

2007 No. 933

PETROLEUM

PIPE-LINES

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

<i>Made</i> - - - -	<i>19th March 2007</i>
<i>Laid before Parliament</i>	<i>21st March 2007</i>
<i>Coming into force</i> - -	<i>16th April 2007</i>

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment(b).

In exercise of the powers conferred upon him by section 2(2) of that Act, he makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) (Amendment) Regulations 2007 and shall come into force on 16th April 2007.

Interpretation

2. In these Regulations “the 1999 Regulations” means the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999(c).

Amendment of the 1999 Regulations

3. The 1999 Regulations are amended as follows.

4. In paragraph (1) of regulation 3 (Interpretation)—

(a) before the definition of “EEA State”, insert—

““the Directive” means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment(d);”;

(a) 1972 c. 68; section 2 is amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(b) SI 1988/785.

(c) SI 1999/360.

(d) OJ No. L 175, 05.07.1985, p. 40; amended by Council Directive 97/11/EC (OJ No. L 73, 14.03.1997, p. 5) and by Directive 2003/35/EC of the European Parliament and of the Council (OJ No. L 156, 25.06.2003, p. 17).

- (b) for the definition of “EEA State” substitute—
 - ““EEA State” means a member State, Norway, Iceland or Liechtenstein;”;
- (c) before the definition of “environmental authority”, insert—
 - ““electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) while in an electronic form;”;
- (d) for the definition of “environmental statement” substitute—
 - ““environmental statement” means a statement prepared in respect of a relevant project which includes—
 - (a) the matters specified in Schedule 2 to these Regulations; and
 - (b) any information submitted to the Secretary of State by the applicant voluntarily along with the matters referred to in (a) above;”;
- (e) before the definition of “undertaker”, insert—
 - ““transboundary area” means the area comprising the relevant area but excluding—
 - (a) the tidal waters and parts of the sea adjacent to Scotland from the low water mark to the seaward limits of the territorial sea; and
 - (b) the seabed and subsoil under the waters referred to in paragraph (a) above;”.

5. In regulation 5 (Grant of consent by Secretary of State in respect of relevant projects)—

- (a) for paragraph (1) substitute—
 - “(1) The Secretary of State shall not grant a consent in respect of a relevant project unless the application for that consent is—
 - (a) one to which paragraph (2) or (2A) below applies;
 - (b) accompanied by an environmental statement in respect of that project; or
 - (c) the subject of a direction given under regulation 6 below (provision as to directions that no environmental statement need be prepared).”;
- (b) for paragraph (2) substitute—
 - “(2) This paragraph applies to any application for consent to the construction of a pipe-line or the augmentation of an existing pipe-line where—
 - (a) no part of the pipe-line to be constructed or augmented would extend more than 500 metres from a well or any part of a fixed installation to which that pipe-line would be directly or indirectly attached; and
 - (b) the Secretary of State has decided that having regard to the matters set out in Schedule 1 to these Regulations the operation in respect of which consent is sought would not be likely to have a significant effect on the environment and that accordingly no environmental statement need be prepared in respect of the relevant project in question.”;
- (c) before paragraph (3), insert—
 - “(2A) This paragraph applies to any application for a renewal of a consent to the getting of petroleum in relation to a relevant project (other than as the by-product of the drilling or testing of a well) where the Secretary of State has decided that, having regard to the matters set out in Schedule 1 to these Regulations, the operation in respect of which the renewal is sought would not be likely to have a significant effect on the environment and that accordingly no environmental statement need be prepared in respect of that project.
 - (2B) For the purposes of paragraph (2A), a consent is renewed where the term of the consent is increased, but without any other variation in the conditions attached to the consent.”;
- (d) in paragraph (3), for “paragraph (2) above applies” substitute “paragraph (2) or (2A) above applies”;

