The voice of the energy industry

Energy UK response to BEIS Consultation on Environmental Impact Assessment: Technical Consultation (Regulations on Electricity Works)

16th March 2017

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 90 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership encompasses the truly diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 26 million homes and every business in Britain. Over 619,000 people in every corner of the country rely on the sector for their jobs with many of our members providing lifelong employment as well as quality apprenticeships and training for those starting their careers. The energy industry adds £83bn to the British economy, equivalent to 5% of GDP, and pays over £6bn in tax annually to HMT.

Executive Summary

Energy UK and our members agree that the proposed 'coordinated procedure' (rather than the 'joint procedure') offers the greatest flexibility for developers around the phasing and timing of EIA and Habitat Regulations Appraisals (HRAs). Accordingly, we strongly consider that the coordinated procedure fits best with the development process for the type of large, complex energy infrastructure projects which Energy UK's members are involved in.

We have some concerns around how the concept of 'Competent Expert' is defined in practice. In particular it will be important to ensure that an approach is taken in terms of implementation that avoids unintended consequences such as questions about the validity of an EIA report. We agree that seeking to set out a definition of a 'Competent Expert' in legislation is not sensible. It is important that developers when working under the EIA process can confidently rely on the advice of recognised professionals considered to have expertise in particular fields or members of appropriate accreditation schemes.

We welcome the clear recognition in the Consultation document that monitoring requirements must be proportionate to the nature, location, size of the project and the significance of its effects on the environment. The reasons for any necessary monitoring should be clearly defined at the outset by the competent authorities and must be directly related to the identified impacts of the project. Early guidance from the competent authorities on the level of monitoring expected by the developer will help to limit uncertainly for developers and avoid possible duplication with monitoring required for other reasons.

We'd also like to take this opportunity to comment on the wider 'meaning' of EIA development. It is frequently the case for 132kV wood pole overhead lines that having followed the EIA procedure, the outcome is that there are very few *significant* impacts. Those that are identified are in respect of visual impacts in a very small number of specific locations. We would suggest that there needs to be a review of how the 'meaning' of EIA development is transposed into the EIA Regulations for Electricity Works in England and Wales with consideration given to the type and design of projects proposed which currently fall under the EIA Regulations, for example wood pole overhead line and short distances. We would welcome further discussions with officials on this at the earliest opportunity.

Energy UK Response to Consultation Questions

Question 1: Do you agree that the coordinated procedure provides the most flexibility that it is appropriate not to make it mandatory to apply joint or coordinated procedures to assessments under EU legislation other than the Habitats and Wild Birds Directives?

Energy UK and our members support the adoption of a 'coordinated procedure', whereby a lead authority coordinates assessments under the EIA Directive with those under the Birds and Habitats Directives, rather than a 'joint procedure' where the assessments are combined into a single assessment exercise. We agree that the coordinated procedure offers the greatest flexibility for developers around the sensible phasing of EIA and Habitats Regulations Appraisals (HRAs) and fits best with the development process for the large complex energy infrastructure projects, such as new flexible gas plants or renewables generation. The 'coordinated procedure' also has the potential to drive efficiencies which we welcome. This flexibility is helpful as often additional information is required for one assessment which (if a joint approach were taken) would delay the second assessment work-stream. At the same time, there should be nothing to prevent a common assessment covering both requirements being prepared and submitted where the necessary information is available on corresponding timescales.

Question 2: Do stakeholders have views as to whether provision should be made to prevent construction in respect of EIA development until all necessary consents and permits needed to operate the development are in place?

We welcome the current flexibility that exists to progress the different permits and consents in line with the optimum development pathway of a project, rather that bringing all permits into a coordinated or joint procedure under the EIA Directive. Other legal mechanisms exist to ensure other consents and licenses are secured.

