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PETROLEUM

PIPE-LINES

ENVIRONMENTAL PROTECTION

**The Offshore Oil and Gas Exploration, Production, Unloading
and Storage (Environmental Impact Assessment) Regulations
2020**

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Coming into force in accordance with regulation 1

CONTENTS

| | | |
|-----|---|----|
| 1. | Citation, commencement and application | 3 |
| 2. | The 1999 Regulations and related legislation | 3 |
| 3. | Interpretation | 4 |
| 4. | Requirement for Consent | 5 |
| 5. | Requirement for an Environmental Impact Assessment | 5 |
| 6. | Requirement for a screening direction | 6 |
| 7. | Decision that no environmental impact assessment is required, without a screening direction | 7 |
| 8. | Environmental Statement Requirements | 7 |
| 9. | Scoping opinion for an environmental statement | 7 |
| 10. | Obtaining information for preparing the environmental statement | 8 |
| 11. | Public Consultation Requirements - United Kingdom | 8 |
| 12. | Provision of further information and related public consultation requirements | 10 |
| 13. | Consultation Requirements – other countries | 11 |
| 14. | Secretary of State decision on whether to agree to the grant of consent | 12 |
| 15. | OGA decision on whether to grant consent | 13 |
| 16. | Publication of Secretary of State and OGA decisions | 13 |
| 17. | Exempt projects – defence and civil emergencies | 13 |
| 18. | Exempt projects – adverse effect on the project purpose | 14 |
| 19. | UK participation in overseas projects | 14 |
| 20. | Confidentiality | 15 |
| 21. | Provision of Documents | 15 |
| 22. | Fees | 15 |

| | | |
|-----|---|----|
| 23. | Inspection and investigation | 18 |
| 24. | Application to court by Secretary of State | 18 |
| 25. | Offences | 19 |
| 26. | Revocation | 20 |
| 27. | Amendments to the Offshore Environmental Civil Sanctions Regulations 2018 | 20 |
| 28. | Consequential Amendments | 21 |
| 29. | Transitional and Saving Provisions relating to the 1999 Regulations | 21 |
| 30. | Review | 22 |

SCHEDULES

| | | |
|------------|---|----|
| SCHEDULE 1 | — Requirement for an environmental impact assessment where the definition of “project” applies | 23 |
| SCHEDULE 2 | — Requirement for a screening direction where the definition of “project” applies | 23 |
| SCHEDULE 3 | — Secretary of State to decide if an environmental impact assessment is required, without a screening direction application where the definition of “project” applies | 24 |
| SCHEDULE 4 | — Information required in an application for a screening direction | 24 |
| SCHEDULE 5 | — Matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment | 25 |
| SCHEDULE 6 | — Information for the environmental statement | 26 |
| SCHEDULE 7 | — Consequential Amendments | 28 |

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972(**a**) in relation to the environment(**b**) and matters relating to the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons(**c**).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act and by section 56(1) and (2) of the Finance Act 1973(**d**), with the consent of the Treasury(**e**).

The Secretary of State has taken into account the selection criteria set out in Annex III to Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment(**f**).

(a) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(b) S.I. 2008/301.

(c) S.I. 1994/1327.

(d) 1973 c. 51. Section 56(1) of the Act was amended by S.I. 2011/1043.

(e) The consent of the Treasury is required to make regulations under section 56(1) of the Finance Act 1973.

(f) O.J. L 26, 28.1.2012, p. 1. The Directive was amended by Directive 2014/52/EU, O.J. L 124, 25.4.2014, p. 1.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 and come into force immediately before 11 p.m. on 31st December 2020.

(2) Paragraphs (3), (4) and (5) are subject to paragraph (6).

(3) Subject to paragraphs (4) and (5), these Regulations apply to projects where they take place wholly or partly within—

(a) tidal waters and parts of the sea adjacent to the United Kingdom from the low water mark up to the seaward limits of territorial waters;

(b) waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964^(a) (designation of areas of continental shelf);

(c) the seabed and subsoil under the waters referred to in paragraphs (a) and (b).

(4) Where a project is within section 2(3) of the Energy Act 2008^(b) (activities related to unloading or storage of combustible gas) these Regulations apply where the project takes place wholly or partly within a “controlled place”, as defined in section 2(4) of that Act.

(5) Where a project is within section 17(2) of the Energy Act 2008 (activities related to the geological storage of carbon dioxide) these Regulations apply where the project takes place wholly or partly within an “offshore controlled place”, as defined in section 35(1) of that Act, where the licensing authority is the OGA as determined in accordance with section 18 of that Act.

(6) These Regulations do not apply to the following projects—

(a) those to which the Marine Works (Environmental Impact Assessment) Regulations 2007^(c) apply, where the appropriate authority under those Regulations is a devolved authority or the Natural Resources Body for Wales;

(b) those to which the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017^(d) apply.

The 1999 Regulations and related legislation

2.—(1) In this regulation “the 1999 Regulations” means the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999^(e).

(2) The 1999 Regulations continue to apply only for the purposes specified in regulation 29 (transitional and savings provisions).

(3) The following legislation amending the 1999 Regulations is revoked—

(a) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007^(f);

(b) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Coronavirus) (Amendment) Regulations 2020^(g).

(4) The following provisions amending the 1999 Regulations are omitted—

(a) regulation 8 of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments and Other Provisions) Regulations 2015^(h);

(a) 1964 c. 29. Section 1(7) of the Act was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23); and by section 103 of the Energy Act 2011 (c. 16).

(b) 2008 c. 32. Section 2 of the Act was amended by section 14(2) of the Deregulation Act 2015 (c. 20).

(c) S.I. 2007/1518. “Appropriate authority” and “devolved authority” are defined in regulation 2(1) of the Regulations. The Regulations are amended by S.I. 2009/2258, S.I. 2011/735, S.I. 2013/755, S.I. 2015/446, S.I. 2017/588, S.I. 2018/287, S.I. 2018/942, S.I. 2019/25, S.I. 2020/904. The Regulations are revoked for Scotland by S.S.I. 2017/115.

(d) S.I. 2017/115. Amended by S.I. 2017/168, S.I. 2017/1013, S.I. 2019/55 and S.I. 2020/157.

(e) S.I. 1999/360. Relevant amending instruments are S.I. 2007/933, S.I. 2015/1431, S.I. 2016/529, S.I. 2016/912, S.I. 2017/582 and S.I. 2018/1325.

(f) S.I. 2007/933.

(g) S.I. 2020/448.

(h) S.I. 2015/1431. Relevant amending instruments are S.I. 2016/529, S.I. 2019/439 and S.I. 2020/208.

- (b) regulation 3 of the Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2016(a);
- (c) regulation 7 of the Energy (Transfer of Functions, Consequential Amendments and Revocation) Regulations 2016(b);
- (d) Part 1 of the Offshore Petroleum Production and Pipe-lines (Environmental Impact Assessment and other Miscellaneous Provisions) (Amendment) Regulations 2017(c);
- (e) regulation 10 of the Oil and Gas Authority (Levy) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2019(d);
- (f) regulation 11 of the Oil and Gas Authority (Levy and Fees) and Pollution Prevention and Control (Fees) (Miscellaneous Amendments) Regulations 2020(e).

Interpretation

3.—(1) In these Regulations—

“the 1999 Regulations” has the meaning given in regulation 2(1);

“the EIA Directive” means Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment;

“combustible gas” means gas within the meaning of section 2(4) of the Energy Act 2008;

“developer” means any person who carries out, or proposes to carry out, a project;

“environmental impact assessment” means the process consisting of—

- (a) the preparation and submission of an environmental statement by a developer in accordance with regulation 8;
- (b) the carrying out of consultations in compliance with regulation 11 and, where relevant, regulations 12 and 13;
- (c) the Secretary of State’s consideration of the information presented in the environmental statement, any further information provided by the developer that falls under regulation 12(3) and any representations received as the result of the consultations referred to in subparagraph (b);
- (d) the Secretary of State’s conclusion as required by regulation 14(2);
- (e) the integration of that conclusion into the Secretary of State’s decision as to whether to agree to the grant of consent;

“environmental statement” means a report prepared by the developer as part of the environmental impact assessment in respect of a project, in accordance with regulation 8 (environmental statement requirements);

“geological storage of carbon dioxide” means an activity within section 17(2)(a) of the Energy Act 2008;

“installation” means a surface installation or subsea installation;

“natural gas” means gas existing in its natural condition in strata;

“the OGA” means the Oil and Gas Authority;

“oil” includes any mineral oil or relative hydrocarbon existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation;

“overseas project” has the meaning give in regulation 19(5)(b);

(a) S.I. 2016/529.
 (b) S.I. 2016/912.
 (c) S.I. 2017/582.
 (d) S.I. 2019/439.
 (e) S.I. 2020/208.

