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HEALTH AND SAFETY COMMISSION

Amendments to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (EIADR99)

A Paper by Jason Batt

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Issue

1. Proposed consultation on amendments to the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (EIADR99).¹
2. Three key changes are proposed:
 - To implement changes made to the EC Directive;
 - To simplify arrangements around decommissioning part of the site (which could save £40-£60m per site) and;
 - To correct some minor typographical errors.
3. We have consulted key stakeholders and expect broad support for the changes proposed.

Timing

4. For agreement at 26 July meeting.

Recommendation

5. You are invited to agree to the publication of the Consultative Document (CD)(please see annexes A, B and C)

Background

6. Amendments are necessary because of changes to the parent Directive, and to correct errors in the existing regulations. In line with the Government's policy on better regulation, amendments are also being made to improve the clarity and administrative efficiency of the existing regulations.
7. The current EIADR99 implement the Environmental Impact Assessment (EIA) Directive 85/337/EEC, as amended by Council Directive by 97/11/EC. Further details on the EIADR99 can be found in Annex D. The proposed amendments to the regulations implement the (relevant) amendments made by Directive 2003/35/EC.²

The Guidance to the existing regulations (described in an earlier paper, HSC05/09) will be maintained on-line as a 'living document' and, in due course be amended to reflect the changes proposed in this paper.

² Directive 2003/35/EC (OJ:L156/17/2003) on public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

Amendments identified by JCSI

8. Some typographical errors were identified by the Joint Committee on Statutory Instruments (JCSI). These errors will be corrected by the proposed amendments of 4(b) and 12(6) (see annex B).

Amendment to achieve greater administrative clarity and efficiency

9. We are also taking this opportunity to amend the regulations to achieve greater administrative clarity by redrafting regulation 13(1) (see annex B). Regulation 13(1) currently puts the initial responsibility onto the licensee to consider whether a change or extension to a decommissioning project may have a significant adverse effect on the environment (SAEE). If a SAEE is likely, then the licensee must apply to HSE for a determination as to whether the decommissioning project shall be subject to an Environmental Impact Assessment (EIA). However, the whole decommissioning project has to stop until HSE has made a determination, and cannot restart if HSE decides an EIA is required. Subject to the requirements of regulation 13, this requires a public consultation of three months.
10. The proposed amendment to regulation 13(1) provides the option of considering that if a change/extension occurs to a decommissioning project that has a significant adverse effect on the environment, then only that part(s) of the site affected would be subject to the requirements of regulation 13. Therefore, work on the parts of the site unaffected by this change/extension could continue if HSE decides ceasing such work is unnecessary.

Implementation of the (relevant) amendments made to the EIA Directive

11. In order to implement the relevant changes made to the EIADR99's parent directive, the following amendments are proposed (and can be found in annex B):
 - *Regulation 3(3)* is to be amended in order to remove the blanket exemption for defence projects and replace it with a case-by-case assessment on whether an application to EIADR is needed.
 - *Regulation 9(1)(a)* is to be amended so that it is clear the decommissioning project is subject to the EIA procedure.
 - *Regulation 11(c)* needs amending in order to include information about the public participation process.

Argument

12. There is a legal requirement to implement the typographical errors identified by the JCSI and transpose the changes made to the EIADR99's parent directive. The efficiency amendment identified by HSE has also been raised as an issue by the recently established Nuclear Decommissioning Authority in their response to the recent consultation exercise on guidance to the EIADR99 (see footnote 1). This amendment will improve efficiency and reduce cost. This approach is consistent with the principles of better regulation.

Consultation

13. HSE's Legal Advisers, the Nuclear Safety Directorate (NSD), Ministry of Defence (MoD) and ODPM have been consulted on the regulations and have provided advice on the costs identified in the Regulatory Impact Assessment (see Annex C).

Presentation

14. An electronic only version of the CD will be available on HSE's website and publicised via a Press Release (although it is not proposed to produce paper copies of the CD on the grounds of cost, they will be obtainable on request). A Welsh language version of the CD will be available on HSE's website once the consultation commences.

Costs and Benefits

15. An assessment of the costs and benefits of these amendments are detailed in the attached Regulatory Impact Assessment (see Annex C).

16. It is expected that the amendments required by JCSI will be cost neutral. The efficiency amendment may save the Nuclear Decommissioning Authority and the nuclear industry up to £40 - £60 million per site. The amendments driven by changes to the EIADR99'S parent directive will present additional administrative costs to MoD, ODPM and HSE (although we expect the costs for HSE to be absorbed by the existing resources within NSD)

Financial/Resource Implications for HSE

17. The cost for the time spent drafting/commenting on the HSC paper, CD and the draft regulations by HSE officials and for placing it on HSE's website is estimated to be £11,000. Existing resources within HSE were used for producing these items, and existing resources within HSE will be used for administering the public consultation. It is estimated that the cost to HSE for administering the public consultation will be £6,200. In the long term, there may be further administration costs to HSE if MoD doesn't apply for an exemption from the EIADR in respect of defence-related projects.

Environmental Implications

18. The efficiency amendment proposed by HSE would allow a decommissioning project to continue on the part(s) of a site unaffected by the change/extension.

Other Implications

19. Local authorities, the Devolved Administrations, licensees, other government departments and relevant non-government organisations will be informed of the consultation exercise.

Action

20. The Commission is asked to agree the recommendation in paragraph 3. We will commence the consultation exercise from August 2005 and report back the findings to the Commission by early 2006.