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Consultation – summary of responses

Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders

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Consultation Summary Report: Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders

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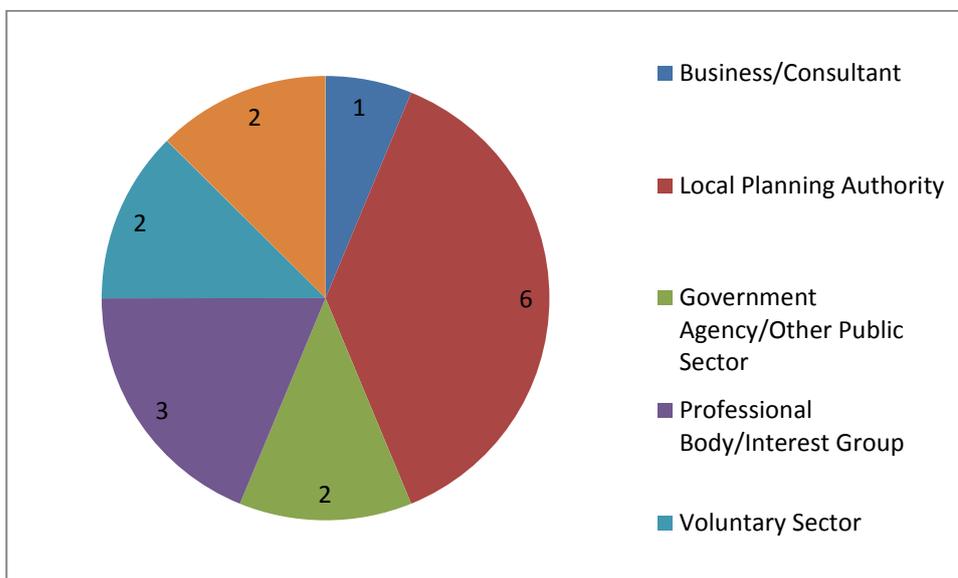
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1. Introduction

- 1.1 The “Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders” consultation document was issued on 26 March 2015 and was open for responses until 18 June 2015. A total of 11 questions were set out in the consultation document, with a form provided for ease of response.
- 1.2 This document provides a summary of the responses. Copies of the responses to the consultation are available on the Welsh Government website.

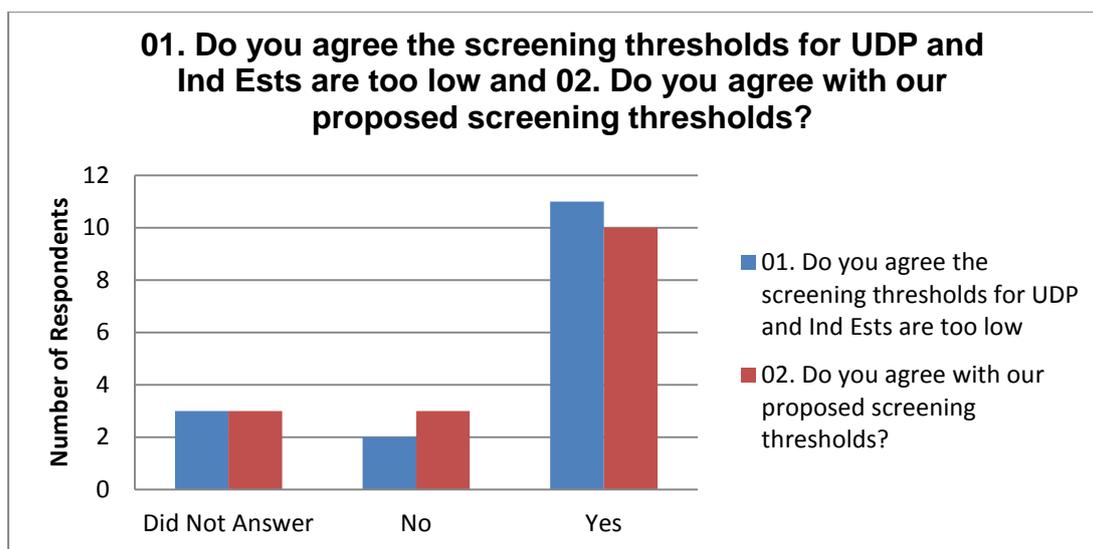
2. Responses

- 2.1 In total, 16 responses were received to this consultation paper. The breakdown of respondents is provided in the graph below:



3. Screening thresholds

Q1	Do you agree that the screening thresholds for urban development projects and industrial estate projects, as set out in Schedule 2 of the EIA Regulations, are too low?
Q2	Do you agree with our proposed screening thresholds?



