

DRAFT TEMPLATE

For non-qualifying regulatory provisions that are in scope of RRC clearance and certified as eligible for the fast track by departments (low-cost regulation – under £1 million gross costs in every year)

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Request for confirmation of status for small non-qualifying proposal(s)
(proposals with costs likely to be under £1 million)

Title of proposal(s)	Transposition of the European Directive 2014/52/EU (the 'revised EIA Directive') through the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017
Department	Business, Energy and Industrial Strategy (“BEIS”)
Expected date(s) of implementation	16 th May 2017
Justification of non-qualifying status (which exemption(s))	EU obligation and gross costs less than £1m
Lead departmental contact (email address)	mandy.king@beis.gov.uk

Description of the proposal(s) and expected scale of impacts

Background

The European Directive 2014/52/EU (“the 2014 EIA Directive”) amends Directive 2011/92/EU (“the existing EIA Directive”). This sets out the process relating to the assessment of the effects of certain public and private projects on the environment and includes details on: i) which type of developments should be considered as development requiring an Environmental Impact Assessment (“EIA”); ii) the process for submitting and deciding whether consent should be granted for such developments; iii) the process for submitting and issuing a screening opinion as to whether an EIA is required and; iv) the process for submitting and issuing a scoping opinion about what information should be provided in the EIA.

History of the Environmental Impact Assessment (EIA) Directive in the UK

The case for no gold plating of existing regulations can best be set out by providing background to the current 2014 EIA Directive, which amends a number of EIA Directives with a 20+ year history, and the cross-government nature of this Directive.

The first EIA Directive - 85/337/EEC – came into force in 1985 and applies to a wide range of defined public and private projects. It was transposed in 1988 and, to ensure minimum disruption to existing planning procedures, different regulations were produced to incorporate EIA into the different consenting regimes which exist across the UK. The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009 and these changes were codified by Directive 2011/92/EU in 2011.

EIA is a long-standing and international requirement. There have been ample opportunities for gold plating scrutiny in the many transpositions that have taken place since 1988.

Cross-Whitehall approach to transposition

The 2014 EIA Directive has been transposed into existing EIA regulations by a number of Departments according to their responsibilities for different types of project caught by EIA requirements e.g. forestry, nationally significant infrastructure, fish farming. This process has been led by DCLG and delivered through a cross-Whitehall working group established to:

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- Co-ordinate transposition
- Harmonise requirements across industries and sectors; and
- Ensure no gold-plating.

BEIS is thus one of a number of Depts transposing the Directive as a consequence of its specific responsibility as a competent body for certain power station and overhead line projects, which are covered under “Electricity Works¹”.

We have taken a cross-Whitehall approach to transposition co-ordinated by DCLG to ensure both consistency and no gold plating. Gold plating concerns have not been raised with DCLG, nor with any other Dept. for their equivalent regulations.

BEIS approach to transposition

In transposing the 2014 EIA Directive into our existing (Electricity Works) EIA Regulations, our view at the outset was that there was merit in retaining, as far as practical, the existing regulatory approach to EIA, as it is well understood by industry and would minimise disruption to long-standing and accepted practice. Our proposals represented the minimum changes necessary to the existing Regulations to bring them into line with the amended 2014 EIA Directive.

The view of our legal advisors was that these changes would best accommodated by issuing a new set of EIA Regulations that consolidated all of the new amendments into the existing Regulations. We consulted on this consolidated set of Regulations and these were laid before Parliament on 16 April and came into force on 16 May 2017.

http://www.legislation.gov.uk/ukxi/2017/572/pdfs/ukxi_20170572_en.pdf

No issue of gold-plating was raised by either our legal advisors during the drafting of the new Regulations, nor by any stakeholder during the consultation. We are not aware of any stakeholder raising gold plating with us as a consequence of the existing regulations.

Key regulatory changes introduced by the 2014 EIA Directive

The changes as a result the 2014 EIA Directive were not described in full in the original NQRP form due to the detailed nature of the amendments. These comprised small-scale tweaks to procedures, clarification of definitions and updates to requirements and timings. A summary is provided below, with a fuller list is provided as **Annex A**.

- Screening opinions to be given within 90 days, although this period can be extended.
- An environmental statement must be 'based on' any scoping opinion that is obtained
- Bodies providing information for the preparation of an environmental statement may make a reasonable charge for preparing it.
- The environmental statement should be prepared by competent experts.
- When deciding an application, the competent authority must 'reach a reasoned conclusion' on the significant effects of the proposed project on the environment and integrate this into his or her decision and decide whether monitoring measures should be imposed. The decision notice must contain all this information
- Monitoring should be co-ordinated

¹ BEIS is also the competent authority for offshore petroleum production and pipelines.

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- Exemptions from the requirement to undergo EIA e.g. for emergency works.

Changes, Impacts on businesses and expected EANDCB

Over the last three years the average number of applications determined each year under the Act where the existing Regulations were applicable has been: 7 applications that required an EIA, 2 screening opinions and 1 scoping opinion. This means only around 10 decisions are issued to developers each year in relation to these Regulations. Whilst we cannot predict how many applications might come forward in future years, there will be no change to the type of development to which the new Regulations apply. We therefore have no reason to believe that the number of applications in future years will be significantly different.

