

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
(ENGLAND AND WALES) REGULATIONS 2017

2017 No. 580

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument makes continuing provision for environmental impact assessments to be undertaken in respect of certain applications for consents for generating stations under section 36 of the Electricity Act 1989 (including variations of such consents) and for consents for electric lines above ground under section 37 of that Act. The instrument changes the requirements for environmental impact assessments to take into account amendments to Directive 2011/92/EU (the “EIA Directive”) on the assessment of the effects of certain public and private projects on the environment, made by Directive 2014/52/EU (the “2014 Directive”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Schedule 1 to the instrument sets out categories of development in respect of which an environmental impact assessment must always be undertaken, which reflect categories set out in Annex I to the EIA Directive that are relevant to consents under the Electricity Act 1989. The categories include those in respect of which no new applications may currently be made under the Electricity Act 1989 (i.e., thermal generating stations with a heat output of 300 megawatts or more (paragraph 1(b) of Schedule 1) and electric lines installed above ground with a voltage of 220 kilovolts or more and a length of more than 15 kilometres (paragraph 1(c) of Schedule 1)). Applications for new development in these categories must now be made under the Planning Act 2008. The Department has included these categories because, although there are no current plans to do so, it is possible for an order to be made under section 14(3) of that Act to take categories of development out of the Planning Act regime. If such an order were made, it is possible that new applications for these categories would have to be made under the Electricity Act 1989 once more.

Other matters of interest to the House of Commons

- 3.2 As the instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The EIA Directive applies inter alia to certain projects to construct generating stations or to install electric lines above ground requiring consent under sections 36 or 37 of the Electricity Act 1989. The 2014 Directive amends the EIA Directive. The amendments must be implemented by 16 May 2017.
- 4.2 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (the “2000 Regulations”) currently implement the EIA Directive in relation to applications in England and Wales for such projects, and provide for environmental impact assessments to be undertaken. Directive 2014/52/EU (the “2014 Directive”) amends the EIA Directive. The amendments must be implemented by 16 May 2017.
- 4.3 The instrument revokes the 2000 Regulations and makes continuing provision for environmental impact assessments to be undertaken in accordance with the EIA Directive, as amended. The instrument consolidates previous amendments to the 2000 Regulations, updates the provisions and simplifies them where possible. A transposition table is submitted with this explanatory memorandum.
- 4.4 The Government’s Better Regulation agenda includes the requirement that when transposing EU law the Government will ensure that the UK does not go beyond the minimum requirements of the measure which is being transposed and will use copy out for transposition where it is available, except where doing so would adversely affect UK interests. These principles have been followed in transposing the amendments made by the 2014 Directive, and copy out has been used where possible, except where alternative or additional text is required for clarity.
- 4.5 The European Scrutiny Committees were provided with an Explanatory Memorandum on the Commission’s proposals which ultimately resulted in the 2014 Directive and were updated following a vote in the European Parliament in October 2013 and following agreement on a compromise text in February 2014. The House of Commons committee released the proposal from scrutiny on 19 March 2014, and the House of Lords scrutiny committee did so on 3 April 2014.
- 4.6 The EIA Directive also applies to energy project types which fall outside of the Electricity Act 1989, including those granted under the Planning Act 2008. These projects are subject to separate consenting regimes and separate Environmental Impact Assessment Regulations.

5. Extent and Territorial Application

- 5.1 The instrument extends to England and Wales.
- 5.2 The instrument applies in relation to applications for consents under sections 36 and 37 of the Electricity Act 1989 in England, Wales, the territorial sea adjacent to England and Wales and the Renewable Energy Zone (other than an area in relation to which the Scottish Ministers have functions).

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union 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.
- 7.2 The United Kingdom is required to implement the 2014 Directive, which amends the EIA Directive, in so far as the EIA Directive applies to consents granted under section 36 and 37, and variations of consents under section 36C, of the Electricity Act 1989. In England and Wales consent is granted by the Secretary of State (for consents under sections 36 and 37 and variations of consents under section 36C) or the Marine Management Organisation (for consents under section 36 and variations of consents under section 36C).
- 7.3 The objective of the EIA Directive is to provide a high level of protection for the environment and to help integrate environmental considerations into the preparation of proposals for development to reduce their impact on the environment. The EIA Directive prohibits a consenting authority from granting consent for development which is likely to have a significant effect on the environment unless an environmental impact assessment has been carried out.
- 7.4 Environmental impact assessment is a process. It involves- (i) the preparation of an EIA report by or on behalf of the developer; (ii) public consultation on the application for consent, the EIA report and any other relevant information; (iii) examination by the relevant authority of the information presented in the EIA report and other relevant information including that received through the consultation; (iv) the authority coming to a reasoned conclusion on the significant effects of the proposed development on the environment; and (v) the authority integrating the reasoned conclusion into the decision on whether to grant consent for the development.
- 7.5 The basic requirements for environmental impact assessment have been in place since 1985 when the predecessor to the EIA Directive (Directive 85/337/EEC) came into force. A key aim of amending the EIA Directive is to simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation, and to lighten unnecessary administrative burdens. The amendments also seek to improve the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.
- 7.6 The most significant changes introduced by the 2014 Directive are:
- The introduction of joint and/or co-ordinated procedures for projects which are subject to assessment under the Directive on the conservation of natural habitats and of wild fauna and flora (Directive 92/43/EEC) or under the Directive on the conservation of wild birds (Directive 2009/147/EC) as well as the EIA Directive. The Department has chosen to provide for co-ordinated