“project” means, except in the term “overseas project”, the execution of construction works or other installations or schemes, and other interventions in the natural surroundings and landscape, where those activities fall under, or relate to the implementation of, a matter set out in Schedules 1, 2 or 3;

“public website” means a website accessible to the public where the public can view and download information placed upon it;

“scoping opinion” has the meaning given in regulation 9(1);

“screening direction” has the meaning give in regulation 5(2)(a);

“surface installation” includes fixed, floating and mobile installations.

(2) References in these Regulations to a project being in a particular area include a project proposed to be carried out in that area, a project which is in the course of being carried out in that area and a project which has been carried out in that area.

Requirement for Consent

4.—(1) A developer must not commence a project without the Secretary of State’s agreement to the OGA’s grant of consent and the consent of the OGA.

(2) The OGA must not grant consent regarding a project without the agreement of the Secretary of State.

(3) The Secretary of State must not agree to the grant of consent for a project unless—

- (a) an environmental impact assessment has been carried out; or
- (b) an environmental impact assessment is not required, pursuant to regulations 5, 6 or 7.

(4) When the Secretary of State notifies the developer of the Secretary of State’s agreement to the grant of consent, the Secretary of State may attach conditions to the agreement that the developer must comply with, including environmental conditions to avoid, prevent, reduce or offset any significant adverse effects on the environment, and measures to monitor such conditions (“a monitoring condition”).

(5) When deciding whether to impose a monitoring condition pursuant to paragraph (4), the Secretary of State must—

- (a) consider whether there are appropriate existing monitoring arrangements under legislation aside from these Regulations that make the imposition of a monitoring condition unnecessary;
- (b) take steps to ensure that the parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Requirement for an Environmental Impact Assessment

5.—(1) Projects that fall under Schedule 1 require an environmental impact assessment, and regulations 8 to 16 apply.

(2) For projects that fall under Schedule 2—

- (a) the developer must apply to the Secretary of State for a direction as to whether an environmental impact assessment is required (“a screening direction”) and the Secretary of State must serve a screening direction in accordance with regulation 6; or
- (b) the developer may choose that the project undergoes an environmental impact assessment, and regulations 8 to 16 apply.

(3) Projects that fall under Schedule 3 do not require an environmental impact assessment where the Secretary of State considers that the project is not likely to have a significant effect on the environment pursuant to regulation 7.

(4) Projects do not require an environmental impact assessment where the Secretary of State directs this under regulations 17 and 18 (exempt projects).

(5) Where a project requires both an environmental impact assessment under these Regulations and an assessment under either regulation 5 of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a) or regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017(b), the Secretary of State must ensure that the preparation of those assessments is coordinated where appropriate.

Requirement for a screening direction

6.—(1) Where a project requires a screening direction under regulation 5(2), the developer's application for a screening direction —

- (a) must include the information specified in Schedule 4;
- (b) may include information on any features of the project or measures envisaged to avoid, prevent, reduce or offset likely significant adverse effects on the environment.

(2) The developer must also provide any further information required by the Secretary of State regarding the application.

(3) The Secretary of State may decide that an environmental impact assessment is not required where the Secretary of State considers that the project is not likely to have a significant effect on the environment, taking into account—

- (a) the information provided by the developer;
- (b) the matters listed in Schedule 5 (matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment);
- (c) the results of any preliminary verifications or assessments of the effects on the environment of the project carried out pursuant to retained EU law other than any law that implemented the EIA Directive;
- (d) any conditions that the Secretary of State may attach to the agreement to the grant of consent pursuant to regulation 4(4).

(4) The screening direction must state—

- (a) the main reasons for the decision, with reference to the matters listed in Schedule 5 (matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment); and
- (b) where the Secretary of State has decided that an environmental impact assessment is not required—
 - (i) that the Secretary of State agrees to the grant of consent for the project;
 - (ii) any conditions that the Secretary of State attaches to the agreement to the grant of consent pursuant to regulation 4(4);
 - (iii) any features of the project or measures envisaged that the developer has proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(5) The Secretary of State must serve the screening direction on the developer as soon as possible and in any event within 90 days of receiving the application containing the information required under paragraph (1), except where paragraph (6) applies.

(6) The Secretary of State may extend the time limit in paragraph (5) where the Secretary of State considers that an application for a screening direction is for a project that is an exceptional case, for example in relation to its nature, complexity, location or size.

(7) Where paragraph (6) applies, the Secretary of State must notify the developer as to when the screening direction is expected to be served and the reasons why the Secretary of State considers that extra time is needed.

(a) S.I. 2001/1754. Relevant amending instruments are S.I. 2016/912, S.I. 2007/77 and S.I. 2007/1842.

(b) S.I. 2017/1013. Amended by S.I. 2019/579. There are other amendments which are not relevant.

(8) The Secretary of State must promptly make the screening direction available on a public website.

Decision that no environmental impact assessment is required, without a screening direction

7.—(1) For a project that falls under Schedule 3, an application for a screening direction is not required, but the developer must provide any information that the Secretary of State requires in relation to the project.

(2) The Secretary of State may decide that an environmental impact assessment is not required where the Secretary of State considers that the project is not likely to have a significant effect on the environment, taking into account—

- (a) any information provided by the developer;
- (b) the matters listed in Schedule 5 (matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment);
- (c) any conditions that the Secretary of State may attach to the agreement to the grant of consent pursuant to regulation 4(4).

(3) The decision must be served promptly on the developer and must state, where it is decided that an environmental impact assessment is not required—

- (a) that the Secretary of State agrees to the grant of consent for the project;
- (b) any conditions that the Secretary of State attaches to the agreement to the grant of consent pursuant to regulation 4(4).

Environmental Statement Requirements

8.—(1) Where a project is subject to an environmental impact assessment, the developer must submit an environmental statement containing the information listed in Schedule 6, as relevant.

(2) In preparing the environmental statement, the developer must take into account the available results of other relevant assessments under the law of any part of the United Kingdom.

(3) The developer must ensure that—

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

Scoping opinion for an environmental statement

9.—(1) Where a project is subject to an environmental impact assessment, the developer may apply to the Secretary of State for an opinion on the scope and level of detail to be included in the environmental statement (the “scoping opinion”).

(2) The application must contain—

- (a) the name and address of the developer;
- (b) a brief description of the physical characteristics of the project;
- (c) the location of the project with particular regard to the environmental sensitivity of the geographical areas likely to be affected by the project;
- (d) any likely significant effects on the environment.

(3) Following receipt of an application, the Secretary of State must notify any authority which the Secretary of State considers would be likely to be interested in the project by reason of either its particular environmental responsibilities or its local or regional competence.

(4) The notice must—

- (a) provide a copy of the application submitted by the developer;
- (b) request views on the scope and level of detail to be included in the environmental statement;

- (c) specify a reasonable period in which representations may be made to the Secretary of State.
- (5) The scoping opinion must take into account the information provided by the developer and any views expressed by the authorities regarding the proposed scoping opinion.
- (6) The Secretary of State must provide the scoping opinion to the developer.
- (7) Where the Secretary of State has provided a scoping opinion to the developer the environmental statement must be based on the scoping opinion.

Obtaining information for preparing the environmental statement

10.—(1) A developer may apply to the Secretary of State to request information regarding a project that is subject to an environmental impact assessment where that information—

- (a) would assist the developer in the preparation of the environmental statement; and
- (b) is not otherwise reasonably accessible to the developer.

