Department for Environment, Food and Rural Affairs

Consultation on the Environmental Impact Assessment – Joint Technical Consultation (planning changes to regulations on forestry, agriculture, water resources, land drainage and marine works)

Summary of responses and government response

December 2017

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Note - Exit from the European Union: In June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Introduction

Environmental Impact Assessment (EIA) is a regulatory process that applies to projects that are likely to have an impact on the environment. It is covered by a European Directive, which sets out the principles that Member States must adopt in assessing and mitigating environmental impacts. In 2014, changes were agreed to the EIA Directive at European level that the UK government needs to implement by May 2017.

The Department for Environment, Food and Rural Affairs (Defra) is responsible in England for EIA regulations relating to forestry, agriculture, water resources, land drainage, marine works and fin fish farming in marine waters. These apply in England and Wales except for the agriculture regulations which apply in England only and the marine works regulations which apply across the UK (except in the Scottish inshore region (0-12 nautical miles)). Changes to the EIA regulations, which were the subject of this consultation, will be implemented by Defra and the Devolved Administrations in their relevant regions (details of which are set out in each set of regulations).

A consultation was published on our proposed approach to implementing the changes on 14 December 2016 (*Environmental Impact Assessment – Joint Technical Consultation (planning changes to regulations on forestry, agriculture, water resources, land drainage and marine works*)). The consultation was published jointly by Defra, the Welsh Government, the Scottish Government, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland and the Forestry Commission. It was open for seven weeks and closed on 31 January 2017.

Our consultation covered the following regulations:

- The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, as amended
- The Environmental Impact Assessment (Agriculture) (England) (No.2) Regulations 2006, as amended
- The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, as amended
- The Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, as amended
- The Marine Works (Environmental Impact Assessment) Regulations 2007, as amended

The consultation also sought views on proposals to revoke the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, as amended, and to bring related activity within the scope of the Marine Works (Environmental Impact Assessment) Regulations 2007, as amended.

This document provides a summary of the responses received to the consultation and sets out the government's response to the key issues raised.

Background

The EU *Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment* (the EIA Directive) forms part of European law and has been implemented into national legislation by a number of implementing regulations. The overall objective of the EIA Directive is to ensure that projects which are likely to have a significant effect on the environment by virtue of, among other things, their nature, size or location are required to be assessed under the appropriate EIA regulations before consent is given.

The EIA Directive was amended in 2014 and those amendments need to be incorporated into national legislation no later than 16 May 2017. The aim of the EIA Directive remains the same: *to provide a high level of protection of the environment and help integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment*. The broad intention of the 2014 amendments is deregulatory – to simplify and clarify requirements, by focusing on environmental factors that are *significantly* impacted by development, rather than on *any* potential impact.

The United Kingdom (UK) has an obligation to implement the 2014 changes. Our view is that there is merit in retaining, as far as practical, the existing approach to environmental impact assessment as it is well understood by developers, local planning authorities and others involved in the procedures. Our proposals for amendments to regulations therefore represent the minimum changes necessary to bring them into line with the amended Directive. This will also minimise familiarisation costs and business uncertainty. For some changes to the Directive, Member States have discretion over how the changes are implemented. The consultation contained questions on the discretional changes and some extra changes that we proposed making while amending the regulations.

The UK government's Better Regulation approach means that when transposing EU law the government will ensure that the UK does not go beyond the minimum requirements of the Directive and will use copy out for transposition where appropriate. We have sought to follow these principles and to minimise additional regulatory burden whilst protecting the environment.

Defra, the Welsh Government and the Scottish Government share in the public sector equality duty under the Equality Act 2010 which came into force across Great Britain on 5 April 2011. For Northern Ireland Section 75 of the Northern Ireland Act 2008 places a similar statutory duty on public authorities. While developing the proposals we assessed the impact of the changes to our EIA regulations, having regard to the public sector equality duty. Based on our assessment we think there is likely to be no specific impact on vulnerable groups.

Environmental Impact Assessment – Joint Technical Consultation (planning changes to regulations on forestry, agriculture, water resources, land drainage and marine works)

Defra, working with the Devolved Administrations and the Forestry Commission, consulted on changes to our EIA regulations between 14 December 2016 and 31 January 2017. Respondents were invited to reply via an internet survey package, email or to post written comments to: the Defra: the Welsh Government: the Scottish Government; or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

A total of 462 responses were received, 400 from individuals and 62 from organisations including farming organisations, developers, professional bodies, public bodies and charities (third sector bodies). Officials met with a range of stakeholder organisations to discuss the transposition prior to and during the period of the consultation. Many of those who took part subsequently responded formally to the consultation. A significant majority of overall consultation responses were from individuals commenting on forestry thresholds following an article in an NGO publication. These respondents did not address the wider issues in the consultation.

