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STATUTORY INSTRUMENTS

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**2017 No. 582**

The Offshore Petroleum Production and Pipelines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017

PART 3

Amendment of the 2000 Regulations

**Introduction**

44. The 2000 Regulations are amended in accordance with this Part.
45. In the 2000 Regulations, for “28 days” or “four weeks”, wherever they occur, substitute “30 days”.

**Amendment of regulation 2 (interpretation)**

46. In regulation 2—
- (a) for the definition of “appropriate particulars”, substitute—
- ““appropriate particulars” means the name and address of the applicant or prospective applicant and a description of the relevant pipe-line works which—
- (a) includes—
- (i) the physical characteristics of the whole works, and where relevant, of demolition works;
  - (ii) the location of the works with particular regard to the environmental sensitivity of the geographical areas likely to be affected by the works;
  - (iii) the aspects of the environment likely to be significantly affected by the works;
  - (iv) any likely significant effects, to the extent of the information available on such effects, of the works on the environment resulting from—
    - (aa) the expected residues and emissions and the production of waste, where relevant; and
    - (bb) the use of natural resources, in particular soil, land, water and biodiversity;
- (b) takes into account the matters set out in Schedule 2 (matters to be taken into account in making an environmental determination etc.) and, where relevant, the results of other assessments of the effects on the environment carried out pursuant to EU legislation other than the Directive; and

- (c) may also include any features of the relevant pipe-line works or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment;”;
- (b) after the definition of “contravention”, insert—
  - ““the Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment<sup>(1)</sup>;”;
- (c) for the definition of “environmental statement”, substitute—
  - ““environmental impact assessment” shall be interpreted in accordance with regulation 2A;
  - “environmental statement” has the meaning set out in regulation 2B;”;
- (d) after the definition of “public notice period”, insert—
  - ““public website” means a website accessible to the public where the public can view and download information placed on it.”.

**New regulation 2A (environmental impact assessment), regulation 2B (environmental statement) and regulation 2C (exempt pipe-line works)**

47. After regulation 2, insert—

**“Environmental impact assessment**

**2A.—(1)** In these Regulations, the “environmental impact assessment” means the process consisting of—

- (a) the preparation and submission of an environmental statement by a prospective applicant;
  - (b) the carrying out of the consultations referred to in regulations 6 to 8A and, where relevant, regulation 10;
  - (c) the Secretary of State’s consideration of the information presented in the environmental statement, any further information or additional information provided in accordance with regulations 8 or 8A and any representations or opinions received as the result of the consultations referred to in subparagraph (b);
  - (d) the Secretary of State’s reasoned conclusion as required by regulation 3(2); and
  - (e) the integration of that conclusion into the decision as to whether the grant of pipe-line construction authorisation is to be given as required by regulation 3(2).
- (2) In carrying out the steps described in paragraph (1), the applicant shall identify, describe and assess in an appropriate manner—
- (a) the direct and indirect significant effects of the relevant pipe-line works on the following factors—
    - (i) population and human health;
    - (ii) biodiversity, with particular attention to species and habitats protected under Council [Directive 92/43/EEC](#)<sup>(2)</sup> on the conservation of natural habitats and

(1) OJ L 26 28.1.2012 p1.

(2) OJ L 206 22.7.92 p.7.

- of wild fauna and flora and [Directive 2009/147/EC\(3\)](#) of the European Parliament and of the Council on the conservation of wild birds;
- (iii) land, soil, water, air and climate;
  - (iv) material assets, cultural heritage and the landscape; and
  - (v) the interaction between the factors referred to in paragraphs (i) to (iv); and
- (b) the operational effects of the relevant pipe-line works (where the works will have operational effects) and the expected effects deriving from the vulnerability of the works to risks of major accidents or disasters that are relevant to the works concerned.

### **Environmental statement**

**2B.**—(1) In these Regulations, an “environmental statement” means a report prepared as part of an environmental information assessment in respect of the relevant pipe-line works which includes—

- (a) a description of the works comprising information on the location, design, size and other relevant features of the works;
- (b) a description of the likely significant effects of the works on the environment;
- (c) a description of the features of the works or measures envisaged in order to avoid, prevent or reduce, and if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant which are relevant to the works and their specific characteristics and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d), and
- (f) any additional information set out in Schedule 1 (information for the environmental statement) relevant to the specific characteristics of the relevant pipe-line works or type of works and to the environmental features likely to be affected.

(2) In preparing the environmental statement, the applicant shall also take into account any available results of other relevant assessments under EU or national legislation.

(3) Where the Secretary of State has given an opinion under regulation 5 on the matters to be included in the environmental statement, the statement shall be based on that opinion and include the information that may be reasonably required for reaching a reasoned conclusion on the significant effects of the relevant pipe-line works on the environment, taking into account current knowledge and methods of assessment.