(2) The application must contain—

- (a) the name and address of the developer;
- (b) a brief description of the physical characteristics of the project;
- (c) the location of the project with particular regard to the environmental sensitivity of the geographical areas likely to be affected by the project;
- (d) a description of the information sought for the preparation of the environmental statement.

(3) Where an application is submitted in accordance with paragraph (2), the Secretary of State must—

- (a) where the Secretary of State has the information requested, provide that information;
- (b) where the Secretary of State does not have the information requested, provide the name and address of any authority that the Secretary of State considers may have that information.

(4) Where the Secretary of State has specified any authority in accordance with paragraph (3)(b), the Secretary of State must serve on that authority a notice which—

- (a) states that the authority's name and address has been provided to the developer;
- (b) refers to the duty imposed on the authority by paragraph (5);
- (c) is accompanied by a copy of the application made by the developer.

(5) Where a notice is served on an authority pursuant to paragraph (4), the authority must promptly provide the developer with any information held by it which falls within scope of the developer's application.

Public Consultation Requirements - United Kingdom

11.—(1) Where the Secretary of State receives an environmental statement for a project from a developer, the Secretary of State must promptly serve a notice on the developer which specifies the authorities that the Secretary of State considers would be likely to be interested in the project due to their particular environmental responsibilities or local or regional competence.

(2) The environmental statement must be accompanied by a summary of the project, which must include the proposed location of the project, the proposed activities and the proposed timeline for those activities.

(3) The developer must promptly—

- (a) serve on each authority specified in the Secretary of State's notice—
 - (i) a copy of the Secretary of State's notice;
 - (ii) a copy of the environmental statement;

- (iii) a copy of the summary of the project;
- (iv) a notice stating that an application for consent has been made and that representations may be made to the Secretary of State by a specified date, which must be at least 30 days after the date on which the copy of the Secretary of State's notice, environmental statement and summary of the project were served on the authority;
- (b) provide notice to the Secretary of State of the name of every authority on whom it has served notice under sub-paragraph (a), and the date of such service;
- (c) publish a notice which—
 - (i) states that an application for consent has been made and sets out the summary of the project;
 - (ii) states that the project is subject to an environmental impact assessment and, where relevant, the fact that regulation 13 (consultation requirements regarding other countries) applies;
 - (iii) states that the OGA is responsible for deciding whether or not to grant consent, that the agreement of the Secretary of State to the grant of consent must be obtained before consent may be granted, and that the Secretary of State's decision on whether to agree to the grant of consent is based on the environmental impact assessment for the project;
 - (iv) states the range of possible decisions in response to the application for consent, where the notice of the decisions will be published in accordance with regulation 16(1), and how information on the Secretary of State's decision can be obtained or requested in accordance with regulation 16(3);
 - (v) states the websites at which the notice, environmental statement and summary of the project may be viewed and downloaded;
 - (vi) states that a copy of the environmental statement and summary of the project may be obtained by post or email during the consultation period specified in paragraph (vii), and provides an address, email address and telephone number for the purpose of requesting a copy;
 - (vii) states a date not less than 30 days after the date on which the notice is last published by which any person may submit representations in relation to the project to the Secretary of State, and specifies the address or email address to which any such representations must be sent;
 - (viii) sets out any other arrangements made for consulting the public;
 - (ix) provides an explanation of the right of a person aggrieved by the grant of consent for a project to apply for judicial review.

(4) The developer must provide one copy of the environmental statement and summary of the project by post or email, during the consultation period specified in paragraph (vii), in accordance with a request for such copies.

(5) The developer must publish the notice required pursuant to paragraph (3)(c), the environmental statement and the summary of the project on a public website at least until the date three months after the date on which the Secretary of State publishes the notice under regulation 16(1) (notice of consent decisions).

(6) The developer must also publish the notice referred to in paragraph (3)(c)—

- (a) at any place and times reasonably required by the Secretary of State;
- (b) in such newspapers as the Secretary of State may direct.

(7) The developer must provide the notice to the Secretary of State promptly and must also provide, within a reasonable time, the names of the newspapers in which the notice was published and the dates of publication.

(8) Following receipt of the notice pursuant to paragraph (7), the Secretary of State must promptly publish the notice, the environmental statement, and the summary of the project on a public website.

Provision of further information and related public consultation requirements

12.—(1) Following receipt of an environmental statement from a developer, the Secretary of State may by notice require a developer to provide further information.

(2) Where the developer proposes changes to the project before the OGA notifies the developer of its decision regarding whether to grant consent for the project under regulation 15, the Secretary of State must direct the developer to provide further information under paragraph (1).

(3) The Secretary of State must notify the developer if—

- (a) the Secretary of State obtains or receives further information during the period between the service of the notice under regulation 11(3)(c) and the OGA's notification to the developer under regulation 15 (OGA consent decision); and
- (b) the Secretary of State considers the further information ought to be made public because the information is directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment.

(4) Where paragraph (3) applies and the Secretary of State has agreed to the grant of consent under regulation 14, but the OGA has not notified the developer of its decision regarding whether to grant consent for the project under regulation 15, the Secretary of State must—

- (a) revoke the agreement to the grant of consent;
- (b) notify the developer that the agreement to the grant of consent has been revoked;
- (c) following the consultation period specified in paragraph (5)(c)(viii), decide whether to agree to the grant of consent in accordance with regulation 14.

(5) Following receipt of the notice under paragraph (3), the developer must promptly—

- (a) serve the further information that the Secretary of State considers is directly relevant in accordance with paragraph (3) on the authorities on which the environmental statement was required to be served pursuant to regulation 11(1) and 11(3)(a), together with a notice referring to the material previously served on that authority and stating that further representations may be made to the Secretary of State by a date specified in that notice, which must be at least 30 days after the date on which the further information was served on that authority;
- (b) notify the Secretary of State of the name of every authority served with the information and notice referred to in sub-paragraph (a) and the date of such service;
- (c) publish a notice which—
 - (i) refers to the previous notice published under regulation 11(3)(c) in respect of the application for consent and environmental statement and states that further information is available in respect of the project;
 - (ii) states that an application for consent has been made and sets out the summary of the project, as referred to in regulation 11(2);
 - (iii) states that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that regulation 13 (consultation requirements regarding other countries) applies;
 - (iv) states that the OGA is responsible for deciding whether or not to grant consent, that the agreement of the Secretary of State to the grant of consent must be obtained before consent may be granted, and that the Secretary of State's decision on whether to agree to the grant of consent is based on the environmental impact assessment for the project;
 - (v) states the range of possible decisions in response to the application for consent, where the notice of the decisions will be published in accordance with regulation

16(1) and how information on the Secretary of State's decision can be obtained or requested in accordance with regulation 16(3);

- (vi) states the websites at which the notice referred to in regulation 11(3)(c), the notice published pursuant to this paragraph, environmental statement, further information and summary of the project may be viewed and downloaded;
- (vii) states that a copy of the environmental statement, further information and summary of the project may be obtained by post or email during the consultation period specified in paragraph (viii), and provides an address, email address and telephone number for the purpose of requesting a copy;
- (viii) states a date not less than 30 days after the date on which this notice is last published by which any person may make representations in relation to the project to the Secretary of State and specifies the address or email address to which any representations must be sent;
- (ix) sets out any other arrangements made for consulting the public;
- (x) provides an explanation of the right of a person aggrieved by the grant of consent for a project to apply for judicial review.

(6) The developer must provide one copy of the environmental statement, further information and summary of the project by post or email, during the period specified in paragraph (viii), in accordance with a request for such copies.

(7) The developer must publish the notice required pursuant to paragraph (5)(c) and the further information on the same website as it published the documents referred to under regulation 11(5) at least until the date three months after the date on which the Secretary of State publishes the notice under regulation 16(1) (notice of consent decisions).

(8) The developer must also publish the notice required pursuant to paragraph (5)(c)—

- (a) at any place and times reasonably required by the Secretary of State;
- (b) in such newspapers as the Secretary of State may direct.