We were grateful for all the responses received, including the alternative or additional text which some respondents offered. These have been given full consideration. In evaluating the responses to this consultation, the government has carefully considered the arguments put forward in support of, or against, any particular proposal, rather than reaching a view based on the absolute number of respondents for or against a particular measure.

The rest of this report sets out an overview of the responses to individual questions and the approach the government will take, having considered those representations.

Co-ordinated and joint procedures (Article 1(2)(a) of the 2014 Directive – amendment to Article 2(3)of the EIA Directive)

The 2014 Directive introduced a requirement for either a 'coordinated procedure' or a 'joint procedure' be used where a project is assessed under both the EIA Directive and the Habitats (92/43/EEC) and/or Wild Birds (2009/147/EC) Directives. The coordinated procedure includes designating an authority/ies to coordinate separate assessments. The joint procedure involves a single assessment of a project's environmental impacts.

For the Forestry Regulations we proposed to include provision for both co-ordinated and joint assessments. The latter would apply where either Forestry Commission England or Natural Resources Wales (NRW) is the competent authority for both EIA and Habitats and/or Wild Birds Directives. Co-ordinated assessments would apply where another regulator carries out the assessment under the Habitats and/or Wild Birds Directives.

For the Agriculture Regulations we proposed to implement a joint procedure (a single assessment) as Natural England is the only competent authority. The Water Resources Regulations needed no change as the Environment Agency or Natural Resources Wales is the competent authority for both the EIA and Habitats Directives. The Land Drainage Regulations already allow drainage bodies to adopt either a co-ordinated or joint assessment procedure, as appropriate.

For the Marine Works Regulations, in most cases, we anticipated that the appropriate authority under the Marine Works Regulations and the competent authority under the Habitats and Wild Birds regimes would be the same authority. However, to cover instances where this is not the case, we proposed to include provision in the Marine Works Regulations for co-ordination where both an appropriate assessment and an EIA are required. We did not think that this would result in any significant change to current procedures adopted in practice.

The 2014 Directive also allows Member States to choose to apply joint or coordinated procedures to assessments required under other EU law, including the Water Framework Directive, the Industrial Emissions Directive and the Waste Framework Directive. The provision is not mandatory and we did not propose to include it in our regulations.

We asked: Do you agree or disagree with these proposals?

We received 54 responses to this question, with the majority of respondents agreeing with our proposals. Those who agreed said flexibility should be retained, that it encourages efficiency and that the proposals fit what already happens in practice. It was suggested that for standardisation with other UK and devolved administration EIA regulations, a coordinated approach should be adopted in order to support trans-boundary projects. There were some concerns that the proposals did not go far enough to streamline assessments, with some respondents advocating more extensive change to include co-ordination of consents for the purpose of complying with the Water Framework Directive, or better joining up with assessments of nationally designated sites, such as Marine

Conservation Zones. A general theme of responses emphasised that clear guidance was required for both applicants and regulators, especially on cross border projects.

Government response

Following the consultation responses and follow up discussion, for greater standardisation we will apply the co-ordinated procedure in the agriculture and water resources regulations, as well as retaining existing and proposed flexibilities for use of joint or co-ordinated procedures across other regulations. We have noted the points to be included in guidance.

Reflecting specific feedback in relation to marine works regulations, we will also explore further the scope for wider join-up and coordination of assessments in future, but will not be making further changes at this time.

Screening (Article 1(4) of the 2014 Directive – amends Article 4 of the EIA Directive)

'Screening' is the process where a competent authority decides if a proposed project is likely to have significant environmental effects such that an EIA is required. The 2014 Directive introduced a list of specific information that the applicant must provide to the competent authority to help it screen the application. The 2014 Directive also requires applicants to provide results of other assessments relating to the project's environmental effects at the screening stage. This could include assessments under the Water Framework Directive (2000/60/EC), the Strategic Environmental Assessment Directive (2001/42/EC) and the Habitats Directive (92/43/EEC). The applicant can also provide details of any features of the project designed to avoid or prevent significant adverse environmental effects.

The 2014 Directive further requires that competent authorities publish their screening decisions and explain the main reasons why an EIA is needed or not. When an EIA is not needed the published decision must list any features of the project and/or action to be taken to avoid/prevent adverse environmental effects.

We proposed to 'copy out' these new requirements to the Forestry, Agriculture, Water Resources and Land Drainage Regulations. For the Marine Works Regulations we proposed to copy out most elements of these requirements, with some tailoring as required to reflect current wording of the regulations.

