EXPLANATORY MEMORANDUM RELATING TO:

THE OFFSHORE PETROLEUM PRODUCTION AND PIPE-LINES (ASSESSMENT OF ENVIRONMENTAL EFFECTS) (AMENDMENT) REGULATIONS 2007

2007 No. 933

1.0 This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2.0 Description

2.1 The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007 ("the amending Regulations") amend the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (the "Offshore EIA Regulations 1999") in accordance with the provisions of the Public Participation Directive 2003/35/EC (the "Public Participation Directive").

3.0 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4.0 Legislative Background

4.1 The Public Participation Directive implements the additional requirements for publicity and access to justice contained in the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters. The Public Participation Directive amends Council Directive 85/337/EEC on assessment of the effects of certain public and private projects on the environment, for which the Offshore EIA Regulations 1999 were introduced and now require amending to transpose the extra publicity requirements into UK law.

4.2 A Transposition Note is attached to this Explanatory Memorandum setting out how the amending Regulations transpose the Public Participation Directive.

5.0 Territorial Extent and Application

5.1 The amending Regulations apply to offshore oil and gas matters, and extend to**:**

- 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;

- waters in any area for the time being designated under section 1(7) of the Continental Shelf Act 1964; and

- the seabed and subsoil under the waters referred to above.

6.0 European Convention on Human Rights

6.1 As the amending Regulations are subject to a negative resolution procedure and do not amend primary legislation, no statement is required.

7.0 Policy Background

7.1 The amending Regulations introduce further requirements for the publicity process - as set out in the Public Participation Directive - which are**:**

- including, within the application for a consent or permit, an outline of the main alternatives, if any, that are studied by the applicant;

- notifying the public of appropriate decisions and making available the relevant consents or permits together with the reasons and considerations on which the decisions are based;

- notifying the public early in the procedure (or as soon as the information can be provided) of the nature of the possible decisions; and

- making available within appropriate timeframes**: (i)** the main reports and advice issued to the regulator in accordance with national legislation when the application was made, and **(ii)** information relevant to the decision which only becomes available after the advertisement of the application.

7.2 The Offshore EIA Regulations 1999 are also amended (in line with the Directive) to**:**

- implement provisions whereby mandatory environmental impact assessments will now be required for the extension of any offshore developments, where the increase in production exceeds the thresholds of either 500 tonnes of oil or 500,000 cubic metres of gas per day (the same will also apply to the extension of an existing pipe-line where that extension is 40 kilometres or more in length and a diameter of 800 millimetres or more, regardless of whether that pipe-line forms an integral part of a specific development); and

- require the Government to publicise information on any proposed offshore oil / gas developments in other EEA States that might have significant transboundary impacts on the UK offshore environment.

7.3 In addition, these amending Regulations address certain other matters which came to light after the Offshore EIA Regulations 1999 came into force**:**

(i) Certain errors in cross-referencing were highlighted in the Thirteenth Report of the Joint Committee on Statutory Instruments, 1998 – 99 Session.

(ii) A number of issues were also raised by University College London in its 2001 Report prepared for the European Commission relating to the Transposition in the UK of EC Directive 85/337EEC as amended by Directive 97/11/EC.

Commencement Date

7.4 The amending Regulations will come into force on 16 April 2007, but they will apply only to applications received by the Secretary of State after that date.

Consultation

7.5 A public consultation (involving more than sixty key stakeholders e.g. the offshore oil / gas industry, environmental Non-Governmental Organisations (NGOs), and other affected bodies) on the legislative proposals to amend the Offshore EIA Regulations 1999 was carried out between 4 September and 4 December 2006. Four responses were received, which all agreed with the need to amend the existing Regulations in accordance with the Public Participation Directive. One concern raised related to the inclusion of statutory provisions requiring the DTI to undertake consultation with advisory bodies on applications for a Direction that an Environmental Statement (ES) need not be prepared, even though this is not a requirement of Article 4(2) of the EIA Directive 85/337/EEC. These provisions have not now been included.

