

THE OFFSHORE ELECTRICITY DEVELOPMENT (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS (NORTHERN IRELAND) 2008

	Consultee Comments	DETI Response
1.	<p>In relation to Regulation 5(6) believe it is important to consult as widely as possible and that local residents should be given an opportunity to express their views on the environmental impact of a proposed scheme. By using the term ‘authorities’ and restricting consultation to groups with ‘specific environmental responsibilities’ local residents do not appear to have an opportunity to be included.</p>	<p>The Regulations fully transpose the EIA Directive as amended by the Public Participation Directive which ensures that the public is involved in the decision making process.</p> <p>In particular:</p> <ul style="list-style-type: none"> - Regulation 5(14) requires the Department to publish “by general and local advertisement” information relating to applications for EIA screening opinions under Regulation 5 and inviting any persons to make representations to the Department; - Regulation 9 requires the Developer to make his environmental statement available to the public, and requires the Department to publish “by general and local advertisement” information relating to the proposed development and inviting any persons to make representations to the Department; - Regulation 14(4) provides for the Department to arrange for consultation with the public in other Member States whose environment is likely to be affected by the proposed development; - Finally, Regulation 15(4) requires the Department to publish its determination on whether the proposed development should proceed, and under Regulation 15(7) make information relating to the decision available to the public on request. <p>The Department therefore considers that consultation with the public is adequately provided for in the Regulations.</p>

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2.	Relevant environment and conservation Non-Government Organisations should be included as 'consultation bodies' where necessary.	The term 'consultation bodies' contained in Regulation 5(6) relates only to public authorities with statutory responsibilities.
3.	Clarification sought on how an organisation applies to get on the list of 'consultation bodies' and suggested that the duty to consult is widened to include individuals and organisations that have an interest in the environment where the development is proposed.	<p>Organisations will not be able to apply to be a consultation body. Consultation bodies are defined in Regulation 5(6) as "the District Council in the area adjacent to the offshore area in which the proposal relates is situated, and such other authorities as appear to it likely to be concerned by the proposed development by reason of their specific environmental responsibilities".</p> <p>As explained above, the Department considers that adequate provision has been made in the Regulations to consult with the public at each stage of the decision making process.</p>
4.	<p>The limited definition of consultation bodies in Regulation 5(6) seems out of kilter with GB. In GB a variety of statutory bodies need to be involved to meet statutory requirements and to ensure that all issues are considered. This process extends beyond those with specific environmental responsibilities, for example, government agencies with responsibilities for heritage, navigation and aviation safety.</p> <p>Similarly, non-statutory bodies without an environmental remit are approached, for example trade associations for activities affected by the development such as fishing. The Department should ensure that it is meeting its statutory requirements with this definition. The term "environmental responsibilities" should be expanded and/or its definition clarified to ensure that all relevant issues are covered.</p>	<p>The areas of navigation and aviation safety are outside the scope of the Directive and, therefore, the Regulations.</p> <p>The Department considers the definition of consultation bodies in Regulation 5(6) to be broadly equivalent to the definition in the equivalent GB legislation, the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, which list:</p> <ul style="list-style-type: none"> - the local planning authority and any principal council for the area where the land is situated; - where the application or proposed application relates to a site in England, the Countryside Agency and the Nature Conservancy Council for England; - where the application or proposed application relates to a site in Wales, the Countryside Council for Wales; and - where the application or proposed application relates

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		to a section 36 consent, the Environment Agency, as consultation bodies.
5.	It is key that whoever is included in the list of statutory consultees for offshore, are required to respond within a deadline.	<p>Regulation 5(14)(c) requires persons to make representations to the Department on its determination or opinion under Regulation 5(1) within 28 days of the date notice of the determination or opinion is given.</p> <p>Regulation 9(1)(d) requires persons to make representations on an environmental statement which is submitted to the Department within 28 days of the date notice is given.</p> <p>In essence, Regulation 11(2) requires the Department to state the period (being not less than 4 weeks) within which representations on the environmental statement may be made by the consultation bodies.</p>
6.	The role of District Councils in other areas of the UK for offshore energy developments is diminishing. This is a reflection that for onshore wind, local people have a fundamental involvement. Offshore does not fall under the jurisdiction of District Councils, so they are unlikely to have sufficient expertise in-house and are unlikely to be representative of “true” offshore stakeholders.	Although the jurisdiction of District Councils does not extend beyond the low water mark, the Department considers it appropriate to name the District Council in the area adjacent to the offshore area in which the proposal relates as a statutory consultee given the impact that an offshore electricity development in waters off their coastline might have within their council area – e.g. visual impacts of wind turbines, etc.

