




Department for
Business, Energy
& Industrial Strategy

ENVIRONMENTAL IMPACT ASSESSMENT

Consultation on Changes to Regulations for
Nuclear Reactor Decommissioning Projects



May 2018

Environmental Impact Assessment

Consultation on Changes to Regulations for Nuclear Reactor Decommissioning

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

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1 General information

1.1 Purpose of this consultation

This consultation sets out proposals for the transposition of the Environmental Impact Assessment Directive 2014/52/EU (the “2014 Directive”) in relation to the consenting regime for nuclear reactor decommissioning and dismantling projects.

This document sets out the environmental impact assessment procedure and how it is integrated within current regulatory arrangements for nuclear decommissioning and dismantling of nuclear reactors in the UK.

In line with the Government’s Better Regulation policy to reduce unnecessary burdens on industry, this consultation seeks views on draft regulations to deliver the proposals for the transposition of the 2014 Directive. Those draft Regulations are published alongside this consultation document.

Issued: 23 May 2018

Respond by: 20 June 2018

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

1.1.1 Territorial extent:

Great Britain.

1.2 How to respond

We wish to ensure that our consideration of the proposals is transparent and informed by a range of views. While we welcome views from all interested parties, we expect the following stakeholders will have a particular interest: nuclear site licence operators, local authorities; environmental bodies; land owners and managers; and NGOs.

Your response will be most useful when it is framed in direct response to the questions posed, though further comments and evidence are also welcome. When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how you assembled the views of members.

This consultation is being made available on the [GOV.UK](#) and the [Citizen Space](#) website. Where possible, responses should be submitted using the questionnaire on the Citizen Space website or by email to EIADR@beis.gov.uk. To help us analyse responses, please provide details of your organisation/industry.

If you are responding in writing, please make it clear which questions you are responding to. Written responses should be sent to the address for enquiries above.

1.2.1 Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at [GOV.UK](#) and the [Citizen Space](#) website link.

Other versions of the document such as Braille or large print are available on request. Please contact us using the details under 'enquiries' above to request alternative versions.

1.3 Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

1.4 Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

1.5 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. Until negotiations to exit the EU are concluded, the UK remains a full member of the EU and 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 outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU

2 Executive Summary

This consultation seeks views on proposals to amend Regulations to transpose changes introduced by Directive 2014/52/EU (the 2014 Directive). The 2014 Directive amends Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, including the decommissioning and dismantling of nuclear reactors.

2.1 Overview

The environmental impact assessment (EIA) process is governed by the European Directive 2011/92/EU (the “EIA Directive”). The EIA Directive’s main aim is to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment. The EIA Directive forms part of European law and has been implemented into UK legislation via several sets of regulations.

The Department for Business, Energy and Industrial Strategy (BEIS) is responsible for the policy relating to nuclear reactor decommissioning and the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (as amended) (the “EIADR”), which implement the requirements of the EIA Directive in respect of nuclear reactor decommissioning and dismantling projects.

The EIA Directive consolidated the assessment requirements introduced since 1985 into one document. The 2014 Directive changes aim to simplify the rules for assessing potential effects of projects on the environment and to reduce administrative burdens. Member States are required to transpose these changes into national legislation.

The purpose of this consultation is to invite views on proposed changes to the EIADR necessary to implement the 2014 Directive requirements. The key amendments are:

- Revised assessment scope, to add consideration of the project’s vulnerability to risks of major accidents and/or disasters;
- Introduction of timeframes for the different stages of environmental assessment to ensure decisions are taken within a reasonable period of time;
- Clarification on information to be provided as part of the screening procedure to determine whether an EIA is required; and

- Ensuring that EIA reports (referred to as an “Environmental Statement” under the EIADR) take account of the scoping opinion by the competent authority, where issued, on the scope and level of detail to be included.

Approach and Summary of Main Proposals for Change

In formulating the proposals we have followed Government’s Better Regulation principles, aiming to transpose the measures within the existing legislative approach as far as practical, whilst minimising any additional regulatory burdens. The key changes we are proposing to make to the EIADR are to:

- Apply exemptions to projects that have civil emergencies response as their sole purpose;
- Formalise the need for assessments to be co-ordinated when a project is subject to assessment under the EIADR as well as the Habitats and/or Wild Birds Directive;
- Require that environmental impact assessments consider population and human health, biodiversity, and include the expected effects from potential major accidents and/or disasters that are relevant to the project;
- Revise the definition of ‘Consultation Bodies’ to allow the Office for Nuclear Regulation (ONR) to consult additional bodies considered likely to have an interest in the application;
- Introduce a 90 day timeframe for ONR to issue a screening decision on whether a change or extension to a project will require a full environment impact assessment;
- Make ONR responsible for making the relevant information available electronically on their website;
- Require the Environmental Statement to be prepared by competent experts, and include specific information such as a description of the project, likely significant effects on the environment, mitigation measures, and a non-technical summary of this information; and
- Require the reasoned conclusion on the significant effects of the project on the environment remains up to date when taking a decision to grant consent.