- (e) for paragraph (8) substitute—
 - “(8) The Secretary of State shall publish a notice of his decision in relation to any application for consent accompanied by an environmental statement—
 - (a) in the Gazettes; and
 - (b) by any other means he considers appropriate (which may include an electronic communication).”;
- (f) before paragraph (9), insert—
 - “(8A) A notice published under paragraph (8) above shall either—
 - (a) set out—
 - (i) the contents of the decision and any conditions attached to the decision;
 - (ii) the main reasons and considerations on which the decision is based;
 - (iii) a summary of any representations made to the Secretary of State by third parties in respect of the project in question, together with details of how those representations were taken into account; and
 - (iv) a description, where necessary, of the main measures required to be taken to avoid, reduce and, if possible, offset major adverse effects on the environment; or
 - (b) specify where details of the matters referred to in paragraph (a) above may be obtained.”;
- (g) in paragraph (9), for “paragraph (8)(a)” substitute “paragraph (8A)(a)”;
- (h) for paragraph (10) substitute—
 - “(10) Where the Secretary of State decides that no environmental statement is required to be prepared in respect of a relevant project which is the subject of an application for a consent to which paragraph (2) or (2A) above applies, he shall publish notice of that decision—
 - (a) in the Gazettes; and
 - (b) by any other means he considers appropriate (which may include an electronic communication).”;
- (i) omit paragraph (11).

6. In regulation 6 (Provisions as to directions that no environmental statement need be prepared)—

- (a) in paragraph (1), for “subject to paragraph (5) below” substitute “subject to paragraphs (5) and (5A) below”;
- (b) for paragraph (2) substitute—
 - “(2) Where a relevant project has been the subject of an environmental assessment in accordance with regulation 5(4) above (grant of consent by Secretary of State in respect of relevant projects subject to environmental assessment), the Secretary of State may, on the application of the undertaker concerned, give a direction that further applications for consents of such kind as may be specified in that direction need not be accompanied by an environmental statement provided that—
 - (a) the Secretary of State is satisfied that if such consents were granted anything that might be done pursuant to them would not give rise to substantially different effects from, or significantly greater effects than, those mentioned in the environmental statement originally prepared in respect of the relevant project; and
 - (b) any such consents, if granted, would not otherwise fall within any of subparagraphs (a) to (d) of paragraph (5) below.”;
- (c) before paragraph (6), insert—
 - “(5A) No direction shall be given pursuant to paragraph (1) above in respect of any application for an extension of a consent.

(5B) For the purposes of paragraph (5A) above, an “extension of a consent” is a variation of an existing consent for a relevant project, where, if the effect of the variation were itself the subject of a separate application, the application would be for consent to—

- (a) the getting of more than 500 tonnes of oil per day, or 500,000 cubic metres of gas per day otherwise than in the course of the drilling or testing of any well;
 - (b) the erection of any structure in relation to a relevant project comprising a development which the Secretary of State is not satisfied would be likely to produce 500 tonnes or less of oil per day or 500,000 cubic metres or less of gas per day; or
 - (c) the execution of works for the construction of a pipe-line of 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 development).”;
- (d) for paragraph (6) substitute—
- “(6) Paragraph (5) above shall not prevent the giving of a direction pursuant to paragraph (1) above in respect of an application for a variation of any consent to the erection of any structure in relation to a development (whether the structure has already been erected pursuant to that consent or not).”;
- (e) omit paragraph (9); and
- (f) after paragraph (10), insert—
- “(11) Where the Secretary of State makes a decision in relation to any application for a direction in accordance with this regulation, regulations 5(8) and 5(8A) shall apply in respect of such an application for a direction in the same way as they apply to an application for a consent accompanied by an environmental statement.”.

