

<b>Title:</b> Transposition of the European Directive 2014/52/EU (the 'EIA Directive') through the Marine Works Regulations  <b>IA No:</b> Defra 2060 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Department for Environment, Food and Rural Affairs <b>Other departments or agencies:</b>	Impact Assessment (IA)			
	<b>Date:</b> 30/03/2017			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> EU			
	<b>Type of measure:</b> Secondary legislation			
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**Summary: Intervention and Options** **RPC Opinion:** Not Applicable

**Cost of Preferred (or more likely) Option**

Total Present Value	Net Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Status	Target
£-0.66m	£-0.66m	£0.1m	Not in scope	Non qualifying provision	

**What is the problem under consideration? Why is government intervention necessary?**  
 Government intervention and associated regulation is required in order to protect the marine environment and manage the activities taking place in the UK marine area. Environmental Impact Assessment (EIA) is required in order to account for environmental impacts associated with the use of the marine environment. The Directive aims to improve the process of EIAs.

**What are the policy objectives and the intended effects?**  
 The European Commission sets out the following objectives of European Union Directive 2014/52/EU amendments:  
 - modifying the process at the pre-application screening stage - that requires mandatory information from applicants to inform a decision on whether EIA consent can be granted,  
 - simplified co-ordinated assessments to be covered through the EIA,  
 - Environmental Statements to be prepared by a competent expert with sufficient expertise to fulfil the requirements for completeness and quality of environmental statements,  
 - specifying timeframes for the various stages of the EIA process,  
 - requiring stronger provisions on monitoring measures where there are conditions attached to the consent provision.

**What policy options have been considered, including any alternatives to regulation?**  
 Option 1: Do nothing. This would mean maintaining the current Marine Works Regulations 2007 (Environmental Impact Assessment) without transposing the requirements of the amended Directive. Choosing this option would result in the European Commission initiating infraction proceeding against the UK ultimately leading to fines imposed by the European Court.  
 Option 2: (preferred option) to implement the Directive in accordance with the Government's principles for transposing European Directives - through the amendment of the Marine Works Regulation 2007 (as amended). This will ensure compliance with the amended 2014 EIA Directive in a way that minimises the impact on business. No other options are feasible.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** May 2022

Does implementation go beyond minimum EU requirements?	No			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

**Signed by the responsible Minister:** Thérèse Coffey **Date:** 24th April 2017

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Implement the Directive in accordance with the Government's principles for transposing European directives, which is to minimise the impact on business

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2017	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: £-0.66m

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low						
High						
Best Estimate	N/A		£0.1m		£-0.66m	

### Description and scale of key monetised costs by 'main affected groups'

The main additional costs will come from the requirement of section (8(a)(1) of the EIAD for the appropriate authority in order to set out in the EIA consent decision the conditions and monitoring measures that the Marine Management Organisation (MMO) put in a marine licence. This would lead to extra costs that would be passed onto the applicant and the best estimate is about c£2000 per application. Total discounted costs over 10 years are expected to be £659,090 assuming an average of 31 consents applications per year. Based on internal data from the MMO.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low						
High						
Best Estimate						

### Description and scale of key monetised benefits by 'main affected groups'

### Other key non-monetised benefits by 'main affected groups'

The amended Directive will ensure an increased level of protection of the marine environment, which the public authority will take into account when deciding whether to carry out the EIA. Resulting in a better-structured process and that gives a better alignment between national and European legislation. It is currently difficult to accurately predict the scale of these benefits as they predict the effects of projects to the marine environment.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Costs are estimated based on the average amounts of applicants MMO receive per year.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: -£0.1m	Benefits:	Net: -£0.1m	

# Evidence Base

## 1 The policy issue and rationale for Government intervention

1.1 Government intervention and associated regulation is required in order to protect the marine environment and activities taking place in the seas. Marine space and resources face increasing use and competition for that use, e.g. from renewable energy, aggregate extraction, fisheries, tourism and marine recreation. Moreover, the government has recognised the need for sustainability in the context of the marine environment. The Environmental Impact Assessment (EIA) is required in order to account for environmental impacts associated with the use of the marine environment. For the marine environment, MMO already considers the EIA process under the Marine Works Regulations 2007. DIRECTIVE 2011/92 /EU of 13 December 2011 have codified the initial Directive of 1985 and its three amendments. DIRECTIVE 2014/52 /EU have amended directive 2011/92/EU in 2014 (for detailed information please refer to Review of the EIA Directive). The Marine Works Regulations 2007 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 and it is in line with the current EIA Directives. Broadly, this includes an application for:

- (i) a marine licence under Part II of the Food and Environmental Protection Act 1985 (FEPA);
- (ii) a marine licence or variation under Part 4 of the Marine and Coastal Access Act 2009 (MCAA);
- (iii) a marine licence or variation under the Marine Scotland Act 2010; and
- (iv) certain approval of consents for harbour works (except in relation to Northern Ireland).

