals. The scoping opinion given must account for information provided by the applicant on the project, such as its location, technical capacity and its likely impact on the environment.

3.50 The EIA Directive sets out the minimum information that has to be provided for a screening opinion and the scoping opinion request. The EIA Directive includes this in Annex IV together with a longer list of topics that should be covered if relevant. The 2014 Directive has introduced minimum requirements to Article 5(1) of the EIA Directive, so that

it sets out what should be included in an environmental impact assessment report. This includes mitigation measures, a non-technical summary, and a description of reasonable alternatives (if the applicant has already studied these) – see *next section*.

3.51 We propose to copy out these new requirements in the regulations. However, for the Marine Works Regulations some minor amendments to the Directive text are required to reflect existing terminology used in the Regulations. We also propose to include a provision to clarify that an appropriate authority is not precluded from asking for further information notwithstanding that an environmental statement has been submitted which contains all of the information specified in the scoping opinion. We think this is already implied in regulation 14 of the Marine Works Regulations but wish to make it clearer in the scoping provisions. Further information requested should be directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment and we propose to clarify this in the Marine Works Regulations.

Consulting others in the EIA process (Article 1(6) of the 2014 Directive – amending Article 6 of the EIA Directive)

3.52 The competent authority has to publish its notice of development applications requiring an EIA, giving the public and other stakeholders opportunity to review and comment on the EIA's findings. Feedback must be considered before issuing a consent decision. The 2014 Directive has introduced a requirement that information is made available electronically, in addition to more traditional methods such as bill posting. Competent authorities can add newspaper notices to the ways of consulting.

3.53 We have considered removing specific references to newspapers in the regulations in order to reduce the cost of advertising. However, following consideration of the possible implications, as part of our Equalities Impact Assessment, we propose to keep the requirement to use non-electronic methods for notices.

3.54 The 2014 Directive has introduced a requirement for a new minimum time for public consultations (on the environmental impact assessment report) of at least 30 days. This is an increase from 28 days.

3.55 We propose to copy out these new requirements into all regulations, except for the Agriculture Regulations which already have a longer (six week) timeframe and the Marine Works Regulations which provide for 42 days from date of publication of the notice for public representations. We propose to amend the current regulations to make it clear that the 42 days begins to run from first publication of the notice. We also propose to require an appropriate authority to publish notice of the application and provide relevant material to consultation bodies (or direct the applicant to do so) “as soon as reasonably practicable”.

3.56 The Marine Works Regulations also provide for public participation (regulation 16 and Schedule 5) but the procedure is prescriptive and complicated. We are considering whether the current approach can be simplified and would welcome views on this before deciding on amendments to the existing approach.

Question 7. Do you agree that we should continue to use non-electronic methods for notices for alerting the public to consultation?

Question 8. Do you think the public participation procedure in the Marine Works Regulations should be simplified? If so, please say how.

Consultations on trans-boundary effects of a project (Article 1(7) of 2014 Directive – amends article 7(4) of the EIA Directive)

3.57 This amendment concerns projects that are likely to have a significant effect on the environment in another country in the EU, allowing public consultations on projects to be run by an appropriate joint body.

3.58 This is something that Member States are required to do. However, in the case of Defra's EIA regulations it is only relevant in the context of the Marine Works Regulations. None of the other regulations concern projects which are likely to have transboundary effects.

3.59 The Marine Works Regulations already contain provisions relating to providing affected European Economic Area (EEA) States with information and consultation with them. We are proposing to make some amendments to the existing provisions to combine the requirements in regulation 18 and 19 and provide that where an appropriate authority considers that an EEA State is affected by the application or where another EEA State is likely to be significantly affected, the appropriate authority must send relevant information to that EEA State as soon as possible with provision for additional information to be provided where an EEA State wishes to participate in consultation. In the Regulations we propose to clarify that the reasonable period agreed for consultation with EEA State authorities should allow for the opinions of its public and of the authorities referred to in Article 6(1) of the Directive on the information supplied. We also wish to insert provision to comply with Article 7 in respect of a project taking place in another EEA State which is likely to have significant effect on the environment of the UK (including the UK Marine Area but excluding the Scottish inshore region). The purpose of such a provision is to enable information received about a project taking place in another EEA State to be made available to relevant authorities and the public so that participation in that State's consultation procedure can take place.