We asked: Do you need information on this and, if so, what would you need from us to help you comply with these new requirements?

There were 62 responses to this question. Twenty respondents felt they understood the requirements, while the remaining 42 made various suggestions about additional guidance they thought should be in place to explain what the information requirements are and provide a more consistent approach for applicants. This would also provide transparency for other interested parties.

On Marine Works Regulations there were suggestions that the requirement under Schedule 2, paragraph 4(1) of the Marine Works Regulations, could extend so that early consultation takes place with statutory nature conservation bodies. Screening should also consider nationally designated sites such as Sites of Special Scientific Interest (SSSI), National Conservation Marine Protected areas and Marine Conservation Zones.

There were concerns expressed by respondents that the requirement to screen and advertise the competent authority's decision places a disproportionate burden for the scale and nature of many projects, particularly under the Land Drainage Regulations. This increases the regulatory burden. In particular, under the Land Drainage Regulations, the lack of thresholds meant that low risk projects remain in scope of the process; the requirement to advertise certain information about the EIA process in newspapers adds to this regulatory burden on drainage bodies. The 2014 amendments increase this burden as authorities will be required to include more information.

Government response

Under the current regulations applicants provide a 'brief' description of the planned project. This has meant that competent authorities have had to, on many occasions, make a site visit to find out exactly what the project is about and make a site assessment. The 2014 changes require a much fuller proposal containing detailed environmental information. This will reduce the need for competent authorities to make site visits to assess proposals. There may be a few circumstances where the competent authorities have to view the site to understand the nature of the project. These are expected to be very limited in number and no charge will be made for these visits. Overall this will free up authorities' resources at the local level and allow these resources to be better used on speeding up the processing of screening applications.

To address the request for further information and clarity of scope, we will work with stakeholder groups on the development of updated guidance and will expect competent authorities to provide clear advice on their requirements. This will include action to ensure that guidance is clear about how other relevant assessments should be referenced when describing the impact of a proposed project on the environment.

In relation to the points raised about the burden placed on competent authorities, especially drainage bodies, the decision was made to retain existing requirements in relation to non-electronic notices. Introducing thresholds could reduce transparency and risk reducing environmental protection.

Thresholds (Article 1(4) of the 2014 Directive – amendments to Articles 4(3), (4) and (5) of the EIA Directive)

Thresholds define the levels beneath which projects do not need to undergo the screening stage of the EIA process. The 2014 Directive amends the Member States' discretion to set thresholds. The amendments also allow for absolute thresholds to apply, i.e. if a threshold is exceeded EIA consent is automatically required.

We will retain existing provisions in respect of thresholds in the Agriculture, Water Resources, Land Drainage and Marine Works Regulations.

To support the government and forestry sector's shared aspiration to create more woodland we sought views on changing the thresholds for afforestation projects, while maintaining environmental protection. We confirmed the intention to retain these thresholds as guidelines, so that exceeding the threshold did not automatically mean a project required an EIA and projects below the threshold, in exceptional circumstances, may still require an EIA.

Thresholds for Afforestation Projects in England

Our consultation proposals included a commitment to retain current thresholds in Sensitive Areas. Outside of Sensitive Areas we used spatial data to identify areas of land at low risk[1] to woodland creation. We explained in the consultation that we saw potential to increase the threshold for afforestation projects within these Low Risk Areas.

We asked for views on different options for increased thresholds in Low Risk Areas. The proposals in England included an additional option (an increase to 100 hectares) to those in Wales.

We asked: Please give us your views on the following proposals for increasing afforestation thresholds in England:

a) Retain the current threshold in non-sensitive areas (5 hectares) but, in the Low Risk Areas, increase the threshold from 5 to 20 hectares.
b) Retain the current threshold in non-sensitive areas (5 hectares) but, in the Low Risk Areas, increase the threshold from 5 to 50 hectares.
c) Retain the current threshold in non-sensitive areas (5 hectares) but, in the Low Risk Areas, increase the threshold from 5 to 100 hectares.