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7.	<p>The advertisement referred to at Regulation 9(1) should also include notice that:-</p> <ul style="list-style-type: none"> - copies of the environmental statement are available for purchase; - where they can be obtained; - what the price is as provided for under Regulation 13(1); and - that such copies are only available whilst stocks last. 	<p>Regulation 9(1) requires an environmental statement to be made available to the public and Regulation 10 requires this to involve a reasonable number of copies. Further, Regulation 13 allows a reasonable charge for such copies of the environmental statement available for purchase. The Department considers, therefore, that the inclusion of a specific provision to this effect is unnecessary.</p> <p>Regulation 9(1)(b) requires the notice to state where copies of the environmental statement may be inspected; and Regulation 10(a) requires the developer to ensure that a reasonable number of copies are made available at that address.</p> <p>The Department does not consider it appropriate to include the price of the environmental statement in the notice as this is for the developer to determine in line with Regulation 13(1). Furthermore, the charge may vary where only part of the statement is sought by a consultee, or where further additional information is provided by the developer and subsequently included in the statement.</p> <p>Regulation 10(a) requires the developer to ensure that a reasonable number of copies are made available by him; therefore, such a reference would be inappropriate.</p>

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8.	<p>There should be an explicit enforced deadline for consultees to respond to a consultation where an environmental statement is submitted. This is to ensure that consultees decide not to respond to a consultation and introduce lengthy delays in the process merely by not responding. One of the main delays and obstacles in the planning process for onshore wind farms in NI is the lack of enforced deadline for the statutory consultees to respond. The Department should ensure that a similar situation does not occur offshore.</p>	<p>Regulation 9(1)(d) requires persons to make representations on an environmental statement which is submitted to the Department within 28 days of the date notice is given by it.</p> <p>Moreover, as explained above, Regulation 11(2) requires the Department to state, in essence, the period (being not less than 4 weeks) within which representations on the environmental statement may be made by the consultation bodies to the Department.</p>
9.	<p>The requirement at Regulation 9(2) for the Department to send a notice to “any person whom it considers is or is likely to be affected by, or has an interest in, the application” is neither practical nor plausible. It is not clear what this even means and could certainly be open to dispute. It is not in the onshore regulations and does not tally with Regulation 5(6) where there is much more defined recipient listing. We would strongly favour amending Regulation 9(2) to reflect the wording in Regulation 5(6).</p>	<p>Regulation 9(2) requires the Department to send the notice to “any person whom it considers is or is likely to be affected by, or has an interest in, the application” <u>in addition to</u> “each of the consultation bodies” as defined in Regulation 5(6).</p>
10.	<p>There is no reference in Regulation 11(2) to response periods in this paragraph which is a serious error. The draft Electricity Consents (Planning) (Northern Ireland) Order 2006 included provision for the Department to stipulate a time limit on responses to the consultation to prevent frustration by consultees of a due decision making process simply be refusing or delaying to respond.</p>	<p>The Minister for Enterprise, Trade and Investment has decided not to commence the Electricity Consents (Planning) (NI) Order 2006 at this time, due the shifting planning and consents environment, and has initiated a review of the Order which is due to be completed later this year.</p>

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10. (cont'd)	The Directive requires the Department to “fix appropriate time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period”. It is therefore proposed that this paragraph be amended to state that the Department will state the period (being not less than 4 weeks) within which representations to the application may be made to the Department.	As explained above, Regulation 11(2) as drafted requires, in essence, the Department to state the period (being not less than 4 weeks) within which representations on the environmental statement may be made by the consultation bodies to the Department.
11.	In Regulation 14(1)(b)(ii) the reference to “head (i)” should be presumably “paragraph (ii)”.	Regulation 14(1)(b)(ii) refers to the notice published under the preceding section Regulation 14(1)(b)(i), otherwise referred to as “head (i)”.
12.	In relation to Regulation 14(4)(a), it is incorrect and impractical to put upon the Department the responsibility of communicating to the public of the affected EEA State as appears to be the case at the end of this paragraph. This is the responsibility of the affected EEA State itself not the Department. Article 7(3) of the Directive makes it explicit that it is for each respective member state to notify its own authorities of the application and procedures that are to be followed.	Regulation 14(4)(a) allows for the Department to either assume responsibility for communicating the particulars and information to the public of the affected EEA date or for it to arrange for this to be done by alternative means, for example, by the EEA State itself. Regulation 14(4)(a) replicates the position already applying to onshore developments by way of Regulation 19(4)(a) of the Planning (EIA) Regulations (NI) 1999.
13.	Most of the ‘sensitive areas’ listed are terrestrial and there are currently few marine protected areas around the Northern Irish coast.	With the exception of a nature reserve provided by a District Council under Article 22(2) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985, the ‘sensitive areas’ listed in Schedule 2 to the draft Regulations can extend offshore. On reflection, since the jurisdiction of a District Council does not extend offshore, paragraph 2(e) of Schedule 2 has been omitted.