1.2 The harbour works covered by the Marine Works Regulations are defined in regulation 2(1). This overlaps with the EIA requirement under the Harbours Act 1964 for which EIA is required under the Harbour Works (EIA) Regulations. The Department of Transport are responsible for these Regulations and are conducting a separate consultation and RTA 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.

1.3 Subject to certain exemptions (e.g. defence projects), the Marine Works Regulations 2007 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.

1.4 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 been given. The applicant must not commence the regulated activity until EIA consent has been given. The appropriate authority 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 and, in particular, to any considerations on which such consent was based and any mitigation and monitoring measures set out in the written confirmation accompanying the EIA consent. If EIA consent is refused, the regulator may not grant regulatory approval and must treat the application for regulatory approval as having been withdrawn.

1.5 Under the MCAA 2009 certain marine licensing functions are given to the “appropriate licensing authority” which is the Secretary of State in English waters (and the areas offshore from Wales and Northern Ireland). Apart from a number of powers that are retained by the Secretary of State, most licensing functions in England have been delegated to the Marine Management Organisation (MMO), a non-departmental public body set up under the above Act. Welsh Ministers delegated their licensing functions under the Act for Welsh inshore regions to the Natural Resources Wales (NRW) since April 2013. In Northern Ireland the functions are carried out by the Marine and Fisheries Division of the Department of Agriculture, Environment and Rural Affairs (DAERA) and Marine Scotland are responsible for marine licensing functions under their respective Act for inshore and offshore regions, except where the Secretary of State has reserved powers for some offshore regions.

1.6 Licensable activities are assessed for any potential adverse effects before being consented. Certain licensable marine activities, which may have significant impacts, would undergo an EIA under the Marine Works Regulations or an appropriate assessment under the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) in order to ensure compliance with current EU Directives. In granting a marine licence, the appropriate licensing authority can include conditions necessary to ensure that the activity does not cause harm to the environment.

1.7 The Marine Works Regulations are UK-wide and operates a two-way approach, i.e. EIA consent and regulatory approval. The Regulations apply to the MMO, the Devolved Administrations and to Marine Scotland for inshore and offshore regions. However Marine Scotland are due to introduce their own EIA Regulations under the 2014 Directive for inshore regions only but offshore region will remain within the amending UK-wide Regulations as Scottish Ministers do not have legislative powers to introduce regulations where reserved functions are maintained by the Secretary of State.

1.8 The Marine Works Regulations 2007 already implements provisions from the original EIA Directive (Council Directive 85/337/EEC) as amended in 1997, 2003 and 2009 before being codified in 2011 as Directive 2011/92/EU. Where an application is likely to have significant impacts on the marine environment the appropriate licensing authority will carry out an environmental impact assessment (EIA) for screening opinions to determine whether an EIA is needed, and, where it is, provide a scoping opinion to inform what information needs to be included in an Environmental Statement. Where EIA consent decision has been given, some projects may also be subject to post-consent monitoring and this would be set out in the marine licence consented at the time the EIA decision is made.

1.9 Government intervention is required to transpose and meet compliance with the amended EIA Directive (2014/52/EU). Some provisions of the amended Directive introduce coordinated and joint procedures for situations where developers must consider other EU environment directives alongside the EIA directive. It also requires that screening stages should consider other evidence (where they exist) as part of early assessment as well as strengthening requirements for those preparing and assessing environmental reports. There are also provisions within the amended Directive in order to ensure that proper mitigation following monitoring is implemented.

## 2 Background to the regulation

2.1 The European Directive 2014/52/EU – Environmental Impact Assessment Directive 2014 - introduces amendments to the prior EU Environmental Impact Assessment Directive 2011. These amendments need to be transposed into UK legislation by 16 May 2017. For marine works and fish farming, which are impacted by the EU EIA Directives, arising changes will be done through amendments to the Marine Works Regulation 2007. The geographic scope of these amendments will cover England, Wales, Northern Ireland and Scotland's offshore region. Scotland is due to introduce its own EIA Regulations under the 2014 EIAD to cover its inshore region.