7. In paragraph (2) of regulation 9 (Procedure on receipt of application for consent in respect of which environmental statement prepared; etc.)—

- (a) after “The undertaker referred to in paragraph (1) above shall”, insert “forthwith”;
- (b) for sub-paragraph (f) substitute—
 - “(f) publish a notice which—
 - (i) describes the application and states that it is accompanied by an environmental statement;
 - (ii) states that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that regulation 12 applies;
 - (iii) gives the address referred to in sub-paragraph (c) above at which a copy of the application for consent and environmental statement may be inspected;
 - (iv) states the nature of possible decisions in response to the application;
 - (v) sets out the arrangements made for consulting the public pursuant to this regulation;
 - (vi) states that a copy of the environmental statement may be obtained from the address referred to in sub-paragraph (d) above and, subject to paragraph (4) below, specifies the amount of any payment required to be tendered for the statement;
 - (vii) states a date not less than 4 weeks after the date on which the notice is last published pursuant to paragraph (2A) below by which any person may make representations in relation to the application in question to the Secretary of State, and specifies the address to which any such representations are to be sent; and
 - (viii) provides an explanation of the right of a person aggrieved by a decision of the Secretary of State to make an application pursuant to regulation 16 below.”;
- (c) before paragraph (3), insert—

“(2A) The undertaker shall publish the notice referred to in paragraph (2)(f) above—

- (a) on such occasions as to be likely to come to the attention of those likely to be interested in, or affected by, the relevant project; and
- (b) in such newspapers and by such other means (which may include an electronic communication) as the Secretary of State may direct.”.

8. In paragraph (2) of regulation 10 (Provision to Secretary of State of further information and evidence respecting environmental statements), after “environmental statement in question”, insert—

“because that information relates to the main effects the project is likely to have on the environment, or where other information becomes available to the Secretary of State after the date on which the application was made which in the Secretary of State’s opinion is of material relevance to his decision as to whether to grant consent”.

9. In regulation 11 (Exercise by Secretary of State of powers under licences)—

(a) for paragraph (9) substitute—

“(9) The Secretary of State shall publish the relevant matters—

- (a) in the Gazettes; and
- (b) by any other means he considers appropriate (which may include an electronic communication).”; and

(b) before paragraph (10), insert—

“(9A) For the purposes of paragraph (9), the “relevant matters” are—

- (a) any decision regarding the approval pursuant to a licence of a project which entails the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State;
- (b) particulars of the exercise by the Secretary of State of any powers pursuant to a licence requiring the carrying out of a relevant project in respect of which an environmental statement was submitted to the Secretary of State; or
- (c) any decision that an environmental statement is not to be required in connection with the giving of an approval or the imposition of a relevant requirement.”.

10. In paragraph (2) of regulation 12 (Projects affecting other States)—

- (a) in sub-paragraph (a), for “paragraph 11(3)” substitute “regulation 11(4)”; and
- (b) in sub-paragraph (c), for “which is relevant to that project” substitute “of a nature referred to in regulations 9(2) and 10(2)”.

11. Before regulation 13, insert—

“Projects in other EEA States having a significant effect on the environment in the transboundary area

12A.—(1) Where, pursuant to Article 7(1) or 7(2) of the Directive, the Secretary of State receives information from another EEA State which that EEA State has gathered from the developer of a relevant project in that EEA State which is likely to have significant effects on the environment of the transboundary area, the Secretary of State shall—

- (a) enter into consultations with that EEA State regarding, inter alia, the potential significant effects of the proposed project on the environment of the transboundary area and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in the United Kingdom may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive.

(2) The Secretary of State shall also—

- (a) arrange for the information referred to in paragraph (1) above to be made available, within a reasonable time, both to the environmental authorities in the United Kingdom which he considers are likely to be concerned by the project by reason of their particular environmental responsibilities, and to the public concerned;
- (b) ensure that those authorities and the public concerned in the United Kingdom are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the EEA State referred to in paragraph (1) above, within a reasonable time, their opinion on the information supplied; and
- (c) so far as he has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of that EEA State, and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
 - (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.”.

12. In regulation 13 (Exempt projects)—

- (a) in paragraph (3), for sub-paragraph (b) substitute—
 - “(b) require that all information relating to the main effects the project is likely to have on the environment collected pursuant to sub-paragraph (a) above is to be made available to the public and specify the manner in which it is to be made available;”;
 - and
- (b) for paragraph (5) substitute—
 - “(5) The Secretary of State shall publish details of any direction made in pursuance of paragraph (1) above together with information as to how persons interested in, or affected by, the project may obtain a copy of any direction given pursuant to this regulation—
 - (a) in the Gazettes; and
 - (b) by any other means he considers appropriate (which may include an electronic communication).”.

