EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make continuing provision for environmental impact assessments ("EIAs") to be undertaken in relation to applications for consents for—

- new offshore generating stations under section 36 of the Electricity Act 1989 (c.29) (applications are made to the Marine Management Organisation (the "MMO"));
- variations of existing section 36 consents under section 36C of that Act (applications are made either to the Secretary of State or the MMO, depending on who granted the original consent); and
- consents for overhead electric lines under section 37 of that Act (applications are made to the Secretary of State).

These Regulations implement Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16th April 2014. These Regulations also make other changes to the existing regime for EIAs which do not arise from Directive 2014/52/EU.

An EIA must be undertaken before an application for "EIA development" can be granted (see regulation 6). The EIA process, which is set out in regulation 7, begins with the developer providing an "EIA report" to the person to whom the application is made (referred to in these Regulations as the "relevant authority").

Regulation 5 sets out what constitutes EIA development. An application for development of a description set out in Schedule 1 is always EIA development, and an EIA must always be undertaken. Where an application is for development of a description set out in Schedule 2 and the developer provides an EIA report, an EIA will be undertaken. But if such an application is made without an EIA report, the relevant authority must first make a "screening decision" to decide whether or not the development is EIA development (see regulation 11(2)). Where an application is for development of a description other than a description set out in Schedule 2, although the relevant authority is not required to do so, it may nevertheless make a screening decision (see regulation 11(4)). If the screening decision is that the application is for EIA development, an EIA must be undertaken and an EIA report provided.

A developer may apply for a screening decision before making an application (see regulation 10). Chapter 2 of Part 2 sets out the procedure for making screening decisions.

The requirements of an EIA report are set out in regulation 17. Before preparing an EIA report, a developer may request the relevant authority to give a "scoping opinion" as to the scope and level of detail of the information to be included (see regulation 18).

The main changes made by these Regulations to the existing regime for EIAs are as follows—

- there is a change of terminology: for example, "EIA report" replaces "environmental statement" and "screening decision" replaces "screening opinion";
- the definition of "consultation body" is updated to include the Historic Buildings and Monuments Commission for England, Cadw and the Joint Nature Conservation Committee (see regulation 4);

- the EIA must assess the effects of the development on a number of new factors such as human health and the effects arising from the risks of major accidents and disasters (see regulation 7(2) and (3));
- where appropriate, the relevant authority must co-ordinate the EIA with any assessment required in relation to "European sites" under regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) or regulation 61 of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (see regulation 8);
- there are new requirements relating to expertise in the EIA process: the developer must ensure that the EIA report is prepared by competent experts (see regulation 17(5)), and the relevant authority must ensure that it has, or has access to, sufficient expertise (see regulation 7(4));
- after examining the EIA report and other environmental information, the relevant authority must reach a "reasoned conclusion" on the significant effects of the development on the environment, which must be included in its decision (see regulation 7(1)). If the relevant authority thinks information to supplement the EIA report is necessary to reach its reasoned conclusion, it must require the information to be provided (see regulation 25(1));
- to enable the relevant authority to make a screening decision, the developer must provide the information set out in regulation 12. The relevant authority must give reasons for its screening decision by reference to the criteria set out in Schedule 3 (see regulation 15(4) and (5)). If the relevant authority decides that an EIA is not required, the decision must also state any measures envisaged to avoid what might otherwise be significant adverse effect on the environment (see regulation 15(5)). In an exceptional case, the relevant authority may unilaterally extend the time in which a screening decision is otherwise required to be made (see regulation 14(2));
- the EIA report must include a number of new categories of information set out in Schedule 4, such as the baseline scenario and a list of references. The EIA report must be based on the most recent scoping opinion (if any) given by the relevant authority (see regulation 17(2));
- a decision to grant an application must include a description of any measures to monitor significant adverse effects on the environment that the relevant authority thinks appropriate (see regulation 33(2)(c)(iv));
- the developer is no longer required to publish a notice in newspapers when "additional environmental information" (as defined in regulation 27(2)) is provided;
- screening decisions, scoping opinions, the EIA report and other environmental information and decisions on applications must be published on a website in all cases (see regulations 16(3), 19(3), 28 and 34(6)). Copies of decisions must be sent to all consultation bodies and other public authorities to which the developer is required to send a copy of the EIA report (see regulation 34(1));
- where the relevant authority itself makes an application for a consent, employees that take part in making the application must not advise on or exercise the relevant authority's functions relating to the determination of the application (see regulation 37);
- the Secretary of State may in certain circumstances exempt projects whose sole purpose is defence or the response to civil emergencies from the need for an EIA to be undertaken (see regulation 38);
- where both a marine licence under the Marine and Coastal Access Act 2009 (c.23) and a section 36 consent are required in relation to a generating station, the relevant authority may decide that an EIA under these Regulations is not required if an EIA is undertaken under the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) (see regulation 39);
- an application for an overhead electric line in a Ramsar site requires a screening decision to determine whether or not it is EIA development if not accompanied by an EIA report (see the definition of "sensitive area" in paragraph 4 of Schedule 2).

The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (S.I. 2000/1927) (the "2000 Regulations"), which provide for the existing regime for EIAs, are revoked, subject to transitional provision (see regulations 41 and 42). The 2000 Regulations continue to apply to—

- applications received before 16th May 2017 where an environmental statement is also received before that date;
- applications (whenever received) in respect of which the relevant authority gives a scoping opinion pursuant to a request received before 16th May 2017;
- requests for screening opinions and scoping opinions received before 16th May 2017;
- determinations under regulation 6 of the 2000 Regulations as to whether or not an application is for EIA development where the application is received before 16th May 2017 but no environmental statement is received before that date.

The Electricity (Applications for Consent) Regulations 1990 (S.I. 1990/455) (the "1990 Regulations"), the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 (S.I. 2006/2064) and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (S.I. 2013/1570) (the "2013 Regulations") also regulate applications under sections 36, 36C and 37 of the Electricity Act 1989. Schedule 5 to these Regulations amends the 1990 Regulations and the 2013 Regulations in a number of respects, many of which are consequential amendments. Regulations 3 and 4 of the 2013 Regulations are amended to make it clear that, although an EIA report is not required to accompany an application to vary a section 36 consent, if the application is for EIA development, the EIA report must be provided before the application is suitable for publication in accordance with regulation 5 of those Regulations.

The Secretary of State must from time to time carry out a review of these Regulations (see regulation 44).

An impact assessment has not been produced for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen.

An Explanatory Memorandum and a transposition note are available with these Regulations on www.legislation.gov.uk. Copies have also been placed in the Libraries of both Houses of Parliament.