7.6 However, because the Offshore EIA Regulations 1999 implement Article 4(2) by way of case-by-case examination and infer that the Secretary of State can only grant a Direction that an ES need not be prepared where he is of the opinion that the activity in question is not likely to have an adverse effect on the environment, the DTI intends to continue to consult in respect of applications seeking a Direction, in order to fully satisfy the Secretary of State that there are no significant environmental impacts prior to the issuing of any Directions. The intention is to ensure that consultation remains an integral component of the review process, but removing the statutory provisions relating to consultation will ensure that the procedure is sufficiently flexible to deal with any urgent applications. DTI also plans to review the consultation procedures for certain categories of application to determine whether consultation is necessary, with a view to reducing the overall burden of this process.

Guidance

7.7 The existing Guidance Notes are in the process of being updated to reflect the requirements of the amending Regulations. The revised Guidance Notes will be available in parallel with the amending Regulations' entry into force. Copies of the Guidance Notes will also be placed on DTI's Oil and Gas website and in the Libraries of both Houses.

8.0 Impact

8.1 The full Regulatory Impact Assessment is attached to this Explanatory Memorandum.

9.0 Contact

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Final Regulatory Impact Assessment (RIA)

1. Title of proposal

The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007.

2. Purpose and intended effect of measure

(i) The objectives

The objectives of the measure are to increase public access to environmental information and to allow for greater public participation in the environmental decision-making process. This requires amendments to the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 ("the Offshore EIA Regulations 1999") in accordance with the requirements of the Public Participation Directive 2003/35/EC. This Directive amends Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, which was the reason for the introduction of the 1999 Regulations.

Offshore oil and gas environmental issues are a reserved matter.

(ii) The background

The Public Participation Directive implements the additional requirements for publicity and access to justice contained in the Aarhus Convention. The additional publicity requirements therefore need to be added to the Offshore EIA Regulations 1999 although not the access to justice provisions as the existing procedure of judicial review is deemed sufficient to do this.

The additions to the publicity process required are**:**

- including, within the application for a consent or permit, an outline of the main alternatives, if any, that are studied by the applicant;

- notifying the public of appropriate decisions and making available the relevant consents or permits together with the reasons and considerations on which the decisions are based;

- notifying the public early in the procedure (or as soon as the information can be provided) of the nature of the possible decisions; and

- making available within appropriate timeframes**: (i)** the main reports and advice issued to the regulator in accordance with national legislation when the application was made, and **(ii)** information relevant to the decision which only becomes available after the advertisement of the application.

The Offshore EIA Regulations 1999 are also amended in order to implement the provision which now makes environmental impact assessment mandatory where an existing project is extended by more than the thresholds in Annex 1 of Council Directive 85/337/EEC. (If the thresholds in Annex 1 are to be exceeded by a project then, under the terms of Directive 85/337/EEC, environmental impact assessment is mandatory). For the UK offshore oil and gas industry, the thresholds apply to a new oil and / or gas field that will produce more than 500 tonnes of oil a day or more than 500,000 cubic metres of gas a day, and to the extension of an existing pipe-line where that extension is 40 kilometres or more in length and a diameter of 800 millimetres or more (regardless of whether that pipe-line forms an integral part of a specific development).

Consequently, an **existing** oil and / or gas field that increases its production by more than these amounts, or any extension to an existing pipe-line exceeding the relevant length / diameter criteria, will now have to undergo mandatory environmental impact assessment.

In addition to the above, there is a requirement on the Government to make arrangements for publicising information concerning any proposed offshore oil / gas related development in another EEA State that might have significant transboundary impacts on the UK offshore environment. Accordingly, the amending Regulations include provisions to meet this requirement.

(iii) Rationale for Government intervention

Provide the public with increased access to and more information than at present to allow all stakeholders to reach better informed decisions that are more acceptable to a wider audience. In addition, without these Regulations, the UK would not be properly implementing a Directive that itself has been amended. Consequently, the UK would be at risk of infraction proceedings from the Commission for incorrect transposition of the Public Participation Directive.

3. Consultation

(i) Within Government

Consultation with relevant Government Departments took place from 14 October to 7 December 2005. No significant comments were received.

