

## EXPLANATORY MEMORANDUM TO

### THE NUCLEAR REACTORS (ENVIRONMENTAL IMPACT ASSESSMENT FOR DECOMMISSIONING) (AMENDMENT) REGULATIONS 2018

2018 No. 834

#### 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.

#### 2. Purpose of the instrument

- 2.1 This instrument makes amendments to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (S.I. 1999/2892) as amended by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006 (S.I. 2006/657).
- 2.2 The instrument also amends the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571), and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572) to reverse an error resulting from previous amendments made to those Regulations.
- 2.3 The amendments are required due to changes made to EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the “EIA Directive”) by EU 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 As confirmed with the S.I. Registrar the changes to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571), and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/572) are minor and provision of free copies of the amended instrument is not necessary.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

#### 5. European Convention on Human Rights

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

## **6. Legislative Context**

- 6.1 The EIA Directive applies to nuclear decommissioning and dismantling projects, and in this regard, is currently implemented in Great Britain through the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, as amended by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006.
- 6.2 The EIA Directive has been amended by the 2014 Directive.
- 6.3 This instrument will further amend the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (as amended) in order to implement the requirements of the 2014 Directive.
- 6.4 The EIA Directive (as amended by the 2014 Directive) applies to projects other than nuclear decommissioning and dismantling projects, for which separate consenting regimes and environmental impact assessment requirements apply, such as the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- 6.5 Transposition of the new requirements introduced by the 2014 Directive in respect of town and country planning and infrastructure planning was implemented into regulations by the now Ministry of Housing, Communities & Local Government in May 2017. However, both instruments incorrectly included nuclear reactor decommissioning and dismantling projects within their scope.
- 6.6 This instrument therefore also amends both the as the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 to reverse this error.
- 6.7 A transposition table is submitted with this explanatory memorandum.
- 6.8 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.
- 6.9 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.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (as amended) (the Regulations) require the Office for Nuclear Regulation (ONR) to assess the effects of certain public and private projects on the environment - including the dismantling or decommissioning of nuclear reactors. ONR is the designated Competent Authority responsible for performing the duties

under the Regulations, including assessing the information supplied as part of the environmental impact assessment process and take the decision to grant or refuse application consent.

7.2 The amendments to the EIA Directive aim to: simplify the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation; to lighten unnecessary administrative burdens; and to improve the level of environmental protection, with a view to making business decisions on public and private investments more sound, predictable and sustainable in the longer term.

7.3 The most significant changes introduced by the amending Directive which are reflected in this instrument are –

- Extension of project exemptions to those that have civil emergency response as their sole purpose, as well as extending the existing defence purpose to parts of projects that have defence as their sole purpose.
- Revision to the list of environmental factors to be considered as part of the environmental impact assessment. 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.
- The introduction of joint and/or co-ordinated procedures for projects which are subject to assessment under both the EIA Directive, and Directive 92/43/EEC4 (“the Habitats Directive”) or Directive 2009/147/EC5 (“the Wild Birds Directive”). Provision has been made in this instrument for coordinated procedures where appropriate.
- A new requirement to use competent experts in assessing environmental impact. The developer must ensure that their Environmental Statement - a report that describes the proposed project and its environmental impact as part of the assessment process - is prepared by a competent expert, while the consenting authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the Environmental Statement.
- A new publicity requirement for ONR to publish information relevant to the application on their website for a minimum period of 30 days. To enable this, various revisions have been made to the publicity procedure, such as a licensee requirement to provide the necessary information to ONR within 7 days of submitting an Environmental Statement.
- Elaboration on the information to be given in decision notices and during the decision-making procedures.
- The decision to grant development consent should also now include, where appropriate, monitoring measures.

7.4 The amendments arising out of changes to the Directive have the effect of both widening and strengthening the quality of information that needs to be considered by ONR when making decisions, as well as streamline assessments required under other EU law through a coordinated approach.

7.5 ONR is required to include additional content and justification when publishing their screening and EIA determinations. There is also an obligation on ONR to carry out different phases of the assessment process within reasonable timeframes.

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

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 This instrument comprises the second set of amendments made to the Regulations. Further consolidation is not proposed at this time. If further amendments or modifications are proposed, the Department will consider whether consolidation would be appropriate.

## **10. Consultation outcome**

10.1 In order to inform policy deliberations for transposing the 2014 Directive, BEIS held an informal consultation in September 2017 with industry stakeholders seeking views on our transposition proposals. Stakeholders were of the opinion that many of the 2014 Directive changes represented current industry practice.

10.2 A public consultation document including a consolidated version of the Regulation for illustration purposes was published on 23 May 2018. The consultation was open for 4 weeks and closed on 20 June 2018.

10.3 We received 5 responses from the public consultation: one from an NGO, one from a public body, and three from the nuclear industry.

10.4 All the respondents agreed with the majority of our proposals to amend the Regulations.

10.5 However, one respondent disagreed with applying any exemptions for projects from undertaking an environmental impact assessment due to concerns that it would not comply with the Health and Social Care Act 2012 obligations to protect the public from exposure to nuclear radiation.

10.6 One public body suggested that Historic England (and the equivalent bodies in the devolved administrations) should be listed as a mandatory consultation body in order to help the ONR assess the information from Environmental Statements with respect to effects on cultural heritage.

10.7 Our Government Response clarified that application of exemptions will only apply in limited and specific circumstances. It was also made clear that the absence of an environmental impact assessment does not reduce the regulatory measures in place to protect the public and the environment from ionising radiation. These will continue to be enforced by the ONR and the environment agencies. Such exemptions are considered necessary to allow projects with defence or civil emergency response purpose to be taken forward without undue delay.

10.8 The proposal to amend the definition of 'consultation bodies' already captures other relevant bodies, such as Historic England, for consultation as the ONR deems appropriate. This removes unnecessary burden on ONR and the licensee.

10.9 The full summary of the consultation responses can be found in the Government Response on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **11. Guidance**

11.1 ONR already provides detailed guidance on the Regulations for licensees. This will be updated by ONR to account for the changes arising from this instrument to the environmental impact assessment process.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because not many businesses will be affected by these changes, and any anticipated impact is also considered to be minor. Responses to the consultation did not raise concerns of additional burden from regulatory changes. The proposals are of a minor technical nature which aligns with current business practice.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is to align with the guiding principles of Government's Better Regulation where statutory reviews are only required for measures with significant impacts on business (greater than +/-£5 million net annualised).

14.2 The Regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Richard Harrington has made the following statement – as the proposals are of a minor and technical nature, and align with current business practices, a statutory review requirement would be disproportionate to the economic impact of the provisions.

## **15. Contact**

15.1 Waiman Tsang at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 579 or email: [Waiman.Tsang@beis.gov.uk](mailto:Waiman.Tsang@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Matthew Clarke at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Richard Harrington at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.