Next Steps

We will review the responses to the proposals and publish the Government’s response to the consultation. Subject to the responses received, the Government will aim to implement the necessary legislative changes as soon as possible, subject to Parliamentary timelines.

3 Catalogue of Consultation questions

3.1 Consultation Question

1.	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?
2.	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?
3.	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?
4.	Do you agree that a definition of 'competent expert' under the EIADR is not necessary? If not, why not?
5.	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?
6.	Do you expect any additional burdens for industry as a result of the amended monitoring measures?
7.	Do you have any further comments or suggestions in relation to the proposals?

4 Introduction

4.1 Background

Environmental Impact Assessment

Environmental impact assessment (EIA) is a well-established, systematic process for bringing environmental considerations into the preparation of projects in order to reduce their impact on the environment (see Figure 1 for the EIA stages). It seeks to ensure that proposals for development that are likely to have a significant effect on the environment, for instance by virtue of their nature, size or location, are subject to a requirement for consent and an assessment of those effects before the work is allowed to commence.

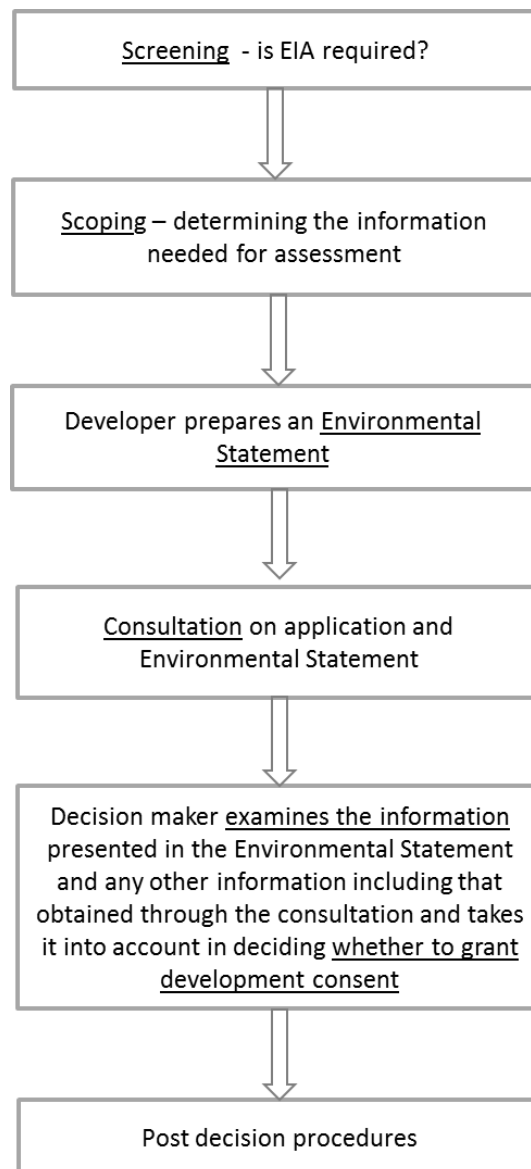


Figure 1 – Typical EIA process for a project seeking consent

This process helps to ensure that the public has a chance to provide views on a proposed project, and that the relevant authority to which an application for consent is submitted (the “competent authority”) makes its decision in the knowledge of any likely significant effects on the environment prior to consent being given.

Member States can decide whether a project should be subject to an EIA through a case-by-case examination and/or by setting thresholds or criteria. Some project types are always considered likely to have significant effects on the environment and must undertake an EIA in all cases.

Where an EIA is required, the applicant must provide specified information to the competent authority to enable it to make an informed decision on whether to grant consent. It also requires that the public and other bodies be consulted and given an opportunity to participate in the decision-making process. This includes those in the European Economic Area (EEA) if a project is likely to have transboundary effects.

EIA Directive

The EIA process is governed by Directive 2011/92/EU¹ (the “EIA Directive”). The EIA Directive’s main aim is to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment. The EIA Directive forms part of European law and has been implemented into UK legislation via several sets of regulations.

The requirements for environmental assessment first came into force in 1985 as EU Directive 85/337/EEC. It was amended several times and the assessment requirements consolidated in 2011 into the EIA Directive. Amendments to the EIA Directive were introduced in 2014 by EU Directive 2014/52/EU² (the “2014 Directive”). The European Commission has produced an unofficial consolidated version of the EIA Directive with the changes introduced by the 2014 Directive incorporated, which is available here:

http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf

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. The changes made by the 2014 Directive are also intended to improve the level of environmental protection, with a view to making business decisions on public and private investments more predictable and sustainable in the longer term. 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.

¹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0092&from=EN>

² Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0052&from=EN>

4.2 Context of the Consultation

The EIA Directive has been implemented in the UK through a number of sets of regulations administered by different government departments and the devolved administrations. EIA is well established in domestic legislation and planning practice for energy infrastructure and other related projects. Any projects involving nuclear power stations and other nuclear reactors³ are projects that will always require an EIA (unless an exemption applies) and need to be granted consent by the relevant competent authority. This is the case also for projects involving the dismantling or decommissioning of nuclear power stations or other nuclear reactors.