- 3.1 Of those who responded to question 1, the majority (85% of those who answered) agreed that the screening thresholds are too low. Of those who answered question 2 77% supported the proposed thresholds set out in the consultation paper. Comments received included:

Question 1

- There are advantages to adopting the same screening thresholds that are operational in England, particularly for border local planning authorities (LPAs).
- Increasing thresholds will help deliver an efficient process of assessment that is proportionate to the effects of development being proposed.
- Some respondents highlighted they would welcome a clear commitment that the new regulations require all Schedule 2 'industrial estate projects' located within sensitive areas to be screened.
- A few respondents considered that raising the threshold could mean that development proposals which are likely to damage the environment would not be screened for EIA.

Question 2

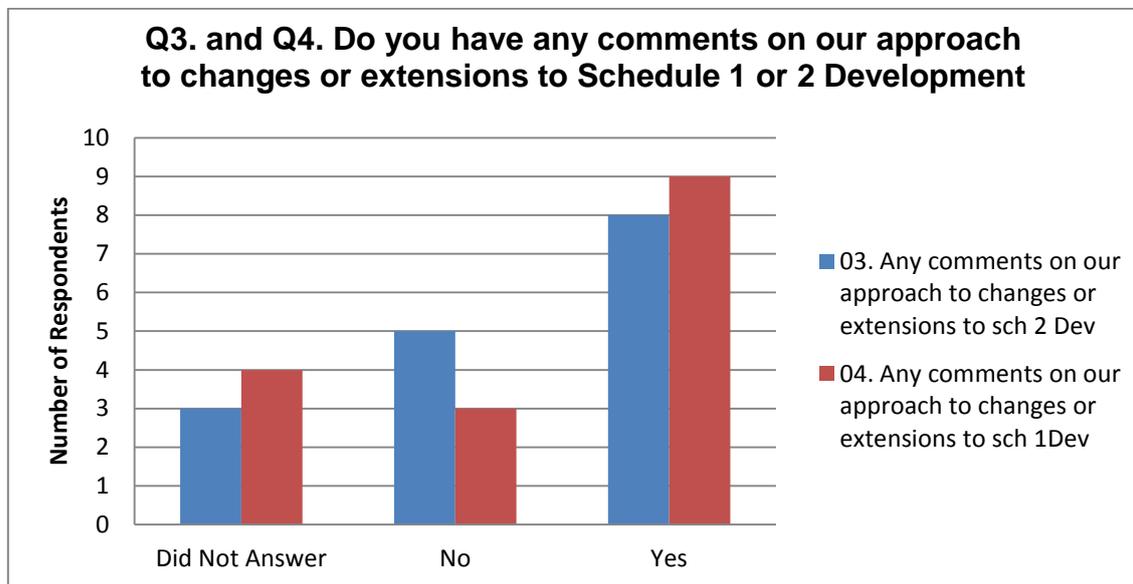
- Some respondents also considered that there are also very strong arguments for raising other thresholds in Schedule 2, in addition to the proposals put forward in the consultation paper.
- There was some concern that the proposed thresholds were high, however overall there was support for the levels proposed.
- There were technical queries over the draft wording of the proposed thresholds.