(9) The developer must provide the notice to the Secretary of State promptly and must also provide, within a reasonable time, the names of the newspapers in which the notice was published and the dates of publication.

(10) Following receipt of the notice pursuant to paragraph (9), the Secretary of State must promptly publish the notice and the further information on the same website as the Secretary of State published the documents referred to under regulation 11(8).

Consultation Requirements – other countries

13.—(1) This regulation applies where a project is subject to an environmental impact assessment and—

- (a) the Secretary of State considers that the project could have a significant effect on the environment of another country; or
- (b) another country notifies the Secretary of State before the Secretary of State agrees to the grant of consent under regulation 14 that its environment is likely to be significantly affected by that project.

(2) Where paragraph (1) applies, the Secretary of State must provide a notice to that country which—

- (a) describes the project together with any available information regarding the possible transboundary impact of the project;
- (b) states the range of possible decisions in response to the application for consent;
- (c) states the period during which the country may request to participate in the decision-making process regarding the Secretary of State's agreement to the grant of consent.

(3) The Secretary of State must provide the notice no later than the date on which the public is notified of the project under regulation 11(3)(c), unless the country notifies the Secretary of State of its interest after this date, in which case the notice must be provided promptly.

(4) Where a country requests to participate in the decision-making process regarding the Secretary of State's agreement to the grant of consent, the Secretary of State must—

- (a) provide to the country a copy of—
 - (i) the summary of the project;
 - (ii) the environmental statement;
 - (iii) the notice published under regulation 11(3)(c);
 - (iv) any information that falls under regulation 12(3);
- (b) provide the country with a reasonable time for it to consult with the Secretary of State on the project;
- (c) where the country consults its public or authorities on the project, provide a reasonable time for the country's authorities and public to submit representations regarding the project to the relevant authority in that country.

(5) As part of the consultation under paragraph (4)(b), the Secretary of State must notify the country of the proposed decision on whether to agree to the grant of consent.

(6) Following the OGA's decision on whether to grant consent under regulation 15, the Secretary of State must provide the notice specified in regulation 16 (notice of consent decisions) to the country.

Secretary of State decision on whether to agree to the grant of consent

14.—(1) When making a decision as to whether to agree to the grant of consent for a project that is subject to an environmental impact assessment, the Secretary of State must reach a conclusion on the significant effects of the project on the environment.

(2) The conclusion must take into account—

- (a) the environmental statement;
- (b) any information obtained by or provided to the Secretary of State under regulation 12(3);
- (c) any representations received pursuant to regulation 11, and regulations 12 and 13 where relevant, which relate to the environmental effects of the project;
- (d) any conditions that the Secretary of State may attach to the agreement to the grant of consent pursuant to regulation 4(4).

(3) A decision by the Secretary of State to agree to the grant of consent must set out—

- (a) the Secretary of State's conclusion on any significant effects of the project on the environment, including an explanation of how the points listed in paragraph (2) have been taken into account;
- (b) any conditions that the Secretary of State attaches to the agreement to the grant of consent pursuant to regulation 4(4);
- (c) a description of any features of the project or measures envisaged to avoid, prevent, reduce or offset any significant adverse effects on the environment.

(4) A decision by the Secretary of State to refuse to agree to the grant of consent must set out the main reasons for that refusal.

(5) The Secretary of State must notify the developer of the Secretary of State's decision to agree to or refuse to agree to the grant of consent.

(6) The Secretary of State's decision on whether or not to agree to the grant of consent must be made within a reasonable time from the date on which the Secretary of State has been provided with the information and representations referred to in paragraph (2), taking into account the nature and complexity of the project.

OGA decision on whether to grant consent

- 15.**—(1) For projects that are subject to an environmental impact assessment, the OGA must—
- (a) decide whether to grant consent within a reasonable time following the Secretary of State’s decision on whether to agree to the grant of consent;
 - (b) notify the developer of its decision in accordance with paragraphs (2) to (4).
- (2) Where the OGA grants consent, the OGA must attach the decision of the Secretary of State to agree to the grant of consent to its notification.
- (3) Where the Secretary of State has refused to agree to the grant of consent, the OGA must attach the decision of the Secretary of State to its notification that consent has not been granted.
- (4) Where the Secretary of State has agreed to the grant of consent, but the OGA has not granted consent, the OGA must give reasons for its decision in its notification.

Publication of Secretary of State and OGA decisions

- 16.**—(1) Following the OGA’s notification to the developer under regulation 15, the Secretary of State must promptly publish a notice containing the information in paragraphs (2) and (3) on a public website.
- (2) The notice must state whether—
- (a) the Secretary of State has agreed to the OGA’s grant of consent following the Secretary of State’s conclusion regarding the environmental effects of the project, and the OGA has granted consent, so the project may proceed;
 - (b) the Secretary of State has refused to agree to the OGA’s grant of consent following the Secretary of State’s conclusion regarding the environmental effects of the project, so the project may not proceed; or
 - (c) the Secretary of State has agreed to the OGA’s grant of consent following the Secretary of State’s conclusion regarding the environmental effects of the project, but the OGA has not granted consent, so the project may not proceed.
- (3) The notice must also state—
- (a) the public website at which the following information can be obtained—
 - (i) the Secretary of State’s decision to agree to or refuse to agree to the grant of consent, setting out the information required by regulation 14(3) or (4) as applicable;
 - (ii) information about the public consultation process, including a summary of representations made to the Secretary of State in respect of the project under regulation 11, and regulations 12 and 13 where relevant, together with details of how those representations were taken into account;
 - (b) an address, email address and telephone number at which the information in sub-paragraph (a) can be requested from the Secretary of State.
- (4) The Secretary of State must promptly provide a copy of the notice to those authorities specified in regulation 11(1) (authorities likely to be interested).

Exempt projects – defence and civil emergencies

- 17.** The Secretary of State may direct a developer that these Regulations do not apply in relation to a project if—
- (a) the project has defence or the response to a civil emergency as its sole purpose; and
 - (b) the Secretary of State considers that compliance with these Regulations would have an adverse effect on that purpose.

Exempt projects – adverse effect on the project purpose

18.—(1) The Secretary of State may, in exceptional cases, direct that a project is exempt in whole or in part from the requirements of these Regulations if the application of all or some of the provisions of these Regulations would adversely affect the purpose of the project.

(2) Where the Secretary of State considers that the project is likely to have significant effects on the environment in another country, the Secretary of State must not serve a direction under paragraph (1) unless the Secretary of State considers that a consultation with that country broadly equivalent to that described in regulation 13 will take place before the Secretary of State decides whether to agree to the grant of consent in respect of the project.

(3) A direction served by the Secretary of State under paragraph (1) must—

- (a) disapply such provisions of these Regulations as the Secretary of State considers appropriate;
- (b) require the developer to carry out an assessment in a form that the Secretary of State considers appropriate in order to ensure a high level of protection of the environment and of human health;
- (c) require that the developer makes all information relating to the effects the project is likely to have on the environment, collected pursuant to sub-paragraph (b), available to the public, and specify the manner in which it is to be made available;
- (d) specify any steps for consultation of the public;
- (e) state the Secretary of State's reasons for serving the direction and the information on which the direction is based.

(4) The Secretary of State must publish the direction on a public website.

(5) Following any required consultations, and after the developer has complied with all requirements specified by the Secretary of State in the direction, the Secretary of State must notify the developer regarding whether the Secretary of State agrees to the grant of consent.

UK participation in overseas projects

19.—(1) This regulation applies where the Secretary of State receives information on a proposed overseas project and the Secretary of State considers that the overseas project is likely to have significant effects on the environment of the relevant UK area.

(2) Where paragraph (1) applies, and the Secretary of State wishes to participate in the decision-making process for the overseas project, the Secretary of State must endeavour to—

- (a) obtain from the country information relating to the likely significant effects on the environment of the overseas project;
- (b) consult with the country regarding the overseas project, including on the potential significant effects of the overseas project on the environment of the relevant UK area and the measures envisaged to reduce or eliminate such effects;
- (c) agree with the country a period of at least 30 days from the date that information is last made available under paragraph (3) during which persons in the United Kingdom may submit representations to the Secretary of State;
- (d) agree with the country that it will take account of such representations that are forwarded by the Secretary of State.