(4) In order to ensure the completeness of the environmental statement, the applicant shall ensure that—

- (a) the statement is prepared by competent experts; and
- (b) the statement is accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

**Exempt pipe-line works**

2C.—(1) The Secretary of State may direct that—

- (a) these Regulations do not apply in relation to relevant pipe-line works if those works comprise or form part of works—
  - (i) having national defence as their sole purpose; or
  - (ii) having the response to a civil emergency as their sole purpose, and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on that purpose; or
- (b) where the relevant pipe-line works are the subject of an Act of Parliament or a measure made under powers contained in such an Act, and providing that the objectives of the Directive are met, the provisions of these Regulations relating to public consultation do not apply in respect of those works.

(2) Subject to paragraph (4), the Secretary of State may, in exceptional cases, direct that any relevant pipe-line works shall be exempt in whole or in part from the requirements of these Regulations if circumstances exist such that the application of all or some of the provisions of these Regulations would adversely affect the purpose of those works.

(3) Where a direction is given under paragraph (1) or (2) the Secretary of State shall send a copy of any such direction to the relevant planning authority.

(4) A direction shall not be given under paragraph (2) unless the Secretary of State —

- (a) has considered whether another form of assessment is appropriate, and
- (b) in a case where the Secretary of State considers that the relevant pipe-line works are likely to have significant environmental effects on the environment in another EEA State, is satisfied that a form of consultation with that state broadly equivalent to the form described in regulation 10 (projects affecting other EEA states) will take place before any pipe-line construction authorisation is given in respect of the relevant pipe-line works, and
- (c) has informed the Commission of the EU of the reasons justifying the exemption to be granted and has provided it with details of the information to be made available to the public pursuant to paragraph (5).

(5) A direction given by the Secretary of State under paragraph (2) may disapply such provisions of these Regulations as may in the circumstances appear to the Secretary of State to be appropriate and shall—

- (a) require the carrying out of such form of assessment as the Secretary of State considers appropriate in order to ensure a high level of protection of the environment and of human health;
- (b) require that all information relating to the main effects the works are likely to have on the environment collected pursuant to sub-paragraph (a) is to be made available to the public and specify the manner in which it is to be made available;
- (c) specify the extent to which these Regulations are to apply or that they are not going to apply at all; and
- (d) include a statement of the Secretary of State's reasons for giving the direction and the information on which that decision is based.

(6) The Secretary of State shall publish—

- (a) details of the direction given under paragraph (2) in the Gazette together with information as to how the public concerned may obtain a copy of the direction; and

(b) the direction itself on a public website.”.

**Amendment of regulation 3 (grant of pipe-line construction authorisation by Secretary of State in respect of relevant pipe-line works)**

**48.** In regulation 3—

(a) after paragraph (1), insert—

“(1A) Where in relation to relevant pipe-line works there is, in addition to a requirement for an environmental statement to be submitted in accordance with these Regulations, also a requirement to carry out a Habitats Regulations Assessment, the Secretary of State shall where appropriate ensure that the preparation of the assessment and the environmental statement are coordinated.”;

(b) for paragraph (2), substitute—

“(2) Where an environmental statement is submitted to the Secretary of State in connection with an EIA application, the Secretary of State—

(a) being satisfied that the requirements of regulations 7 to 8A, as appropriate, have been substantially complied with;

(b) having taken into consideration—

(i) the environmental statement and any supplementary information, ensuring that, where necessary, advice has been obtained by persons with appropriate expert knowledge who have examined the statement;

(ii) any further information or additional information;

(iii) any representations in respect of the relevant pipe-line works made by any person to whom a copy of the environmental statement was required to be sent pursuant to these Regulations; and

(iv) any opinions of the public; and

(c) having reached a reasoned conclusion on the significant effects of the relevant pipe-line works on the environment taking into account the information, representations and opinions referred to in sub-paragraph (b),

shall, subject to paragraph (3), integrate that conclusion into the decision as to whether or not to grant a pipe-line construction authorisation in respect of the works.”;

(c) after paragraph (2), insert—

“(2A) If the decision in paragraph (2) is to grant the pipe-line construction authorisation, the decision shall set out—

(a) any environmental conditions attached to the consent; and

(b) a description of any features of the relevant pipe-line works or measure envisaged to avoid, reduce or prevent and if possible offset any significant adverse effect on the environment; and

(c) any measures to monitor conditions imposed to avoid, prevent, or reduce and, if possible, offset significant adverse effects on the environment (“a monitoring condition”).

(2B) If the decision in paragraph (2) is to refuse the pipe-line construction authorisation, the decision shall state the main reasons for the refusal.