Response

- 3.2 There is clear support for ensuring that the screening thresholds associated with "urban development projects" and "industrial estate development" are not screened when they are unlikely to have significant effects on the environment. As highlighted, these changes will provide consistency with other UK administrations, and ensure assessments are proportionate to the effects of development being proposed.
- 3.3 The Welsh Government remains committed to protecting the environment and all Schedule 2 industrial estates development and urban development projects that are located in a 'sensitive area', irrespective of their size, will be subject to screening.
- 3.4 The threshold has been set at a level bearing in mind the need to ensure that only those projects that are not considered likely to give rise to significant environmental effects are removed from the need for screening. This will provide certainty that projects that could have a significant effect on the environment are still subject to screening, and if required, the EIA procedure.
- 3.5 The consultation paper proposed increases in thresholds where it is clear that only those projects that are not considered likely to give rise to significant environmental effects are removed from the need for screening. Changes to other thresholds would need evidence to demonstrate that higher thresholds are appropriate.
- 3.6 The proposed legislation has been reviewed and amended to take account of the technical queries raised.

4. Changes and Extensions

Q3	Do you have any comments on the proposed approach to addressing changes or extensions to Schedule 2 development?
Q4	Do you have any comments on the proposed approach to addressing changes or extensions to Schedule 1 development?



4.1 The following comments were received on our approach to Schedule 1 and 2 development:

Schedule 2 development

- Many supported the principle of aligning the screening in accordance with the case law on this subject.
- Some respondents sought clarification on what is deemed an extension to a development
- Technical queries were raised on the proposals, these were:
 - One respondent considered that there appears to be a loophole in the proposal: a change/extension could have the potential to cause substantial harm to the environment, but, if the overall development fell short of a threshold, the LPA would have no cause to screen it.
 - Two respondents considered there is the potential for unintended consequences of small works (including permitted development) that may become subject to screening and EIA as a result of the proposed changes.

Schedule 1 development

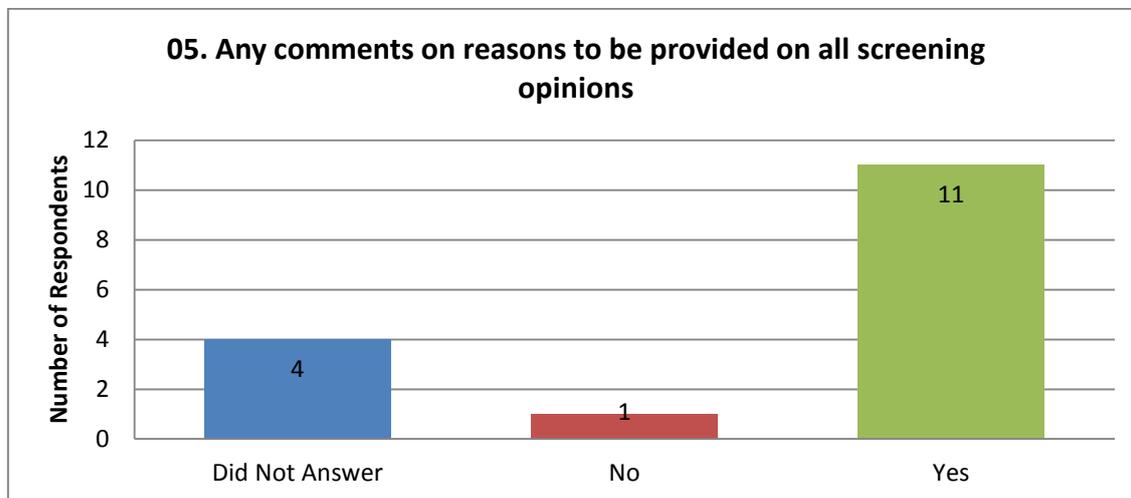
- The majority of respondents echoed their support for the changes to Schedule 2 development in the response to this question.
- Technical queries were raised by one respondent who questioned why Schedule 1 development and Schedule 2 development should be treated differently.