(3) The Secretary of State must arrange for any information received under paragraph (2)(a) to be made available to the public and to the authorities which the Secretary of State considers would be likely to be interested in the overseas project by reason of either their particular environmental responsibilities or local or regional competence.

(4) The Secretary of State must notify the authorities specified in paragraph (3) of the decision made by the country and make available information on the decision on a public website, including, in so far as this information is made available to the Secretary of State—

- (a) the content of the decision;

- (b) a description of any features of the overseas project or measures envisaged to avoid, prevent, reduce or offset any significant adverse effects on the environment, including monitoring measures;
 - (c) any environmental conditions attached to the decision;
 - (d) the main reasons for the decision, including—
 - (i) information about the public consultation process;
 - (ii) a summary of the results of the consultations;
 - (iii) a summary of how the consultation results have been taken into account;
 - (iv) any other information gathered, and how this has been taken into account.
- (5) In this regulation—
- (a) “relevant UK area” means—
 - (i) tidal waters and parts of the sea adjacent to England, Wales and Northern Ireland from the low water mark up to the seaward limits of territorial waters;
 - (ii) waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964 (designation of areas of continental shelf);
 - (iii) the seabed and subsoil under the waters referred to in paragraphs (i) and (ii);
 - (b) an “overseas project” means the execution of construction works or other installations or schemes, and other interventions in the natural surroundings and landscape, that are—
 - (i) proposed to take place in the jurisdiction of another country; and
 - (ii) equivalent or substantially similar to a matter set out in Schedules 1, 2 or 3, and includes related works.

Confidentiality

20. Nothing in these Regulations requires the disclosure of information which is subject to an obligation of confidentiality by virtue of any law of any part of the United Kingdom.

Provision of Documents

21. Any information, application, decision, notice, notification, direction, or any other document may be provided to a person pursuant to these Regulations by—

- (a) sending it to the person by electronic means; or
- (b) delivering or sending it to—
 - (i) the person’s registered office (if applicable);
 - (ii) the person’s principal office in the United Kingdom; or
 - (iii) another address in the United Kingdom specified by the person as the address for service.

Fees

22.—(1) The Secretary of State may charge fees in respect of the following—

- (a) deciding whether, and providing advice as to whether, an environmental impact assessment is required under regulation 5(1);
- (b) regarding screening directions—
 - (i) deciding whether, and providing advice as to whether, a screening direction is required under regulation 5(2);
 - (ii) providing advice regarding the content of an application for a screening direction under regulation 6(1);

- (iii) requiring further information regarding the application for a screening direction under regulation 6(2) and providing advice regarding the information required;
- (iv) deciding whether an environmental impact assessment is required under regulation 6(3);
- (v) serving a screening direction under regulation 6(4);
- (vi) notifying a developer that extra time is needed under regulation 6(7);
- (vii) publishing the screening direction under regulation 6(8);
- (c) regarding projects for which the Secretary of State may decide that an environmental impact assessment is not required without undertaking a screening direction—
 - (i) deciding whether, and providing advice as to whether, regulation 7 applies to a project;
 - (ii) requiring information under regulation 7(1) and providing advice regarding the information required;
 - (iii) deciding whether an environmental impact assessment is required under regulation 7(2);
 - (iv) serving the decision under regulation 7(3);
- (d) regarding the preparation of environmental statements—
 - (i) providing advice regarding the content of an environmental statement;
 - (ii) providing advice regarding an application for a scoping opinion under regulation 9(1) and (2);
 - (iii) consulting relevant authorities under regulation 9(3) to (5);
 - (iv) providing a scoping opinion under regulation 9(6);
 - (v) providing advice regarding applications for information under regulation 10(1) and (2);
 - (vi) providing information to the developer under regulation 10(3);
 - (vii) serving a notice under regulation 10(4) (requesting information from authorities);
- (e) regarding the public consultation process—
 - (i) serving a notice on the developer under regulation 11(1) (consultation requirements);
 - (ii) providing advice to the developer with respect to its obligations under regulation 11(2) to (7);
 - (iii) publishing the notice, environmental statement, and summary of the project under regulation 11(8);
- (f) regarding the provision of further information and related public consultation requirements—
 - (i) requiring a developer to provide further information under regulation 12(1) and (2);
 - (ii) providing advice to the developer regarding its obligations under regulation 12(1) and (2) (provision of further information);
 - (iii) notifying the developer under regulation 12(3);
 - (iv) revoking the Secretary of State's agreement to the grant of consent under regulation 12(4), and notifying the developer of this;
 - (v) providing advice to the developer with respect to its obligations under regulation 12(5) to (9) (consultation);
 - (vi) publishing the notice and further information under regulation 12(10).
- (g) regarding consultation with other countries, providing information and consulting under regulation 13;
- (h) regarding the decision on whether to agree to the grant of consent—

- (i) reaching a conclusion under regulation 14(1) and (2) (conclusion on the significant effects of the project on the environment);
- (ii) deciding whether to agree to the grant of consent and providing notice of the decision under regulation 14(3) to (5);
- (i) regarding publication of the decisions of the Secretary of State and the OGA—
 - (i) publishing a notice under regulation 16(1);
 - (ii) publishing and providing information under regulation 16(3);
 - (iii) providing a copy of the notice to the authorities under regulation 16(4);
- (j) regarding regulation 17 (exempt projects – defence and civil emergencies)—
 - (i) deciding whether, and providing advice as to whether, regulation 17 applies;
 - (ii) serving a direction under regulation 17;
- (k) regarding regulation 18 (exempt projects – adverse effect on the project purpose)—
 - (i) deciding whether, and providing advice as to whether, regulation 18 applies;
 - (ii) serving a direction under regulation 18(1);
 - (iii) providing information and consulting under regulation 18(2);
 - (iv) providing advice with respect to the developer’s obligations under regulation 18(3);
 - (v) publishing a direction under regulation 18(4);
 - (vi) deciding whether to agree to the grant of consent and providing notice under regulation 18(5);
- (l) notifying the OGA of the Secretary of State’s decision whether to agree to the grant of consent or refuse to agree to the grant of consent;
- (m) regarding regulation 20 (confidentiality), deciding whether any information is confidential;
- (n) regarding compliance, monitoring compliance with these Regulations and any conditions attached to the Secretary of State’s agreement to the grant of consent.

(2) A fee charged under paragraph (1) is—

$$(A \times B) + (C \times D)$$

where—

A is the number of hours work carried out by specialist officers;

B is £190;

C is the number of hours work carried out by non-specialist officers;

D is £101.

(3) For the purposes of paragraph (2), the number of hours work may be expressed as a fraction where—

- (a) less than one hour’s work has been carried out; or
- (b) the total amount of time worked is more than one hour but cannot be expressed as a whole number in hours.

(4) Any fee must be paid on demand.

(5) In this regulation, “specialist officers” means persons engaged on behalf of the Secretary of State to carry out the functions of the Secretary of State referred to in paragraph (1) and “non-specialist officers” means any other persons engaged on behalf of the Secretary of State to provide administrative support to those specialist officers.

Inspection and investigation

23.—(1) The Secretary of State may appoint inspectors to monitor compliance with these Regulations and any conditions attached to the Secretary of State’s agreement to the grant of consent.

(2) An inspector may, where the inspector considers this necessary for an investigation under paragraph (1)—

- (a) require the production of any record and take copies of these;
- (b) require any person to assist the inspector to exercise the powers conferred on the inspector under this regulation, to the extent that it is within that person’s responsibilities or control to provide such assistance;
- (c) require any person that the inspector reasonably believes is able to provide information relevant to the investigation to—
 - (i) meet the inspector at a time and place specified by the inspector;
 - (ii) answer any questions that the inspector considers relevant to the investigation;
 - (iii) sign a declaration of truth regarding the answers provided.

(3) No other person is permitted to be present at a meeting under paragraph 2(c)(i), except that—

- (a) the person who is required to provide information under paragraph 2(c) may nominate another person to be present;
- (b) the inspector may allow others to be present at the inspector’s discretion.

