

EXPLANATORY MEMORANDUM TO
THE OFFSHORE PETROLEUM PRODUCTION AND PIPE-LINES (ASSESSMENT
OF ENVIRONMENTAL EFFECTS) (CORONAVIRUS) (AMENDMENT)
REGULATIONS 2020

2020 No. 448

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Coronavirus) (Amendment) Regulations 2020 introduces provision to exempt offshore oil and gas developers from the requirement to make relevant documents available for public inspection at an address within the United Kingdom. This change is necessary due to the restrictions on movement and social distancing that have been put in place to respond to the coronavirus pandemic. The relevant documents are the environmental statement, application for consent, and any further information required under regulation 10 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999. These documents are required as part of the approval process for relevant offshore oil and gas projects.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being laid in breach of the 21-day rule, which requires instruments to be laid at least 21 days before they come into effect. This is necessary because offshore oil and gas companies would otherwise be delayed in obtaining approvals, which would lead to significant financial impacts for industry.

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 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 at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument includes any designated area of the United Kingdom Continental Shelf (including tidal waters and parts of the sea adjacent to the UK from the low water mark up to the seaward limits of territorial waters).

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended) (“the EIA Regulations”) transposed Directive 2011/92/EU, and its subsequent amendment by Directive 2014/52/EU, for certain offshore hydrocarbon-related projects including pipe-lines (namely oil and gas extraction activities, carbon capture and storage operations and gas unloading and storage activities). The EIA Regulations set out requirements for environmental statements, as part of the approval process for relevant offshore oil and gas projects.
- 6.2 The EIA Regulations are amended by this instrument to ensure that an application for consent for an offshore hydrocarbon-related project does not require applicants to make the relevant documents available for public inspection at an address within the United Kingdom. These documents are the application for consent, the environmental statement and any further information required by the Secretary of State. This instrument disappplies the requirement where public inspection at a specified UK address is not reasonably practicable due to the effects of coronavirus.
- 6.3 The instrument also clarifies that offshore oil and gas developers do not need to make the relevant documents obtainable in person. Requirements under the EIA Regulations to make the environmental statement, and any further information required, available by post where requested will continue to apply. Also, the instrument adds provision for a copy of the application for consent to be made available by post, in the same way as the environmental statement, where the exemptions apply. Requirements under the EIA Regulations to make the relevant documents available online will also continue to apply. The amendments are compatible with Directive 2011/92/EU and Directive 2014/52/EU and only apply for the time that the effects of coronavirus mean that inspection of documents by the public at a specified UK address is not reasonably practicable.

7. Policy background

What is being done and why?

- 7.1 The EIA Regulations require offshore oil and gas developers to make the relevant documents publicly available at a UK address of the developers’ choice. Due to current government restrictions in response to the coronavirus outbreak, some developer offices are closed and consequently cannot be used to make the relevant documents available for inspection. Further, the public would be unable to inspect or obtain such documents if available at the developer’s offices, due to restrictions on travel.
- 7.2 The instrument removes the requirement to make documents available for inspection or to be obtained at a UK address where the effects of coronavirus, including guidelines or legal requirements put in place to respond to the coronavirus, mean that public inspection or collection of documents at a specified UK address is not reasonably practicable. The public will be able to obtain copies of the relevant documents by post and electronically via a publicly accessible website.

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 Consolidation or further amendment of the EIA Regulations is planned by 31 December 2020, subject to consultation.

10. Consultation outcome

- 10.1 Given the urgency of acting in these circumstances, there has not been time for any formal consultation.

11. Guidance

- 11.1 The Department intends to inform industry by email on the date the instrument comes into force and via an update to the EIA Regulations guidance document (anticipated by May 2020).

12. Impact

- 12.1 The impact on offshore oil and gas developers who have made or intend to make environmental statement submissions for relevant projects under the EIA Regulations whilst coronavirus restrictions apply, is to give them the ability to continue the application process without contravening the requirement to allow for public inspection or collection of the relevant documents at a UK address, by means of an exemption to this requirement.
- 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 SI has temporary effect, relates to maintenance of existing regulatory standards, and will have minimal cost impact on business.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. The amending instrument will benefit all size of offshore oil and gas businesses, as the amendment will enable applicants to comply with the public participation provisions of the EIA Regulations.

14. Monitoring & review

- 14.1 The amendments made by this legislation only apply for the period in which the effects of coronavirus mean that public inspection or collection of documents at a specified UK address is not reasonably practicable.
- 14.2 The legislation does not include a statutory review clause because there is already a review clause at regulation 19 of the EIA Regulations, so the amendments made by this legislation would be reviewed in line with this provision. Therefore, no review clause is required, as section 28(3)(e) of the Small Business, Enterprise and Employment Act 2015 applies.

15. Contact

- 15.1 Ben Bryant at the Department for Business, Energy and Industrial Strategy Telephone: 01224 254176 or email: Benjamin.Bryant@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Wendy Kennedy, Deputy Director, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Secretary of State at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.