Response

- 4.2 There is strong support for the proposal, aligning the legislation with the case law on changes or extensions. There has been a technical change to the legislative drafting for schedule I and II development. This does not amend the approach outlined in the consultation paper, however the drafting aligns the wording used in schedule I and II.
- 4.3 An extension is difficult to precisely define given that the characteristics of the original project, the specific circumstances of the proposal, as well as the overall context of the development scheme are some of the key determining factors in deciding whether something is a change or extension. These will vary considerably from one application to another and it is not possible to provide legislation on this point. LPAs are best placed to consider whether individual applications fall within the definition based on analysis of all the local factors and project circumstances.
- 4.4 The identified approach to changes and extensions is that set out in case law and is not considered to have a loophole, which was the concern of one respondent. The effect of the project as changed or extended must be considered each time. However the baseline against which environmental impacts are considered will change once development is consented. Therefore when the impacts of later changes or extensions in the context of the development as a whole may quite rightly be reporting less significant effects than the environmental statement prepared for the original development.
- 4.5 It is considered unlikely that this approach will give rise to the unintended consequences a respondent anticipated, in the form of very small inconsequential changes being subject to full screening assessment. The provisions of the regulations require a three stage decision making process to determine whether EIA should be undertaken. The first stage will require the size of the project as changed or extended to be considered against the thresholds. If the project does exceed the threshold, the second stage is to identify whether there is the possibility of likely significant effects from the development as changed or extended. At this stage, very small changes can be discounted as they will not fall within the scope of the regulations and therefore this decision is not subject to statutory processes such as the need to publicise reasons in the same manner required of the third stage, which is the formal screening assessment.

5. Reasons for Negative Screening Decisions

Q5 Do you have any comments on the proposal to amend the EIA Regulations to require reasons to be provided for all screening opinions and screening directions?



5.1 Of those who responded, the majority (92% of those who answered) made comments on the requirement that all screening opinions/directions should be supported by reasons for the determination.

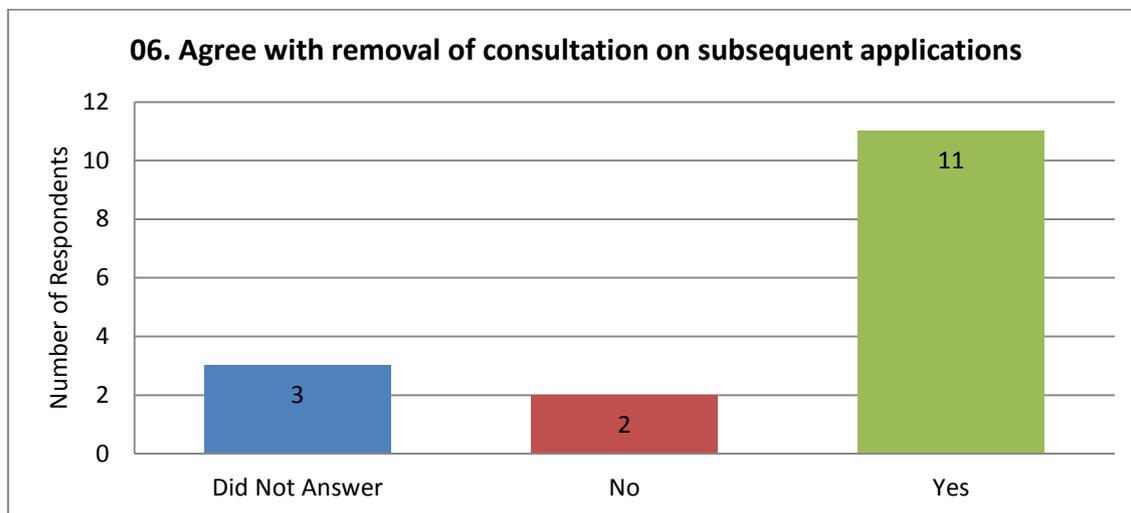
- The majority of respondents felt that this approach would increase transparency and maintaining public confidence in EIA screening decisions.
- A number of LPAs commented that the reasons given in a screening decision should be consistent in nature and proportional to the development complexity.