3.60 We propose not to copy out these new requirements into the regulations.

Consent - Explaining Decisions and Monitoring of significant environmental effects (Article 1(9) of the 2014 Directive – inserts new provision Article 8a into the EIA Directive)

3.61 This new provision from the 2014 Directive sets out requirements for information to be included in a decision to grant development consent. Following consultation, where a competent authority decides to grant consent for a project, the decision is given in writing. The decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions in the project to reduce the risk of significant adverse effects on the environment. Where the decision is to refuse consent, the main reasons for the refusal are given.

3.62 A notice of a decision must also include any planned monitoring measures. We have some flexibility on the procedures for monitoring for significant adverse environmental effects. The monitoring, including how long it happens, should be proportionate to the nature, location and size of the project and the significance of its effects on the environment. We can keep existing monitoring arrangements.

3.63 The authority will inform the public and the statutory consultation bodies about the decision and its content, including a summary of the results of the consultation.

3.64 With respect to the Forestry Regulations no change is proposed; Forestry Commission England (FCE) or Natural Resources Wales (NRW) already provide a statement setting out the reason for granting consent and any associated conditions.

3.65 For the Marine Works Regulations we propose to make the following changes in order to implement Article 8a requirements:

- a) Article 8a(1) – We propose to include provision in regulation 22 of the Marine Works Regulations (the EIA consent decision) requiring an appropriate authority to consider whether to impose any conditions on EIA consent, including reference to mitigation or monitoring conditions. We propose to adopt wording consistent with article 8a(1)(b) and 8a(4) when describing such mitigation and monitoring conditions. We propose to amend regulation 24 so that the reasoned conclusion in the EIA consent decision, as well as any environmental conditions, description of any features and/or measures envisaged to avoid, prevent or reduce significant adverse effects on the environment and monitoring measures attached to the EIA consent decision are incorporated into the regulatory approval decision (e.g. marine licence). We propose to include provisions in the Regulations for article 8a(1) requirements to be met in cases where the EIA has been carried out under a separate regime to the Marine Works Regulations and the appropriate authority has invoked the regulation 10(1)(b) of the Regulations. The purpose of such amendments is to enable the reasoned conclusion and any relevant information required under article 8a(1) which is included in the decision to grant development consent under another EIA regime (e.g. terrestrial planning or harbours regimes) to be incorporated into that regulatory decision.
- b) Article 8a(2) – The Marine Works Regulations already provides for reasons to be given for the issuing of a positive EIA consent decision. We propose to make some amendments to the existing wording to more closely reflect the Directive requirements. In particular, we propose to include a requirement for the regulator to give reasons in the regulatory decision in the event of refusal.
- c) Article 8a(3) – The article applies provisions to procedures which are not part of the application for development consent. This article is especially relevant for the Marine Works Regulations due to the two stage approach adopted, i.e. EIA consent decision is separate to regulatory approval. We have interpreted the provision to mean that information required under article 8a(1) and (2) must be included in both the EIA consent decision and the regulatory decision, as well as compliance under article 8a(6).
- d) Article 8a(4) – This article aims to ensure environmental conditions are implemented by the developer and provides for Member States to determine procedures regarding monitoring significant adverse effects. The marine licensing framework provides for monitoring. We also propose to include a provision requiring that, when considering whether to impose a monitoring condition (see paragraph on article 8a(1) above), an appropriate authority must: (i) consider whether to make provision for potential remedial action; (ii) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the project and the significance of its effect on the environment; and (iii) consider (in order to avoid duplication of monitoring) whether existing monitoring arrangements arising from other Union legislation are more appropriate than imposing a monitoring condition.
- e) Article 8a(5) – The article requires decisions referred to in article 8a(1)-(3) to be taken within a reasonable period of time. We propose to include provision requiring the EIA consent decision and regulatory decision to be taken within a reasonable period of time,

taking into account the nature and complexity of the project and regulated activity. This is envisaged to be subject to existing provisions in the Regulations which allow an appropriate authority to suspend progress with an application until specified steps have been completed by the applicant (e.g. provision of required information).