(2C) The reasoned conclusion referred to in paragraph (2)(c) shall be up to date at the time that the decision to grant the pipe-line construction authorisation is made but that conclusion shall be take to be up to date if, in the opinion of the Secretary of State it

continues to address the significant effects that are likely to arise as a result of the relevant pipe-line works.

(2D) When considering whether to impose a monitoring condition under paragraph (2A)(c), the Secretary of State shall—

- (a) consider whether to make provision for potential remedial action;
- (b) consider whether there are appropriate existing monitoring arrangements under EU legislation other than the Directive, or under national legislation, to make the imposition of a monitoring condition unnecessary; and
- (c) 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 relevant pipe-line works and the significance of their effects on the environment.

(2E) The decision of the Secretary of State referred to in paragraph (2) shall be taken within a reasonable period of time, taking into account the nature and complexity of the relevant pipe-line works, from the date on which the Secretary of State has been provided with the information referred to in paragraph (2)(b).”;

- (d) in paragraph (3)(c)(ii), after “reasonable time” insert “(in respect of the public, at least 30 days)”;
- (e) in paragraph (4)—
  - (i) after “Secretary of State shall”, insert “promptly”;
  - (ii) at the end of sub-paragraph (b)(ii), insert “including where regulation 10 (projects affecting other EEA states) applies, any representations made by an EEA State affected by the relevant pipe-line works, the public concerned or authorities in that state”; and
  - (iii) in sub-paragraph (b)(iv), after “relevant pipe-line works”, insert “, including any monitoring conditions”;
- (f) in paragraph (5), after sub-paragraph (b), insert—
  - “; and
  - (c) on a public website.”;
- (g) for paragraph (5A), substitute
  - “(5A) A notice published under paragraph (5) shall—
    - (a) set out—
      - (i) the contents of the decision;
      - (ii) the main reasons and considerations on which the decision is based;
      - (iii) a summary of all representations made to the Secretary of State by any person in respect of the relevant pipe-line works including where regulation 10 (projects affecting other EEA states) applies, any representations made by an EEA State affected by the relevant pipe-line works, the public concerned or authorities in that state, together with details of how those representations were taken into account; and
    - (b) specify where details of these matters may be obtained, including the address of the public website on which a copy of the notice is published.”;
- (h) omit paragraph (5B);
- (i) at the end of paragraph (6), insert “and also the address of the public website on which the notice was published in accordance with paragraph (5).” and
- (j) after paragraph (6), insert—

“(7) In this regulation, “a Habitats Regulations Assessment” means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010 in respect of the relevant pipe-line works(4).”.

**Amendment of regulation 4 (directions that no environmental statement need be prepared)**

49. In regulation 4—

(a) for paragraph (1)(a) substitute—

“(a) no direction under paragraph (1A) is in force in respect of the relevant pipe-line works and a prospective applicant makes an application containing the appropriate particulars in respect of those works to the Secretary of State for the exercise the power conferred on the Secretary of State by sub-paragraph (b); and”;

(b) after paragraph (1), insert—

“(1A) If the Secretary of State considers that a relevant pipe-line works is highly likely to have a significant effect on the environment given the environmental sensitivity of the location of the works, the Secretary of State may direct that no application may be made under paragraph (1) in respect of those works and that an environmental statement shall be required before the Secretary of State can agree to the grant of a pipe-line construction authorisation in respect of those works.”;

(c) at the end of paragraph (2), insert “and the results of any preliminary determinations or assessments on the environment carried out pursuant to EU legislation other than the Directive”;

(d) after paragraph (6), insert—

“(6A) The Secretary of State shall make a decision in relation to any application made under paragraph (1) as soon as possible and in any event within 90 days of receiving the application, unless paragraph (6B) applies.

(6B) Where an application referred to in paragraph (1) is for relevant pipe-line works that are, in the opinion of the Secretary of State, an exceptional case, for example in relation to their nature, complexity, location or size, the Secretary of State may extend the time limit referred to in paragraph (6A) by notifying the applicant as to when the decision is expected to be made and the reasons why the Secretary of State considers the extra time is needed.”; and

(e) for paragraph (7), substitute—

“(7) Paragraph (8) applies where either the Secretary of State—

(a) makes a direction under paragraph (1A); or

(b) directs, in response to an application under paragraph (1) that either—

(i) an EIA application in respect of those relevant pipe-line works needs to be accompanied by an environmental statement; or

(ii) an EIA application in respect of those relevant pipe-line works does not need to be accompanied by an environmental statement.