13. In regulation 16 (Petition to court by person aggrieved)—

- (a) in paragraph (1)—
 - (i) for “regulation 4(1)” substitute “regulation 5(1); and
 - (ii) for “regulation 5(2)(b)” substitute “regulation 5(4)(b)”; and
- (b) in paragraph (2), for “regulation 9(5)” substitute “regulation 11(6)”.

Transitional Provisions

14. The amendments made by regulations 4 to 13 above shall not apply in relation to any application made under the 1999 Regulations which is received by the Secretary of State prior to the coming into force of these Regulations.

19th March 2007

Truscott
Parliamentary Under Secretary of State for Energy
Department of Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 (“the 1999 Regulations”). The 1999 Regulations implement Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, in relation to offshore oil and gas activities, as amended by Council Directive 97/11/EC of 3 March 1997. These Regulations implement Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003. Directive 2003/35/EC provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends, with regard to public participation and access to justice, Council Directives 85/337/EEC and 96/61/EC. The 1999 Regulations are also amended to deal with certain matters which came to light after those Regulations came into force.

Regulation 4 of these Regulations amends regulation 3 of the 1999 Regulations by inserting definitions for “the Directive”, “electronic communication” and “transboundary area”. Regulation 3 also amends the definition of “EEA State” (so as to ensure the inclusion of all the member States which joined the European Union in 2004 and 2007) and “environmental statement”.

Regulation 5 amends regulation 5 of the 1999 Regulations. The amendments provide that the Secretary of State can only grant or renew consent to a relevant project where it falls within the circumstances specified; it also amends the requirements regarding the information which the Secretary of State must provide in the notice setting out his decision on whether to grant consent for a relevant project.

Regulation 6 amends regulation 6 of the 1999 Regulations; it amends the circumstances in which the Secretary of State can direct that an environmental statement need not be prepared and introduces more detailed publicity requirements in respect of any decision to make such a direction.

Regulation 7 amends regulation 9 of the 1999 Regulations in relation to the information to be published when an application for consent for a relevant project is made where that application is accompanied by an environmental statement.

Regulation 8 amends regulation 10 of the 1999 Regulations; it requires that information which is of material relevance to the Secretary of State’s decision, but becomes available to the Secretary of State only after the date of the application for consent, is made available to the public.

Regulation 9 amends regulation 11 of the 1999 Regulations by providing that the Secretary of State must publish certain matters in the Gazettes and by any other means he considers appropriate.

Regulation 10 corrects a cross-referencing error in regulation 12 of the 1999 Regulations and clarifies the duty to send information to an EEA State which has requested to participate in the UK consultation procedure where a relevant project is likely to have a significant effect on the environment in that EEA State.

Regulation 11 inserts a new regulation 12A into the 1999 Regulations; it provides that the Secretary of State can request to participate in the consultation procedure of another EEA State, where a project in that EEA State is likely to have a significant effect on the environment in the transboundary area. The new regulation also sets out the procedure that the Secretary of State must follow in bringing such relevant projects to the attention of the public concerned in the UK.

Regulation 12 amends regulation 13 of the 1999 Regulations by providing that in cases where a relevant project is exempt from the Regulations, the Secretary of State must require certain information to be made available to the public and specify the manner in which it is to be made public.

Regulation 13 amends certain cross-referencing errors in regulation 16 of the 1999 Regulations.

Regulation 14 provides a transitional provision which applies to applications received prior to the coming into force of these Regulations.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Energy Development Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

A Transposition Note is available and can also be obtained from the Energy Development Unit, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET.

The regulatory impact assessment and Transposition Note are also annexed to the Explanatory Memorandum, which is available alongside the instrument on the Office of Public Sector Information website: www.opsi.gov.uk.

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