f) Article 8a(6) – The article requires the reasoned conclusion on the significant effects of the project on the environment and decisions referred to in article 8a(3) are up to date when the competent authority takes a decision to grant development consent. We propose to include provision requiring the reasoned conclusion to be up to date at the time that both EIA consent decision and regulatory approval decision are taken. We also propose to include provision to the effect that the EIA consent decision must be up to date when the regulatory decision is taken, though in practice we expect that there would not usually be a significant period of time between the EIA consent decision and the regulatory decision being taken.

3.66 The Marine Works Regulations require an appropriate authority to send written confirmation of its EIA consent decision to the applicant, regulator (if not the same body as the appropriate authority), members of the public who submitted representations, consultation bodies which participated in the consultation and EEA State authorities consulted. We wish to include an equivalent obligation on the regulator in respect of notification of the regulatory decision to such parties. This notification obligation on the appropriate authority and regulator will be carried out as soon as reasonably possible.

3.67 With respect to the other regulations, we propose to copy out these new requirements.

Section 2 - Related requirements

3.68 The 2014 Directive introduces several other related requirements:

Competent experts (Article 5(3) of the 2014 Directive – amends Article 5(3) of the EIA Directive)

3.69 The 2014 Directive has introduced a requirement that the applicant must ensure that the environmental statement is prepared by competent experts. Also, the competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement. Our initial view is that most decision makers either have people with sufficient expertise within their teams to examine the environmental statement, or could readily obtain access to such expertise. They will also have any comments of the statutory consultation bodies, including Natural England and the Environmental Agency to assist them.

3.70 We propose to copy out these provisions into our Forestry, Agriculture, Water Resources and Land Drainage Regulations. In the case of the Marine Works Regulations we will clarify the terms in the Regulations so that they are in line with the 2014 Directive. Further information requested should be directly relevant to reaching the reasoned conclusion.

3.71 We propose to adopt the following definition of ‘competent experts’: “persons who, by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement”. We propose adopting this across all the regulations. In the Marine Works Regulations, we propose to require the applicant to

include a statement in the environmental statement setting out how this provision has been met.

Question 9. Do you agree with our proposals?

Conflicts of interest (Article 1(9) of the 2014 Directive – inserts Article 9a into the EIA Directive)

3.72 The 2014 Directive has introduced a requirement that the competent authorities have to be objective and avoid conflicts of interest. Where the competent authority is also the applicant, there must be appropriate separation between the people making the application and the people carrying out the role as competent authority.

3.73 We do not propose a change to the Forestry Regulations. This is because Forestry Commission England (FCE) and Natural Resources Wales (NRW) as public authorities are already subject to public law principles that require them to act in an objective manner and to avoid conflicts of interest. This is reflected in the organisational structures of FCE and NRW which separate regulatory from operational activity to avoid conflicts of interest.

3.74 For the Agriculture and Water Resources Regulations we propose to copy out these new requirements in to the regulations.

3.75 In respect of the Land Drainage Regulations, public bodies already carry out their functions in a way which does not give rise to a conflict of interest. In England, local authorities and Internal Drainage Boards have to clear their proposed works (including clearance of the EIA) with the Environment Agency before starting. The Environment Agency have no separate body from whom they must seek clearance, but the decision and responsibilities for the project and for the EIA are held by different teams. Our view is that there is already sufficient functional separation in the governance arrangements between those seeking to undertake the land drainage improvement project and those responsible for approving the EIA. We are comfortable that Natural Resources Wales (NRW) has the functional separation too, so we do not therefore propose making any further amendments to the regulations.

