

# RESPONSES MADE TO THIRD PARTY CONSULTATIONS

## OCTOBER 2016



**Chairman**  
Bob Downes

**Chief Executive**  
Terry A'Hearn

### SEPA Stirling Office

Strathallan House, Castle Business Park,  
Stirling FK9 4TZ

tel 01786 457700 fax 01786 446885

[www.sepa.org.uk](http://www.sepa.org.uk) • customer enquiries 03000 99 66 99

Our Ref: JM/KL/AF/  
ORG13-A3081

By email: [EIAconsultation2016@gov.scot](mailto:EIAconsultation2016@gov.scot)

If telephoning ask for:  
Katherine Lakeman

31 October 2016

Dear Sir/Madam

**CONSULTATION ON ENVIRONMENTAL IMPACT ASSESSMENT AMENDING SCOTTISH ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS TO TRANSPOSE DIRECTIVE 2014/52/EU**

Thank you for the opportunity to provide comments on the proposals for implementing European Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment. We strongly support the transposition of the Directive into Scots law and its alignment with the Scottish Government's Better Regulation agenda. Please find attached our completed Respondent Information Form as requested.

The intention to bring as much consistency as possible across all EIA regimes is strongly supported. Indeed, we advocate that there would be considerable benefits in achieving complete consistency through the alignment of all statutory instruments relating to EIA within Scotland, into one piece of legislation. This would support the delivery of the Better Regulation agenda by ensuring greater clarity, consistency and parity across all EIA projects.

Some key issues contained within our response include:

- Scoping opinions should become a mandatory stage within the EIA process and underpin the production of a focussed, robust and effective EIA Report:
- We have concerns around the resource implications and effectiveness of the screening proposals: and,
- Further consideration should be given to the use of competent experts in the preparation of EIA reports.

Further detail on these and other matters can be found in the attached form.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on public record. We would welcome a meeting with the Scottish Government to discuss our response in more detail. Should you wish to discuss any of the points raised please contact Katherine Lakeman, Principal Policy Officer (Planning), SEPA Stirling Office.

Yours faithfully

Janice Milne  
Head of National Regulatory Services

## Questionnaire

Please provide your feedback on these proposals in the form of responses to the questions below.

### Regimes

If you are answering the consultation questions in relation to a particular regime, please select the relevant box clearly highlight which regime you are referring to in the comments section.

- |                          |               |                          |                              |
|--------------------------|---------------|--------------------------|------------------------------|
| <input type="checkbox"/> | Agriculture   | <input type="checkbox"/> | Marine Works                 |
| <input type="checkbox"/> | Energy        | <input type="checkbox"/> | Planning                     |
| <input type="checkbox"/> | Forestry      | <input type="checkbox"/> | Transport and Works Projects |
| <input type="checkbox"/> | Land Drainage | <input type="checkbox"/> | Trunk Roads                  |

### Section 1. Assessment Process

**Q1.** Do you agree with proposals to provide for a coordinated rather than joint procedure?

- Yes
- No
- Unsure

This may be possible in respect of the Habitats and /or Birds Directives but would be difficult to achieve in relation to assessments undertaken under other regimes such as the Industrial Emissions Directive and SEVESO III Directive due to differing information requirements at the planning stage and different statutory determination timescales. For example assessments under these Directives for authorisation purposes would require detailed designs and specification of plant. There is also, for example, a 4 month statutory determination period (for which the clock can be stopped should further information be required) for IED which would not align with EIA timescales.

It should be noted that in the future, some of these regimes will be integrated into a single regulatory framework, supported by universal outcomes that will have a strong alignment with EIA ambitions. This may allow, in future, potential opportunities for stronger integration between these regimes and EIA processes.

Provides an opportunity to provide one process for EIA across all regimes.

- Q2.** What would the regulatory impact be if legislation was introduced which required that no construction of any EIA development should take place until any operational permits or consents required under the Habitats and Birds Directives, Water Framework Directive, the Industrial Emissions Directive, the Waste Framework Directive or the SEVESO III Directive had been granted?  
(Please provide details in the comments box below)

This is unnecessary as, in many cases, the operator would require the relevant authorisation under environmental regulation before construction took place anyway.

