



Department for
Business, Energy
& Industrial Strategy

ENVIRONMENTAL IMPACT ASSESSMENT

Consultation on Changes to Regulations for Nuclear Reactor Decommissioning Projects

Government Response



July 2018

Environmental Impact Assessment: Consultation on Changes to Regulations for Nuclear Reactor Decommissioning

Government Response

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Any enquiries regarding this publication should be sent to us at EIADR@beis.gov.uk.

Exit from the European Union (EU)

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the EU. The United Kingdom will leave the EU on 29 March 2019, until then all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The Government has entered into negotiations with the EU on the terms of its withdrawal, and future relationship with, the EU. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

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Executive Summary

Background

The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 and the 2006 amending regulations (collectively referred to as EIADR in this document) implement the EU requirements for environmental impact assessments (EIA) in the context of nuclear reactor dismantling and decommissioning projects. The requirements for environmental assessment are governed by EU Directive 2011/92/EU (the 'EIA Directive').

Amendments to the EIA Directive were introduced in 2014 by EU Directive 2014/52/EU (the '2014 Directive') which require transposition in order to fulfil our EU obligations. The 2014 Directive aimed to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation and the removal of unnecessary administrative burdens. In developing the policy to transpose the 2014 Directive changes, the Government invited comments via a four-week consultation held between 23 May and 20 June 2018 on draft legislative proposals for amending the EIADR.

Response to the consultation

There were five responses received for this consultation from five organisations. The responses were largely in favour of the proposals outlined in the consultation. One respondent disagreed with any projects being exempt from carrying out the EIA obligations under the EIADR.

Feedback and Decisions

Exemptions

Nuclear reactor decommissioning or dismantling projects that are solely for a national defence purpose may be exempted under the EIADR at present. The consultation included a proposal that this exemption be extended to parts of projects with a defence purpose, and to nuclear reactor decommissioning or dismantling projects with a civil emergency response. One consultee opposed this proposal (as well as the use of any exemption), expressing concern that this would not comply with the Health and Social Care Act 2012 obligations to protect the public from exposure to nuclear radiation.

We have clarified in this Government Response that exempting a project from carrying out an environmental impact assessment does not reduce the regulatory measures in place to protect the public and the environment from ionising radiation. **Government has therefore decided to proceed with implementing exemptions for projects with a civil emergency response purpose, or part of a project serving defence as its sole purpose.**

Consultation Bodies

The Government has considered the suggestion made by one respondent to revise the definition of consultation bodies to specify additional statutory bodies, in particular those with cultural heritage responsibilities. However, this is not considered necessary as part of the

transposition requirements. Cultural heritage will continue to be a factor to be considered as part of the EIA. The consultation bodies definition is not intended to be an exhaustive list and the proposed amendments to allow ONR to consult the bodies they consider most appropriate on a case by case basis also capture statutory bodies such as Historic England, or Public Health England.

Government has decided not to add Historic England, or other such authorities to the list of named consultation bodies.

Government has decided to implement the proposals as detailed in the consultation.

Implementation

The Nuclear Reactor (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2018 will be laid in Parliament as soon as practicable.

1 Introduction

The Government launched a four-week public consultation on the 23 May 2018 on proposals for implementing Directive 2014/52/EU (the 2014 Directive) amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), insofar as it applies to the consenting regime for nuclear reactor dismantling and decommissioning projects.

Environmental impact assessment (EIA) is a process aimed at bringing environmental considerations into the preparation of projects in order to reduce their impact on the environment. The EIA Directive seeks to ensure that proposals for development that are likely to have a significant effect on the environment are subject to a requirement for consent and an assessment of those effects before the work is allowed to commence.

The 2014 Directive aims to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, aiming to remove unnecessary administrative burdens. In addition, the new approach also pays greater attention to resource efficiency, climate change and disaster prevention considerations, which will be better reflected in the assessment process.

In line with Government's Better Regulation principles, our proposals transpose the new measures within the existing legislative approach as far as practical. We consulted on proposals which represented the minimum changes necessary to the existing regulations in order to bring them into line with the amended EIA Directive, and to minimise familiarisation costs and business uncertainty. A draft consolidated version of the regulations that incorporated our proposed changes was included with the consultation.

Comments were sought on our interpretation of the changes and how we proposed to implement them through regulations. Consultees were invited to consider the proposed amendments to the regulations and provide any comments.