BEIS is responsible for legislation relating to nuclear reactor decommissioning. The EIA Directive is currently integrated into the consenting regimes for nuclear reactor decommissioning and dismantling through the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999⁴ and the 2006 amending regulations⁵ (collectively referred to as EIADR in this document). Implementing the amendments to the EIA Directive made by the 2014 Directive requires changes to be made to the EIADR.

The Office for Nuclear Regulation (ONR) is the competent authority responsible for granting consents for projects within the scope of the EIADR. Dismantling or decommissioning projects cannot commence until the nuclear site licensee has applied for and been granted consent by the ONR in accordance with the EIADR.

The purpose of this consultation is to invite views on the proposals for implementing the changes to the EIA Directive made by the 2014 Directive in so far as those changes apply to applications made under the EIADR. In this context, when explaining how the 2014 Directive's Articles are being transposed, the terms "licensee" or "licensees" are used (where appropriate) as opposed to the term "developer" as used in the Directives.

4.3 Scope of the Consultation and Transitional Provisions

The proposed changes will apply to nuclear reactor decommissioning or dismantling projects that apply under the EIADR once the amendment regulations come into force. They will not apply to the carrying out of dismantling or decommissioning work on a nuclear power station or nuclear reactor that has already been granted consent and where works have already commenced, or where the determination process has been initiated in relation to a change or extension to an existing project prior to the coming into force of the amendment regulations.

Once the amendments are implemented, any changes or extensions to an existing project which obtained consent prior to these revisions coming into force will be subject to the EIADR as amended.

³ Except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load

⁴ SI 1999/2892

⁵ SI 2006/657

4.4 Impact Assessment

Whilst the 2014 Directive introduces new requirements, most of the new obligations reflect current practice under existing regulations. Therefore, the new requirements will have limited impacts on the nuclear sector.

BEIS has undertaken an initial assessment of the likely costs to business which indicates that the expected impacts are considerably below the +/-£5million threshold that triggers the need for a formal Impact Assessment.

5 Proposed Changes to Regulations

The key amendments and our proposed approach to transpose the 2014 Directive requirements are set out in this section.

The 2014 Directive also prescribes particular actions, for example, the specific factors that should be included as part of an environmental impact assessment. Where this is the case, we have set out the changes that will be made but are not seeking views on implementation.

A draft consolidated version of the EIADR is published alongside this consultation, including the proposed amendments inserted in red text to illustrate how we intend to implement our consultation proposals. Material that is proposed to be removed from the draft consolidated regulations is not shown in this version.

Unless stated otherwise, throughout this document, references to Articles are in relation to the EIA Directive as amended by the 2014 Directive

Table 1 – Summary of key changes to the EIA Directive introduced by the 2014 Directive and proposals to amend the EIADR

EIA Directive amended Article	Proposed Changes to the EIADR
Article 1(2)(g) - A new definition setting out what an EIA process entails.	Revise definition of “environmental impact assessment” within the EIADR and make consequential amendments to the EIADR to reflect this definition. See 5.1 Definition of the EIA Process
Article 1(3) - Changes to the circumstances in which a project may be exempted from the requirements of the EIA Directive.	Clarify in the EIADR that the exemption for projects serving national defence purposes: (i) must have defence as their sole purpose in order to qualify for the exemption; and (ii) extend the exemption to apply to projects which have response to civil emergencies as their sole purpose. Exemptions may also be applied to parts of projects serving national defence purposes. See 5.2 Exemptions – Defence and Civil Emergencies
Article 2(3)	Formalise the approach to carry out coordinated assessments where assessments are required under the EIADR as well as the Habitats and/or Wild Birds Directive. See 5.3 - Coordinated and Joint Procedures

EIA Directive amended Article	Proposed Changes to the EIADR
<p>Article 3 - Changes to the list of factors, the effects of which are to be assessed as part of the EIA process.</p>	<p>The amended articles will be transposed across to the EIADR to reflect the revised wording of factors to be assessed as part of a EIA. See 5.4 Scope of the EIA</p>
<p>Article 4 (plus Annexes IIA and III) - Amendments to the information required, and the criteria to be applied when screening projects to determine whether the full EIA process (i.e. the need to prepare an EIA report) applies.</p>	<p>Incorporate Annex IIA of the Directive in to the EIADR, with relevant tailoring to ensure sites that already possess a full EIA would not be burdened with duplicating information.</p> <p>See 5.5 Screening</p>
<p>Article 4(6) - Sets a maximum timeframe not exceeding 90 days, once all required information is supplied (extendable in exceptional circumstances), for the competent authority to provide screening decisions to licensees.</p>	<p>Amend EIADR to require screening determinations to be provided as soon as possible, but not later than 90 days from the date on which all relevant information is received from the licensee to the quality required by the ONR. See 5.5 Screening</p>
<p>Article 5(1) (plus Annex IV) - Amendments to the information to be included in an EIA report</p>	<p>Make necessary amendments to the information to be included in an Environmental Statement. See 5.6 Information Required for a EIA Report</p>
<p>Article 5(2) - A requirement for an Environmental Statement to be 'based on' a scoping opinion, where one is issued.</p>	<p>Amend EIADR to require Environmental Statements to be based on a pre-application opinion where available, but retain current practice where such opinions are optional. See 5.7 Scope and Level of Assessment</p>
<p>Article 5(3) - Requirements for EIA reports to be prepared by competent experts, for the competent authority to have access to sufficient expertise to examine these reports, and allow the competent authority to seek supplementary information.</p>	<p>Amend the EIADR to require environmental statements to be prepared by competent experts and reflect the change that supplementary information to be provided by the licensee will be in accordance with the new Annex IIA. See 5.8 Competent Experts</p>