We also asked: Please give us your views for the following proposals for ensuring environmental protection if the threshold in England is increased:

a) Retain the current approach: no requirement to notify Forestry Commission England of proposals under threshold before starting work.
b) Notify Forestry Commission England of the proposal and provide information that confirms it complies with the UK Forestry Standard – demonstrating how woodland design will mitigate any adverse environmental impact – and allow 28 working days for Forestry Commission England to review this before starting work.
c) Notify Forestry Commission England of the proposal and provide information that confirms it complies with the UK Forestry Standard – demonstrating how woodland

[1] Low risk areas are land in England where the following do not apply: RSPB Important Bird Areas, Acid Vulnerable Catchments, National Parks, Areas of Outstanding Natural Beauty, Local Nature Reserves, Common Land, Higher Level Stewardship agreements, Best and Most Versatile Agricultural land (Land Classes 1-3a), Sites of Special Scientific Interest (SSSI); Special Area of Conservation (SAC), Special Protected Area (SPA), National Nature Reserve (NNR), World Heritage Sites, priority habitat shown on the Priority Habitat Inventory, Registered battlefields, Registered parks and gardens and deep peat.

design will mitigate any adverse environmental impact - and allow 42 working days for Forestry Commission England to review this, including placing on a public register for local stakeholders to comment before starting work.

We received 415 responses to the proposals to increase the threshold for afforestation projects. In total 390 responses did not support any increase and 25 responses supported a change of some sort. Of these, fourteen agreed with 100 hectares; four agreed with 50 hectares; and seven agreed with 20 hectares.

Of the responses opposing any change, 331 were from individuals and reflected a common message based on an NGO campaign. These replies often suggested the threshold should be reduced to ensure pockets of small semi-natural habitat are not left vulnerable. Organisations that opposed the change questioned how government would meet its requirements under the Natural Environment and Rural Communities (NERC) Act if thresholds were increased and had concerns that the data used to map Low Risk Areas was not sufficiently detailed to capture all ecologically and historically important sites.

Despite this, the majority of responses also supported the aspiration to create more woodland. Responses supporting an increase emphasised the need for change to encourage more woodland creation. There were also suggestions that threshold should be increased in National Parks and Areas of Outstanding Natural Beauty to recognise the scope for woodland creation within them.

We received 43 responses to our question on options to ensure environmental protection if the threshold was increased. Many respondents did not respond to this question and informal discussions with stakeholders suggests that many had not understood that these proposals sat along-side those of an increased threshold.

Of the responses provided, five agreed with option (a); nine agreed with (b); 16 agreed with (c); and 13 gave no clear preference. A significant number of all the consultation respondents maintained a general concern that these proposals would be insufficient to protect unrecorded priority habitats and as a result did not chose an option. Respondents supporting option (c) did not see its 42 day turnaround as critical, but considered stakeholder engagement via a public register as important.

Some responses expressed views that more project information would be required for the approach to be effective and while some were in favour, one responder identified concerns about the potential cost of obtaining such information. However, there was also broad recognition from organisations that afforestation projects should comply with the UK Forestry Standard, though there were differing views on how this might be demonstrated to the Forestry Commission.

Government response for both questions on English afforestation thresholds

We have analysed and listened carefully to the responses to the consultation. In light of these mixed responses the government will increase the threshold in mapped Low Risk Areas, as set out in the consultation, from 5 to 50 hectares. To address concerns from organisations about the quality and reliability of the datasets used to identify Low Risk Areas we will introduce a Prior Notification process. This will require proposers to provide evidence to the Forestry Commission that their woodland's design complies with the UK Forestry Standard.

The requirements of this process will be considered in more detail in guidance but we anticipate this will include proposers identifying those local stakeholders they have approached to inform their woodland design. Such stakeholders would include local authorities in order to obtain any information held by Local Environment Registers and on the Historic Environment Record. We anticipate this engagement will allow such features to be considered by proposers, for example, the presence of Local Wildlife Sites, in their woodland design and enable evidence to be presented to the Forestry Commission which shows that the potential environmental impacts have been addressed.

The Forestry Commission will have 42 days to review this information, including publishing notice of the proposal on a public register so stakeholders have opportunity to identify any potential environmental impacts not already accounted for in the woodland's design. This approach reflects the amended EIA Directive's requirement for more information to be provided on proposals up-front, but does so in a focused way compliant with good forestry practice to which the sector already works. If the Forestry Commission judges that the Prior Notification requirements are not adequately met, a proposal can be called in for full EIA screening.

Some respondents called for the current threshold to be reduced. Certain evidence was presented to demonstrate that protected habitats have been damaged or lost as a consequence of tree planting on these sites that are not currently subject to any EIA screening because they fall below the current 5 hectare threshold. To address this we will also introduce, regardless of location, a requirement for land managers to submit a 'Basic Notification' of any scheme above two hectares to the Forestry Commission, outlining the scheme and its location. The Forestry Commission will have 28 days to confirm if a full EIA screening is needed but with the assumption that, unless the Forestry Commission confirm otherwise, tree planting may proceed after this time has lapsed.

Almost all small scale planting between 2 and 5 hectares is funded by Countryside Stewardship Woodland Capital Grants and applications for grant aid will serve as a 'Basic Notification' with the issuing of a grant agreement constituting confirmation that tree planting may proceed.