Response

5.2 There is clear support for all screening decisions and directions to be accompanied by the reason for the decision.

6. Multi-stage consents

Q6	Do you agree that, in the case of a subsequent application (e.g. reserved matters application), where an environmental statement was provided with the original outline application and remains fit for purpose, there is no merit in repeating the public consultation process?
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6.1 Of those who responded, the majority (85% of those who answered) agreed that, where an environmental statement was provided with the original application and remains fit for purpose, there is no merit in repeating the public consultation process on subsequent applications. Comments received included:

- The majority of LPAs welcomed the reduction in administrative burdens of the EIA process and felt there is little value in requiring the submission of a further Environmental Statement and going through a further public consultation exercise where sufficient detail was provided at the outline stage.
- Some respondents identified that it is important to identify and define the factors which determined that the original environmental statement was considered “fit for purpose” and the circumstances in which this would no longer be the case. This would help determine whether or not a fresh public consultation is warranted.

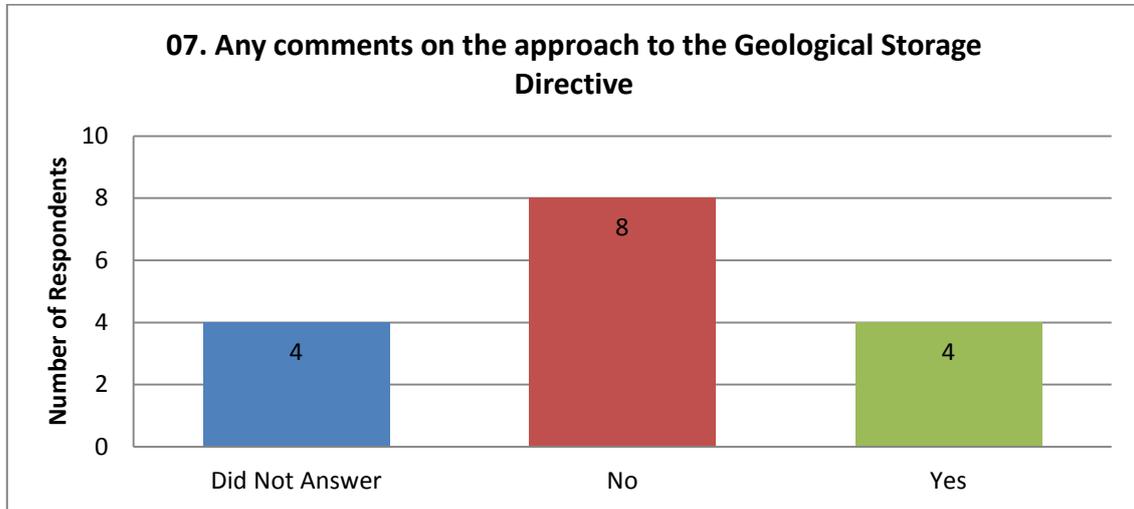
Response

6.2 There is clear support that where an environmental statement provided with the original application remains fit for purpose, the public consultation process is not repeated on subsequent applications.

6.3 The subsequent application stage can include reserved matters applications and the discharge of pre-commencement conditions. Given the possible variation in the details of the subsequent consent, the specific circumstances of the site and its surroundings, as well as the overall context of the development scheme, will determine whether an ES remains fit for purpose. These will vary considerably from one application to another, and the LPA will need to judge accordingly where this is the case.

7. Geological Storage Directive

Q7 Do you have any comments on the proposed approach to implementing the Geological Storage Directive?



