

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

EIA Amendment Directive Public Consultation

December 2016



Department for
Infrastructure

An Roinn

Bonneagair

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1. RESPONDING TO THIS CONSULTATION DOCUMENT

1.1 How to respond

You are invited to send your views on this consultation document. Comments should reflect the structure of the document as far as possible with references to question numbers and paragraph numbers where relevant.

All responses should be made in writing and submitted to the Department no later than 9 February 2017 in one of the following ways:

1. **By post to:**

EIA Amendment Directive Consultation
Planning Policy Division
Room 1-18
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

2. **By e-mail to:** ppdconsultations@infrastructure-ni.gov.uk

In keeping with government policy on openness, responses to this consultation may be made available on request or published on the Department's planning website at www.planningni.gov.uk. Before you submit your response please read Annex 5, 'Freedom of Information Act 2000 – Confidentiality of Consultations'.

We look forward to receiving responses to the proposals and issues raised within this consultation document. Additional copies of the consultation document can be downloaded from following websites: www.infrastructure-ni.gov.uk/consultations or www.planningni.gov.uk or requested via the postal address, e-mail as above, by telephone on (028) 90540572 (text relay prefix 18001).

This document is available in alternative formats.

Please contact us to discuss your requirements.

If you have any comments or complaints about the consultation process itself (rather than the content of this document), these should be directed to the postal or e-mail addresses above.

2. IMPACT ASSESSMENTS

Government bodies are required to screen the impact of new policies and legislation against a wide range of criteria, including equality and human rights.

Preliminary Regulatory Impact Assessment and an Equality Impact Assessment Screening have been undertaken and are set out at Annexes 2 and 3 to this consultation paper. The Department believes that there would be no differential impact in rural areas or on rural communities.

The Department also considers that the proposals laid out in this document are fully compliant with the Human Rights Act 1998.

The Department welcomes views and comments on whether the conclusions contained in the above assessments are correct.

3. INTRODUCTION

The Department for Infrastructure “the Department” is inviting comments on the enclosed consultation which sets out proposals for implementing the European Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (known as the Environmental Impact Assessment or 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 reduce their impact on the environment.

The requirements of the EIA Directive form part of European law and the Department is responsible for the proper transposition of Directive 2014/52/EU into planning legislation in the north. The Department therefore proposes to revoke the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and enact the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (“2017 EIA Regulations”).

In many cases, the requirements of the EIA Directive are mandatory. Member States have to implement the requirements set out in the Directive, but the method or process for doing so is at the discretion of the Member State. The purpose of this consultation is to seek comments on the approach we have taken and whether this appropriately implements these mandatory requirements.

4. BACKGROUND

The EIA Directive (85/337/EEC), which has been in force since 1985, has been amended several times, the most recent amendments were made by the 2011/92/EU Directive which consolidated the changes that came before it. Following a report on the application and effectiveness of the Directive and a wide public consultation, an amended EU Directive (2014/52/EU) came into force on 15 May 2014 and must be implemented by Member States by 16 May 2017.

The EIA Directive requires the assessment of the effects of certain public and private projects on the environment before planning permission is granted. Its main aim is to ensure that a planning authority giving planning permission for a project makes its decision in the full knowledge of any likely significant effects on the environment.

The European Commission website¹ states that the newly amended EIA Directive was introduced primarily to simplify the rules for assessing the potential effects of projects on the environment. It is intended to lighten unnecessary administrative burdens, reinforce the quality of decision-making, improve current levels of environmental protection and introduce a more harmonised regulatory framework, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

Its aims are to correct the shortcomings of the previous regime, reflect ongoing environmental and socio-economic changes and challenges, and align it with the principles of smart regulation. In addition, emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention are now reflected in the assessment process.

¹ <http://ec.europa.eu/environment/eia/review.htm>

The EIA Directive's requirements are for the most part procedurally based and must be followed by Member States for certain types of projects before planning permission can be granted. It helps to ensure that the potential effects of development on the environment and human health, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

The appropriate planning authorities in the north make decisions about the future development and use of land. They consider where development should take place, taking proper account of the potential impact of such development on its surroundings. The planning system considers different interests relating to development to ensure land is used and developed in a way that creates high quality, sustainable places. The aim is to balance the need for development and economic growth while ensuring the environment remains well protected.

