

EXPLANATORY MEMORANDUM TO

THE OFFSHORE OIL AND GAS EXPLORATION, PRODUCTION, UNLOADING AND STORAGE (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2020

2020 No. 1497

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 (“the Instrument”) fully transpose EU Directive 2011/92/EU¹ on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”), as amended by EU Directive 2014/52/EU². The Instrument applies to activities related to proposed offshore oil and gas exploration and production, gas unloading and storage, and storage of carbon dioxide (“offshore projects”). The Instrument makes provision for the Secretary of State’s consideration of the environmental impacts of proposed offshore projects when deciding whether to agree to the grant of consent for such projects.

3. Matters of special interest to Parliament

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the Instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

- 4.1 The territorial extent of the Instrument is the United Kingdom.
- 4.2 Where a project:
- (a) comprises activities relating to unloading or storage of combustible gas, and
 - (b) is not a project to which the Marine Works (Environmental Impact Assessment) Regulations 2007 applies, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and
 - (c) is not a project to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 applies,

¹ OJ No. L 26, 28.1.2012, p. 1-21

² OJ No. L 124, 25.4.2014, p. 1.

the Instrument applies if the project is in the territorial sea adjacent to the United Kingdom (the territorial sea extends 12 nautical miles from baselines established under the Territorial Sea Act 1987) or in waters in the Gas Importation and Storage Zone (as designated under section 41(3) of the Marine and Coastal Access Act 2009 and including the area resulting from Orders in Council made under section 1(5)(b) of the Energy Act 2008).

4.3 Where a project:

(a) comprises activities relating to the geological storage of carbon dioxide, the licensing authority for which is the Oil and Gas Authority, and

(b) is not a project to which the Marine Works (Environmental Impact Assessment) Regulations 2007 applies, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and

(c) is not a project to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 applies,

the Instrument applies if the project is in the territorial sea adjacent to the United Kingdom or in waters in the Gas Importation and Storage Zone.

4.4 For all other projects:

(a) which are not projects to which the Marine Works (Environmental Impact Assessment) Regulations 2007 applies, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales, and

(b) which are not projects to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 applies,

the territorial application of the Instrument is the United Kingdom's territorial waters (including tidal waters) and any designated area of the United Kingdom Continental Shelf.

5. **European Convention on Human Rights**

5.1 As the Instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. **Legislative Context**

6.1 The Instrument seeks to fully transpose the EIA Directive by addressing shortfalls in respect to the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 ("the 1999 Regulations") that were identified in judicial review proceedings brought against the Secretary of State in 2019, which challenged BEIS's implementation of the EIA Directive on the basis that the 1999 Regulations did not provide a clear way to challenge consent decisions.

6.2 BEIS accepted that the 1999 Regulations did not provide a clear way to challenge consent decisions. This was primarily as a consequence of the fact that the relevant provisions did not take into account changes to the offshore EIA regulatory regime resulting from the split of functions of the Oil and Gas Authority (OGA) from the Secretary of State. BEIS therefore agreed: (i) as an interim measure, to amend current processes so that the way to challenge decisions would be made clearer; and (ii) to review the 1999 Regulations with a view to consulting on amended regulations. BEIS amended its current processes on an interim basis in accordance with point (i) and has

consulted on proposals for regulatory reform and laid the Instrument in accordance with point (ii).

- 6.3 The Instrument fulfils the commitments arising from the judicial reviews. It also makes policy changes to the environmental impact assessment (“EIA”) regime for offshore projects, as described below.
- 6.4 The Instrument has been made under section 2(2) of the European Communities Act 1972. It implements the EIA Directive in full, in a way that ensures the offshore EIA regulatory regime will continue to be operable at the end of the Transition Period.
- 6.5 The Instrument replaces the 1999 Regulations, except that the 1999 Regulations will continue to apply for some limited transitional purposes after the Instrument enters into force. The 1999 Regulations have not been revoked because they are due to be amended by the Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1325) (“the 2018 EU Exit Regulations”) at the end of the Transition Period, after the Instrument enters into force. The 2018 EU Exit Regulations correct deficiencies arising from the end of the Transition Period and will amend the 1999 Regulations in so far as they continue to apply for transitional purposes.
- 6.6 We consider that the Instrument should be subject to the negative resolution procedure, rather than the affirmative resolution procedure, as it does not involve significant Government expenditure, impose any onerous duties on developers of offshore projects, contain any unusual criminal provisions or unusual civil penalties, or include unusual powers to require information.

7. Policy background

What is being done and why?

