Nuclear Industry Association submission to the Department for Business, Energy & Industrial Strategy (BEIS) consultation on the National security and investment: mandatory notification sectors

About the NIA

The Nuclear Industry Association (NIA) is the trade association and representative body for the civil nuclear industry in the UK. We represent more than 200 companies operating across all aspects of the nuclear fuel cycle, including the current and prospective operators of nuclear power stations, the international designers and vendors of nuclear power stations, and those engaged in decommissioning, waste management and nuclear liabilities management.

Summary of Responses

- Close alignment and consistency with the ONR's well-established regime is key for the UK nuclear industry and investors.

- Section e should be amended to include a clear and robust definition of "developer of a civil nuclear construction site" as the legislation currently cited in that section does not define "developer". This is clarity is critical to the operation of the mandatory referral regime and to the ability of the UK nuclear sector to secure the continued support of the construction industry and its investors.

- It should be made clear whether or not the tests set out in the proposed definition apply to entities only at the point at which investment is being considered, or whether they apply to entities that have in the past or might in the future meet those criteria. This is particularly pertinent where parties form a "greenfield" joint venture which does not at the time have any qualifying assets or activities but where the intention is for that entity to carry out activities "of a specified description". We recommend that the tests should apply only at the point of investment, to avoid unnecessary referrals. We also recommend that the regulation be worded to provide absolute clarity as to the point at which a mandatory notification is triggered by reference to the lifecycle of a civil nuclear project (e.g. at the point of application for a nuclear site licence).

We would welcome the opportunity to engage further with the department as it develops its sector definitions and guidance and remain available for any questions you may have regarding this response.

Consultations Questions and Responses

Are the sector definitions sufficiently clear to enable investors and businesses to self-assess whether they must notify and receive approval for relevant transactions? If not, how can the definitions be improved?

To what extent are technical and scientific terms correct and sufficiently clear and commonly understood for the purposes of determining relevant activities?

To what extent do these definitions include the areas of the economy where foreign investment has the greatest potential to cause national security risks?

How else, aside from mandatory notification under the NSI regime, can the Government ensure relevant transactions receive appropriate screening while minimising the impact on business?

Do these definitions strike the right balance between safeguarding national security and minimising the burdens placed on businesses and investors? Is it possible to narrow the scope of the definitions without compromising national security?

1. We would encourage the close alignment of this regime with the ONR's well-established and broad powers to regulate security in the sector under the Nuclear Industries Security Regulations 2003 (NISRs) and site licensing regime, which already includes (including under LC36) an assessment of organisational governance, including shareholder influence. We understand that this is the department's intention and urge that this should continue during the implementation of the new mandatory regime to ensure consistency and legal certainty for the UK nuclear industry and investors.

2. There is a clear need for greater clarity in the drafting of the definition of entities in the civil nuclear sector which are subject to the mandatory regime. We have detailed these concerns over definition below, as maximal clarity and predictable regulation are important for investment in the UK nuclear sector.

    a. Section a of the proposed definition applies to any entity which holds "or applies for" a nuclear site licence. It is not clear whether this only applies to entities supporting active site licence applications, or any entity which may apply for a site licence in the future. We would suggest that only active applicants be included, or that a specific pre-application test is identified, such as ownership of a site designated under the nuclear national policy statement (EN6).

    b. Section b of the proposed definition of the civil nuclear industry includes "a tenant operating on a site in respect of which a nuclear site licence has been granted in accordance with section 3 of the Nuclear Installations Act 1965…". We would welcome the department's clarification as to whether this is intended to apply to all tenants, and or to substantial nuclear-related tenants alone. If this is the department's intention, we note that the ONR's assessment of any tenancy at a licensed site (under LC3) will assess security issues, including in connection with the licensee's site security plan under the NISRs. We urge the department to avoid any duplication in the mandatory referral process of any security assessment already conducted by the ONR. We also note that non-nuclear tenants who commonly occupy nuclear sites (such as whose involved in electricity transmission connection or research and development) may also be qualifying entities under other parts of the regime, and we request clarity as to how these interactions will be applied in practice.

    c. Section c of the proposed definition includes any entity that "holds Category I/II and/or Category III 'nuclear material'", while Section h brings in any "holder of sensitive nuclear information". We recommend that the department clarify that these tests would apply only at the point of investment, and not take in entities that have ever held or may hold such material or information. Without this clarification, these tests could be construed quite broadly to include professional service firms, shipping companies, or other suppliers, who occasionally work with the nuclear industry, and create unnecessary burdens because of that.

    d. Section e of the proposed definition includes "a developer of a civil nuclear construction site as defined in section 70(3) of the Energy Act 2013." Noting that the defined term in the Energy Act 2013 is "civil nuclear construction site", and not "developer", it is not clear what "developer" means. Site licence applicants, for instance, are already covered by Section a. Therefore, a clear legal definition of a "developer" is necessary.

We also urge the department to clarify the proposed definition, so it does not apply broadly to building contractors. Given the size of nuclear projects, a very large proportion of the UK construction industry and supply chain has some interest and involvement in the sector. Without precise definitions here, they could be subject to unnecessary mandatory referral, or dissuaded from engaging with the nuclear industry altogether.

e. Section f of the proposed definition includes any entity that "is or has been, required to pay a fee to the Office for Nuclear Regulation under regulation 16(1) of the Health and Safety and Nuclear (Fees) Regulations 2016." We do not feel these inclusion is necessary, as all relevant entities here will be taken in by other provisions, particularly Section h for holders of sensitive nuclear information, which will take in applicants for Generic Design Assessment. If this section remains, it should also be amended, so that it no longer captures any entity which "has been" required to pay such a fee, even if they are no longer pursuing nuclear opportunities, or if the application was withdrawn or refused.

f. Section g of the proposed definition includes any entity that "is subject to the prohibition on disclosure of uranium enrichment technology as defined in regulation 2 of the Uranium Enrichment Technology (Prohibition on Disclosure) Regulations 2004. The wording should be amended, so that is precisely captures entities involved in uranium enrichment or which hold enrichment-related technology or information. Technically speaking, all of the UK is subject to prohibition in the 2004 Regulations and thus would be captured under the current drafting of this definition.

3. We would also request further clarity is requested as to whether the tests set out in the proposed definitions apply to entities only at the point at which investment is being considered, or whether they apply to entities that have in the past or might in the future meet those criteria. We recommend that the tests should apply only at the point of investment, to avoid unnecessary referrals. In particular, the industry would welcome specific guidance on the department's proposed treatment of "greenfield" joint ventures, which do not at the time have any qualifying assets or activitis but where the intention is for that joint venture to carry out activities "of a specified description" at some point in the future. These types of projects are common in the industry and it is important that investors have clarity as to the point at which a mandatory notification would be triggered (e.g. when the parties apply for a nuclear site licence). Guidance on the application of the mandatory regime to joint ventures which do not involve the creation of a new legal entity but which comprise a combination of certain assets would also be welcome.