(ii) Public consultation

A public consultation (involving more than sixty key stakeholders e.g. the offshore oil / gas industry, environmental Non-Governmental Organisations (NGOs), and other affected bodies) on the legislative proposals to amend the Offshore EIA Regulations 1999 was carried out between 4 September and 4

December 2006. Four responses were received, which all agreed with the need to amend the existing Regulations in accordance with the Public Participation Directive. One concern raised related to the inclusion of statutory provisions requiring the DTI to undertake consultation with advisory bodies on applications for a Direction that an Environmental Statement (ES) need not be prepared, even though this is not a requirement of Article 4(2) the EIA Directive 85/337/EEC. These provisions have not now been included.

However, because the Offshore EIA Regulations 1999 implement Article 4(2) by way of case-by-case examination and infer that the Secretary of State can only grant a Direction that an ES need not be prepared where he is of the opinion that the activity in question is not likely to have an adverse effect on the environment, the DTI intends to continue to consult in respect of applications seeking a Direction, in order to fully satisfy the Secretary of State that there are no significant environmental impacts prior to the issuing of any Directions. The intention is to ensure that consultation remains an integral component of the review process, but removing the statutory provisions relating to consultation will ensure that the procedure is sufficiently flexible to deal with any urgent applications. DTI also plans to review the consultation procedures for certain categories of application to determine whether consultation is necessary, with a view to reducing the overall burden of this process.

4. Options

(i) Option 1: Do nothing

This is not possible as correct implementation of the Directive requires Regulations to be introduced. As already indicated, the UK would be open to infraction proceedings from the Commission if the provisions of the Directive were not properly transposed into UK law.

(ii) Option 2: Introduce Regulations

As well as the provisions for better public access to environmental information and participation in the decision making process, another new requirement of the Public Participation Directive is that any existing oil and / or gas field which increases its production by more than 500 tonnes of oil a day or 500,000 cubic metres of gas a day, or the proposed extension of an existing pipe-line where that extension is 40 kilometres or more in length and a diameter of 800 millimetres or more (regardless of whether that pipe-line forms an integral part of a specific development), will now be subject to a mandatory environmental impact assessment Accordingly, the introduction of the amending Regulations is the only option available to enable enforcement of mandatory environmental impact assessment on existing oil and / or gas fields where increases in production or a pipe-line development exceed the abovementioned thresholds.

5. Costs and Benefits

(i) Sectors and Groups affected

The only business sector affected is the UK offshore oil and gas industry.

(ii) Benefits

(a) Option 1: There are no benefits associated with this option. As previously stated, there would be a risk of infraction proceedings if this option were to be adopted.

(b) Option 2: The obvious benefit is correct implementation of a Directive (to be accompanied by revised Guidance Notes providing certainty and clarity on the Directive's requirements), which will deliver increased public access to environmental information leading to greater participation in the environmental decision-making process. In addition, there would be more transparency in, and accountability for, all decisions taken by Government regards the approval of proposed developments.

(iii) Costs

(a) Implementation costs

Most of the implementation costs associated with the processing and additional publicity will fall on Government. The annual costs will apply to the processing of about fifty requests from operators for exemptions from the requirement to undertake an environmental impact assessment, plus the publicity in respect of the exemptions issued. The average staff costs associated with processing these requests would be £14,450 - based on £2,450 for 50 man-hours to process fifty requests (e.g. £49 per hour x 1 hour per request x 50) plus £12,000 for Gazette notices (e.g. £80 x 3 x 50).

If an operator had to carry out environmental impact assessment as a result of an existing project exceeding the specified thresholds, then that operator would incur the costs associated with**:**

- the preparation of an environmental statement;

- publicity for the environmental statement (which includes a 'public notice' in the Guardian newspaper and appropriate local newspapers e.g. those circulated in the vicinity of the coast nearest the proposed project); and

- consultation with statutory bodies (in addition to DTI) namely the JNCC, FRS and CEFAS, as well as other relevant environmental authorities (i.e. the EA) if the proposed activity is within 40 kilometres of the coast.