Energy UK and our members are of the opinion that current Electricity Act provisions work well. The S36 Variation process provides an overarching consent with environmental safeguards in place that allow regulators the flexibility to undertake ongoing assessment in parallel with project development to refine mitigation and precisely determine emissions levels. We do not support any requirement to ensure a permit under the Environmental Permitting Regulations (EP) or Controlled Activities Regulations (CAR) licence is in place prior to any construction works, as this would require final detailed design to be locked down at an early stage and potentially restrict further changes that would be of significant benefit to project design. There can be a considerable period of time between obtaining a Section 36 consent and construction so there are frequently changes to design. It was for this reason that legislation was introduced to provide procedures for making changes to Section 36 consent (the Section 36 variation process). Energy UK considers that where effects are not identified or identifiable at the time of the S36 (e.g. due to design details not being finalised) a relevant assessment should be undertaken at a subsequent stage such as EP or CAR. As such information is likely to be restricted to a specific topic such as air quality or hydrology, it is appropriate that any assessment of this topic is carried out under the terms of EIA Regulations but should not necessitate a reworking of the full EIA.

This also reflects our view in relation to Section 37 consents.

The entire development should not be made conditional on obtaining all consents and operational permits but instead only the specific parts of the development to which they relate, as is reflected in existing practice. We would welcome further clarity on the process and detailed requirements around such an approach, perhaps in the form of case studies to demonstrate how applicants and competent authorities can avoid infractions, without delaying or restricting much needed national infrastructure. We believe that clear guidance to developers in this area would also benefit the work of DCLG and PINS who also have a role to play in this approach.

Question 3: Will you have to change your current practice to take account of the risk of major accidents and/or disasters or the change in terminology? If so, what do you consider the likely cost/benefits associated with this?

Whilst the consideration of expected effects deriving from the potential vulnerability of projects to the risk of major accidents and/or disasters would add an extra element to our assessment practice, it is not considered that this would materially impact our approach, given the types of development we undertake. We would, however, suggest that the expectations around this type of assessment should be clearly defined within appropriate guidance so as to avoid any misunderstandings. Furthermore, it will be important that advice provided in a Scoping Opinion is clear, justifiable and proportionate to the potential risks identified. Provided that a proportionate approach is applied, we do not consider that this is likely to change our current practice and therefore cost.

However, for S37 132kV wood pole projects over a short distance, one of our members estimates that the additional cost could add approximately £30,000 per project where specialist risk assessment input would be required.

Question 4: What are the current costs to you for submitting an application for a screening opinion under the Electricity Works (EIA) Regulations 2000 and is there a cost/benefit associated with any change to your current practice to meet the new screening requirements?

Generally there are no significant additional costs to submitting a request for a screening opinion. Given that these Regulations will relate to consent under the Electricity Act 1989, such as a Variation under Section 36C, it is likely that significant environmental information will have already been prepared to previously secure consent for the proposed development. It is therefore anticipated that an update of the environmental information will be required to support such an application, which would include a request for a Screening Opinion.

The new screening requirements offer no benefits to S37 consents as these relate to areas that are not relevant to the installation of wood pole overhead lines at 132kV and below, which represent the majority of EIA projects at this voltage in England and Wales. Reference to Schedule 3 of the proposed regulations indicates new requirements such as assessing the effects on soil, the risk of disasters, human health due to water contamination and air pollution, all of which are very often not relevant to wood pole overhead lines.

However, we note that in transposing the requirements of the Directive, the provisions of Regulation 5(3) to the Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2000 ("EIA Regulations) requiring the Secretary of State to notify a Developer within three weeks of receiving a request for a screening opinion if further information is needed, has been omitted. Whilst it is acknowledged that proposed Regulation 12 of the draft Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2017 is more prescriptive than current requirements of the EIA Regulation, hence the likelihood of further information being requested is more remote, the omission of this timeframe may result in considerable time elapsing before such further environmental information is requested thus leading to costly delays to the consenting and delivery of the project. Accordingly, Energy UK believe that a timeframe should be imposed in this respect for the future regime in order to ensure that no undue delay or costs are suffered by the Developer. There should also be an explicit requirement for any such request to be reasonable and justified.

Question 5: Do you have any views on the proposed amendments to the timing for a screening opinion to be issued?