procedures in the instrument, as this provides flexibility for developers and enables them to phase the various assessments where considered appropriate.

- There are changes to the list of environmental factors to be considered as part of the environmental impact assessment process. The term ‘human being’ has been replaced by the term ‘population and human health’; the term ‘fauna and flora’ has been replaced by ‘biodiversity’ and there is a new requirement to consider, where relevant, the effects on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters.
- There are new requirements to use experts in the environmental impact assessment process. The developer must ensure that the EIA report is prepared by competent experts, while the consenting authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report.
- There are new requirements relating to the publication of information electronically and to the content of decisions.
- The decision to grant consent should also now include, where appropriate, monitoring measures. Existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication.

7.7 Over the last three years the average number of applications determined each year under the Act where the 2000 Regulations applied has been: 7 applications that required an EIA, 2 screening opinions and 1 scoping opinion. This means only around 10 decisions are expected to be issued to developers each year in accordance with the instrument.

7.8 There are no alternatives to legislation to implement the Directive. However, in line with the Government’s Better Regulation agenda the Department has sought to minimise additional regulatory burden by copying out the text of the Directive except where an alternative approach was considered beneficial.

Consolidation

7.9 The instrument amends the Electricity (Applications for Consent) Regulations 1990 (the “1990 Regulations”) and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (the “2013 Regulations”). The 1990 Regulations have been amended a number of times, and the Department will consider whether that instrument should be consolidated within the next 12 months. The Department has no plans to consolidate the 2013 Regulations, as this is the first time that instrument has been amended.

8. Consultation outcome

8.1 The Department for Business, Energy and Industrial Strategy conducted a technical consultation from 16 February to 16 March 2017 seeking views on a draft instrument. The consultation document was sent to key stakeholders such as energy companies, statutory advisers under the existing environmental impact assessment process, environmental groups and it was placed on the Department’s website.

8.2 The Department received 14 responses in total. Responses were received from the Welsh Government, developers, statutory consultees proposed under the draft instrument, non-governmental organisations and representative organisations. Respondents addressed some or all of the questions set out in the consultation paper,

offered comments on the draft, and in some cases made specific suggestions for revised wording.

- 8.3 The overall consensus of respondents was that the proposed changes were proportionate and appropriate. No responses considered that the proposals were inappropriate but a small number made suggestions for broader changes. A number of responses noted that the proposed changes reflected current practice. The consultation demonstrated that the costs to business from implementing the changes would be limited.
- 8.4 The Department has considered all of the responses received and has made where appropriate, minor changes to the draft instrument to reflect comments received and to achieve greater consistency with the other sets of Environmental Impact Assessment regulations which concern other UK planning regimes. It was not considered appropriate to make broader changes, beyond what was required to implement the 2014 Directive, as this would increase the burden on business.
- 8.5 The full Department's response to the consultation will be made available on the Department for Business, Energy and Industrial Strategy website at <https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>

9. Guidance

- 9.1 It is BEIS's intention to consider further with industry and other interested stakeholders the implementation of the Directive and issues relating to the existing guidance.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is limited with minor changes expected in costs (less than £1 million each year).
- 10.2 There is limited impact on the public sector with minor changes expected in costs (less than £1 million each year).
- 10.3 An Impact Assessment has not been prepared for the instrument because the amounts involved fall below the threshold for producing one.

11. Regulating small business

- 11.1 The legislation does not regulate the conduct of small businesses as the projects likely to benefit from the revised variation process are large. However, there may be small businesses employed as subcontractors.

12. Monitoring & review

- 12.1 Regulation 44 of the instrument is included to comply with section 28(2)(a) of the Small Business Enterprise and Employment Act 2015. In accordance with that regulation, the Secretary of State must carry out a review of the instrument and publish the conclusions of that review before 16 May 2022 and must carry out a review of the instrument at subsequent intervals of not less than 5 years.

13. Contact

- 13.1 Gareth Leigh at the Department for Business, Energy and Industrial Strategy, Tel: 0300 068 5677 or e-mail: Gareth.leigh@beis.gov.uk can answer any queries regarding the Instrument.