For the majority of planning applications an EIA would not be required, however, for those developments likely to have a significant effect on the environment, the planning system provides a means of assessing the environmental effects of the proposal through the EIA process.

4.1 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

This consultation paper sets out the key changes to the EIA Directive that impact on the planning system and which the Department proposes to transpose through the 2017 EIA Regulations, a draft of which is attached at Annex 1.

Some key changes to the EIA Directive include the following:

- Administrative burdens will be reduced and processes streamlined through the introduction of joint and/or coordinated procedures when a development also requires assessment under the Habitats/Wild Birds Directive.

- The environmental factors to be considered in the assessment have been refined and broadened to reflect emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention.
- The screening procedure, determining whether an EIA is required, is strengthened through new information requirements and a revision of the selection criteria to be considered when making decisions. The Directive also clarifies that only those developments with significant environmental effects should be subject to an assessment.
- The information to be contained with the Environmental Statement has been revised and clarified to improve their quality and content.
- Environmental Statements are to be prepared by competent experts and planning authorities are to have access to sufficient expertise to examine and assess the statements.
- The grounds for planning permission decisions must be clear and considered and reasons for determinations and decisions must be provided and shared with the public. In addition, planning authorities need to prove their objectivity to avoid conflicts of interest.
- Monitoring, proportionate to the nature, location and size of the development, will be required for developments which appear to have significant negative effects on the environment. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.
- Effective, proportionate and dissuasive penalties are to be introduced for breaches of the requirements of the Directive.

5. ASSESSMENT PROCESS

5.1 Definition of Environmental Impact Assessment Process

For the first time, the Directive includes a definition of the EIA process, which outlines each step in the process from the submission of the Environmental Impact Assessment Report by the developer to the integration of the competent authority's reasoned conclusion into the decisions made on the development under consideration.

While adjustments and improvements have been introduced to these various steps, the overall process has not changed from before. However, what this definition does is to further clarify what the EIA process entails and that all steps must be concluded or the environmental impact assessment will be incomplete.

Please note the EIA Directive refers to an "Environmental Impact Assessment Report". In the 2017 EIA Regulations and this consultation document, this report is called the "**Environmental Statement**", therefore any references to the Environmental Impact Assessment Report in the Directive equate to Environmental Statement in the Regulations.

The actual wording of the Directive is as follows:

Article 1(2)(g)

"environmental impact assessment" means a process consisting of:

- ***the preparation of an environmental impact assessment report by the developer...***
- ***the carrying out of consultations ...;***
- ***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 ...***

- *and any relevant information received through the consultations...;*
- *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 Article 1(2)(g)(iii) and, where appropriate, its own supplementary examination; and*
- *the integration of the competent authority's reasoned conclusion into any of the decisions*

This article is mandatory and has been transposed in regulation 5 in the 2017 EIA Regulations.

5.2 Exemptions – Defence/Civil Emergencies

The Directive allows for some projects to be made exempt from the requirements of the Directive e.g. projects serving national defence purposes. These exemptions have been extended and now also apply to projects which are solely in response to civil emergencies.

The actual wording of the Directive is as follows:

Article 1(3)

Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

Defence is a reserved matter therefore provisions concerning defence are covered in the relevant UK legislation. The exemption for civil emergencies has been transposed in regulation 3(1)(c) in the 2017 EIA Regulations.

5.3 Coordinated Procedures

The newly amended EIA Directive aims to reduce administrative burdens and align the process with the principles of smart regulation while improving environmental protection and so introduces the concept of streamlining environmental assessments.

In the case of projects for which there is an obligation to carry out an assessment under the EIA Directive and also under the Habitats and/or Birds Directives, the EIA Directive requires that either a **coordinated procedure** or a **joint procedure** should be used. The coordinated procedure is undertaken by designating a lead authority to coordinate the individual assessments, whereas the joint procedure requires a single assessment.

We feel that a coordinated procedure offers the most effective method of delivering smart regulation, providing greatest flexibility around the phasing and timing of EIA and any assessment required under the Habitats and/or Birds Directives. This is consistent with the approach adopted in all other UK Member State jurisdictions.