3.76 In the case of the Marine Works Regulations there are currently no provisions. We wish to insert a provision broadly adopting a copy out approach.

Penalties (Article 13 of the 2014 Directive – inserts Article 10a into the EIA Directive)

3.77 The 2014 Directive requires that we must have penalties for infringements of our EIA regulations. The penalties have to be effective, proportionate and dissuasive.

3.78 We do not propose any changes to the existing regulatory provisions.

Section 3 - Other changes in current regulations

Agriculture Regulations

3.79 We have identified the four following changes which we consider will help to clarify the Agriculture Regulation and improve the process:

- a) **Change to the current definition of “cultivated”**. The current definition is set out at regulation 2 (1) which reads: “cultivated by physical means (including ploughing and harrowing) or chemical means (including the application of fertilisers)”. It is proposed that the definition should be amended to read “cultivated means cultivated by physical means (including all agricultural activities that break the soil surface) or chemical means (including the application of fertilisers or soil enhancers)”.

Question 10. Do you agree with the proposed change?

Question 11. Do you have an alternative proposal?

- b) **Change to the definition of “good environmental condition”**. Regulation 27 (2) (b) states: “A remediation notice may require the person – to take such other steps as Natural England thinks fit to return the relevant land to **good environmental condition**”. The current Regulation contains no definition of what is “good environmental condition”. This term is also used in cross compliance and it is proposed that a definition will help to clarify the position for NE and end users. Change the current wording from: “(b) to take such other steps as Natural England thinks fit to return the relevant land to good environmental condition” to (b) to take such other steps as Natural England thinks fit to ensure the relevant land can support the environmental interest/s which have been identified on that land”.

Question 12. Do you agree with the proposed change?

Question 13. Do you have an alternative proposal?

- c) We would like to be able to alter the time limit within which someone can bring an appeal in order to enable the applicant to take steps to rectify the position and or negotiations to proceed to a solution and thereby avoiding the need for an appeal. To this end we would like at regulation 31 (3) (c) the following sentence inserted: “This period may be extended by 14 days if both parties agree to do so by mutual consent.”

Question 14. Do you agree with the proposed change?

Question 15. Do you have an alternative proposal?

- d) We are also proposing to continue to exempt common land projects from the EIA Directive where the consent regime for common land under section 38 of the Commons Act 2006 already applies. We will amend the reference to section 194 of the Law of Property Act 1925 Act, in paragraph 3(2)(f) of the Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006, by a reference to section 38 of the Commons Act 2006. All applications for consent for “restricted works” under section 38 of that Act will be determined by the Planning Inspectorate, on behalf of the Secretary of State, against the detailed criteria set out in section 39 of that Act and in accordance with the Defra’s Common Land consents policy.

Question 16. Do you agree with the proposed change?

Marine Works Regulations

3.80 We have identified the following which are not covered in the previous parts of this document and would welcome any views you have.

3.81 Article 2(4) sets provisions in exceptional cases to exempt a specific project – the Marine Works Regulations currently make provision for exempting regulated activity from an EIA where exceptional circumstances apply. We propose to supplement the existing provisions to transpose article 2(4)(a) (whether another form of assessment is appropriate) and (b) (making certain information available to the public) of the EIA Directive and will use copy out approach.

3.82 Article 2(5) relates to projects adopted by specific act of national legislation, allowing exemption from public consultation – the Marine Works Regulations do not currently contain this exemption. We propose to amend the Regulations to include provision for this, taking account of legislation relating to the Devolved Administrations as appropriate.

3.83 Article 5(3) requires use of competent experts – the Marine Works Regulations will take the same approach as the rest of the EIA Regulations in this consultation. However, in relation to Article 5(3)(c) we will clarify that in line with this article, further information requested should be directly relevant to reaching the reasoned conclusion.