- Q3.** Do you have any further comments on the changes proposed to implement articles 1 and 2 of the EIA Directive?  
(Please provide details in the comments box below)

It would be very useful in certain circumstances (e.g. where a derogation process is required under WFD) that planning permission should not be granted by the planning authority until authorisation is given. This would be in line with local authority duties as a responsible body under the Water Environment and Water Services (Scotland) Act 2003.

## Section 2: Information to be Assessed

- Q4.** Will you have to change your current practice to take account of the risk of major accidents?
- Yes
- No
- Unsure

It would be the responsibility of the developer to consider this and reflect their assessment in the EIA Report. Where we consider the risk of major accidents and/or disasters relates to our interests we would provide comment. These may relate to flood risk which is something we currently consider.

- Q5.** Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?
- Yes
- No
- Unsure

It will, however, be important that this is supported by guidance to help ensure that information is assessed effectively. This is particularly important for areas of change such as risks to population and human health, biodiversity and increased emphasis on climate change issues. It would be helpful if supporting guidance can provide clarity around the roles of relevant organisations in areas such as population and human health as they relate to EIA.

### Section 3: Screening

**Q6.** Will you have to change your current practices to meet the new screening requirements?

- Yes
- No
- Unsure

The proposed screening requirements would result in the competent authority receiving more information on the proposed scheme at this stage, including proposals for mitigation. We have significant concerns around this as it would lead to a considerable increase in workload for statutory consultees.

We envisage real difficulties in accurately identifying environmental effects at the screening stage. It is possible that applicants would be reticent to identify the scope or degree of potential environmental effects to avoid the need to undertake an EIA which would necessitate an enhanced scrutiny role from statutory consultees. A key addition is that the screening opinion must be based upon information provided by the developer but we consider that there must be a role for a statutory consultee to highlight additional information of which they are aware if this is relevant to a screening decision.

Finally, we have concerns around the identification and implementation of suitable mitigation measures as part of the screening process. In particular there could be real difficulties if the regime cannot require the mitigation measures proposed to avoid the need for EIA. The planning regime can achieve this through the use of conditions but many other regimes do not have robust mechanisms to ensure mitigation measures are implemented. This could be resolved through the bringing together of all EIA regimes into one statutory instrument that includes effective provisions for the delivery of mitigation.

**Q7.** Are you content with the current timescales for providing a screening opinion?

- Yes
- No
- Unsure

If the amount of information received through screening increases and there is a need to give greater scrutiny to the information provided the timescales for this stage would need to be extended.

**Q8.** Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

- Yes
- No
- Unsure

If there is no mechanism in place to require the implementation of any proposed mitigation measures this could result in significant environmental impacts and would therefore be contrary to the objectives of the Directive. Whilst the planning regime can ensure implementation of mitigation measures through the attachment of conditions to the planning application other regimes to which EIA applies do not have such regulatory mechanisms in place to ensure delivery. This would be a serious weakness of the proposals that could undermine the requirements of the Directive.

## Section 4: EIA Report

**Q9.** Will you have to change your current practice to prepare a reasoned conclusion?

- Yes
- No
- Unsure

Not applicable – we do not prepare EIA Reports.

**Q10.** Do you consider that our approach to transposition of requirements concerning the content of the EIA report appropriately implements the Directive?

- Yes
- No
- Unsure

We support the need for the contents of the EIA Report to be based on the scoping opinion but this should not be to the exclusion of other significant environmental effects that may, for valid reasons, not be picked up until post scoping. If this is to be effective in practice it must be mandatory to require a scoping opinion.