The consultation asked seven questions on the proposals for transposing the Articles of the amended EIA Directive, summarised in the below table.

We are grateful for and have given full consideration to all the responses received. This document provides a summary of the responses to the technical consultation and the Government's response.

Table 1 – Summary of consultation questions on proposals to amend the EIADR

EIA Directive amended Article	Proposed Changes to the EIADR
Article 1(3) - EIA Exemptions	Q1. Do you agree with the proposal to apply exemptions to projects, or parts of projects (in the case of defence) that have national defence and/or civil emergencies as their sole purpose? If not, why not?
Article 2(3) – Co-ordinated procedures	Q2. Do you agree with the proposals to formalise a co-ordinated procedure where a project is subject to assessment under both the EIADR and Habitats and/or Wild Birds Directive? If not, why not?
Article 4(6) – Timeframe for screening	Q3. Do you agree with the proposed amendments to the timeframe for a screening opinion to be issued within a 90-day period? If not, why not?
Article 5(3) – Competent experts	Q4. Do you agree that a definition of ‘competent expert’ under the EIADR is not necessary? If not, why not?
Article 6(2), 6(5) - Electronic communication	Q5. Do you agree with the changes proposed to the publication procedure, including the requirement that the Office for Nuclear Regulation publish information contained in the licensee’s publicity notice on their website? If not, why not?
Article 8a(4) - Monitoring of significant environmental effects	Q6. Do you expect any additional burdens for industry as a result of the amended monitoring measures?
Other Information	Q7. Do you have any further comments or suggestions in relation to the proposals?

2 Summary of Consultation Responses

We received five responses to the consultation from one NGO, one public body, and three from the nuclear industry. The following sections highlights the key comments.

2.1 Exemptions – Defence and Civil Emergencies

Article 1(3) of the EIA Directive has been amended by the 2014 Directive to expand the existing exemption for defence projects from carrying out an EIA, so that it can also apply where part of a project has defence as its sole purpose. The exemption has also been extended to include projects which have the response to civil emergencies as their sole purpose. We proposed to transpose the changes to the EIADR in line with the requirements of amended Article 1(3).

Main messages from responses

One respondent disagreed with the proposal to apply any exemptions to projects from carrying out an EIA, citing concerns that any exemption would not comply with the requirement to protect the public from exposure to nuclear radiation under the Health and Social Care Act 2012.

One respondent agreed with the proposal but felt it would be difficult to identify what type of facilities would meet this exemption criteria considering that facilities used to respond to civil emergencies are typically located away from nuclear sites. The respondent assumed this reference was made in respect of organisations such as AWE (the Atomic Weapons Establishment) which hold both civil emergencies and national defence roles.

Another respondent commented that any requirement for an EIA should be proportionate to the development proposed at the nuclear decommissioning sites. This may include portacabins, construction storage facilities and any other associated facility which may be required to support the decommissioning activities. The respondent suggested that these developments may also be granted an exemption based on their scale, nature, and location within a nuclear site, not necessarily within the site licensed boundary.

The two other respondents to this consultation did not comment on this proposal.

Government Response

The 2014 Directive changes allow for projects having as their sole purpose the response to civil emergencies to be exempt from the EIA Directive. In the field of application of the EIADR, this means that nuclear reactor decommissioning or dismantling projects whose sole purpose is in relation to the response to cases of civil emergency may be exempt from compliance with the EIADR.

Government took the decision to transpose Article 1(3) in order to implement the 2014 Directive as fully as practical to allow projects with civil emergency response as their sole purpose to be taken forward without undue delay.

There is a robust regulatory framework for protecting the public and the environment from ionising radiation. Our proposed amendments are also clear that projects can only be exempt where the Secretary of State is of the opinion that compliance with these Regulations would have an adverse effect on the project's purpose.

The ONR will continue to regulate nuclear sites through the Nuclear Installations Act 1965, the Health and Safety at Work etc. Act 1974, the Ionising Radiations Regulations 2017¹ and the Radiation (Emergency Preparedness and Public Information) Regulations 2001. The relevant environment agencies also regulate nuclear sites under separate regulations to ensure radioactive wastes are managed effectively to limit radiological impact on the general public and the environment². The absence of an EIA requirement does not reduce the public and environmental protection measures already in place.

Government has decided to implement the 2014 Directive as fully as is practical and introduce exemptions for projects with a civil emergency response purpose from the obligations under the EIADR.