The actual wording of the Directive is as follows:

Article 2(3)

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first

subparagraph, Member States may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure referred to in the first and second subparagraphs, Member States shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

This article is mandatory and has been transposed in regulation 23 in the 2017 EIA Regulations.

Finally, this article also sets out provision such that Member States *may* choose to cover within the scope of their joint or coordinated procedure any assessments required under the Water Framework Directive, the Industrial Emissions Directive, the SEA Directive, the Waste Framework Directive, and the SEVESO III Directive. We do not propose to legislate for mandatory coordination in these circumstances, however, the Department will consider any comments received in relation to possible practical issues arising from this approach to coordination.

Question 1. Do you agree with proposals to provide for a coordinated rather than joint procedure?

Question 2. Do you have any comments in relation to the possible practical issues arising from the proposed approach to co-ordination?

Question 3. Do you consider that our approach to the transposition of Article 1 and 2 as set out in the draft Regulations appropriately implements the requirements of the Directive?

6. INFORMATION TO BE ASSESSED

6.1 Environmental Impact Assessment Information

Through the EIA process the impact of the development on a range of environmental factors is considered. These environmental factors have been amended and clarified in the new Directive. The Directive also clarifies that the EIA should only be assessing **significant** effects of the project on the environment.

The actual wording of the Directive is as follows:

Article 3(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).

This article is mandatory and has been transposed in regulation 5(2) in the 2017 EIA Regulations.

6.2 Assessing the Risk of Major Accidents

In addition to the amended environmental factors listed above, the Directive introduces a new requirement – consideration of the vulnerability of the project to risks of major accidents and/or disasters.

The actual wording of the Directive is as follows:

Article 3(2)

The effects referred to in Article 3(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.

This article is mandatory and has been transposed in regulation 5(3) in the 2017 EIA Regulations.

Question 4. Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?

7. SCREENING

7.1 Information to be Provided for Screening

Screening is the process whereby the competent authority determines whether the proposed development should be subject to an environmental impact assessment. As in the previous Directive, the developer can request a screening determination on a development proposal, however, the information to be provided by the developer when making this request is now prescribed in the Directive.

When providing this information the developer needs to take account of the available results of other relevant assessments of the effects on the environment carried out under other EU legislation.

The Directive also clarifies that the developer may provide a description of any features and mitigation measures of the project envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment. This could negate the need to carry out an EIA and has the potential to reduce the number of EIAs.

The actual wording of the Directive is as follows:

Article 4(4)

Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

This article is mandatory and has been transposed in regulation 8(3) and 8(4) in the 2017 EIA Regulations.

7.2 Screening Determination

Screening determinations, both positive and negative, must be based on information provided by the developer and any preliminary verification or assessment of the effects on the environment carried out under other EU legislation. Previously negative decisions were only made available to the public on request but now, in all cases, the screening determination must be made available to the public with reasons justifying any decision.

The actual wording of the Directive is as follows:

Article 4(5)

The competent authority shall make its determination, on the basis of the information provided by the developer...taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive.

The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

This article is mandatory and has been transposed in regulation 8(12) and 8(13) in the 2017 EIA Regulations.

7.3 Maximum Timeframe for a Screening Determination

The Directive introduces a maximum timeframe for the competent authority to provide a screening determination. This determination must be made as soon as possible and within a period not exceeding 90 days from the date on which the developer has submitted all the information required.

The Directive also allows discretion in the maximum time limit in exceptional circumstances relating to the nature, complexity, location or size of the project.

The current legislative timeframe to make a screening determination is 4 weeks. In transposing the requirements the Department will maintain the current 4 week period but specify that where an extension needs to be agreed it will not exceed 90 days, except in the exceptional circumstances outlined above.

The actual wording of the Directive is as follows:

Article 4(6)

Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required...

In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

This article is mandatory and has been transposed in regulation 8(8) and 8(9) in the 2017 EIA Regulations.

Question 5. Are you content that the current timescale of 4 weeks for a screening determination is maintained subject to a maximum extension of 90 days?

Question 6. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

8. ENVIRONMENTAL STATEMENT

8.1 Information to be provided in an Environmental Statement

The information to be included in the Environmental Statement has been refined and clarified. In addition, a new provision has been introduced requiring that where a scoping opinion is requested the Environmental Statement must be “based on” that opinion.