The changes in England are summarised in the table below:

Land type	Proposed Planting Area	Change
The land, or part of the land, is in a Sensitive Area which is a National Park or an Area of Outstanding Natural Beauty.	2 hectares or less	No change: No action required
The land, or part of the land, is in a Sensitive Area which is a National Park or an Area of Outstanding Natural Beauty.	More than 2 hectares	No change: EIA screening under new Directive
The land, or part of the land, is in a Sensitive Area which is not a National Park or an Area of Outstanding Natural Beauty.	Area of any size	No change: EIA screening under new Directive

Land type	Proposed Planting Area	Change
No part of the land is in a Sensitive Area.	2 hectares or less	No change: No action required
No part of the land is in a Sensitive Area	More than 2, but no more than 5 hectares	New requirement for prior basic notification
No part of the land is in a Sensitive Area and the area is a Low Risk Area	More than 5, but no more than 50 hectares	New requirement for prior full notification (including UKFS compliant Woodland Creation Design Plan) if between 5 and 50 hectares New flexibility and shorter timeline, provided UKFS compliance demonstrated
No part of the land is in a Sensitive Area and the area is a Low Risk Area	More than 50 hectares	No change: EIA screening under new Directive
No part of the land is in a sensitive area and the area is outside of a Low Risk Area	More than 5 hectares	No change: EIA screening under new Directive

Thresholds for Afforestation Projects in Wales

In Wales, the Welsh Government has worked with stakeholders to develop the woodland opportunities map. The woodland opportunities map can be accessed at: http://lle.gov.wales/apps/woodlandopportunities. This map excludes all sensitive sites and shows that approximately 35% of Wales is not environmentally sensitive and is capable of supporting woodland creation proposals. Woodland creation in Wales is principally supported by the Glastir Woodland Creation Scheme, part of the Rural Communities Rural Development Plan. Glastir supports mixed and native planting rather than outright conifer planting and requires woodland planting to comply with the UK Forestry Standard, the benchmark for sustainable forest management in the UK.

A zero or very low threshold in sensitive areas is appropriate to protect the special environmental characteristics of those areas. The current five hectare threshold for non-sensitive areas is low, particularly as most woodland creation in Wales comes through a controlled or regulated channel, such as Glastir, and the environmental sensitivities associated with such planting are low. There is scope to increase the threshold level for

non-sensitive areas to encourage woodland creation whilst ensuring that larger planting projects with greater environmental sensitivities are still appropriately screened.

We asked: Please give your views on increasing the thresholds in non-sensitive areas in Wales to one of two levels:

(a) increase the afforestation threshold for non-sensitive areas from five hectares to 20 hectares;
(b) increase the afforestation threshold for non-sensitive areas from five hectares to 50 hectares.

Ninety-five respondents provided comments and views on increasing the afforestation threshold for non-sensitive arrears in Wales from the current five hectares to either 20 hectares or 50 hectares.

Many respondents were supportive of the aspiration to create more woodland but not at the expense of other rare habitats which, in their opinion, are not fully captured by the woodland opportunities map. Thirty-two responses expressed concern that increasing the threshold for afforestation projects would result in woodland planting on scarce habitats such as flower rich meadows and breeding sites for rare birds like curlew. Some respondents commented that the current threshold should not be increased and suggested that poorly protected and mapped habitats and wildlife will be better protected if the current threshold was lowered. Some suggested that all afforestation projects should therefore be subject to a screening process prior to proceeding, making a comparison with the way in which uncultivated land projects are regulated in Wales.

Nineteen respondents were supportive of the proposal to increase the afforestation threshold, citing that this will greatly assist achievement of the much needed increase in woodland cover which will contribute to a range of outcomes including sustaining the forestry sector and delivering climate change commitments. Some respondents suggested that compliance with the UK Forestry Standard will ensure that afforestation projects adhere to principles of sustainable forest management and environmental protection.

Some respondents suggested that rather than increasing the afforestation threshold, the Environment (Wales) Act 2016 provides the basis to trial alternative approaches using opportunity mapping and landscape management plans that would embed environmental impact assessment into site and landscape management planning rather than see it being carried out as a reactive and ad hoc activity.

Government response

The responses make clear that there are divided views on increasing the threshold for new woodland planting in non-sensitive areas in Wales and the majority were not supportive of an increase in the current level. The Welsh Government has decided to retain the current threshold and to test the approaches to woodland creation, including process improvements to support proposals for new woodland planting, in the context of the soon to be published National Natural Resources Policy and the framework of the Environment (Wales) Act 2016.