(4) An inspector may be required to produce evidence of appointment by any person involved in the investigation when the inspector purports to carry out functions under this regulation.

Application to court by Secretary of State

24.—(1) The Secretary of State may apply to the court where a developer is carrying out, or has carried out, a project —

- (a) without the Secretary of State’s agreement to the grant of consent; or
- (b) in breach of a condition attached to the Secretary of State’s agreement to the grant of consent.

(2) Where paragraph (1) applies, and subject to paragraph (3), the court may make an order—

- (a) restraining the carrying out of the project or particular aspects of the project;
- (b) compelling the performance of any act required to be done by a condition attached to the Secretary of State’s agreement to the grant of consent;
- (c) requiring the removal, so far as is practicable in all the circumstances, of any installation erected or located—
 - (i) without the Secretary of State’s agreement to the grant of consent; or
 - (ii) in breach of a condition attached to the Secretary of State’s agreement to the grant of consent;
- (d) where it orders the removal of any installation, requiring the reinstatement of the site where the installation was erected or located.

(3) The court shall not grant an order under this regulation in respect of a breach of any condition attached to the Secretary of State’s agreement to the grant of consent where—

- (a) the breach in question was due to circumstances beyond the control of the developer and the breach could not reasonably have been prevented by the developer; or
- (b) the breach occurred as a result of anything required to be done as a matter of urgency for the purposes of securing the safety of any person.

(4) Where the developer fails to comply with the terms of an order made pursuant to paragraph (2) within such time as may be specified in it or, if no such time is specified, within a reasonable

time of the making of the order, the Secretary of State may take the action required to be taken by the order and the reasonable costs and expenses of doing so are recoverable as a debt from the developer.

(5) Where the Secretary of State takes action pursuant to paragraph (4), that action is without prejudice to any consequences which may flow from the developer's failure to comply with the order.

(6) In this regulation—

(a) “the court” means—

- (i) regarding a project in the English area, the High Court in England;
- (ii) regarding a project in the Scottish area, the Court of Session;
- (iii) regarding a project in the Northern Irish area, the High Court in Northern Ireland;

(b) “the English area”, “the Scottish area” and “the Northern Irish area” have the same meanings as in the Civil Jurisdiction (Offshore Activities) Order 1987^(a).

(7) Where a project is situated in more than one of the areas referred to in paragraph (6)(b), any of the courts having jurisdiction in those areas has jurisdiction in relation to any question arising under this regulation.

Offences

25.—(1) Subject to paragraph (4), a person is guilty of an offence where the person—

- (a) intentionally or recklessly provides to the Secretary of State relevant information which is false or misleading in a material way;
- (b) fails to provide information required under regulation 23(2)(a) or (c); or
- (c) wilfully obstructs an inspector appointed under regulation 23(1).

(2) “Relevant information” is information—

- (a) contained in an environmental statement;
- (b) provided under regulations 6(1), 6(2), 7(1), 9(2), 10(2), 12(1), 18(3)(c), 23(2)(a) or 23(2)(c); or
- (c) any other information that the developer is required to provide by virtue of any provision of these Regulations.

(3) Subject to paragraphs (4) and (5) a developer is guilty of an offence where it carries out a project—

- (a) without the Secretary of State's agreement to the grant of consent; or
- (b) in breach of a condition attached to the Secretary of State's agreement to the grant of consent.

(4) Paragraphs (1) and (3) do not apply to anything which is an offence by virtue of section 21 of the Petroleum Act 1998^(b).

(5) It is a defence to a charge under paragraph (3)(b) for the developer to show that—

- (a) it took all reasonable steps to avoid the commission of the offence; or
- (b) the acts in question were required to be done as a matter of urgency for the purposes of securing the safety of a person.

(6) An offence under this regulation is punishable—

- (a) on summary conviction in England and Wales, by a fine;
- (b) on summary conviction in Scotland and Northern Ireland, by a fine not exceeding the statutory maximum;

(a) S.I. 1987/2197. There are no relevant amendments.

(b) 1998 c. 17. Section 21 of the Act was amended by paragraph 7 of Schedule 4 to S.I. 2000/1937 and paragraph 25 of Schedule 1 to the Energy Act 2016 (c. 20).

(c) on conviction on indictment, by a fine.

(7) Where an offence under these Regulations is committed by a body corporate, an officer as well as the body corporate is guilty of the offence and liable if the offence is—

- (a) committed with the consent or connivance of an officer; or
- (b) attributable to any neglect on the part of the officer.

(8) Where the affairs of a body corporate are managed by its members, paragraph (7) applies in relation to the acts or defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.

(9) No proceedings shall be instituted in England and Wales or Northern Ireland except—

- (a) in the case of proceedings in England and Wales, by or with the consent of the Director of Public Prosecutions;
- (b) in the case of proceedings in Northern Ireland, by or with the consent of the Director of Public Prosecutions for Northern Ireland;
- (c) in any case, by or with the consent of the Secretary of State.

(10) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions)(a) does not apply to any proceedings for an offence under this regulation.

(11) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(12) In this regulation, “officer” means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate, or any person purporting to act in such capacity.

Revocation

26.—(1) The Secretary of State may revoke the agreement to the grant of consent for a project where the Secretary of State considers that—

- (a) the developer has carried out, or is carrying out, a project in breach of a condition attached to the Secretary of State's agreement to the grant of consent; or
- (b) the developer has provided to the Secretary of State relevant information which is false or misleading in a material way.

(2) The Secretary of State must notify the developer of the decision to revoke the agreement to the grant of consent.

(3) Where the Secretary of State has revoked the agreement to the grant of consent for a project, the developer must not continue with the project.

(4) “Relevant information” has the meaning given in regulation 25(2).

Amendments to the Offshore Environmental Civil Sanctions Regulations 2018

27.—(1) The Offshore Environmental Civil Sanctions Regulations 2018(b) are amended as follows.

(2) In regulation 2, in the definition of “relevant permit”, after (c), insert—

“(d) the Secretary of State's agreement to the grant of consent pursuant to the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020;”.

(3) In the Schedule, after paragraph 5, insert—

“**6.** The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020

(a) 1878 c. 73.

(b) S.I. 2018/800.

| (1) <i>Provision of the above</i> | (2) <i>Fixed monetary penalty</i> | (3) <i>Amount of fixed monetary penalty</i> | (4) <i>Variable monetary penalty</i> |
|--------------------------------------|--------------------------------------|--|---|
| regulation 25(1)(a) | Yes | £1,000 | - |
| regulation 25(1)(b) | Yes | £1,000 | - |
| regulation 25(1)(c) | Yes | £1,000 | - |
| regulation 25(3)(a) | Yes | £2,500 | Yes |
| regulation 25(3)(b) | Yes | £2,500 | Yes". |

Consequential Amendments

28. Schedule 7 (consequential amendments) has effect.

Transitional and Saving Provisions relating to the 1999 Regulations

29.—(1) The 1999 Regulations apply only for the purposes specified in this regulation, with the modifications specified in this regulation.

(2) Subject to paragraph (7), where a project is pending a decision from the OGA on whether to grant consent when these Regulations come into force, regulations 4, 5 and 6 to 12 of the 1999 Regulations apply, rather than regulations 4 to 13 of these Regulations, but otherwise these Regulations apply.

(3) For the purposes of paragraph (2), the 1999 Regulations have effect as if—

(a) in regulation 3A—

(i) in sub-paragraph (d), for “reasoned conclusion as required by regulation 5A(1) or regulation 11(8A)” there were substituted “conclusion on the significant effects of the project on the environment”;

(ii) in sub-paragraph (e), “as required by regulation 5A(1)(c) or as to whether agreement is to be given in respect of the matters referred to in regulation 11(8A)(c)” were omitted;

(b) in regulation 5(4), (5) and (6), for “the decision referred to in regulation 5A(1)(c)” there were substituted “the decision as to whether to agree to the grant of consent”;

(c) in regulation (9)(2)(f)(viii), for “pursuant to regulation 16 below” there were substituted “to the court”.