3.84 Article 9(1) sets provisions for informing the public and consultation bodies – the Marine Works Regulations require an appropriate authority to send written confirmation of its EIA consent decision to the applicant, regulator (if not the same body as the appropriate authority), members of the public who submitted representations, consultation bodies which participated in the consultation and EEA State authorities consulted. We propose to include an equivalent obligation on the regulator in respect of notification of the regulatory decision to such parties. We propose that this notification obligation on the appropriate authority and regulator will be carried out as soon as reasonably possible.

3.85 We propose to amend the Regulations so that an appropriate authority is required to ensure that:

- a) Notice of EIA consent decision is published (i) electronically on the appropriate website for the authority; (ii) in the newspaper(s)/publication(s) used for the notice of the application required by the Regulations and (iii) in such other manner as considered appropriate.
- b) Such notice will state the information required in the Regulations as well as a statement containing the information referred to in Article 9(1)(b) is available (i) on the relevant Public Register (for regulated activities under the Marine and Coastal Access Act 2009; (ii) at the address/place nominated under the Regulation, for other regulated activities.
- c) Such notice will also state the times at which the relevant Public Register or information at the relevant address/place may be inspected.

3.86 We also propose that the same provisions apply to the regulator in respect of regulatory decision (if they are not also the appropriate authority).

3.87 Article 9(2) (transboundary requirements): Regulation 23(1)(e) of the Marine Works Regulations requires an appropriate authority to send written confirmation of the EIA

consent decision to any authorities of an EEA State consulted under regulation 20 Marine Works Regulations. We wish to clarify that, in addition to written confirmation of the EIA consent decision, the appropriate authority shall send a statement containing the information set out in article 9(1)(b) of the EIA Directive to such authorities. We also propose to provide that the regulator shall send a statement containing the information set out in article 9(1)(b) to such authorities.

Welsh Language

3.88 The policy approach set out in this consultation paper is to transpose the requirements of the Directive to ensure the environment remains well-protected whilst reducing administrative burdens. We would like to know your views on the effects that this policy approach would have on the Welsh language.

3.89 We do not believe that the policy affects opportunities for people to use the Welsh language or treats the language less favourably than English, or that the policy could be reformulated or revised to have positive effects.

Question 17. Do you think that the policy approach proposed has any implications for the Welsh language?

Impact assessment

3.90 The 2014 Directive's changes aim to reduce the burden by cutting the number for cases that go through the EIA process, the benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report.

3.91 Defra's economists have undertaken an initial assessment of cost to business of the proposed changes and this has shown that the cost level is considerably lower in each of Defra's consenting regimes covered by this consultation than the £1million limit required to trigger the need for an Impact Assessment. We welcome the views and evidence of direct costs to business of the changed proposed to Defra EIA regulations. These views and evidence will be used in making a further assessment of the direct costs to business following this consultation.

Views and evidence of direct costs to business of the changed proposed to EIA regulations are welcome.

Equalities

3.92 Defra, the Welsh Government and the Scottish Government share in the public sector equality duty under the Equality Act 2010 which came into force across Great Britain on 5 April 2011. For Northern Ireland Section 75 of the Northern Ireland Act 2008 places a similar statutory duty on public authorities.

3.93 While developing these proposals we assessed the impact of the changes to our EIA regulations, having regard to the public sector equality duty. As part of the assessment we

considered removing the requirement to use newspapers as part of the obligation on competent authorities, in exercising their functions to publish scoping decisions to consult the public on proposed projects. We came to the conclusion that keeping the reference to newspapers would help give access to have due regard the published consultations to the need to: sectors of the public without computer access.

3.94 Based on our initial assessment of the other proposals, we think there is likely to be no impact on vulnerable groups, but will keep this under review.

Part 4: What happens next?

4.1 The closing date for this consultation is 31 January 2017. Responses received by that date will be analysed and taken into account by Ministers in their consideration of the proposals for amending the regulations. The consultation responses will be published. If you wish your response not to be published, please make that clear in your reply.



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