The actual wording of the Directive is as follows:

Article 5(1)

Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report².

The information to be provided by the developer shall include at least:

(a) a description of the project comprising information on the site, design, size and other relevant features of the project;

(b) a description of the likely significant effects of the project on the environment;

(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;

² As stated in section 5.1 above the Draft 2017 EIA Regulations refer to an Environmental Statement which equates to the Environmental Impact Assessment Report in the EIA Directive.

(e) a non-technical summary of the information referred to in points (a) to (d); and

(f) any additional information ... relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued... the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

This article is mandatory and has been transposed in regulation 11 in the 2017 EIA Regulations.

Annex IV of the Directive sets out information in detail that can be included in the Environmental Statement. This is mandatory and has been transposed in Schedule 4 of the 2017 EIA Regulations.

Question 7. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?

9. SCOPING

9.1 Scoping Opinion

Currently the developer can require a competent authority to issue a scoping opinion setting out the information to be included in the Environmental Statement. Scoping has an important role to play in delivering a proportionate

and effective EIA process. In order to gain the full benefits of EIA, developers are encouraged to engage, where appropriate, with the competent authority and with the consultation bodies during the early stages of planning and design. In this way EIA can help to facilitate the early avoidance of adverse effects through changes to design strategies.

The factors to be taken into account by the competent authority when issuing a scoping opinion have been amended in the Directive. This has had a subsequent impact on the information we require the developer to provide when making a scoping request.

The actual wording of the Directive is as follows:

Article 5(2)

Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report The competent authority shall consult the authorities... before it gives its opinion.

Member States may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.

The developer will be responsible for supplying the appropriate information as set out in regulation 8(5) of the draft 2017 EIA Regulations to the competent authority in order to carry out an effective scoping opinion.

Question 8. Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?

10. ASSESSMENT QUALITY AND EXPERTISE

10.1 Competent Experts

To improve the quality of the environmental impact assessment process, the Directive requires that experts involved in the preparation of Environmental Statements should be qualified and competent. Furthermore the Directive stipulates that the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the Statement.

Given the diverse range of EIA topics and different areas of specialist expertise, we do not propose to define in legislation any particular route to or procedures for accreditation in this respect. The assessment of relevant expertise will be a matter for the competent authorities relating to the particular circumstances of the development proposals.

The actual wording of the Directive is as follows:

Article 5(3)

In order to ensure the completeness and quality of the environmental impact assessment report:

(a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;

(b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and

(c) where necessary, the competent authority shall seek from the developer supplementary information... which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

This article is mandatory and has been transposed in regulation 11 in the 2017 EIA Regulations.

Question 9. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

11. CONSULTATION AND PUBLICITY

11.1 Timeframes for Consulting the Public

The Directive sets a new minimum time frame for public consultations on the Environmental Statement, which should be no shorter than 30 days.

The current existing timescale of 4 weeks for public consultation will be updated to 30 days.

The actual wording of the Directive is as follows:

Article 6(7)

The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

This article is mandatory and the appropriate timeframes have been transposed to the 2017 EIA Regulations (e.g.) regulation 20(3).

Question 10. Do you consider the new timeframes appropriately implement the requirements of Directive?

12. DECISIONS

12.1 Up-to-date Reasoned Conclusion

The EIA process includes the requirement for the competent authority to make a reasoned conclusion on the significant effects of the development on the

environment. This reasoned conclusion is already an integral part of the planning permission process but the Directive now clarifies that this conclusion must be still “up-to-date” when the final decision whether to grant planning permission is made.

We propose that the reasoned conclusion should be considered up to date if the competent authority is satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the development on the environment at the time of the decision.

The actual wording of the Directive is as follows:

Article 8a(6)

The competent authority shall be satisfied that the reasoned conclusion ..., or any of the decisions ..., is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion...

This article is mandatory and has been transposed in regulation 24(3) in the 2017 EIA Regulations.

12.2 Information to be Included in a Decision

The Directive clarifies the information to be included in a decision to grant planning permission. The first part reflects the requirement in Article 1(2)(g)(v) that the competent authority’s reasoned conclusion must be integrated into any decision.