We are supportive of proposals which add value to the screening process and ensure that the outcome of such a process is robust and relevant to the development. We do not believe that it is appropriate to extend the timing for making a screening decision from the current 3 weeks to the backstop 90 days provided for in the Directive. Rather, the three week provision within Regulation 5(6) of the EIA Regulations should prevail as the default period by which time an opinion must be issued and the 90 "backstop" should only apply in instances where it is agreed in writing with the Developer. This would

also ensure consistency across the various EIA regimes in England and Wales. It is important for developers that regulatory timescales that apply to the different EIA regimes align wherever possible.

Furthermore, we would welcome clarity on the meaning of "an exceptional case". As drafted this affords the relevant authority an indefinite period within which to issue the screening decision which may result in a significant cost and time delay to the progress of a development.

Question 6: Do you consider that including features and mitigation measures of the project envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment will lead to a reduction in the number of EIAs?

It is possible that by identifying mitigation measures to avoid or prevent any significant environment effects, this could lead to a reduction in the number of EIAs to be prepared as the competent authority would have additional information at hand when issuing its screening determination. However, as mitigation measures flow from the likely effects, the assessment still needs to be carried out so any benefits are likely to be minimal.

Question 7: What are the current costs to you for providing an environmental statement under the Electricity Works (EIA) Regulations 2000?

Costs for preparing a full Environmental Statement (ES), together with all necessary supporting reports, vary from project to project and costs are very much dependent on the complexity of the project. It is therefore difficult to provide specific costs. Costs for undertaking baseline surveys and then undertaking relevant assessments, which are presented in an ES with accompanying supporting reports can cost between of £300K - £500K. This however excludes any technical assessments, grid and gas arrangements, consultation requirements and engagement with stakeholders.

Grid based EIA's can amount to approximately £300k.

Question 8: Our preliminary view is that it is likely in practice that all of the issues listed in the amended Annex IV should already be included in an environmental statement, where it is considered to be relevant to an assessment of the likely significant effects of development. Do you agree with this or do you consider that there will be any additional cost/benefit to developers in meeting this requirement?

We consider that the issues listed in Annex IV of the Amended EIA Directive are generally already included in current ESs prepared under the Electricity Works (EIA) Regulations. It is therefore not expected that the revised EIA Regulations will require significant changes to current EIA practices, and thus it is not expected that there will be any significant additional costs.

Costs are likely to be increased for 132kV wood pole projects seeking s37 consent.

We would however welcome guidance on several elements of Article 5 (as transposed into Regulation 17 of the draft EIA Regulations), in particular, what is meant by "reasonable alternatives studied by the developer". This would help provide clarity and consistency of approach to the EIA process with a view to limiting cost escalation through the process. Furthermore, the introduction of new terminology that is used in Article 3(1) of the Directive such as "population and human health" and "biodiversity" introduces uncertainty. It will take time (and therefore cost) to better understand what is meant by this and how they relate to specific projects. Energy UK would welcome further clarity on the meaning of such terms.

Question 9: Do you consider that the requirement for a person who is competent to do so to prepare the EIA report would result in extra cost to you? If so what do you expect these costs to be?

Energy UK and our members believe that it will be important to ensure that an approach is taken in terms of implementation that avoids unintended consequences such as questions about the validity of an EIA report. This could in turn, result in additional costs and delays being incurred by developers.

Whilst we agree that setting out some form of restrictive definition of accreditation or qualification in legislation is not sensible, we welcome the consultation document indicating that there is no intention to define a "competent expert". However, it is important that developers when working under the EIA process can confidently rely on the advice of recognised professionals considered to have expertise in particular fields or members of appropriate accreditation schemes or professional bodies.

Whilst the requirement to ensure that a competent authority has access to sufficient expertise to examine a report is clearly set out, this should not be taken as implying that developers are obliged to provide funding for such expertise to either be retained or hired by competent authorities. Should this need arise, the proposed applicant should be forewarned of this and provided with justification of the reasonable nature of such cost.