Time period for making screening decisions (Article 1(4) of the 2014 Directive – amendment to Article 4 of the EIA Directive)

The 2014 Directive introduced a requirement that the competent authority must make its screening decision as soon as possible and within 90 days from the date the developer provides all the information required. This period can be extended in exceptional circumstances with the authority explaining the reason for the extension.

Existing Defra Regulations vary in their approach. They generally require competent authorities to make their determination as soon as possible, in some cases setting specific deadlines for responses. We consulted on proposals to amend regulations to reflect the 90 day deadline, to allow competent authorities time to assess the greater amount of information to be provided by applications at the screening stage.

We asked: Do you agree with our proposals on changing the time for making screening decisions?

There were 63 responses to this question. Forty respondents agreed with proposals and 23 disagreed and wanted to keep existing timeframes for decisions or wanted an explanation from the competent authority on a case basis why the additional time was required. The vast majority of those that disagreed were concerned that the additional time given to the competent authority for a screening decision would cause delays to projects. A few respondents also suggested that the decisions timeframes across the different EIA regulations should be consistent.

Government response

Following consideration of the responses to the consultation, we will retain existing deadlines where these are under 90 days and already set out in current EIA regulations. We will, however, amend regulations to acknowledge the Directive's requirement to provide screening decisions within 90 days.

Under Marine Works Regulations, we will amend the regulations to meet the Directive's requirement that the appropriate authority must make its screening decision as soon as possible, and within a period of 90 days beginning with the day on which the request is made. For Marine Works Regulations, we will also include provision for the existing deadline to be extended in exceptional circumstances, where the nature, complexity, location or size of the project demands a longer period for determination. In such circumstance, the appropriate authority will be required to advise the applicant of the reasons justifying an extension and the date on which its screening opinion is expected.

Consulting others in the EIA process (Article 1(6) of the 2014 Directive – amending Article 6 of the EIA Directive)

The competent authority has to publish a notice of development applications requiring an EIA, giving the public and other stakeholders opportunity to review and comment on the EIA's findings. Feedback must be considered before issuing a consent decision. The 2014 Directive added the need for information to be made available electronically, in addition to more traditional methods such as bill posting. We had considered removing specific requirements to publicise information through local newspapers, to reduce the cost of advertising. However, following consideration of the possible implications as part of our Equalities Impact Assessment, we will keep the requirement to use non-electronic methods for notices.

The 2014 Directive also increased the minimum time for public consultations from 28 days to a minimum of 30 days. We will copy out both of these new requirements into all regulations, except for the Agriculture Regulations and the Marine Works Regulations which already have a 42 day timeframe from date of publication of the notice for public representations. We will amend the current regulations to make it clear that the 42 days begins to run from first publication of the notice. We will also require a competent authority to publish notice of the application and provide relevant material to consultation bodies (or direct the applicant to do so) "as soon as reasonably practicable".

The Marine Works Regulations also provide for public participation (regulation 16 and Schedule 5) but the procedure is prescriptive and complicated. We are considering whether the current approach can be simplified and invited views on this to inform our consideration of future amendments. .

We asked: Do you agree that we should continue to use non-electronic methods for notices for alerting the public to consultation?
We also asked: Do you think the public participation procedure in the Marine Works Regulations should be simplified? If so, please say how.

There were 58 responses to the question relating to non-electronic methods. Fifty-one agreed that we should continue to use non-electronic methods for notices. Those respondents felt that the current approach encourages inclusivity and participation from those without internet access, particularly in rural areas. There were seven responses that disagreed. Those who disagreed were concerned about the ongoing cost of advertising to public bodies or applicants.

Seventeen respondents agreed that the current approach to public participation in the Marine Works Regulations should be simplified, but did not provide specific details or suggestions as to how this should be achieved. Four respondents disagreed, as the current requirements in the Marine Works Regulations clearly set out the process.

Government response

Having considered the balance of representations, we will retain the existing requirements in relation to use of non-electronic methods for notices for alerting the public to consultation.

Under the Marine Works Regulations, we will amend the current regulations to make it clear that the 42 days consultation period begins from the date of the first publication of the consultation notice. We will require an appropriate authority to publish notice of the application and the environmental statement, and where appropriate other relevant material (or direct the applicant to do so) as soon as reasonably practicable. We will also amend the regulations to clarify requirements on what information is to be made available and how it is to be publicised. We will continue to consider options for future simplification of the Marine Works Regulations but will not take further action on this at this time.