It is estimated these costs could be anything up to £100,000 per statement (including required publicity / consultation plus 10% (minimum) for staff costs),

with perhaps ten additional statements a year. This estimate is based on the preparation of an environmental statement for a development in a location that is considered to have some habitats / species of a sensitive nature, but which are not necessarily in such abundance as to warrant the area being designated as a Special Area of Conservation (SAC). However, where projects might have an impact on particularly sensitive / designated offshore areas (i.e. SACs), the cost for preparing an environmental statement could be as much as £275,000. Should a seabed survey also be required, then the cost would increase significantly e.g. £375,000 - £475,000 per statement.

As indicated in Section 2(ii), the Government is required to arrange the publicity in respect of any proposed offshore oil / gas related development in another EEA State that might have a significant effect on the UK offshore environment. The number of instances where such transboundary issues are likely to occur is low, however, the additional cost for any related publicity (which, as with UK-based developments, includes the use of the Guardian newspaper and any local newspapers) would probably be £2,500 - £4,000 per project (depending on the size of notice being published).

(b) Policy costs

Those projects which have been subject to environmental impact assessment since 1999 may have incurred some policy costs as a result of having undergone that procedure. However, this is likely to have been infrequent since environmental statements have very largely shown that the environmental impact of a proposed project was minimal anyway with the result that little or nothing has had to be done to mitigate the environmental impact. The amending Regulations will not alter this conclusion.

Consequently, where an operator was required to undertake a mandatory environmental impact assessment, then (as indicated in Section 5(iii)(a)) the overall costs could range from £100,000 – £250,000 (or even up to £475,000) per environmental statement, depending on the proximity of a development to sensitive areas and whether any seabed surveys were required. Where transboundary environmental effects were an issue, any additional publicity concerning a proposed development in another EEA State would most likely cost a maximum of £4,000.

(c) Other costs

No environmental or social costs are anticipated as a result of these Regulations.

(d) Costs for a typical business

As already stated, an offshore operator will incur additional costs (i.e. typically anything from £100,000 - £250,000) only if they had to carry out environmental impact assessment for an existing project that exceeded the relevant thresholds.

6. Small Firms' Impact test

There are forty-eight production operators present offshore (the majority being large multi-national companies) of which five would meet the `small firms' definition e.g. less than 250 employees. However, the five operators concerned would only be one of several co-venturers on licensed fields - none of them is solely responsible for undertaking or meeting the full costs of activities related to oil and gas production. In view of this situation, there is no need to carry out this test, as the regulatory proposals would have no disproportionate impact on these firms.

7. Competition Assessment

The Government considers that implementation will not result in negative competition impacts. Any costs increases will not be sufficient in relation to the turnover of the operators involved to affect the existing structure of the market.

8. Enforcement, Sanctions and Monitoring

(i) Enforcement and Sanctions

The amending Regulations themselves do not alter the enforcement and sanctions provisions already existing in the 1999 Regulations.

(ii) Monitoring

A close watch will be kept on the implementation of the additional publicity requirements in order to ensure that they were not causing difficulties for operators. Should it become apparent that such difficulties were arising, then additional measures could be considered which might lead to updated guidance for the industry or even further amending Regulations.

9. Implementation and Delivery Plan

The amending Regulations will enter into force on 16 April 2007. The summary of comments received to the public consultation exercise and the Government's response to these (including reasons for decisions finally taken) has now been published on the DTI website.

10. Post-implementation Review

Under the offshore oil and gas legislative regime, the Regulations will undergo periodic reviews e.g. at least once every couple of years, to ensure that**:**

- the policy objectives are being met;
- the impacts have been as expected;
- compliance levels indicate that the enforcement regime is effective; and
- guidance to industry is updated as appropriate in light of experience of enforcing the Regulations.

The Regulations may also require further amending should any future proposals from the Commission arise which impact on the consenting process and / or the public participation requirements.

11. Summary and Recommendation

The 1999 Regulations need to be amended in order to implement the provisions of the Public Participation Directive and avoid any potential infraction proceedings from the Commission (e.g. for incorrect transposition). This can be achieved only by introducing the amending Regulations.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed : *Truscott*

Date: 19th March 2007

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TRANSPOSITION NOTE RELATING TO AMENDMENTS TO COUNCIL DIRECTIVE 85/337/EEC ARISING FROM DIRECTIVE 2003/35/EC (the "Public Participation Directive") IN THE CONTEXT OF S.I. 1999/360 (The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999)

The Public Participation Directive amends Council Directive 85/337/EEC on the effects of certain public and private projects on the environment ("the EIA Directive"). The EIA Directive was transposed (to the extent that it applied to the construction of offshore oil and gas developments and pipe-lines) by the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 ("the Principal Regulations"). The Public Participation Directive is transposed by amendment of the Principal Regulations through amending Regulations (the "Amending Regulations").