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14.	<p>Schedule 2 should include proposed developments that may have an effect on species protected by nearby ‘sensitive areas’, for example, development in an offshore feeding location for seabirds where their breeding sites on land are protected.</p>	<p>Schedules 1 and 2 restrict the application of the Regulations to offshore electricity developments. The EIA Directive is applied to other types of offshore development by way of separate Regulations.</p> <p>Schedule 4, paragraph 4 requires environmental statements to include a description of the likely significant effects including “the direct effects and any indirect, secondary, cumulative....effects of the development”. Therefore, the Department considers that the example illustrated is addressed by the Regulations.</p>
15.	<p>EU Directive areas should be added to the definition of “sensitive areas” in Schedule 2. The list while adequately referencing NI legislation, should list more of the European designations (for example Habitats or Birds Directives, etc.). The reason for this is that the EU Directives that underpin these designations (and many of the legislative definitions) have very far-reaching implications for the sector and are particularly pertinent.</p>	<p>This requirement is met by paragraph 2(h) of Schedule 2.</p>
16.	<p>There is a need to list the deleterious effects of the plant in Schedules 3 and 4. It appears to be copied directly from earlier legislation aimed only at traditional power stations. Would it not assist decision makers to also require applications to state the carbon and environmental benefits so that they have all the information with which to make a balanced decision for the various stakeholders? These characteristics are not mitigation, they are the primary drivers for plant of this type. To illustrate this point, are these not in fact the characteristics of the marine or wind energy power station which cause Government to incentivise (through Renewable Obligation Certificates) its operation?</p>	<p>Schedules 3 and 4 to the Regulations have been taken <i>verbatim</i> from Annexes 3 and 4 to the Directive to ensure a complete and accurate transposition. This is consistent with the approach taken in the Planning (EIA) Regulations (NI) 1999 which apply to onshore developments.</p> <p>Schedule 4 paragraph 4 explicitly states that, inter alia, both positive <u>and</u> negative effects of the proposed development should be included in the environmental statement. The Department is subsequently required to take all information (positive and negative) in the statement into consideration when making its decision under Regulation 15.</p>

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17.	<p>The concept of environmental impact appears to be fundamentally a negative one, and should take cognisance of the positive environmental. The Department should explicitly recognise the benefits of offshore wind. They can have positive local impacts, such as the creation of new habitats. Due to the higher capacity factors and scale achievable, offshore wind significantly impacts on a country's carbon emissions. In balancing the environmental impact, cognisance should be given by the Department to this impact on carbon emissions.</p>	<p>Schedule 4 paragraph 4 explicitly states that both positive <u>and</u> negative effects of the proposed development should be included in the Environmental Statement. The Department is subsequently required to take all information in the Statement into consideration (positive and negative) when making its decision under Regulation 15.</p>
18.	<p>Under Part VII what opportunity is there for the applicant or another interested party to appeal against the determination by the Department?</p>	<p>As is currently the case in relation to Article 39 decisions, the Department's determinations under the Regulations may be challenged by applicants and other interested parties by Judicial Review.</p>
19.	<p>If DETI gives consent to a power station project, this should be deemed to include outline consent to the need for the electricity infrastructure to connect the project, i.e. when permission is sought to construct a line there should not be the requirement to re-examine the case of need, but rather the efficiency of the route. Where the project calls for an additional overhead circuit then, by accepting the project, DETI must be accepting the need for the circuit. To later require that this would be substantially by underground cable, would be to potentially make the project unviable and waste developers' time and money.</p>	<p>The Department considers that this issue is outside the scope of the Regulations.</p>
20.	<p>Where information is made available to the public it should be made available in different formats such as audio cassette. Information made available in different formats include details of any charges.</p>	<p>On request, the Department will make appropriate arrangements within reason for the provision of information in alternative formats. The Department will also encourage private developers to make appropriate arrangements for the provision of information in alternative formats.</p>

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21.	DETI concludes that there is no significant differential impact on rural communities from the Regulations or the Order. It is believed that there could be indirect impacts on rural communities (despite the Regulations and Order only applying in offshore areas) because of possible changes to existing land use onshore in close proximity to the offshore area and the effect on tourism, property prices etc.	The Department remains of the view that there will be no significant differential impact on the rural community as the Regulations and Order do not make offshore electricity development any more likely to take place. The legislation simply provides for greater regulatory controls to be imposed on potential developers.
22.	The economic benefits of offshore wind should be given serious consideration.	The Directive is concerned with assessing the environmental impact of proposed developments and does not extend to assessing any associated economic effects.

**ELECTRICITY (OFFSHORE WIND AND WATER DRIVEN GENERATING STATIONS) (PERMITTED CAPACITY) ORDER
(NORTHERN IRELAND) 2008**

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	<p>Question whether bringing very small power stations of 1MW within the scope of this legislation and thus potentially exposing them to these costs is detrimental to achievement of Government’s renewable technology development objectives. Breaking the linkage with GB legislation in this regard could offer strategic advantage to NI in becoming a marine renewable technology rich area, which in turn may have beneficial long run business implications for NI.</p>	<p>The 2008 Regulations automatically require an EIA to be carried out for those large scale projects listed in Schedule 1 to the Regulations.</p> <p>An EIA is not automatically required for smaller scale projects listed in Schedule 2 to the Regulations. It will be for the Department to determine, having taken into account the selection criteria in Schedule 3, whether to require the proposed development to be subject to the EIA procedures.</p>