- 7.1 The objective of the EIA Directive is to provide a high level of protection for the environment and to help integrate environmental considerations into the preparation of proposals for specific projects to reduce their impact on the environment. It seeks to ensure that projects which are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location, are subject to a requirement for an assessment of those effects before the proposals are allowed to proceed.
- 7.2 The Instrument will address shortfalls within the 1999 Regulations.
- 7.3 Changes from the 1999 Regulations include:
 - enhanced access to environmental information through publication of documents relating to the EIA process on a public website;
 - the introduction of inspection and investigation provisions in order to monitor compliance by developers with these Regulations and conditions attached to the Secretary of State’s agreement to the grant of consent for a project, and the introduction of new offences related to these provisions;
 - the introduction of provisions enabling the Secretary of State to revoke the agreement to the grant of consent for a project; and
 - amendments to the Offshore Environmental Civil Sanctions Regulations 2018 (S.I. 2018/800) so that civil sanctions apply as an alternative to prosecution.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Instrument replaces the 1999 Regulations, except that the 1999 Regulations and associated amendments will continue to apply for some limited transitional purposes after the Instrument enters into force. The 1999 Regulations have not been revoked as they are due to be amended by the 2018 EU Exit Regulations at the end of the Transition Period, after the Instrument enters into force. The 2018 EU Exit Regulations correct deficiencies arising from the end of the Transition Period and will amend the 1999 Regulations in so far as they continue to apply for transitional purposes.

10. Consultation outcome

10.1 BEIS undertook a ten-week consultation on the Instrument. The consultation ran from 24 July to 2 October 2020. Details on the consultation can be found at: <https://www.gov.uk/government/consultations/amendments-to-the-environmental-impact-assessment-regime-for-offshore-oil-and-gas-projects>.

10.2 There were 13 respondents to the consultation, including from offshore project developers, industry trade associations, nature conservation bodies, government agencies, non-governmental organisations and individual members of the public. Respondents supported the majority of proposals outlined in the consultation, and where policy decisions were taken as a result of the responses received, the expectation is that respondents will mostly be satisfied with those policy decisions and the Instrument's provisions. In this context, there were several areas where BEIS decided to make changes to the policy and drafting of the Instrument as a result of the consultation exercise. This included (a) clarifying the definition of 'project'; (b) requiring developers to provide a summary of their proposed project and specifying what this must include; and (c) removing the statutory appeal provision so that judicial review will be the means by which persons with sufficient interest can challenge agreement to the grant of consent.

10.3 The Secretary of State is the relevant authority for the purposes of the Instrument, which will apply to offshore projects where regulatory competence is 'reserved' to the UK Government. The Devolved Administrations were consulted, and no concerns were expressed.

11. Guidance

11.1 The Government is updating its guidance on the offshore EIA regulatory regime and aims to publish this when the Instrument comes into force, or shortly thereafter. It will be available at the following link:

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

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because:

The cost recovery provisions in the Instrument mirror the approach currently applied by BEIS. There will be extra activities and costs for BEIS, which would require a fee to industry in relation to new administrative procedures, estimated to be £10,606. The supply of a paper copy of an EIA report (referred to as an ES in the Instrument) to an enquirer without provision for an optional charge will have a financial impact on industry of £2 per ES.

The Instrument includes provisions for imposition of civil sanctions. Given the compliance record of industry with the offshore EIA legislative regime, the impact will likely be minimal. For illustrative purposes, it is possible that there would be no more than one civil penalty issued every five to seven years with costs ranging from £1,000 or £2,500 for an offence linked to a fixed monetary penalty to £50,000 for an offence linked to a variable monetary penalty.

BEIS may also incur extra costs in relation to new provisions for inspection and investigation which would require a fee to industry. For illustrative purposes, it is possible that while undertaking inspection activities, no more than one breach would occur every five to seven years. Depending on breach, the estimated costs to industry would be approximately £7,030 if related to an ES, and £3,040 for a screening direction.

The Instrument removes the need for developers of offshore projects to make an ES available at an address for public inspection, resulting in an annual saving to the industry of between £175 and £250. It also removes Gazette notice publication obligations on BEIS relating to determinations made in relation to screening directions and ESs resulting in a saving to Government and industry (as such costs are recovered through charging provisions) of approximately £10,000 in total.

Taking into account the above elements and the fact that no negative comments on the impact assessment section of the consultation document were included in stakeholders' responses, an Impact Assessment (IA) has not been prepared for the Instrument because the extra costs to the industry of complying with the new legislative requirements would be well below the threshold for producing an IA.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 It is important to note that the potential for a project to result in adverse environmental effects is not proportionate to business size. The potential for poorly managed risks leading to a significant environmental incident is the same for small businesses as it is for large international companies. Therefore, small businesses will not be exempt from the EIA requirements where they are involved in offshore projects that are likely to have significant environmental effects.

13.3 The Instrument will clarify the EIA legislative process (leading to an improved system for businesses) whilst ensuring that all businesses operating offshore, regardless of size, are subject to the same regulatory framework so that they continue to provide a high level of protection for the marine environment.

14. Monitoring & review

- 14.1 A review provision is included in the Instrument. The provision requires that a report setting out the conclusions of the review be published before 31 December 2025. The review will assess, by considering relevant data, whether the objectives of the offshore EIA regulatory regime remain appropriate.

15. Contact

- 15.1 David Foskett at BEIS, Telephone: 0300 068 6063 or email: David.Foskett@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Wendy Kennedy, Deputy Director at BEIS, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State for BEIS can confirm that this Explanatory Memorandum meets the required standard.