In order to help the reader to identify the method of transposition adopted, cross references in this Transposition Note are both to the Principal Regulations as amended (the "Consolidated Regulations") and the Amending Regulations.

These Regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply:

Article	Objective	Implementation	Responsibility
2(3)	Requires a Member State, where a specific project is exempted from the provisions of the Directive, to consider whether another form of assessment may be appropriate but also institutes a requirement to make available to the public any information obtained under such assessment.	A project may be exempted from the requirement for an environmental statement in accordance with regulation 13 of the Consolidated Regulations. The amendment made by regulation 12(a) of the Amending Regulations (see regulation 13(3)(b) of the Consolidated Regulations) requires the Secretary of State, where another form of assessment is considered appropriate, to direct that all information gathered pursuant to that assessment shall be made available to interested parties.	Secretary of State
6(2)	Requires a Member State to inform the public, early in the decision-making process, by public notices or other appropriate means such as electronic media, of the matters listed in sub-paragraphs (a) to (g) of Article 6(2).	Regulation 7(b) of the Amending Regulations makes provision for the specified information to be made available to the public (see regulation 9(2)(f) of the Consolidated Regulations).	The undertaker

Article	Objective	Implementation	Responsibility
6(3)	Requires a Member State to make available to the public concerned the information listed in sub-paragraphs (a) to (c) of Article 6(3).	Article 6(3) relates to information which comes to light after an environmental statement is submitted. This is transposed by regulation 8 of the Amending Regulations (see regulation 10(2) of the Consolidated Regulations).	The undertaker following a direction by the Secretary of State
6(5)	Allows a Member State to determine the detailed arrangements for informing the public.	This is transposed by regulation 7(b) of the Amending Regulations (see regulation 9(2) of the Consolidated Regulations).	Secretary of State
7(5)	Stipulates that Member States may determine detailed arrangements for implementing Article 7 and requires those arrangements to be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures.	The Regulations did not previously address the question of a project in another State which had an impact on the territory of the UK. Regulation 11 of the Amending Regulations addresses this point (see regulation 12A of the Consolidated Regulations).	Secretary of State
9(1)	Requires a Member State's competent authority or authorities to alert the public concerned as to a decision to grant or refuse development consent by making available: the content of the decision and any conditions attached thereto; the main reasons and considerations on which, following an examination of the concerns and opinions expressed by the public concerned, the decision was based, including information about the public participation process; and a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.	The Principal Regulations already largely fulfilled this requirement. However, regulations 5(e) and 5(f) of the Amending Regulations create obligations to publish information about any representations received during the consultation process and how these were taken into account in the decision-making process (see regulations 5(8) and 5(8A) of the Consolidated Regulations).	Secretary of State
10a	Regulation 10a requires Member States to ensure that practical information is made available to the public on access to review procedures before a court.	Transposed by regulation 7(b) of the Amending Regulations (see regulation 9(2)(f)(viii) of the Consolidated Regulations).	The undertaker

Article	Objective	Implementation	Responsibility
Para 22 of Annex 1	Stipulates that any change to or extension of projects listed in Annex 1 (including those referred to in paragraphs 14 and 16) where such a change or extension in itself meets the thresholds set out in the Annex.	An environmental assessment is required where there is to be an increase of the stipulated amount in excess of what is already authorised. While this was implicit in the Principal Regulations, regulation 5(c) of the Amending Regulations defines what is meant by a renewal of a consent and clarifies the position with respect to renewals (see regulations 5(2A) and 5(2B) of the Consolidated Regulations). Regulation 6(c) of the Amending Regulations defines what is meant by an extension of a consent and clarifies the position with respect to such extensions (see regulations 6(5A) and 6(5B) of the Consolidated Regulations).	Secretary of State