## Section 5: Scoping

**Q11.** Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?

- Yes
- No
- Unsure

The scoping stage is critical in ensuring a focussed, well-informed and effective EIA Report and schedule of mitigation. The introduction of a mandatory scoping stage should be introduced to support shorter, more focussed EIA Reports resulting in substantial benefits including improved environmental outcomes, reduced costs and speedier processes. The proposals require that the EIA Report must be based on the scoping opinion. Whilst we support this in principal the current proposals allow for an option to not ask for a scoping opinion thereby totally undermining the transposition of this element of the Directive and potentially deterring developers from seeking a scoping opinion in the first instance. This can only be overcome through the introduction of a mandatory scoping stage.

As previously mentioned we consider that 'based on' should not lead to the exclusion of issues raised post-scoping. Occasionally significant environmental effects do not become apparent until post-scoping and the current proposals would not allow for such effects to be included.

There will also be other essential information required for e.g. in relation to drainage, waste management etc. that may not cause significant effects but is still required for consideration. It would be useful if it could be clarified whether these should sit within the EIA Report or in a separate supporting document.

## Section 6: Assessment quality and expertise

**Q12.** Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

- Yes
- No
- Unsure

We consider that some level of accreditation would be very beneficial and should be explored further. In our experience this has been raised as an issue at hearings. Whilst it is accepted that there is a diverse range of EIA topics, given our experience of the poor quality of many ES submissions, and the regularity with which some issues recur, we consider that it is important to consider accreditation more fully. It will also be important to provide for rejection of a report where it is clear that it has not been prepared by a competent expert and there is therefore a strong likelihood that the requirements of the Directive are not being met. The reliance of statutory consultees, such as SEPA, to fulfil 'access to sufficient expertise' is inadequate as the expertise held by statutory consultees may not cover the full scope of issues included in the EIA Report. For example Health Boards would be better placed to provide 'sufficient expertise' on human health issues. If we are to effectively embrace these new areas we need to ensure that they are undertaken and reviewed by appropriate experts. A more holistic approach to health within the EIA process would prevent the need for separate Health Impact Assessments.

## Section 7. Consultation and Publicity

**Q13.** Do you consider that our approach to transposing consultation and publicity appropriately implements the requirements of Directive?

- Yes
- No
- Unsure

No comment.

**Q14.** Do you feel that the current arrangements for informing the public meet your needs?

- Yes
- No
- Unsure

The transposition provides an ideal opportunity to bring a consistent approach to timelines for consultation across all the regimes. This could be resolved through the bringing together of all EIA regimes into one statutory instrument.

## Section 8. Monitoring

**Q15.** Do you consider that the regulations meet the requirements of the Directive concerning the information to be included in the development consent?

- Yes
- No
- Unsure

The proposed arrangements do not require a remedial feedback mechanism as required by the Directive. This is essential if any monitoring arrangements are to ensure that any significant environmental effects are avoided.

**Q16.** What administrative changes are likely to be required to implement new provisions on the content of decision notices?

The onus should be on developers to fund any monitoring requirements. Any monitoring requirements will increase administrative burdens on all stakeholders including developers, planning authorities and statutory consultees. We would therefore advocate that the need for monitoring should be minimised through effective mitigation measures supported by a clear schedule of mitigation.

**Q17.** Do you consider that our approach to transposition of monitoring in the regulations implements the requirements of the Directive?

- Yes
- No
- Unsure

We should be seeking to avoid the need for monitoring in the first instance as mitigation measures should be robust enough to ensure that the effect is avoided or minimised to such an extent that monitoring is not necessary. Monitoring is only useful if there is a robust remedial feedback mechanism as required within the Directive. The robust feedback mechanism is not, however, required in the proposed transposition arrangements.

**Q18.** Will you have to change your current practices to meet the new monitoring requirements?

- Yes
- No
- Unsure

As previously mentioned we strongly believe that monitoring should be avoided where at all possible in the first instance as mitigation measures should be robust enough to eradicate the need for monitoring. In addition any monitoring inevitably requires considerable time and resources to implement and where necessary act upon. Whilst we consider that any monitoring requirements should be funded by the developers it is inevitable that in some instances statutory consultees may be asked to provide advice on monitoring requirements and findings. This would inevitably increase workload.