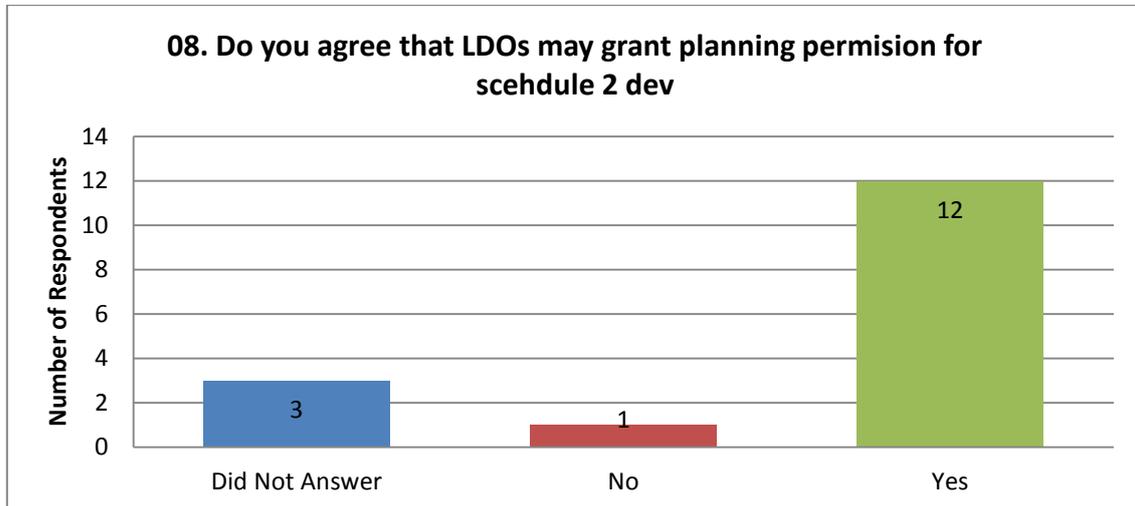
7.1 Of those who responded, only a few identified that they have comments to make on the proposals. Where comments were received these provided support for the proposal.

Response

7.2 There is clear support for the addition of new categories of development to Schedule 1 and 2 of the EIA Regulations to reflect Directive 2009/31/EC.

8. Local Development Orders

Q8 Should the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (DMPO) and the EIA Regulations be amended in order to allow LDOs to grant planning permission for Schedule 2 development?



8.1 Of those who responded, the majority (92% of those who answered) agreed that LDOs should be able to grant planning permission for Schedule 2 development. Comments received included:

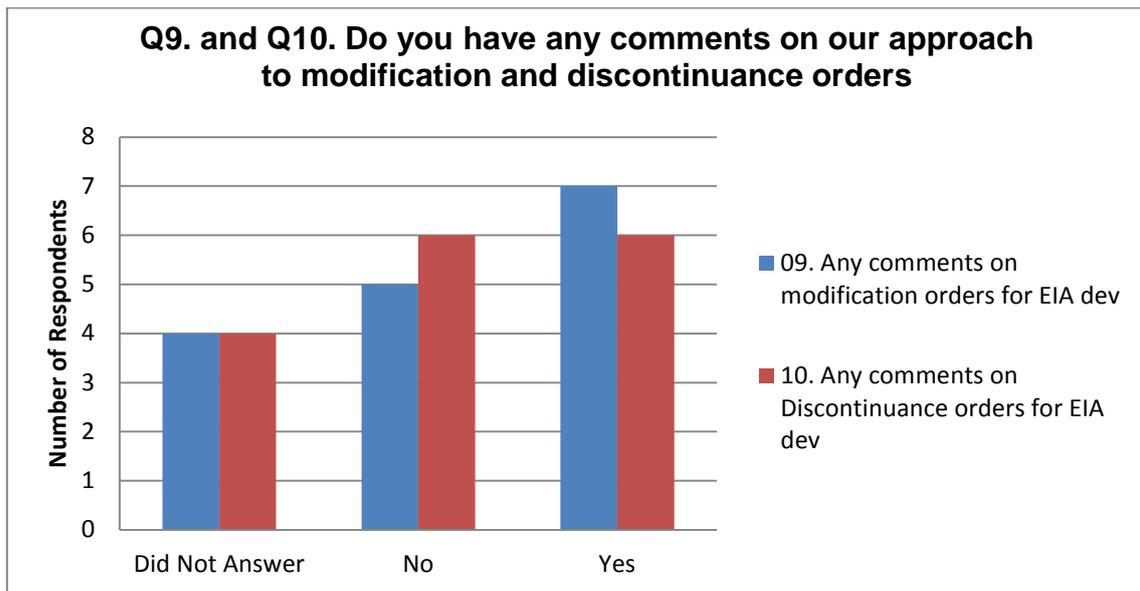
- The majority felt that with a robust and accountable process in place to ensure the suitable validation and analysis of a comprehensive environmental statement, there should be no increased risk of significant environmental impact from any grant of planning permission though an LDO subject to Schedule 2.
- The proposal was highlighted as a good way to facilitate economic activity.