Amendments needed to the Marine Works Regulation 2007 can be summarised as:

- modifying the process at the pre-application screening stage - that requires mandatory information from applicants to inform a decision on whether EIA consent can be granted,
- simplified co-ordinated assessments to be covered through the EIA,
- Environmental Statements to be prepared by a competent expert with sufficient expertise to fulfil the requirements for completeness and quality of environmental statements,
- Specifying timeframes for the various stages of the EIA process, requiring stronger provisions on monitoring measures where there are conditions attached to the consent provision.

2.2 The Marine Works Regulations 2007 (MWR) already sets out the circumstance in which an EIA is required in relation to marine-based projects. Where an EIA is required, regulatory approval for the activity (e.g. marine licence) cannot be granted until necessary EIA assessment has been finalised and consent been given for the activity to take place by the appropriate authority. The regulations therefore set out the procedure for determining EIA consent, including consultation, publication and notification requirements, as well as obtaining screening/scoping opinions from the appropriate authority.

Under the MWR 2007, small and medium businesses are not exempt from the requirements and this is in line with the amended 2014 EIA Directive. However, given the nature of requirements that projects are subject to under EIA, we anticipate any additional costs incurred by business because of adoption of the EIA Directive changes into the MWR are likely to be minimal.

### 3 Policy options considered, including alternatives to regulation

3.1 Cabinet Office Transposition Guidance sets out key principles for implementing EU Directives. The instructions state “ensure that (save in exceptional circumstances) the UK does not go beyond the minimum requirements of the measure which is being transposed” and to “always use copy-out for transposition where it is available, except where doing so would adversely affect UK interests”. As the amendments fundamentally does not change the current working practice but streamlines some processes a ‘copy out’ approach is being taken. Other options (including voluntary mechanisms) were not viewed as feasible since it would be disproportionate or not delivering the above policy objectives.

The preferred and only option considered was to implement the Directive in accordance with the Government’s principles for transposing European directives through the amendments of the Marine Works Regulation. This will ensure compliance with the amended directive in a way that minimises the impact on business.

Under the MWR 2007, small and medium businesses are not exempt from the requirements and this is in line with the amended 2014 EIA Directive. However, given the nature of requirements that projects are subject to under EIA, we anticipate any additional costs incurred by business because of adoption of the EIA Directive changes into the MWR are likely to be minimal.

The main minor additional costs will come from the requirement of section (8(a)(1) of the EIAD for the appropriate authority in order to set out in the EIA consent decision the conditions and monitoring measures that the MMO put in a marine licence. This would lead to extra costs which would be passed onto the applicant and the best estimate based on MMO internal data this extra cost is around c£2000 per application. Based on the cost to prepare and quality check an EIA consent decision will be £658 and the cost of £423 ensure the licence itself is drafted in line with the consent decision .See section 4 for more detail. Minor extra costs associated with the proposed change will also consist of extra 5 hours per consent application (drafting and QC).

Another extra requirement envisaged by the MWR as per the amended 2014 EIA Directive requires that an expert who has sufficient expertise to fulfil the completeness and quality of the environmental statements should draft Environmental Statements. We do not envisage any likely cost in this process as applicants currently adhere to this anyway as envisaged in Annex IIA of the Directive.

In relation to the extra costs for the EIA consent application (passed to the applicant) and the extra hours associated with the process it was estimated that the total discounted costs over the next 10 years consist of drafting and QC costs of £125,413 and EIA consents applications passed onto the applicants for £533,676. Total discounted costs over 10 years are expected to be £659,090 assuming an average of 31 consents applications per year.

Wales, Northern Ireland and Scotland have yet to introduce fees. Therefore costs to these public bodies are not included and hence unquantified

The amended Directive will ensure an increased level of protection of the marine environment, which the public authority will take into account when deciding whether to carry out the EIA. Even though the current Marine Works already envisage this instrument, the amendment of the new Directive would lead to a better-structured process enabling a better alignment between national and European legislation at minor costs to taxpayers. It is currently difficult to accurately predict the scale of these benefits as they predict the effects of projects to the marine environment. Therefore, benefit figures are not included in the net cost calculations due to it not being possible to quantify such benefits.