Under the EIADR, all nuclear reactor dismantling or decommissioning projects must carry out an EIA in order to receive consent for the project to commence. The EIA covers construction of new buildings as well as removal of old buildings. A project may be exempt where the Secretary of State is of the opinion that application of the EIADR would adversely affect the purpose of the project (subject to conditions). If following consent, there is a change or extension to the project, an EIA would only be required if the change or extension is likely to have a significant adverse effect on the environment.

It should be noted that consent under the EIADR does not remove the need for permission to be sought under other regulations, including those which may also require EIAs.

2.2 Coordinated and Joint Procedures

The 2014 Directive introduced a requirement for either a 'coordinated' or a 'joint' procedure to be used where a project is assessed under both the EIA Directive and the Habitats (92/43/EEC) and/or Wild Birds (2009/147/EC) Directives. The coordinated procedure includes designating an authority, or authorities to coordinate separate assessments. The joint procedure involves a single assessment of a project's environmental impacts.

¹ IRR 2017 ensure that employers carrying out any work involving ionising radiation to ensure public exposure does not exceed the limit set by the European Basic Safety Standards Directive

² For example, under the Environmental Permitting (England and Wales) Regulations 2016, the regulator must ensure that public exposure does not exceed 1mSv per year

In practice, ONR already adopts the ‘coordinated procedure’ for projects which are likely to have a significant effect on a Special Protection Area (SPA), Special Area of Conservation (SAC) or candidate Special Area of Conservation (cSAC) by consulting with the appropriate environment agencies and conservation bodies.

We proposed to formalise this existing approach to carry out a coordinated assessment where appropriate, since it is well understood by industry and offers the greatest flexibilities for licensees.

Main messages from responses

Three respondents agreed with our proposal, and two respondents did not comment.

One respondent commented on the need to provide details on how such a ‘coordinated’ approach would operate where there is more than one authority involved and suggested inserting timescales for this approach to prevent delays in the process.

Government Response

The EIADR already have timescales in place to carry out certain phases of the EIA. Should there be a need for a co-ordinated approach to assessments, the ONR is still required to take the decision to grant or refuse consent of an application within a reasonable period.

Government has decided to formally implement the co-ordinated procedure in the EIADR to retain the existing approach and flexibilities for licensees around the phasing and timing of an EIA. ONR’s published guidance³ sets out the procedure that is currently followed.

2.3 Screening

‘Screening’ is the process whereby a competent authority decides if a proposed project is likely to have significant environmental effects and, therefore, if an EIA is required.

A new Article 4(6) introduced by the 2014 Directive sets a requirement for a maximum timeframe of 90 days - from the date on which the developer has submitted all the necessary information required for the competent authority to provide a screening decision.

This timeframe may be extended in exceptional circumstances, for example, relating to the nature, complexity, location or size of the project.

We proposed that where a licensee has applied for a screening decision under Regulation 13 of the EIADR, the ONR is required to come to a decision within a period not exceeding 90 days. The 90 days period begins from the date that the licensee has submitted the necessary information required by the ONR to reach an opinion.

³ <http://www.onr.org.uk/eiadrguidance.pdf>

Main messages from responses

One respondent did not comment. Four respondents agreed with our proposal. It was commented that it would be beneficial to include a requirement for ONR and the licensee to mutually agree a determination period following submission of a main application or a Regulation 13 determination. The consultee noted that this would assist the licensee with scheduling the associated programmes of work.

The consultee also suggested that if a threshold approach is taken to determine whether an Annex II project under the EIA Directive (as amended by the 2014 Directive) would require an assessment this could follow a similar approach to that taken in the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (TCP 2017). The consultee noted that under the TCP 2017, threshold criteria are used to determine if a project falls under Annex II, for example if the size of building footprint exceeds some value. If it is considered an Annex II project then there is a need to look at the potential for significant impacts which is determined by topic-specific guidance used by technical consultants.

The respondent felt that such thresholds could be used for Regulation 13 purposes under the EIADR, but that there should be a consultation on those thresholds.

Government Response

The 2014 Directive's definition of a EIA clarified that the decision to grant project consent should incorporate the conclusion on the significant effects of the project on the environment based on consultations with the relevant consultation bodies, affected Member States and the public.

Should other Member States be involved, the consultation period is determined between the Member State and Secretary of State. In line with the 2014 Directive amendments, we have proposed that decisions to grant or refuse consent to carry out a project must be taken within a reasonable period of time.