Overall BEIS considers that the changes that will result from transposition of the Directive will result in little additional costs to developers as most changes reflect what already happens in practice. This was confirmed in a consultation that was carried out during February and March 2017. 10 of the 20 questions in the consultation requested information on current and/or likely future costs as a result of changes to the regulations. 14 responses were received to the consultation which answered some or all of the questions posed. Four responses provided detail on the current costs of providing an Environmental statement under the Electricity Works (EIA) Regulations. One response noted that current costs vary between £10,000 to £100,000 depending on the scheme and its location. Three other responses noted that they can cost between £300,000 to £500,000. No response quantified an increase in cost from the changes to the Regulations. Developers did however confirm that the changes to the Regulations would result in limited additional costs as the changes that are required are already carried out in practice. Where some changes could result in additional cost for some specific developers, we consider that these will be minimal, this is based on the consultation responses which showed that there was not agreement between developers; some developers considered that there would be limited additional cost and some considered that there would be no additional costs (for example in relation to a question posed about providing application information electronically six responses noted that this was already carried out and so would be unlikely to increase costs, two responses however noted that it would likely increase costs for developers). One of the consultation questions asked “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?”. Developers confirmed that the changes would only result in limited additional costs and no developers raised concerns that these limited additional costs would constrain development. As environmental impact assessment is well established in domestic legislation and planning practice for energy infrastructure, BEIS is confident that developers are already familiar with the revised EIA Directive, this was confirmed in the consultation responses, and therefore consider that there will be limited costs for developers associated with familiarisation with the new Regulations. Following the consultation and consideration of the responses received, alongside the low number of applications that are submitted in relation to the existing Regulations, we consider that overall, the cost of meeting the new Regulations on business will be below £1m a year.

Justification of non-qualifying regulatory provision(s) assessment

The proposed approach represents the minimum required for BEIS to meet its European obligations under the revised EIA Directive i.e. no gold plating. Due to the low number of applications received each year where these Regulations apply, and responses received from the

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consultation, BEIS considers that the overall costs to business that will result from transposing the revised Directive and streamlining of the Regulations will likely be under £1m every year.

There have been 10 decisions issued to developers each year on average, up to 7 of which required an EIA. To breach the £1million threshold the additional cost per EIA must be more than £100,000 as there are 7 EIA's on average each year. Based on the consultation responses of current EIA costs (£10,000-£500,000) a £100,000 increase per EIA would mean an increase in the cost of an EIA of over 20%, as the current maximum EIA cost is £500,000. We consider that a 20% increase or more in costs would be more than the 'limited' additional costs outlined in the consultation responses. Therefore we consider that the costs are unlikely to breach the £1 million per annum threshold.

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Annex A – Regulatory Changes

The changes introduced by the amended EIA Directive that are considered to be of most significance are set out below.

- Article 1(2)(g) Definition of EIA process;
- Article 1(3) Changes to the circumstances in which a project may be exempt from the requirements of the Directive for reasons of defence or civil emergencies;
- Article 2(3) Joint/Coordinated procedures for projects that are subject to the Habitats or Wild Birds Directive as well as the EIA Directive;
- Article 2(4) Provisions for exempting, in exceptional circumstances, specific projects from the Directive's obligations where the application of those obligations would adversely affect the purpose of projects;
- Article 2(5) Provision whereby projects adopted by specific acts of national legislation may be exempted from the Directive's public consultation requirements;
- Article 3(1) Changes to the list of factors, the effects of which are to be assessed as part of the EIA process;
- Article 3(2) A new requirement to consider the expected effects deriving from the vulnerability of a project to risks of major accidents and / or disasters that are relevant to the project;
- Article 4 (plus Annexes IIA and III) Clarification of the options for screening and amendments to the information which is required and the criteria to be applied when screening projects to determine whether the Directive applies;
- Article 5(1) (plus Annex IV) Amendments to the information to be included in the Environmental Statement / EIA report;
- Article 5(2) A requirement for Environmental Statements / EIA reports to be 'based on' a scoping opinion, where one is issued;
- Article 5(3) Requirements for Environmental Statements / EIA reports to be prepared by competent experts; for the competent authority to have access to sufficient expertise to examine Environmental Statements / EIA reports; and for the competent authority to seek supplementary information;
- Article 6(1) Requirement to ensure appropriate authorities with local or regional competences (as well as those with environmental responsibilities) are given an opportunity to express opinions on information provided by project developers in an application for consent;
- Articles 6(2), 6(5) and 6(7) Provisions for informing the public electronically - including timescales;
- Article 7(5) Public consultation requirements for projects affecting other Member States;
- Article 8 Provisions for decisions to take into account the results of consultations and information gathered;
- Article 8a A new Article elaborating on information to be given in decision notices and making further provision about decision-making procedures;
- Article 8a(4) Requirements to ensure that features of projects designed to prevent adverse environmental effects are implemented by developers and for determining the monitoring of significant adverse effects;
- Article 8a(5) Requirements for decisions being made in a reasonable period of time;
- Article 8a(6) Requirement that a competent authority's reasoned conclusion must be "up-to-date" when a decision is taken to grant consent;

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- Article 9(1) Requirement for decisions and additional information about decisions (including results of consultations undertaken) to be notified to the public and consultation bodies;
- Article 9a A new Article requiring the avoidance of conflicts of interest; and
- Article 10a A new Article concerning penalties for infringements of national provisions.