EIA Directive amended Article	Proposed Changes to the EIADR
<p>Article 6(1) - Requirement to ensure appropriate authorities are given an opportunity to express opinions on information provided by licensees in an application for consent.</p>	<p>Amend the definition of ‘consultation bodies’ to ensure access to relevant expertise to evaluate the environmental statement. See 5.9 Consultation Bodies</p>
<p>Article 6(2), 6(5) and 6(6) - Provisions for informing the public electronically - including timescales.</p>	<p>Amend the EIADR to reflect the revised wording that information will be made available electronically by the ONR. See 5.10 Electronic Communication</p>
<p>Article 8a - A new Article elaborating on information to be given in decision notices and making further provision about decision-making.</p>	<p>Amend to require:</p> <ul style="list-style-type: none"> • that the decision to grant consent incorporates the ‘reasoned conclusion’, and where the decision is to refuse consent, to state the reasons for refusal. See 5.11 - Making a Decision • monitoring procedures where necessary. See 5.12 Monitoring of Significant Environmental Effects • decisions to be taken within a reasonable timeframe. See 5.13 Decisions in a Reasonable Time. • that the ‘reasoned conclusion’ is up to date at the time that an application is determined. See 5.14 Up to Date Reasoned Conclusions
<p>Article 9(1) - Requirements for decisions and additional information about decisions (including results of consultations undertaken) to be notified to the public and consultation bodies.</p>	<p>Amend the EIADR to require ONR to include a summary of results in the decision notification to relevant parties and to carry this out as soon as possible. See 5.15 Informing the Public of the Decision</p>
<p>Article 9(a) - A new Article requiring the avoidance of conflicts of interest.</p>	<p>The ONR is established as an independent body with statutorily defined functions. Amendments not necessary. See 5.16 Conflicts of Interest</p>
<p>Article 10a - Penalties for infringements of national provisions that implement this Directive</p>	<p>Already provided for under EIADR (See Regulation 16 of EIADR). Amendments not necessary. See 5.17 Penalties on Infringement.</p>

5.1 Definition of the EIA Process

The 2014 Directive introduces a definition for the ‘environmental impact assessment’ under Article 1(2)(g) of the EIA Directive:

“environmental impact assessment” means a process consisting of:

- (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);
- (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
- (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
- (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
- (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.”

We propose to transpose the new environmental impact assessment definition across to the EIADR. This is necessary to capture the additional requirement to include the ‘reasoned conclusion’ as part of the EIA process. See Regulation 2 of the draft consolidated EIADR.

5.2 Exemptions – Defence and Civil Emergencies

Article 1(3) has been amended to restrict the existing exemption for defence projects so that it can only apply where a project, or 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.

The EIADR currently provide for an exemption from the requirements of the EIADR for a project serving national defence purposes where the Secretary of State is of the opinion that the application of the EIADR would have an adverse effect on the defence purposes of the project.

We propose to transpose these changes to the EIADR in line with the amended Article. Whilst not a mandatory provision, it will ensure that projects falling within this category can be taken forward at the necessary pace.

See Regulations 2 and 3 of the draft consolidated EIADR.

Consultation Question

- | | |
|----|--|
| 1. | Do you agree with the proposal to apply exemptions to projects, or parts of projects (in the case of defence projects) that have national defence and/or civil emergencies as their sole purpose? If not, why not? |
|----|--|

5.3 Coordinated and Joint Procedures

Prior to the 2014 Directive changes, Article 2(3) of the EIA Directive allowed Member States the option to provide for a single procedure in order to fulfil the requirements of both the EIA Directive and the Integrated Pollution Prevention and Control Directive⁶.

The 2014 Directive amendments to Article 2(3) replaced the Integrated Pollution Prevention and Control Directive with the Habitats⁷ and Wild Birds⁸ Directives as a measure to avoid deterioration in the quality of the environment and any net loss of biodiversity. The Habitats and Wild Birds Directives aim to protect a range of threatened or endemic animals, plants and wild bird species in the EU. The 2014 Directive changes also make it mandatory for Member States to provide for, where appropriate, a coordinated or a joint procedure to fulfil the requirements of the EIA Directive and the Habitats and/or Wild Birds Directives where an assessment is required under both. The Article states that a coordinated procedure requires designating an authority to coordinate the various individual assessments, while the joint procedure would require information for both (or more) assessments to be dealt with in a single assessment.