Question 10: Do you agree with our assumption that making information available electronically is already carried out and that this will not result in additional cost for developers? If you do not agree what do you consider the additional costs will likely be?

While currently information may well be made available electronically, we are concerned that going forward the onus to do this will be placed on the developer (unless otherwise notified by the relevant authority) which will result in a substantial increase in costs. We note that the Directive does not prescribe who should have the primary obligation to do this, and therefore, in order to aid the consultation process and make information more readily accessible to the general public, and in the interest of promoting transparency in the determination process, Energy UK believes that the responsibility to make information available electronically should lie centrally with the relevant authority.

Question 11: Do you expect that transposition of Article 8a(4) will result in any additional costs to you?

We consider it current good practice to clearly define in consent decisions, the impacts and mitigation measures, together with the reasoning behind any conclusions drawn from the EIA Report. We therefore welcome the requirement for clearly defined and full decision notices.

The need for monitoring requires to be considered at the outset of projects and so it is important that competent authorities provide clarity on the nature of any expected monitoring as early as possible in the process. This is key to limiting uncertainty for developers.

It is important to recognise that the purpose of any required monitoring must directly relate to the development and be proportionate to the nature, location and size of the project and the significance of its effects on the environment. We would also wish to highlight that monitoring must not be used as a general means of gathering environmental information and should not duplicate monitoring required for other reasons.

As monitoring requirements are often set out as outline in advance to allow flexibility when working with design envelopes, we do not foresee any cost implications as result of this new requirement, other than those arising from further negotiation with stakeholders pre-consent rather than post- consent.

It is likely to have a greater impact on 132kV wood pole projects where, at present, monitoring mostly relates to landscaping provisions. The inclusion of additional monitoring for example in relation to biodiversity or noise will increase the extent of planning requirements and will result in increased costs. This will in turn result in increased costs for the local authorities who have the task of managing such requirements. Monitoring should only be used where it can be fully justified in particular cases.

Question 12: Overall, do you consider that our approach to transposition as set out in this document appropriately implements the requirements of the EIA Directive or have any points or relevant information to provide?

Yes, in the main it would appear to do so. However, we have taken the opportunity to raise a number of points that we believe should be addressed through the transposition process:

- Articles 1 and 2 of the Directive emphasise that EIA is a process focussed on the identification of likely significant effects of a project on the environment. As highlighted in the consultation document, the current Regulations already set out that the EIA should only be assessing significant effects of the project on the environment. However, in order to support a consistent approach, we believe that there may be merit in providing greater guidance on what is meant by "significant effects" and how such effects should be assessed.
- We note that in transposing Article 3(2), Regulation 7(3) (a) of the draft EIA Regulations exceeds that which is explicitly required by the EIA Directive. That is, it includes the requirement to identify "the operational effects of the development". It is unclear at this point whether this specifically requires something more than would ordinarily be required in order to meet the requirements of the Directive as transposed by Regulation 7(2).
- As indicated in our response to questions 4 and 5 (above), we do not believe that it is appropriate that the transposition of the EIA Directive is seen as an opportunity to remove or extend the timescales by which the relevant authority is required to carry out its duties. Any extension to or removal of existing timescales has the effect of introducing delay, further uncertainty and therefore cost to the EIA process.
- Article 8a (5) of the Directive imposes an obligation on the relevant authority to make decisions within a reasonable period of time. So as to provide developers with greater certainty on the determination timeframe and in turn, cost certainty, clarity is required on the term , "reasonable",
- Energy UK and our members do not believe that the wording "Where the relevant authority *thinks* that sufficient information has been provided" used in Regulation 18(4) of the draft EIA Regulations, is appropriate. Rather it should be a statement of fact that where, within 21 days of having received a request from the Developer or, where relevant, within 21 days of receiving the further information requested under Regulation 18(3) the relevant authority *shall* consult. Similarly, we do not agree with the use of the word "thinks" in Regulation 33(2) of the draft EIA Regulations. Both instances create an element of subjectivity, which we believe may lead to the institution of legal proceedings.