(4) For the purposes of paragraph (2), these Regulations have effect as if—

(a) in the definition of “environmental impact assessment”—

(i) in sub-paragraph (a), “in accordance with regulation 8” were omitted;

(ii) in sub-paragraph (b), for “regulation 11 and, where relevant, regulations 12 and 13”, there were substituted “regulation 9, and regulations 5(5), 10 and 10A where relevant, of the 1999 Regulations”;

(iii) in sub-paragraph (c), for “regulation 12(3)”, there were substituted “regulation 10(2) of the 1999 Regulations”;

(b) in the definition of “environmental statement”, “, in accordance with regulation 8 (environmental statement requirements)” were omitted;

(c) in regulation 14(2)(b), for “regulation 12(3)” there were substituted “regulation 10(2) of the 1999 Regulations”;

(d) in regulation 14(2)(c), for “regulation 11, and regulations 12 and 13 where relevant,” there were substituted “regulation 9, and regulations 5(5), 10 and 10A where relevant, of the 1999 Regulations”;

(e) in regulation 14(2)(d), “pursuant to regulation 4(4)” were omitted;

(f) in regulation 14(3)(b), “pursuant to regulation 4(4)” were omitted;

- (g) in regulation 16(3)(b)(ii), for “regulation 11, and regulations 12 and 13 where relevant,” there were substituted “regulation 9, and regulations 5(5), 10 and 10A where relevant, of the 1999 Regulations”;
- (h) in regulation 16(4), for “regulation 11(1)”, there were substituted “regulation 9(1) of the 1999 Regulations”;
- (i) in regulation 20, after “these Regulations”, there were inserted “or the 1999 Regulations”;
- (j) in regulation 21, after “these Regulations”, there were inserted “or the 1999 Regulations”;
- (k) in regulation 23(1), after “these Regulations”, there were inserted “and the 1999 Regulations”;
- (l) in regulation 25(2), after “these Regulations”, there were inserted “or the 1999 Regulations”.

(5) Where an application to the court under regulation 16 of the 1999 Regulations is pending an order from the court when these Regulations come into force, regulation 16 of the 1999 Regulations continues to apply.

(6) Regarding any acts or omissions by a person that occurred prior to these Regulations coming into force, regulations 17 and 18 of the 1999 Regulations apply, rather than regulations 24, 25 and 26 and the amendments to the Offshore Environmental Civil Sanctions Regulations 2018 in regulation 27 of these Regulations.

(7) Where the Secretary of State is exercising any functions under the 1999 Regulations in accordance with this regulation, regulation 17A of the 1999 Regulations applies, rather than regulation 22 of these Regulations (fees), except that regulation 22(2) of these Regulations applies to determine the rate charged.

Review

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

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report;
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the day on which this regulation comes into force.

(4) Subsequent reports under this regulation must be published at intervals not exceeding five years.

7th December 2020

Kwasi Kwarteng
Minister of State
Department for Business, Energy and Industrial Strategy

8th December 2020

Rebecca Harris
Maggie Throup
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULES

SCHEDULE 1

Regulation 5 and Schedule 2

Requirement for an environmental impact assessment where the definition of “project” applies

1. Extraction of oil and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of oil and 500,000 cubic metres per day in the case of natural gas.
2. Installations for storage of oil with a capacity of 200,000 tonnes or more.
3. Activities captured by section 17(2)(a) or (b) of the Energy Act 2008 (activities related to the geological storage of carbon dioxide).
4. Installations for the capture of carbon dioxide streams for the purposes of geological storage of carbon dioxide where—
 - (a) the carbon dioxide is captured from an installation forming part of a project that falls under paragraph 1; or
 - (b) the total yearly capture of carbon dioxide is 1.5 megatonnes or more.
5. Pipelines with a diameter of more than 800 mm and a length of more than 40 km for the transport of oil, combustible gas or chemicals.
6. Pipelines with a diameter of more than 800 mm and a length of more than 40 km for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide.
7. A change to a project that falls under this Schedule where such a change in itself meets the thresholds, if any, listed in this Schedule.

SCHEDULE 2

Regulation 5

Requirement for a screening direction where the definition of “project” applies

- 1.—(1) Subject to sub-paragraph (2), drilling a well or borehole for the purpose of—
 - (a) exploring for oil or natural gas, establishing the existence of oil or natural gas, appraising the quantity, characteristics, or quality of oil or natural gas, or getting oil or natural gas; or
 - (b) activities within section 2(3) or section 17(2) of the Energy Act 2008 (activities related to unloading or storage of combustible gas or the geological storage of carbon dioxide).
- (2) Sub-paragraph (1) does not include—
 - (a) a well or borehole drilled to a depth of 350 metres or less below the surface of the seabed for the purpose of obtaining geological information about strata; or
 - (b) a drilling operation where the main purpose is the testing of the stability of the seabed.
2. Surface installations for the extraction of oil or natural gas.
3. Extraction of oil or natural gas for commercial purposes where the amount extracted is equal to or less than 500 tonnes per day in the case of oil and equal to or less than 500,000 cubic metres per day in the case of natural gas.
4. Installations for storage of oil with a capacity of less than 200,000 tonnes.

5. Activities captured by section 2(3)(a) to (d) of the Energy Act 2008 (activities related to the unloading or storage of combustible gas).

6. Installations for the capture of carbon dioxide streams for the purposes of geological storage of carbon dioxide where—

- (a) the carbon dioxide is captured from an installation forming part of a project under paragraph (3); and
- (b) the total yearly capture of carbon dioxide is less than 1.5 megatonnes.

7. Pipelines that are—

- (a) for the transport of oil, combustible gas, or chemicals, or for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide; and
- (b) do not fall under paragraphs 5 or 6 of Schedule 1 or Schedule 3.

8. A change to a project that falls under Schedule 1, except a change to which paragraph 7 of Schedule 1 applies.

9. A change to a project that falls under this Schedule.

SCHEDULE 3 Regulations 5 and 7 and Schedule 2

Secretary of State to decide if an environmental impact assessment is required, without a screening direction application where the definition of “project” applies

The construction of a pipeline for the transport of oil, combustible gas, or chemicals, or for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide, or the maintenance, repair, replacement, protection or extension of an existing pipeline constructed for those purposes where no part of the pipeline or related works would extend more than 500 metres from a well or any part of an installation to which that pipeline would be directly or indirectly attached.

SCHEDULE 4 Regulation 6

Information required in an application for a screening direction

1. The name and address of the developer.

2. A description of the project, including—

- (a) the physical characteristics of the project, and of any demolition works necessary to implement the project;
- (b) the location of the project, with particular regard to the environmental sensitivity of the geographical areas likely to be affected by the project;
- (c) the aspects of the environment likely to be significantly affected by the project;
- (d) any likely significant effects of the project on the environment, to the extent of the information available on such effects, resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

3. The description of the project must take into account—

- (a) the matters listed in Schedule 5 (matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment);

- (b) where relevant, the results of other assessments of the effects on the environment carried out pursuant to retained EU law other than any law that implemented the EIA Directive.

SCHEDULE 5 Regulations 6 and 7 and Schedule 4

Matters to be taken into account in deciding whether a project is likely to have a significant effect on the environment

Characteristics of the project

1. The characteristics of the project having regard, in particular, to—
 - (a) the size and design of the project;
 - (b) cumulation with other existing or approved projects;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents or disasters, including those caused by climate change, in accordance with scientific knowledge;
 - (g) the risks to human health (for example, due to water contamination or air pollution).

Location of the project

2. The environmental sensitivity of geographical areas likely to be affected by the project, with particular regard to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation, or Natura 2000 as defined in regulation 3(1) of the Conservation of Habitats and Species Regulations 2017(a);
 - (vi) areas in which there has been a failure to meet the environmental quality standards laid down in retained EU law, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Type and characteristics of the potential impact

3. The likely significant effects of the project on the environment in relation to the matters listed under paragraphs 1 and 2—
 - (a) having regard to the impact of the project on—
 - (i) population and human health;

(a) S.I. 2017/1012. Amended by S.I. 2019/579. There are other amendments which are not relevant.