## Section 9. Decision

**Q19.** Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

- Yes
- No
- Unsure

Whilst the onus is placed on the competent authority to conclude that a reasoned conclusion is still up to date this will inevitably require input from statutory consultees. The planning authority, for example, will not know if a survey result is still applicable without consulting the relevant statutory consultee, thereby leading to an increase in statutory consultee workload.

## Section 10. Conflict of interests

**Q20.** Do you consider that our approach to conflict of interest appropriately implements the requirements of the Directive?

- Yes
- No
- Unsure

Where the applicant is also the competent authority it is important that there is an appropriate barrier or 'firewall' between the two roles. The current proposals should be strengthened in this respect.

## Section 11. Penalties

- Q21.** Do you agree with proposals to introduce penalties and sanctions for knowingly or recklessly providing false information should be applied across all eight EIA regimes?
- Yes
- No
- Unsure

If the objectives of the Directive are to be upheld it is vital that the information provided is accurate and robust. We have had experience of applicants becoming aware of incorrect information and then not voluntarily correcting it. It may, however, be preferable to require applicants to correct information that proves to be false rather than a penalty for knowingly or recklessly providing false information which may be difficult to prove and would not necessarily lead to the information being corrected.

## Section 12. Transitional Arrangements

- Q22.** Do you consider that our approach to transitional arrangements appropriately implements the requirements of the Directive?
- Yes
- No
- Unsure

These seem clear and reasonable.

- Q23.** Do you have any comments on the proposal by the forestry regime to increase the afforestation threshold for non-sensitive areas from 5 hectares to 20 hectares?

We consider that the threshold should not be increased as the potential environmental impacts on non-sensitive areas can still be significant for 5 hectare sites. Many of the environmental impacts we consider (e.g. waste management, impacts on the water environment, flood risk) do not correlate with what may be identified as sensitive areas and we would not therefore support a two tier approach.

**Q24.** Do you have any comments on the proposal by the marine regime to adopt the thresholds used by the planning regime where they are relevant to marine developments?

We would support the adoption of the same thresholds by the marine regime. This could be achieved through the bringing together of all EIA regimes into one statutory instrument.

**Q25.** Do you have any comments on the new provisions for multi stage consents?

We support the proposed approach.

**Q26.** Do you currently use EIA guidance? If so please provide further details.

- Yes
- No
- Unsure

Supporting guidance will be important to ensure the effective and consistent implementation of new legislation.

**Q27.** Is there any particular area or regime where you feel that guidance would be helpful?

Guidance around key areas of change including processes and the scope of issues to be covered would be needed. Guidance around the consideration of climate change, human health and biodiversity as part of the EIA process would be particularly welcome.

### Part 3 – Assessing Impact

**Q28.** Do you think that the proposals presented might impact on people differently depending on characteristics such as age, disability, gender, race, religion or belief, sexual orientation, gender identity or children's rights and wellbeing?

No comment.

**Q29.** What do you consider are the likely costs and benefits arising from the changes outlined in this consultation paper?  
(Please specify which of the Scottish EIA regimes your comments refer to.)

Some of the new provisions, particularly those around screening, could lead to a significant increase in workload, and therefore costs, for SEPA. An opportunity has been missed to help streamline the EIA process through the introduction of a mandatory scoping stage. The introduction of a mandatory scoping stage would bring a range of benefits and cost savings through more focussed and effective EIA Reports.

**Q30.** Do you have any comments on the Draft Partial Regulatory Impact Assessment?

No comment.

Helen McArthur  
Assistant Decommissioning Manager  
Oil & Gas Environment and Decommissioning  
Department for Business, Energy & Industrial Strategy  
AB1 Building, Crimon Place  
Aberdeen AB10 1BJ

Our Ref: JM/AS/DO/JW/  
ORG13-A3082

27 October 2016

By email: [helen.mcarthur@beis.gov.uk](mailto:helen.mcarthur@beis.gov.uk)

Dear Ms McArthur

## **ATLANTIC AND CROMARTY DECOMMISSIONING PROGRAMMES**

Thank you for providing the Scottish Environment Protection Agency (SEPA) with the opportunity to comment on the above consultation document.