Competent experts (Article 5(3) of the 2014 Directive – amends Article 5(3) of the EIA Directive)

The 2014 Directive introduced a requirement for the applicant to ensure that their environmental statement is prepared by competent experts. Also, the competent authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement. We proposed to copy out these provisions into our Forestry, Agriculture, Water Resources and Land Drainage Regulations. We proposed to clarify the Marine Works Regulations to be in line with the 2014 Directive. Further information requested should be directly relevant to reaching the reasoned conclusion.

We proposed to adopt the following definition of 'competent experts': "persons who, by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement". In the Marine Works Regulations we proposed to require the applicant to include information in their environmental statement setting out how this provision has been met.

We asked: Do you agree with our proposals?

There were 59 responses, of which 48 agreed and 11 disagreed. There was general agreement that EIAs should be prepared and reviewed by experts, but that the definition of an expert needed further clarification. It was suggested that membership of a professional organisation could be used. Clarity was required on whether this would create additional work for those seeking out competent experts and it was suggested that guidance would be helpful to avoid legal challenge. It was also suggested that there should be a requirement for applicants to demonstrate how this provision had been met.

Respondents who disagreed were concerned that the requirement on the applicant to include information in the Environmental Statement (on how the provision was met) would represent an extra burden. They suggested that the definition was not in line with the Directive's requirements by using the term "sufficient expertise" and suggested the definition should align both across all Defra EIA regulations and with that proposed by

devolved administrations. It was also suggested that competent persons should be defined as: “persons with both qualifications and experience”.

Government response

We will work with stakeholders on the definition of ‘competent experts’ and place this in guidance, addressing any further need for clarity.

Under Marine Works Regulations we will amend the regulations to require any environmental statement to be prepared by competent experts; and that the environmental statement is accompanied by a statement from the applicant outlining the relevant experience or qualifications of such experts. The use of competent experts is considered already embedded within good practice and therefore a minimal burden to the applicant in setting out the arrangements they have used. We will also make provision for the appropriate authority to be required to ensure that it has, or has access to, sufficient expertise to examine the environmental statement.

The increase in information requirements at the application stage is likely to lead to more work for consultants and/or advisers employed to make screening applications, rather than the landowner doing it independently. Due to this change it is considered that there may well be a lack of trained consultants/advisors to undertake these applications. In order to fill this gap, Natural England will run a training programme for anyone interested in updating or learning how to conduct a site assessment specifically for these regulations.

Other changes to current regulations

Land drainage improvement works

The 2014 Directive requires that a competent authority must perform its duties in an objective manner and avoid conflicts of interest. It also requires there to be an appropriate separation of functions where the same body acts as the developer proposing improvement works and the decision maker, deciding whether the works will have a significant effect on the environment and whether the works may proceed. In the consultation, we stated that we did not propose to transpose these provisions in the Land Drainage Regulations on the basis that existing arrangements were already compliant. During the consultation, a concern was raised as to whether drainage bodies comply with these requirements.

Government response

Following consideration, we remain of the view that, as public authorities, drainage bodies must already carry out their functions in a way which does not give rise to a conflict of interest and that compliance with the requirements of these provisions of the 2014 Directive is best achieved through administrative arrangements. We will therefore continue with our approach to transposition.

Agriculture Regulations

We identified a number of small changes in relation to the Agriculture Regulations on which we sought views through the consultation.

Definitions

We have considered making changes to the current definitions of 'cultivated' and 'good environmental condition', to increase clarity for applicants. We consulted on alternative definitions for use in amended regulations.

We asked: Do you agree with the proposed change? Do you have an alternative proposal?

We received 36 responses on the proposed new definition of 'cultivated'. Twenty-four agreed and 12 disagreed with the proposal. However, key agricultural stakeholders were unsupportive of the proposed change for a number of reasons, including: it did not increase the clarity of the definition; and it was more appropriate for the guidance. Six responders had alternative proposals.

We received 35 responses on the proposed definition of 'good environmental condition', of which 25 agreed and ten disagreed. Key agricultural stakeholders' support for the change was mixed. It ranged from approval to concern over a widening of the scope of the regulation. Five responders had an alternative proposal.

Government response

On consideration of the responses we intend to clarify the two terms further in the associated guidance rather than change the statutory instrument. This will be done in consultation with stakeholders. The suggested alternatives will be considered as part of that process.

Appeals

We also consulted on a proposal to change the time limit within which appeals can be brought, allowing for the limit to be extended by 14 days with mutual consent to allow applicants more time to take steps to rectify issues with an application and proceed to an agreeable solution, removing the need for an appeal.

We asked: Do you agree with the proposed change? Do you have an alternative proposal?

We received 32 responses, of which 30 agreed and two disagreed. Of our key agricultural stakeholders there was full support for the change. Of the one substantive comment this seemed to be more concerned about another matter. There was one alternative proposal.