- (ii) biodiversity, with particular attention to species and habitats protected under any law of any part of the United Kingdom that implemented Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^(a) and Directive 2009/147/EC^(b) on the conservation of wild birds;
- (iii) land, soil, water, air and climate;
- (iv) material assets, cultural heritage and the landscape;
- (v) the interaction between the factors referred to in paragraphs (i) to (iv); and
- (b) taking into account—
 - (i) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
 - (ii) the nature of the impact;
 - (iii) any impact on the environment in other countries;
 - (iv) the intensity and complexity of the impact;
 - (v) the probability of the impact;
 - (vi) the expected onset, duration, frequency and reversibility of the impact;
 - (vii) the cumulation of the impact with the impact of other existing or approved projects;
 - (viii) the possibility of effectively reducing the impact.

SCHEDULE 6

Regulation 8

Information for the environmental statement

1. A description of the project comprising information on the site, design, size and other relevant features of the project including—

- (a) a description of the location of the project;
- (b) a description of the physical characteristics of the project, including any demolition works necessary to implement the project, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the project, in particular any production process, which must cover energy demand and energy used, and nature and quantity of the materials and natural resources used (including water, land, soil and biodiversity);
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat and radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment and including a comparison of environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of its likely evolution without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

^(a) O.J. L 206, 22.7.1992, p. 7. The Directive was amended by Directive 97/62/EC, O.J. L 305, 8.11.1997, p. 42; Regulation (EC) No 1882/2003, O.J. L 284, 31.10.2003, p. 1; Directive 2006/105/EC, O.J. L 363, 20.12.2006, p. 368; and Directive 2013/17/EU, O.J. L 158, 10.6.2013, p. 193.

^(b) OJ L 20, 26.1.2010, p. 7. The Directive was amended by Directive 2013/17/EU, O.J. L 158, 10.6.2013, p. 193 and Regulation (EU) 2019/1010, O.J. L 170, 25.6.2019, p.115.

4. An assessment of the likely significant effects of the project on the environment, including those resulting from—

- (a) the construction and existence of the project, including any demolition works necessary to implement the project;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

5. The assessment under paragraph 4 must—

- (a) cover the likely significant effects on—
 - (i) population and human health;
 - (ii) biodiversity, with particular attention to species and habitats protected under any law of any part of the United Kingdom that implemented Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds;
 - (iii) land, soil, water, air and climate;
 - (iv) material assets, cultural heritage and the landscape;
 - (v) the interaction between the factors referred to in paragraphs (i) to (iv);
- (b) cover the direct effects and any indirect, secondary, cumulative, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project, including any effects on the environment in other countries;
- (c) cover the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters;
- (d) take into account environmental protection objectives established in retained EU law or at national level.

6. A description of the features of the project or measures envisaged in order to avoid, prevent, reduce or offset likely significant adverse effects on the environment that—

- (a) explains the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset;
- (b) covers both the construction and operational phases;
- (c) includes any proposed monitoring arrangements (for example the preparation of a post-project analysis);
- (d) describes measures envisaged to prevent or mitigate the significant adverse effects of major accidents or disasters on the environment and details of the preparedness for and proposed response to such emergencies.

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A non-technical summary of the information provided under paragraphs 1 to 7.

9. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

SCHEDULE 7

Regulation 28

Consequential Amendments

Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001

1. In regulation 4(3)(b) of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a), after “Regulations 1999” insert “or the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020”.

Offshore Chemicals Regulations 2002

2.—(1) The Offshore Chemicals Regulations 2002(b) are amended as follows.

(2) In regulation 2, omit the definition of “relevant project”.

(3) In regulation 7(2), for paragraph (a) substitute—

“(a) in connection with a project for which the Secretary of State serves a direction that an environmental impact assessment is not required pursuant to regulation 6 of the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 or regulation 6 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999;”.

Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005

3. In regulation 5A(5) of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(c), for paragraph (a) substitute—

“(a) in connection with a project for which the Secretary of State serves a direction that an environmental impact assessment is not required pursuant to regulation 6 of the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 or regulation 6 of the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999;”.

Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010

4. In article 3(5) of the Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010(d), after “Regulations 1999”, insert “or the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020”.

Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013

5. In regulation 4(5) of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013(e), for “Offshore Petroleum Production and Pipe-lines (Assessment of

(a) S.I. 2001/1754. Amended by S.I. 2007/77. There are other amendments which are not relevant.

(b) S.I. 2002/1355. Amended by S.I. 2016/912. There are other amendments which are not relevant.

(c) S.I. 2005/2055. Relevant amending instruments are S.I. 2011/983 and S.I. 2016/912.

(d) S.I. 2010/1513. Relevant amending instruments are S.I. 2016/912 and S.I. 2017/582.

(e) S.I. 2013/971. Amended by S.I. 2018/798. There are other amendments which are not relevant.

Environmental Effects) Regulations 1999”, substitute “Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020”.

Conservation of Offshore Marine Habitats and Species Regulations 2017

6.—(1) The Conservation of Offshore Marine Habitats and Species Regulations 2017(a) are amended as follows.

(2) In regulation 2, in the definition of “Petroleum or Energy Act consent”, after “Regulations 1999” insert “or the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020”.

(3) In regulation 28(7), after “Secretary of State”, insert “or the agreement to the grant”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (O.J. L 26, 28.1.2012, p. 1), and amendments made to that Directive by Directive 2014/52/EU (O.J. L 124, 25.4.2014, p. 1), for projects that fall under Schedules 1, 2 and 3 of these Regulations. These are projects related to offshore oil and gas exploration and production, offshore gas unloading and storage, and offshore capture and storage of carbon dioxide. The Directives were previously implemented for such projects by the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/360) and its amending instruments. These Regulations consolidate and replace S.I. 1999/360, and also make changes to the previous regime.

Regulation 4 of these Regulations provides that projects cannot commence without the consent of the Oil and Gas Authority, and that the Oil and Gas Authority cannot grant consent without the Secretary of State’s agreement.

Regulation 5 sets out when a project must be subject to an environmental impact assessment (an “EIA”) before a decision is made by the Secretary of State on whether to agree to the grant of consent for the project. Projects which are likely to have a significant effect on the environment must undergo an EIA. Projects that fall under Schedule 1 require an EIA. Projects that fall under Schedule 2 must apply to the Secretary of State for a screening direction to decide if an EIA is required, or the developer can choose that the project undergoes an EIA (regulations 5 and 6). For projects that fall under Schedule 3, an application for a screening direction is not required from the developer and the Secretary of State decides whether an EIA is required without undertaking a screening direction (regulations 5 and 7). Where an EIA is required (or chosen), the process set out in regulations 8 to 16 applies. This includes a requirement for the project to undergo public consultation.

These Regulations are made pursuant to the power to implement EU law under section 2(2) of the European Communities Act 1972 (c. 68). Also, fees provisions have been drafted using the power at section 56 of the Finance Act 1973 (c. 51). Changes to the fee provisions set out in S.I. 1999/360 have been made for the services provided by the Secretary of State to developers, so the provisions reflect the structure of these Regulations (regulation 22).

Other changes from S.I. 1999/360 include:

- 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 (regulations 23 and 25);
- the introduction of provisions enabling the Secretary of State to revoke the agreement to the grant of consent for a project (regulation 26);

(a) S.I. 2017/1013. Amended by S.I. 2019/579. There are other amendments which are not relevant.

- amendments to the Offshore Environmental Civil Sanctions Regulations 2018 (S.I. 2018/800) so that civil sanctions apply as an alternative to prosecution (regulation 27).

These Regulations were notified to the European Commission in accordance with Article 2 of Directive 2014/52/EU, and in line with the EU Withdrawal Agreement between the EU and the UK.

A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen.

A transposition note setting out how these Regulations implement Directive 2011/92/EU and Directive 2014/52/EU is annexed to the Explanatory Memorandum, which is published alongside the instrument on the legislation website of The National Archives (<http://www.legislation.gov.uk>).

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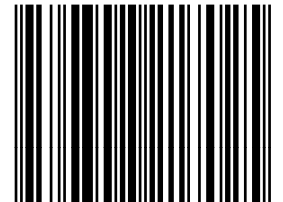
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