Question 13: Do you have any comments on the definition of "consultation body" as set out in regulation 4 of the draft Regulations?

The definition of "consultative body" has been updated and is now termed "consultation body" to ensure these bodies accurately reflect those with responsibility for the local, historic and natural environment. We have no further comments on this change.

Question 14: Do you agree that the removal of the requirement for additional information to be publicised by a notice in a newspaper on the first occasion on which additional information is provided and the inclusion of a requirement for any information provided by the developer to supplement the EIA report to be publicised by a notice in a newspaper targets the need to publicise environmental information and invite representations more appropriately?

Energy UK and our members welcome this proposed change for the publication of a statutory notice on the first occasion on which additional information is provided. This is frequently a confusing arrangement for the public as this additional information often relates to a consultation response rather than additional information prepared by the applicant. It is however correct that further or supplementary information continues to be adequately published and advertised and that such information is made available on the project website, in addition to being provided to the local authority and the competent authority.

Question 15: Do you consider that the amendments to the publication requirements will result in any additional costs or benefits to you? If so, please provide details on how much you estimate these to be?

It is our opinion that the amendments to publication requirements would result in a greater administrative burden being imposed on applicants as well as some additional advertising costs. Energy UK does however support reducing the requirement to publish statutory notices from twice to once in the London Gazette, but to maintain the requirement to publish for two successive weeks' editions of a local newspaper. This particular amendment should reduce costs by around £200.

Question 16: Do you consider that this simplification will result in any additional costs/benefits to you? If so, please provide details on how much you estimate these to be?

It is not considered that this change will alter the processes we have previously undertaken with regard to S36 and S37 Consents; therefore there should be no change to the costs. Previous experience has resulted in agreement with DECC/BEIS as to who should be consulted, and therefore receives a copy of the Environmental Report.

However, we are concerned that the drafting of Regulation 23(1)(b) is too loose. That is, as drafted, the developer would be required to inform every consultation body and *every* public authority; whereas we believe only those public authorities that have been identified by the relevant authority under Regulation 23(1)(a)(ii) need to be informed. Furthermore, the relevant authority should only identify those other public bodies that have a legitimate interest in the development; it should not be extended to those that it "thinks" are likely to have an interest.

More substantively however, we believe that draft Regulation 23(1) (a) (ii) that requires the relevant authority to direct the Developer to send copies of the EIA Report to certain other public authorities must stipulate a timeframe within which this Direction must be given and the means by which it will be provided.

Question 17: Do you consider that the competent authority's ability to decide that an EIA assessment under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 is not required where such an assessment has also or will be carried out under the Marine Works (Environmental Impact Assessment) Regulations 2007 is a useful provision and if so could this be extended to where an EIA has been carried out or will be carried under any other Regulations?

We agree that the competent authority's ability to decide that an EIA assessment under the Electricity Works Regulation is not required where such an assessment has or will be carried out under the Maine Works Regulations. We also agree that where there is duplication / overlap between any two EIA assessments, in relation to particular plan or project, then it is desirable for the competent authority to have the ability to decide whether both assessments, and just one, is required.

Question 18: Do you consider that the definition of "sensitive" area is appropriate?

Yes.

Question 19: Do you consider that we have consolidated the previous amendments to the Electricity Works (EIA) Regulations 2000 in to the updated Regulations in a way that is helpful?

Yes.

Question 20: What do you consider to be the benefits of the existing arrangements and do you consider that the proposed changes will result in any additional costs/benefits to you? If so what do you expect these to be?

The additional changes proposed appear to consolidate a range of alterations to the Regulations, and reflect new terminology. Our experience of the current arrangements suggest that they have worked well. However, some of the proposed changes also introduce new provisions which are not suitable for new 132kV wood pole overhead line projects and will increase costs for both the promoter and local planning authorities.

For more detail about the questions posed within the consultation document please refer to the responses submitted by our members.

Should you have any questions regarding this consultation response then please do not hesitate to get in touch via the details below.

I can confirm that this response may be published on BEIS's website.

Yours sincerely,

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