For projects that require a determination due to a change or extension under Regulation 13 of the EIADR, Government considers that the maximum specified timeframe of 90 days (once all information requested by ONR has been submitted) is sufficient to allow licensees to schedule their operations and is consistent with the approach taken as per other EIA regulations, such as those in respect of Town and Country Planning, and offshore developments.

Government will not be amending regulations to incorporate formal criteria or thresholds. The EIADR have always followed a case by case approach to determine whether an Annex II project under the EIA Directive would be required to carry out an EIA. As per published ONR guidance, it is the duty of the licensee to decide whether an application for a determination under Regulation 13 on whether an EIA is required should be made, as well as to screen for changes, which may be significant. The approach taken to the screening process to determine whether an application is required is similar to the TCP 2017.

2.4 Competent Experts

To ensure the quality and completeness of EIA reports (referred to as Environmental Statements in the EIADR), Article 5(3) of the amended EIA Directive require the developer to ensure these reports are prepared by competent experts.

In order to effect transposition, we proposed to amend the EIADR to require the licensee to ensure that Environmental Statements are prepared by competent experts and contain a statement from the licensee setting out how this provision has been met.

We have not provided a definition for 'competent expert' because the level of competence and expertise necessary to prepare the Environmental Statement is likely to depend on the individual circumstance of each case, and we requested views on this approach.

Main messages from responses

One respondent did not comment. Four respondents agreed with our proposals, with two of those four respondents also agreeing that a definition of 'competent expert' is not necessary because the level and scope of expertise will vary from project to project, and standards are expected to change over time. One respondent highlighted that existing nuclear site licence conditions already require that reports are prepared by 'competent experts' and that the operator should have sufficient expertise to assess the report. The additional measures to ensure the licensee demonstrates compliance that the Environmental Statement is prepared by competent experts was welcomed.

Government Response

Government has decided to implement the changes regarding competent experts as proposed.

2.5 Consultation Bodies

Article 6(1) of the EIA Directive has been amended to require that the authorities likely to be concerned by the project by reason of their local, or regional competences are given an opportunity to express opinions on information provided by developers in an application for consent.

To address this change and the requirement for the competent authority to be able to access expertise from the appropriate bodies, we proposed amending the definition of 'consultation bodies' to include 'any other body with environmental or public health responsibilities or local or regional competencies with whom the ONR considers it appropriate to consult'.

Main messages from responses

One respondent suggested that the Historic Buildings and Monuments Commission for England (Historic England), as a statutory environmental body should also be named under the

definition of ‘consultation bodies’, as well as the relevant devolved bodies in Wales (Cadw) and Scotland (Historic Environment).

The respondent stated that cultural heritage is included under the revised Schedule 1 and Schedule 2 of the draft consolidated EIADR, where the ONR is expected to consider the likely significant effects of a project on cultural heritage. They considered that inclusion of these named bodies will help ONR in considering the Environment Statement regarding cultural heritage.

Another respondent suggested that the proposed amendment to the definition of ‘consultation bodies’ should be modified to “any other body with *statutory* environmental or public health responsibilities or local or regional competencies” to ensure that this covers only those bodies that the Regulations anticipate consultation with.

Government Response

We have considered the suggestion by the respondent on the benefits of specifically naming other statutory environmental bodies with historic or cultural responsibilities to the definition of ‘consultation bodies’.

The 2014 Directive made various changes to the EIA Directive to emphasise the importance of certain factors to be considered as part of an EIA. Cultural heritage has previously been included under Schedule 2 and listed as a specific factor to be considered as part of the EIA under the extant EIADR. The proposed EIADR amendments to Schedule 2 retain reference to cultural heritage.

The list of named consultation bodies is not intended to be an exhaustive list of the only bodies to be consulted. The aim of the proposed amendments is to also capture other relevant bodies, for example Public Health England, or Historic England, which ONR consider necessary to consult with depending on the project, to be determined on a case by case basis. This will remove unnecessary burden on the ONR and licensee as well as the consultation bodies whilst enabling ONR to access expertise when needed. To this end, the insertion of ‘statutory’ is not considered necessary. **Government has decided it is not necessary to specifically name any additional consultation bodies to the current list in the definition, or to limit the bodies to those with statutory responsibilities.**

2.6 Electronic Communication

Article 6(2) of the amended EIA Directive requires relevant project information to be made available electronically to ensure effective public participation in the decision-making process. Article 6(5) has also been amended to ensure this relevant information is electronically accessible through “at least a central portal or easily accessible points of access”.