The ONR currently adopts the 'coordinated procedure' for projects which are likely to have a significant effect on a protected European site⁹, where views of the appropriate environment agencies and conservation bodies are taken into consideration when assessing project applications under the EIADR.

We **propose to continue to apply the coordinated procedure where appropriate**, rather than implementing a joint procedure, since it is well understood by industry and offers the greatest flexibilities for licensees around the phasing and timing of an environmental impact assessment. See Regulation 4A of the draft consolidated EIADR.

We welcome views on the practical matters of this approach, for example, whether additional provision on coordination of assessments would be helpful; whether provisions would be necessary when more than one authority is involved in granting consent/permission; and whether provisions to prevent commencement of work until all necessary consents and/or permits have been obtained would be necessary.

The 2014 Directive also allows Member States, if they so wish, to choose to also apply joint or coordinated procedures to any assessments on the effects on the environment required under other EU law. The provision is not mandatory, and we do not propose to include it in our amendments to the EIADR.

Consultation Question

- | | |
|----|--|
| 2. | Do you agree with the proposals to formalise a co-ordinated procedure where a project is subject to assessment under both the EIADR and the Habitats and/or Wild Birds Directive? If not, why not? |
|----|--|

⁶ 2008/1/EC

⁷ 92/43/EEC

⁸ 2009/147/EC

⁹ A Special Protection Area (SPA), Special Area of Conservation (SAC) or candidate Special Area of Conservation (cSAC)

5.4 Scope of the EIA

Amended Article 3(1) describes the factors that should be considered as part of an EIA which now read:

“1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in points (a) to (d).

The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from ‘the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.’”

Article 3(1) emphasises that it is only ‘significant’ effects that should be assessed. The terminology has also been amended, for example, ‘population and human health’ and ‘biodiversity’ have replaced ‘human beings, fauna and flora’. A new Article 3(2) requires that an EIA include, where relevant, the expected effects on the factors listed above, deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned¹⁰.

Article 3(1) was previously incorporated into the EIADR as part of the definition for ‘environmental impact assessment’ and referenced effects on ‘human beings, flora and fauna’. **We propose to transpose both Articles 3(1) and 3(2) into the EIADR.** See Regulation 10B(3) of the draft consolidated EIADR.

5.5 Screening

Information to be provided for 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(4) introduced by the 2014 Directive now requires that where there are changes or extensions to projects undergoing a screening process, the developer have to provide specific information set out in a new Annex IIA. This includes information such as the physical characteristics of the whole project, description of the environmental aspects likely to be significantly affected, and any significant effects on the environment from the production of waste and the use of natural resources. Where previously Member States would determine

¹⁰ The Government has a robust regulatory framework for safeguarding against ionising radiation to the public and environment. Nuclear specific emergency preparedness and response arrangements are detailed in the Ionising Radiation Regulations 2017 and the Radiation (Emergency Preparedness and Public Information) Regulations 2001. Guidance is also available for Nuclear Emergency Planning and Response.

what information the developer should supply, the 2014 Directive standardises the type of information to be provided to the competent authority to screen a proposal.

The EIADR provisions relating to screening currently only set out the relevant criteria that the ONR should use to determine if an environmental impact assessment is required (Schedule 2 to the EIADR). **We propose to transpose these changes to the EIADR in line with the amended Article. This will provide clarity to both the licensee and ONR to focus on the key aspects during screening.** See Regulation 13(3) to (3C) and Schedule 3 of the draft consolidated EIADR.

Screening Determination

New Article 4(5) requires that the competent authority make its screening determination on the basis of the information provided by the developer under Annex IIA and take into account other assessments where relevant. It also explicitly requires that the screening decision which needs to take in to account the criteria listed in Annex III of the EIA Directive is made available to the public.

To provide clarification on the duties of the ONR regarding screening decisions, **we propose that this provision and the revisions to Annex III be transposed into the EIADR.** See Regulations 13(5) to (6), and Schedule 2 of the draft consolidated EIADR.

Screening Timeframe

New Article 4(6) sets a requirement for a maximum timeframe of 90 days - from the date on which the developer has submitted all the information required under Annex IIA - 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. In such cases, the competent authority is required to inform the developer in writing to justify this extension and when a determination can be expected.

The current regulations do not specify a timeframe for the ONR to come to a screening decision. **We propose for this new requirement to be transposed into the EIADR.** The 90 day countdown will begin from the date that the licensee has submitted the necessary Annex IIA information to the satisfaction of the ONR. See Regulations 13(7) to (9) of the draft consolidated EIADR.

Consultation Question

3.

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?