(8) Where this paragraph applies, the Secretary of State shall—

(a) publish notice of the direction in the Gazette and on a public website; and

(b) publish with the notice a written statement of the main reasons for the direction, making references to the relevant criteria set out in Schedule 2 and where the direction is that the EIA application does not need to be accompanied by

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(4) [S.I. 2010/490](#); regulation 61 is amended by [S.I. 2012/1927](#).

an environmental statement, shall state any features of the proposed works or measures imposed that are proposed by the prospective applicant to avoid or prevent significant adverse effects.”.

**Amendment of regulation 5 (pre-application opinion by the Secretary of State as to content of environmental statement)**

**50.**—(1) In regulation 5—

- (a) in paragraph (1), for “the information to be provided”, substitute “the scope and level of detail to be included by the applicant”; and
- (b) in paragraph (2)(a)—
  - (i) after “into account”, insert “on the information provided”;
  - (ii) in paragraph (a)(i), after “works”, insert “including location and technical capacity”, and
  - (iii) omit paragraph (iv).

**Amendment of regulation 7 (publicity for environmental statements)**

**51.** In regulation 7—

- (a) in paragraph (4)(a), for “satisfies the requirements of paragraph (5) below”, insert—
  - “(i) satisfies the requirements of paragraph (5); and
  - (ii) is also published on a public website alongside electronic copies of the EIA application, environmental statement and any supplementary information which accompanied the statement;”;
- (b) at the end of paragraph (6), insert “and also the address of the public website on which the notice was published in accordance with paragraph (4).”.

**Amendment of regulation 8 (further information and evidence respecting environmental statements)**

**52.** In regulation 8—

- (a) in paragraph (1)—
  - (i) after “specify”, insert “which is directly relevant to enabling the Secretary of State to reach the reasoned conclusion referred to in regulation 3(2)(c)”;
  - (ii) after “regulations 2, ”, insert “2A, ”;
- (b) for paragraph (5), substitute—

“(5) The applicant shall publish a notice containing the information specified in paragraph (6)—

  - (a) in two successive weeks in—
    - (i) the Gazette, and
    - (ii) one or more local newspapers circulating in each area in which the relevant pipe-line works would be carried out; and
  - (b) on a public website alongside the further information.”;
- (c) at the end of paragraph (7), insert “and also the address of the public website on which the notice was published in accordance with paragraph (5).”.



### **Amendment of regulation 8A (additional information and publicity)**

**53.** In regulation 8A—

(a) for paragraph (4), substitute—

“(4) The applicant shall publish the notice referred to in paragraph (2)(a)—

(a) in two successive weeks in—

(i) the Gazette, and

(ii) one or more local newspapers circulating in each area in which the relevant pipe-line works would be carried out; and

(b) on a public website alongside the additional information.”; and

(b) at the end of paragraph (7), insert “and also the address of the public website on which the notice was published in accordance with paragraph (4).”.

### **Amendment of regulation 10 (projects affecting other EEA States)**

**54.** In regulation 10, in paragraph (2)(a)(iii), after “these Regulations”, insert “including the address of the public website referred to in regulation 7(4)(a)”.

### **New review regulation**

**55.** After regulation 15 (service of notices), insert—

#### **“Review**

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

(a) carry out a review of the regulatory provision contained in these Regulations, and

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

(2) The first report must be published before 16th May 2022.

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

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015<sup>(5)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

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

(c) assess whether those objectives remain appropriate; and

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

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).”.

### **Substitution of Schedule 1 (information to be included in an environmental statement)**

**56.** For Schedule 1, substitute the schedule that is set out in Schedule 5 to these Regulations.

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(5) 2015 c. 26; section 30 was amended by the Enterprise Act 2016 (c. 12), section 19.

**Substitution of Schedule 2 (matters to be taken into account in giving a direction under regulation 4(2))**

57. For Schedule 2, substitute the schedule that is set out in Schedule 6 to these Regulations.

**Transitional provisions in respect of the 2000 Regulations**

58.—(1) Subject to paragraphs (2) and (3), the following must be dealt with under the 2000 Regulations as if they had not been amended by these Regulations—

- (a) any EIA application for the grant of a pipe-line construction authorisation referred to in regulation 3;
- (b) any application for a direction that no environmental statement need be prepared referred to in regulation 4; or
- (c) pre-application request for an opinion as to the information to be provided in an environmental statement referred to in regulation 5,

received by the Secretary of State before the Regulations come into force.

(2) This regulation is subject to regulation 2C (exempt pipe-line works).

(3) Where paragraph (1) applies in respect of an application for a pre-application request for an opinion under regulation 5, the 2000 Regulations as unamended by these regulations shall apply for all purposes, save for regulation 2C, in respect of the relevant pipe-line works to which the opinion relates.

(4) In this regulation, a reference to a numbered regulation is to that regulation so numbered in the 2000 Regulations.