The second requirement sets out that, in addition to any planning environmental conditions attached to the decision, competent authorities must also ensure that any mitigation measures and appropriate procedures regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of a project are identified and clearly set out in the permission.

The actual wording of the Directive is as follows:

Article 8a(1)

The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion ...;

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

This article is mandatory and has been transposed in regulation 26 in the 2017 EIA Regulations.

12.3 Informing the Public of the Decision

The Directive introduces additional information, including results of the consultations undertaken, which must be included in the decision. There is also a requirement that the competent authorities must promptly inform the public once a decision whether to grant planning permission has been made.

The actual wording of the Directive is as follows:

Article 9(1)

When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities ... thereof, in accordance with the national procedures, and shall ensure that the following information is available to the public and to the authorities ...,

(a) the content of the decision and any conditions attached thereto ...

(b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also

includes the summary of the results of the consultations and the information gathered ... and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State

This article is mandatory and has been transposed in regulation 27 and 45(1)(c) in the 2017 EIA Regulations.

Question 11. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

13. MONITORING

13.1 Monitoring Requirements

The Directive requires that the decision to grant planning permission should include, where appropriate, monitoring measures for developments which appear to have significant negative effects on the environment. The factors to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the development.

Monitoring should not be used as a general means of gathering environmental information and should not duplicate any monitoring required for other reasons. Existing monitoring arrangements can be used if appropriate.

The actual wording of the Directive is as follows:

Article 8a(4)

Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

This article is mandatory and has been transposed in regulation 25 in the 2017 EIA Regulations.

Question 12. Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?

14. CONFLICT OF INTERESTS

14.1 Objectivity

The Directive introduces a new article dealing with a conflict of interest and stipulates that in cases where an organisation is both the developer and the competent authority, there must be an appropriate separation between functions. This is already the case in planning processes in the north but the 2017 EIA Regulations now include express provision for this.

The actual wording of the Directive is as follows:

Article 9a

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

This article is mandatory and has been transposed in regulation 44 in the 2017 EIA Regulations.

Question 13. Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?

15. PENALTIES

15.1 Rules on Penalties

The Directive now expressly requires effective, proportionate and dissuasive penalties to be introduced for breaches of the requirements of the Directive.

Ultimately it will be a matter for the courts to determine whether any breach of EIA provisions has occurred, with the ultimate sanction that an existing permission or consent could be quashed. Unlawful EIA development, like other forms of unlawful development, may be subject to enforcement proceedings.

We consider that the existing planning enforcement powers provide an appropriate penalty system for unlawful development. To reinforce this position we propose placing an explicit duty on planning authorities to consider if the requirements and objectives of the EIA Directive have been met when considering enforcement action as set out in regulation 32 of the 2017 EIA Regulations.

The actual wording of the Directive is as follows:

Article 10a

Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

This article is mandatory and has been transposed in Part 9 of the 2017 EIA Regulations.

Question 14. Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?

CONSULTATION QUESTIONS

Question 1. Do you agree with proposals to provide for a coordinated rather than joint procedure?

Q1. YES/NO

Comment:

Question 2. Do you have any comments in relation to the possible practical issues arising from the proposed approach to co-ordination?

Q2. YES/NO

Comment:

Question 3. Do you consider that our approach to the transposition of Article 1 and 2 as set out in the draft Regulations appropriately implements the requirements of the Directive?

Q3. YES/NO

Comment:

Question 4. Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?

Q4. YES/NO

Comment:

Question 5. Are you content that the current timescale of 4 weeks for a screening determination is maintained subject to a maximum extension of 90 days?

Q5. YES/NO

Comment:

Question 6. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

Q6. YES/NO

Comment:

Question 7. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?

Q7. YES/NO

Comment:

Question 8. Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?

Q8. YES/NO

Comment:

Question 9. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

Q9. YES/NO

Comment:

Question 10. Do you consider the new timeframes appropriately implement the requirements of Directive?

Q10. YES/NO

Comment:

Question 11. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

Q11. YES/NO

Comment:

Question 12. Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?

Q12. YES/NO

Comment:

Question 13. Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?

Q13. YES/NO

Comment:

Question 14. Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?