### 4 Costs and benefits of the preferred option

#### **Costs**

4.1 It is anticipated that overall additional costs to businesses because of the amending EIA Directive will be minimal since the Marine Works Regulations already operates the EIA requirements and related amendments for marine works to mitigate any significant effects to the environment. These are summarized in section 4.4.below. Some new provisions are also unlikely to have impact to businesses or the appropriate authorities.

4.2 As mentioned previously the MMO are the only appropriate authority that charges for EIA consents under the Marine Works Regulations. Wales, Northern Ireland and Scotland have yet to introduce fees. Therefore costs to these public bodies are not included and hence unquantified.

4.3 There are currently no fish farms<sup>1</sup> in marine waters around the coast of England and Wales. Therefore no EIA consent applications are expected for this proposal

4.4 Based on MMO data the cost for MMO (part of which will be passed onto the applicants) are presented in the Table below. It also includes the advisor cost of which Cefas provides to the MMO.

<b>Table 1. MMO – EIA applications from April 2011 – present and expected extra costs</b>			
<b>No. of EIA applications</b>	<b>Cost of screening EIA applications</b>	<b>Cost of scoping EIA applications</b>	<b>Cost of EIA licence consent</b>
Baseline: 155 (i.e. average of 31 per annum)	14.5 hours @ £94 <sup>2</sup> /hour = £1,363 (MMO)	20 hours @ £94/hour = £1,880 (MMO)  15 hours @ £86/hour = £1,290 (Cefas)	96 hours @ £94/hour = £9,024 (MMO)  27.5 hours @ £86/hour = £2,365 (Cefas)
Extra costs associated with this proposal	extra 5 hours due to extra drafting and QC per application = 5*£94*31= £14,570 per year to be passed onto the applicants	Not applicable	Extra costs of £/2000 per application = 31*2000= £62,000 per year for requirement of section (8(a)(1) of the EIAD for the appropriate authority in order to set out in the EIA consent decision the conditions and monitoring measures that the MMO put in a marine licence <sup>3</sup>

For post consent monitoring

All EIA licence consents would be subject to monitoring. Post-consent monitoring is/would be set out in the marine licence consented at the same time rather than in the EIA consent decision document. The EIA decision document will capture some conditions but some of their content will be subject to some interpretation and further clarification. Costs would be dependent on the monitoring required for each project, which are variable. It was assumed that overall the costs would consist of 5 extra hours due to additional drafting and QC (assuming 31 applications per year at £94 per hour) and extra expected costs due to EIA consent application (c£2000 per application) to be passed onto the applicants. The rounded figure of c£2000 per application has been derived by the sum of the average advertising costs which are estimated to be £886 (based on MMO internal data), the cost to prepare and quality check an EIA consent decision are expected to be £658 (7 hours @£94/hour) and the cost to ensure the licence itself is drafted in line with the consent decision assumed to be £423 (4.5 hours @£94/hour). Total £1967 (rounded to £2000).

The total gross annual costs of this proposal are therefore £76,570 ( £14,570 + £62,000). Following guidance from BIT assessment calculator the total discounted extra costs of the proposal is £659K over the next 10 years.

**Benefits**

4.5 On the benefit side, the amended Directive will ensure an increased level of protection of the marine environment, which the public authority will take into account when deciding whether to carry out the EIA. Even though the current Marine Works already envisage this instrument, the amendment of the new Directive would lead to a better structured process enabling a better alignment between national and European legislation at minor costs to taxpayers.

It is currently difficult to accurately predict the scale of these benefits as they predict the effects of projects to the marine environment. These benefits are however, potentially significant. Whilst the EIA is one of the many other instruments used by MMO to preserve the

<sup>1</sup> DEFRA personal correspondence (2016). No additional CEFAS input is anticipated. The cost is borne by producing a decision document not previously produced and advertising.

<sup>2</sup> £94 hour are based of application fees under The Marine Licensing Regulations <https://www.gov.uk/government/publications/marine-licensing-fees/marine-licensing-fees#estimates-and-monitoring-costs>

<sup>3</sup> MMO personal correspondence (2016)

marine environment it is important that the process is aligned and provides simplification and certainty to developers and those applying for consents.

Consequently, benefit figures are not included in the net cost calculations due to it not being possible to quantify such benefits.