5.6 Information Required for a EIA Report

Amended Article 5(1) sets out the information that needs to be provided as part of an environmental impact assessment report (EIA report) as a means to improve the quality of the EIA process. The report needs to include a description of the project and its likely significant effects on the environment. It should also set out any mitigation measures, a non-technical summary and reasonable alternatives considered by the developer.

This Article also requires that where a scoping opinion is issued by the competent authority (see section below), the EIA report needs to be based on that opinion. The EIA report should also include information that may be required to reach a reasoned conclusion on the significant effects of the project on the environment, and take into account results of other assessments where available.

EIA reports are referred to as Environmental Statements in the EIADR. Regulation 5 of the current EIADR states that where an Environmental Statement is required it needs to include information in Part II of Schedule 1, which substantially reproduces the requirements of amended Article 5(1).

To ensure a full transposition **we propose to transpose these amended requirements into the EIADR, and require that any Environmental Statement is to be based on a pre-application opinion where one is issued.** See Regulations 5(1) and 5(2)(c) of the draft consolidated EIADR.

5.7 Scope and Level of Assessment

Amended Article 5(2) clarifies that where requested by a developer, the competent authority must issue an opinion on the scope and level of detail of information that should be included in an EIA report in accordance with Article 5(1) (see above). This opinion is required to take into account ‘the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment’.

Currently, under the EIADR, licensees may apply to the competent authority for a pre-application opinion to assist with the preparation of an Environmental Statement. The EIADR does not currently specify particular aspects of the project on which the competent authority should base their opinion on. For clarification, we **propose to transpose the amended provisions into the EIADR to require the ONR to take into account specific project characteristics when issuing an opinion.** See Regulation 6(3)(b) of the draft consolidated EIADR.

5.8 Competent Experts

To ensure the quality and completeness of EIA reports (as previously discussed, these are referred to as Environmental Statements in the EIADR), Article 5(3) requires the developer to ensure these reports are prepared by competent experts. In addition, the competent authority must ensure that it has, or has access to where necessary, sufficient expertise to assess the report. The competent authority may also request supplementary information from the licensee, in accordance with Annex IV of the Directive in order to reach a reasoned conclusion on the significant effects of the project on the environment.

We propose that the EIADR be amended to require the licensee to ensure that Environmental Statements are prepared by competent experts. Licensees already utilise competent experts (either in-house or consultancies) for preparing such Statements, however **we propose to include a requirement in the EIADR that the Environmental Statement should contain a statement from the licensee setting out how this provision has been met.**

We have not sought to define “competent expert” any further, because the level of competence and expertise necessary to prepare the Environmental Statement is likely to depend on the individual circumstance of each case. Views are sought on this approach.

Regulation 10 of the EIADR already allows for the ONR to request further information to be included as part of the Environmental Statement. **We propose to amend this to reflect that supplementary information requested by the competent authority has to be in accordance with Annex IV of the EIA Directive and directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.** See Regulation 5(2)(a) and Regulation 10 of the draft consolidated EIADR.

Consultation Question

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| 4. | Do you agree that a definition of ‘competent expert’ under the EIADR is not necessary? If not, why not? |
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5.9 Consultation Bodies

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

These provisions are substantially met by the extant EIADR where relevant advisors, in the form of ‘consultation bodies’ as defined in the EIADR, are required to be consulted when evaluating applications for the purposes of reaching formal decisions to ensure proper assessment of the Environmental Statement. **We propose to amend the definition of ‘consultation bodies’ in regulations 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’.** This will enable the competent authority to access expertise from the appropriate and relevant authorities on a case by case basis with respect to the environmental factors to be assessed, including impacts to population and human health. See Regulation 2 in the draft consolidated EIADR.

5.10 Electronic Communication

Article 6(2) (prior to amendment by the 2014 Directive) required that relevant project information to be made available to the public. This includes:

- a project’s request for consent;
- the fact that the project is subject to an EIA process;
- details of the authorities responsible for taking the decision;
- nature of possible decisions, details of the EIA report; the time and place the relevant information is available; and
- the arrangements for public representation

The 2014 Directive adds the requirement that information has to be made available to the public electronically to ensure effective public participation in the decision-making process and make the process more transparent.

Article 6(5) has also been amended to ensure this information is electronically accessible through “at least a central portal or easily accessible points of access” in addition to more traditional methods such as bill posting.

Regulation 9 of the EIADR regarding publicity already requires the licensee to publish a ‘notice’ which includes the information set out in Article 6(2). The application and all other relevant information are also published on the ONR website. To reflect the requirement to publish information electronically, **we propose to amend 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 will be required to publish the information contained in this notice on their website on the date of the newspaper publication, and be available to the public for a period of not less than 30 days.**

See Regulations 9 to 10A of the draft consolidated EIADR.

Consultation Question

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| 5. | 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? |
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5.11 Making a Decision

New Articles 8a(1) and 8a(2) specify what information needs to be included in a decision to grant consent. The competent authority is required to come to a reasoned conclusion on the significant effects of the project on the environment based on information in the EIA report, consultations and any supplementary information. Once the reasoned conclusion has been made, the decision to grant consent needs to consider and include this reasoned conclusion, any environmental conditions attached to the decision, a description of any mitigation measures, and, where appropriate, monitoring measures. Where the decision is to refuse consent, the main reasons for the refusal need to be given.