Q14. YES/NO

Comment:

**Draft the Planning (Environmental Impact Assessment)
Regulations (Northern Ireland) 2017**

STATUTORY RULES OF NORTHERN IRELAND

2017 No.

PLANNING

**The Planning (Environmental Impact Assessment) Regulations
(Northern Ireland) 2017**

Made - - - - 2017

Coming into operation - 16th May 2017

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PART 1

PART 2

The Department for Infrastructure is a designated⁽³⁾ Department for the purposes of section 2(2) of the European Communities Act 1972⁽⁴⁾, in relation to the environment.

The Department for Infrastructure makes the following regulations in exercise of the powers conferred on it by that section.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and shall come into operation on 16th May 2017.

⁽³⁾ S.I. 2008/301

⁽⁴⁾ 1972 c.68 The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽⁵⁾ shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011⁽⁶⁾ and references to sections are references to sections in that Act;

“any other information” means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;

“any particular person” includes any non-governmental organisation promoting environmental protection;

“the Commission” means the Planning Appeals Commission;

“council” means a district council;

“the Department” means the Department for Infrastructure;

“developer” means a person carrying out or proposing to carry out development;

“the Directive” means Council Directive 2011/92/EU (as amended by Council Directive 2014/52/EU);

“documents” includes photographs, drawings, maps and plans;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented immediately prior to the commencement of these Regulations;

“EEA state” means:—

- (a) a state which is a member state; or
- (b) any other state which is a party to the EEA agreement;

“EIA application” means—

- (a) an application for planning permission for EIA development; or
- (b) a subsequent application in respect of EIA development;

“EIA development” means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental assessment” means any assessment of potential environmental impacts which are relevant to an EIA application;

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001⁽⁷⁾

“environmental condition” means any condition placed on the grant of planning permission for EIA development which are expressed as being intended to address any likely significant environmental effects of the development;

“environmental impact assessment” means the process described in regulation 5(1);

“environmental information” means the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be consulted and any representations duly made by any other person about the likely environmental effects of the proposed development;

⁽⁵⁾ 1954 c.33 (N.I.)

⁽⁶⁾ 2011 c.25 (N.I.)

⁽⁷⁾ 2001 c.9 (N.I.) (as amended by 2003 c.21)

“environmental statement” has the meaning given by regulation 11;

“exempt development” means development in respect of which the Department has made a direction under regulation 3(1)(b);

“further information” has the meaning given to it in regulation 21(1);

“the General Development Procedure Order” means the Planning (General Development Procedure) Order (Northern Ireland) 2015⁽⁸⁾;

“the General Regulations” means the Planning General Regulations (Northern Ireland) 2015⁽⁹⁾;

“the land” means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“local advertisement”, in relation to a notice, means—

(a) by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and

(b) where the Department, council, or the Commission maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;

“remedial action” means action needed to address the significant environmental impacts of the development;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 and Schedule 2 development respectively;

“Schedule 1 development” means development other than exempt development of a description mentioned in Schedule 1;

“Schedule 2 development” means development other than exempt development of a description mentioned in column 1 of the table in Schedule 2 where—

(a) any part of that development is to be carried out in a sensitive area; or

(b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to that development;

“selection criteria” means the criteria set out in Schedule 3;

“sensitive area” means any of the following—

(a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002⁽¹⁰⁾;

(b) an area of outstanding natural beauty, that is to say, an area so designated under Article 14(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985⁽¹¹⁾;

(c) a National Park, that is to say an area so designated under Article 12(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

(d) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage⁽¹²⁾;

(e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995⁽¹³⁾

(f) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995⁽¹⁴⁾.

⁽⁸⁾ S.R. 2015 No. 72

⁽⁹⁾ S.R. 2015 No. 39

⁽¹⁰⁾ S.I. 2002/3153 (N.I. 7)

⁽¹¹⁾ S.I. 1985/170 (N.I. 1)

⁽¹²⁾ See Command Paper 9424

⁽¹³⁾ S.I. 1995/1625 (N.I. 9)

⁽¹⁴⁾ S.R. 1995 No. 380

“subsequent application” means an application for approval of a matter where the approval—

(a) is required by or under a condition to which a planning permission is subject; and

(b) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” means consent granted pursuant to a subsequent application.