Having reviewed the decommissioning programme SEPA has identified one area where clarification is required and several other areas where engagement between BG Group and SEPA would be beneficial in relation to ongoing waste management responsibilities. Notwithstanding these points SEPA is content with the proposed decommissioning plan and the commitment to manage waste in accordance with the waste hierarchy with disposal being considered only where no other option is available. SEPA also note the statement that all decommissioning works and waste management will be carried out at facilities with all necessary permits and consents.

### **Clarification: Liquid waste management and waste inventory**

The decommissioning programme does not detail what will happen to the liquid waste (i.e. the inhibited water and glycol) contained within the infrastructure due to be decommissioned. SEPA would welcome clarity on the intended management of these wastes and if they are to be returned to shore for management SEPA request that the waste inventory is updated to include these wastes. The waste inventory should also be updated to include the classification of all wastes, as hazardous or non-hazardous, as well as the reason for the classification.

### **Further engagement and advice**

#### *Waste management Strategy*

Reference is made at Section 3.8 of the decommissioning programme to the presence of a Waste Management Strategy. SEPA would welcome the opportunity to comment on this Strategy together with two further documents, namely;

- BG-UKU-PROC-HSSE-00021 relating to the management of radioactive waste; and
- BG-BMS-PROC-HSSE-0517 relating to the management of wastes.

#### *Duty of care*

BG must ensure that they comply fully with the requirements of Section 34 of the Environmental Protection Act 1990 (as amended) with regard to the Duty of Care of waste. It is important that BG recognise that their obligations under this piece of legislation do not cease once the wastes, derived from the Atlantic and Cromarty decommissioning activities, are transferred to a third party waste contractor, but rather are only discharged at final disposal of those wastes, or at that point when the waste is no longer so classified.

The following link is to the 'Duty of Care: A Code of Practice'. This code explains the duties applicable to anyone producing, keeping, or treating controlled waste in Scotland.  
<http://www.scotland.gov.uk/Resource/0040/00404095.pdf>

It is noted at Section 3.1 and again at Section 2.3.2 that although there are no surface installations to be decommissioned, a topside umbilical termination unit (TUTU) and two associated modules are to be left on the Goldeneye platform. It is further understood that decommissioning of these will form part of that Platforms decommissioning programme. SEPA would like to be assured that this will not result in an "orphan waste" and that the Goldeneye Partnership is willing and able to take on the responsibility under the Duty of Care for these wastes.

BG should be able to demonstrate, to the satisfaction of BEIS and SEPA, that they have complied with their Duty of Care obligations and can demonstrate the ultimate fate of all wastes and materials derived from their decommissioning activities. Such a demonstration should be made prior to close-out of the decommissioning plan and indeed could usefully form part of the 'Close-out' process.

#### *Waste Transfrontier Shipment*

Should decommissioning involve the consideration of movement and landing of materials and wastes outwith the UK then, BG are strongly advised to contact SEPA to discuss their needs.

#### *Radioactive Substances*

We note that appropriate monitoring will be carried out for NORM wastes (LSA scales) even though it is not anticipated to be present. Should NORM be detected we strongly advise that SEPA is contacted to ensure that any proposed movements are appropriately authorised in accordance with the Radioactive Substances Act. It is also common for there to be exempt sealed radioactive sources present on offshore installations. The decommissioning programme does not mention that any are present, if there are they should be managed in accordance with the Radioactive Substances Exemption (Scotland) Order 2011.

As a public body committed to openness and transparency, SEPA feels it is appropriate that this response be placed on the public record. If you require further clarification on any aspect of this correspondence, please contact Adam Stackhouse, Specialist 1, Radioactive Substances & Nuclear Regulation at the address shown or by email: [adam.stackhouse@sepa.org.uk](mailto:adam.stackhouse@sepa.org.uk) .

Yours sincerely

Janice Milne  
Head of National Regulatory Services