Response

8.2 There is clear support to allow LDOs that could grant planning permission for Schedule 2 EIA development, subject to consideration of an environmental statement. This was seen to facilitate and encourage the use of LDOs for large scale development.

9. Modification and Discontinuance Orders

Q9	Do you have any comments on the proposal to prevent modification orders for EIA development being made or confirmed unless the order is accompanied by an Environmental Statement that is taken into account when making or confirming the order?
Q10	Do you have any comments on the proposal to prevent discontinuance orders for EIA development being made or confirmed unless the order is accompanied by an Environmental Statement that is taken into account when making or confirming the order?



9.1 Those who had comments on the proposals to include modification and discontinuance orders within the EIA process supported the approach. One respondent identified that these are rarely used processes within the planning system.

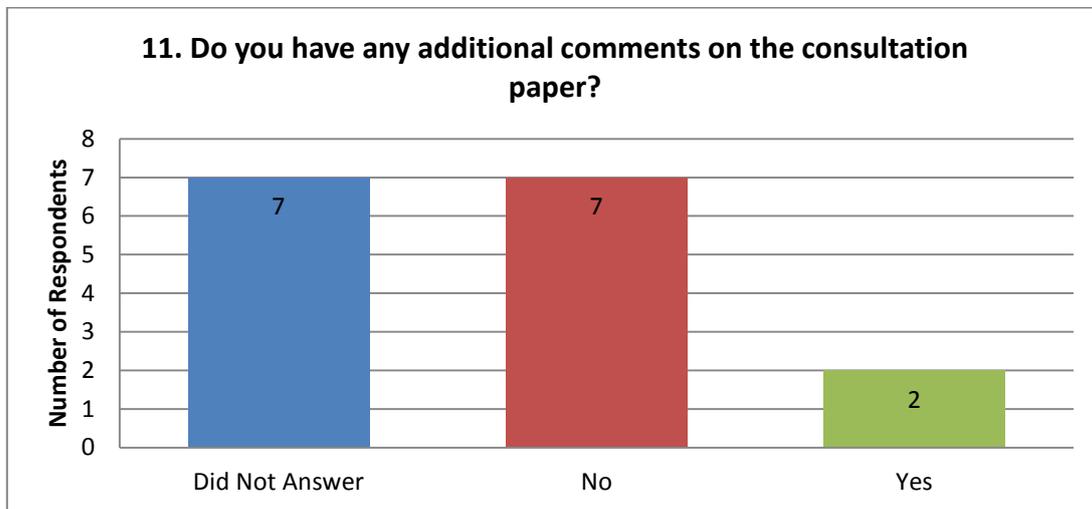
Response

9.2 There is clear support to incorporate modification and discontinuance orders within the EIA system.

9.3 Although these are rarely used orders, legislation will ensure that an order that is likely to have significant effects on the environment cannot be confirmed unless an environmental statement has been prepared in relation to the order and the decision to confirm the order takes account of the environmental statement.

10. Other

Q11 Do you have any additional comments on the consultation paper?



10.1 Additional comments made on the consultation paper were:

- One respondent would welcome simplified EIA regulations, or if they cannot be simplified, they would welcome the publication of a new Welsh Government circular on the subject.
- A second respondent considered that there should be some updating to the Schedule 2 criteria to include reference to new and novel technology.

Response

10.2 The regulations, which have been subject to many amendments since 1999, will be consolidated and a number of changes will be incorporated to take account of case law. This will simplify the legislative statute.

10.3 To assist in the aligning projects within the correct categories, the Commission has produced guidance on the interpretation and scope of certain project categories in annex I and II of the EIA Directive. These are available at:

- http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf
- http://ec.europa.eu/environment/archives/eia/pdf/interpretation_eia.pdf