Under the extant EIADR, the licensee is required to notify the public that their project is undergoing an EIA and set out where they can access relevant information.

In order to meet the electronic publication requirements of the 2014 Directive, we proposed to amend the publicity procedure under the EIADR so that:

- i. licensees are required to notify ONR of the newspaper notice publication date and provide ONR with a copy of the notice before this date;
- ii. ONR are required to publish the newspaper notice provided by the licensee, the application for consent, and the Environmental Statement on their website on the date of the newspaper publication. This information must be available to the public for a minimum period of 30 days, or a longer period as considered appropriate by ONR.

Main messages from responses

Two respondents did not comment. Three respondents agreed with our proposal for the ONR to publish the relevant application information on their website. It was commented that to have the information published on ONR's website would improve access to information. It was suggested that the Environment Agency's public participation model is considered best practice and should be taken on board when considering publication of information.

Government Response

The ONR already publishes the relevant information on their website. **Government has decided to formalise this process by implementing changes to the publicity procedure in the EIADR as proposed.**

2.7 Monitoring of Significant Environmental Effects

New Article 8a(4), as introduced by the 2014 Directive, requires that the decision to grant consent should include, where appropriate, monitoring measures. This is to ensure that features of the project envisaged to avoid, prevent or reduce significant effects on the environment are implemented.

We proposed to revise the EIADR to allow ONR to apply proportionate monitoring conditions where applicable and requested views on whether this would place additional burden on licensees.

Main messages from responses

One respondent did not think that the amended monitoring requirements in the EIADR would present additional burden to industry. The other four respondents did not provide substantive comments on this proposal.

Government Response

Under the extant EIADR, ONR holds the responsibility to determine monitoring and mitigation measures as part of the conditions to grant consent. The consent is generally subject to the

licensee submitting regular Environmental Management Plans as a form of monitoring. The proposed amendments formalise the requirement for suitable monitoring measures to be in place, and makes it clear that any monitoring measures should be “proportionate to the nature, location and size of the project in question”.

As existing practices are closely aligned with the 2014 Directive requirements, Government analysis corresponds with industry expectations that the revised monitoring measures will not cause significant added expense to industry. **Government has decided to implement changes regarding monitoring measures as proposed.**

2.8 Other Information

We invited views in respect of the proposals outlined in the consultation and submission of evidence of direct costs to business from the changes proposed.

No other substantive information or comments were provided from the respondents regarding the consultation proposals and their potential cost impacts. However, one respondent noted that there is an existing overlap with the requirements for an EIA under the EIADR and the Town and Country Planning (Environmental Impact Assessment) Regulations which Government could look to resolve. In their response, they commented that under the EIADR, the EIA covers construction of new buildings as well as removal of old buildings, but the Town and Country Planning regime does not exclude radioactive waste management associated with nuclear reactor decommissioning or development on nuclear licensed sites. The respondent felt that the development of buildings all have to go through the planning process, which potentially includes an EIA, meaning that works are subject to duplicate assessment under two separate regulatory regimes.

Government Response

Government has noted the comment.

3 Next Steps and Implementation

The Government intends to lay regulations before Parliament as soon as practical to incorporate the changes as proposed in our consultation for transposition of the 2014 Directive into the EIADR.

Without further financial evidence, and no changes made to Government proposals on transposition of the 2014 Directive into the EIADR, the assessment of cost impacts of these changes are considered to remain below the +/-£5million threshold that triggers the need for a formal Impact Assessment.

4 Town and Country, and Infrastructure Planning Regulations

The EIA Directive applies to a wide range of projects that may be considered could have a significant effect on the environment, and its implementation in the UK is administered by different government departments and the devolved administrations through various regulations.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the TCP Regulations) that came into force in May 2017 implements other elements of the EIA Directive. However, it incorrectly included the dismantling or decommissioning of a nuclear power station or other nuclear reactor within its¹² scope as a development that requires an EIA. The same error also appears in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Such projects have always been captured under the EIADR since the regulations came into force in 1999. We have therefore included an amendment as part of our transposition of the 2014 Directive into the EIADR to correct these errors to ensure that Government EIA regulations are aligned.