Government response

We will introduce this change into the new regulation as proposed in our consultation.

Common land projects

The consent of the Secretary of State is required under section 38 of the Commons Act 2006 for the carrying out of "restricted works" on common land. As such, we have previously exempted projects on common land from the agriculture EIA regulations. Our proposal was to continue to exempt common land projects where the consent regime for common land under section 38 of the Commons Act 2006 already applies, by amending the reference to section 194 of the Law of Property Act 1925 Act, in paragraph 3(2)(f) of the Agriculture Regulations, by a reference to section 38 of the Commons Act 2006. All applications for consent for "restricted works" under section 38 of the Commons Act 2006 would be determined by the Planning Inspectorate, on behalf of the Secretary of State, against the detailed criteria set out in section 39 of the Commons Act 2006 and is in accordance with the Defra's Common Land consents policy.

We asked: Do you agree with the proposed change?

Thirty-one respondents addressed the question of commons. We received 20 responses which agreed with our proposal to continue to exempt common land projects from the EIA Directive where the consent regime for common land under section 38 of the Commons Act 2006 already applies. Respondents also agreed that the existing reference to section 194 of the Law of Property Act 1925 Act, in paragraph 3(2)(f) of the Agriculture Regulations, should be amended by a reference to section 38 of the Commons Act 2006. Six of these respondents made additional comments including that the proposal sounded very sensible and that it was appropriate to continue with the existing position provided there was no reduction in the levels of oversight and protection for the historic environment.

Eleven responses were received disagreeing with the proposal. General comments were made that common land was different from other types of land because it may have different ownership and management structures and also be of high ecological or environmental quality. The view was expressed that if common land was to be altered or developed it should be subject to the provisions of the EIA Directive.

Three of the 11 responses we received disagreed with the proposal included more detailed views that many "restricted works" on common land e.g. fencing works, and which were above the thresholds set out in Schedule 1 to the Agriculture Regulations, currently required the consent of the Secretary of State under section 38 of the Commons Act 2006 but would also fall within the definition of either a restructuring project or uncultivated land project under the EIA Directive. The respondents did not agree that the existing exemption in regulation 3(2)(f) of the Agriculture Regulations should continue. Instead

projects for “restricted works” on common land, which fell above the thresholds, should fall within the scope of the 2006 Regulations.

Government response

We have considered the views and will amend the existing Agriculture Regulations to remove the exemption for common land.

Welsh language

The policy approach that was set out in the consultation was to transpose the requirements of the EIA Directive to ensure that the environment remains well-protected whilst reducing administrative burdens. We sought views on the effects that this policy approach would have on the Welsh language.

We do not believe that the policy affects opportunities for people to use the Welsh language or treats the language less favourably than English, or that the policy could be reformulated or revised to have positive effects.

We asked: Do you think that the policy approach proposed has any implications for the Welsh language?

We received 19 responses to the question and all of the respondents were of the view that the proposed approach does not have implications for the Welsh language.

Government response

Respondents agreed with the view that the proposed approach to transposition does not have implications for the Welsh language and there will be no further action.

Impact assessment

The 2014 Directive’s changes aim to reduce the overall regulatory burden by cutting the number for cases that go through the EIA process, the benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report. There is a requirement for more information to be provided at the start of the EIA process (‘screening’ stage), which is likely to result in an increase in the burden for those projects that either do not progress or are screened out (identified as not requiring a full EIA).

Defra’s economists have undertaken an initial assessment of cost to business of the proposed changes and this has shown that the cost level is considerably lower in each of Defra’s consenting regimes covered by this consultation than the £1million limit required to

trigger the need for an Impact Assessment. We welcomed views and evidence of direct costs to business of the changed proposed to Defra EIA regulations as part of our consultation.

Fourteen responses addressed the question of regulatory impact, of which only five provided specific evidence.

Respondents stated that they had concerns around the financial impact of advertising in newspapers, especially on drainage bodies. These newspaper adverts vary in cost but on average can cost between £600-£1200 per advert, though they can cost significantly more, especially with costs for translation into the Welsh language. The Land Drainage Regulations also stipulate that, under certain circumstances, two newspaper adverts are required, doubling the cost. Respondents believed that these considerations should be considered as they represent direct costs to the regulators that cannot be recovered.

Government response

The evidence received has been considered and has helped inform revisions to the government's impact assessments and the government response. Evidence from land drainage stakeholders suggested how the introduction of thresholds within the regulations could reduce the cost of compliance for competent authorities and developers. The evidence will help inform future thinking.

If you have any enquiries regarding this document/publication write to us at:

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