The ONR already complies with these new requirements in practice, whereby all decisions for consents are published on their website, including the reasons for decisions. If consent is granted, it also contains information on any conditions attached to the decision, as well as a description of mitigation measures.

To effect appropriate transposition, **we propose to amend the EIADR to require ONR to come to a reasoned ‘conclusion’ and incorporate this as part of the decision to grant consent.** See Regulation 10C(1) of the draft consolidated EIADR.

5.12 Monitoring of Significant Environmental Effects

New Article 8a(4) 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.

As noted above, the current EIADR provisions allow the ONR to attach conditions to consents. The ONR currently require the licensee to provide regular updates on environmental monitoring and mitigation measures, in the form of Environmental Management Plans (EMP) as part of the condition of consent. **We propose to make changes to the EIADR to transpose Article 8a(4).** See Regulations 10C(1) to 10C(3) of the draft consolidated EIADR.

Consultation Question

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| 6. | Do you expect any additional burdens for industry as a result of the amended monitoring measures? |
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5.13 Decisions in a Reasonable Time

The new Article 8a(5) requires the competent authority to take any decisions to grant or refuse project consent in a ‘reasonable period of time’.

Relevant timeframes are already established under the EIADR for certain parts of the decision making process. For example, the ONR is currently required to issue a pre-application opinion on the content of Environmental Statements within 21 days following the end of consultation with relevant bodies.

However, this is a new requirement, and we therefore **propose to amend the EIADR to clarify that decisions for consent have to be taken within a ‘reasonable period of time’.** See Regulation 10C(5) of the draft consolidated EIADR.

5.14 Up to Date Reasoned Conclusions

The 2014 Directive introduces an obligation that the competent authority should be satisfied that the reasoned conclusion on the significant effects of the project on the environment remains up-to-date when taking a decision to grant consent. Under new Article 8a(6), Member States may set time-frames for the validity of the reasoned conclusion or other decisions made under the Directive.

Currently, consents are granted by ONR with the condition that decommissioning works needs to commence within 5 years of the decision being granted. Under Regulation 13 of the current EIADR, any changes or extensions to the project which may have a significant effect on the environment would require additional review under the current regime to ensure the consent is still valid.

We consider that the current EIADR already meet the new obligation that decision to grant consent is based on current information. However, to effect full transposition, **we propose to amend the EIADR to place an obligation on ONR to ensure that a reasoned conclusion is up to date at the time an application is determined.** See Regulation 10C(4) of the draft consolidated EIADR.

We do not propose to set specific time frames for validity within the regulations. We consider that the relevant authorities would be better placed to determine the period of validity on a case-by-case basis as per the existing approach.

5.15 Informing the Public of the Decision

Amended Article 9(1) sets out the requirement that the public and relevant statutory bodies should be promptly informed of the competent authority's decision to grant or refuse consent to carry out a project, and make available to such parties the content of the decision (see 5.11).

This is currently met in part by current Regulation 11 of the EIADR but needs to reflect the need to include the 'reasoned conclusion' that forms part of the decision content, and a summary of information gathered from consultations.

We propose to include an equivalent obligation on ONR to notify the public and relevant authorities of the regulatory decision to include the reasoned conclusion and a summary of the results from consultations. **We also propose that this obligation on the competent authority to notify the relevant parties should be carried out as soon as reasonably possible** once an application has been determined. See Regulation 11 of the draft consolidated EIADR.

5.16 Conflicts of Interest

The 2014 Directive has introduced a new requirement under Article 9a that the competent authorities have to be objective and avoid conflicts of interest when carrying out duties under the EIA Directive. Where the competent authority is also the applicant, there must be appropriate separation between the people making the application and the people carrying out the role of the competent authority.

The intent of this Article is to capture the scenario where the developer may also be the regulator. We do not consider that this provision will have any effect in practice. ONR as the competent authority is established as an independent body with statutorily defined functions that are separate from those of BEIS, and do not include the promotion of, or participation in the nuclear energy sector, or the electricity production sector more widely. Government cannot direct ONR with respect to regulatory functions in a particular case, thereby ensuring that regulatory decisions are independent.

We consider that the existing legislative framework is adequate to meet this new Directive requirement, and therefore propose that amendments to the EIADR are not necessary.

5.17 Penalties on Infringement

New Article 10a requires Member States to apply penalties for infringements of national provisions adopted under the EIA Directive. The penalties have to be effective, proportionate and dissuasive.

It is our view is that the existing enforcement provisions¹¹ under the EIADR are sufficient to meet the requirements of the Directive.

¹¹ Regulation 16 - "Sections 18 to 26 and 33 to 42 of the Health and Safety at Work etc. Act 1974(a) shall apply to any requirement or prohibition imposed upon any licensee by these Regulations or any requirement imposed upon any person by regulation 7 as if the requirement or prohibition concerned had been imposed by regulations made under section 15 of that Act and

We propose that no changes to the EIADR are necessary to implement the penalty provisions under Article 10a.

5.18 Final Information

We welcome the views and evidence of direct costs to business from the changes proposed to the EIADR. These views and evidence will be used refine the assessment of the direct costs to business. We also welcome any further thoughts in respect of our proposals.

Consultation Question

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| 7. | Do you have any further comments or suggestions in relation to the proposals? |
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any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive under or in respect of health and safety regulations (including their enforcement) shall be exercisable as if these Regulations were health and safety regulations for the purposes of that Act.”

6 Implementation

We will review the responses to the proposals and publish the Government Response to the consultation in due course. Subject to the responses received, we will set out our intentions of how and when we will implement the proposals on changes to the existing Regulations to effect transposition of the 2014 Directive amendments.

Annex A – Summary of 2014 Directive Changes and Proposals

The changes introduced by the 2014 Directive are listed in the below table and summarises our proposals to amend the EIADR. It also notes where changes are not considered necessary.

EIA Directive amended Articles	Summary of Proposed Changes to EIADR
Article 1(2)(g)	Revise definition of “environmental impact assessment” within the EIADR and make consequential amendments to the EIADR to reflect this definition
Article 1(3)	<p>Clarify in the EIADR that the exemption for projects serving national defence purposes: (i) must have defence as their sole purpose in order to qualify for the exemption; and (ii) extend the exemption to apply to projects which have response to civil emergencies as their sole purpose.</p> <p>The Secretary of State will be required to notify the competent authority, ONR, of any project exemptions.</p>
Articles 2(1) and 2(2)	Amendments not necessary for minor revisions in text of Article 2(1). Article 2(2) is not applicable. The EIADR is the regime for implementing the aims of the EIA Directive with respect to nuclear reactor decommissioning projects in Great Britain
Article 2(3)	Formalise a co-ordinated approach to align with existing practice
Article 2(4)	Amend EIADR to allow specific projects to be exempt in exceptional cases where application of the regulations would adversely affect the purpose of the project.
Articles 3(1) and 3(2)	The amended Articles will be transposed across to the EIADR to reflect the revised wording of factors to be assessed as part of an EIA.

EIA Directive amended Articles	Summary of Proposed Changes to EIADR
Article 4(3)	Amendments not necessary. Already provided for under current EIADR (See Regulations 13 and Schedule 2).
Article 4(4)	Incorporate Annex IIA of the Directive in to the EIADR, with relevant tailoring to ensure sites that already possess a full EIA would not be burdened with duplicating information.
Article 4(5)	Amendments not necessary. Already provided for under current EIADR (See Regulation 13(5)).
Article 4(6)	Amend EIADR to require screening determinations to be provided as soon as possible, but not later than 90 days from the date on which all relevant information is received from the licensee to the quality required by the ONR.
Article 5(1)	Make necessary amendments to the information to be included in an Environmental Statement.
Article 5(2)	Amend EIADR to require Environmental Statements to be based on a pre-application opinion where available, but retain current practice where such opinions are optional.
Article 5(3)	Amend the EIADR to require Environmental Statements to be prepared by competent experts and reflect the change that supplementary information to be provided by the licensee will be in accordance with the new Annex IIA.
Article 6(1)	Amend the definition of ‘consultation bodies’ to ensure access to relevant expertise to evaluate the environmental statement.
Articles 6(2) and 6(5)	Amend the EIADR to reflect the revised wording that information will be made available electronically by the ONR.
Articles 6(6) and 6(7)	Amendments not necessary. Timeframes are already specified under EIADR (See Regulations 8 to 10A).
Article 7(4)	Amendments not necessary – not a mandatory provision.

EIA Directive amended Articles	Summary of Proposed Changes to EIADR
Article 7(5)	Amendments not necessary. Covered by existing provisions under EIADR.
Article 8	Amendments not necessary. Covered by existing provisions under EIADR.
Articles 8a(1) and 8a(2)	Amend EIADR to require the decision to grant consent to incorporate the ‘reasoned conclusion’, and where the decision is to refuse consent, to state the reasons for refusal.
Article 8a(3)	Amendments not necessary – not applicable under EIADR
Article 8a(4)	Amend EIADR to require monitoring procedures where necessary.
Article 8a(5)	Amend EIADR to require that decisions are taken within a reasonable timeframe.
Article 8a(6)	Amend EIADR to that the ‘reasoned conclusion’ is up to date at the time that an application is determined.
Article 9(1)	Amend EIADR require ONR to include a summary of results in the decision notification to relevant parties and to carry this out as soon as possible.
Article 9a	Amendments not necessary. The ONR is established as a separate body with statutorily defined functions.
Article 10	Amendments not necessary. Already provided for under the EIADR (See Regulation 14 of the EIADR)
Article 10a	Amendments not necessary. Already provided for under the EIADR (See Regulation 16 of the EIADR)