“unauthorised EIA development” means EIA development which is the subject of an enforcement notice under section 138 or 139;

“Union legislation” means any enactment in the domestic legislation of Northern Ireland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under EU Treaties.

(3) Subject to paragraph (4), expressions used both in these Regulations and in the 2011 Act have the same meaning for the purposes of these Regulations as they have for the purposes of that Act.

(4) Expressions used in these Regulations and in the Directive (whether or not used in the 2011 Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) In these Regulations any reference to a Council Directive is a reference to that Directive as amended immediately prior to the commencement of the Regulations.

(6) In these Regulations, and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression “address” includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to plans, notices or other documents or to copies of such things include references to such documents or copies of them in electronic form.

(7) Paragraphs (8) to (11) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(8) The requirement shall (except in the case of service of a notice under regulation 34) be taken to be fulfilled where the notice or other document transmitted by means of electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(9) In paragraph (8), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(10) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.

(11) A requirement in these Regulations that any application, notice or other document should be in writing is fulfilled where the document meets the criteria in paragraph (8).

Directions

3.—(1) The Department may direct that—

- (a) a particular development of a description described in column 1 of the table in Schedule 2 and which does not meet the conditions in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” is EIA development;
 - (b) in accordance with Article 2.4 of the Directive (but without prejudice to Article 7 of the Directive) that a specific development is exempted from these Regulations where the application of the Regulations would result in adversely affecting the purpose of the development, provided the objectives of these Regulations are met; or
 - (c) these Regulations do not apply in relation to a particular proposed development if the development comprises a development having the response to civil emergencies as its sole purpose and where the application of the Regulations would result in adversely affecting the purpose of the development.
- (2) Where a direction is given under paragraph (1)(b) or (c) the Department shall—
- (a) send a copy of the direction to the council;
 - (b) make available to the public the information considered in making the direction and the reasons for making the direction;
 - (c) consider whether another form of assessment would be appropriate; and
 - (d) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.

Prohibition on granting planning permission or subsequent consent without an environmental impact assessment

4.—A council, the Department or the Commission, as the case may require, must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such an assessment the council, Department or Commission must take the environmental information into consideration and state in their decision that they have done so.

Environmental impact assessment

- 5.—(1) An environmental impact assessment is a process consisting of-
- (a) the preparation of an environmental statement by the developer;
 - (b) any consultation, publication and notification required in respect of an EIA application; and
 - (c) the steps required under regulation 24 (1)(a) to (c).
- (2) The environmental impact assessment must identify, describe and assess, in an appropriate manner, the likely direct and indirect significant effects of the proposed EIA development 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; and
 - (e) the interaction between the factors referred to in subparagraphs (a) to (d).
- (3)The effects to be identified, described and assessed under paragraph (2) shall include the expected effects deriving from the vulnerability of the proposed EIA development to risks, so far as relevant to the development, of major accidents or disasters.

Confirmation that development is EIA development

6.—(1) Subject to any direction of the Department under regulation 3, the occurrence of an event mentioned in paragraph (2) shall determine, for the purposes of these Regulations, that development is EIA development.

(2) The events mentioned in paragraph (1) are—

- (a) the submission by the applicant or appellant, in relation to that development, of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
- (b) the determination by the council or by the Department, or following a hearing by the Commission, confirmation by the council or by the Department, that the development is EIA development.

Appeals under Section 58 or Section 60 of the 2011 Act

7.—(1) Where an appeal is made to the Commission under section 58 (appeals) or 60 (appeal against failure to take planning decision), the functions conferred on the council or on the Department by Part 3 to Part 8 of these Regulations shall be exercisable by the Commission in respect of that appeal.

(2) For the purposes of paragraph (1), regulation 15(3) shall have effect as if substituted by the following provision—

“(3) An appellant receiving a notification pursuant to paragraph (1) shall, within 4 weeks from the date of the determination, inform the Commission, in writing, that the appellant—

- (a) accepts the Commission’s determination and proposes to provide an environmental statement; or
- (b) does not accept the Commission’s determination.”

(3) For the purposes of paragraph (1), regulation 15(5) does not apply.

(4) For the purposes of paragraph (1), the phrase “Such a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 (appeals) or section 60 (appeal against failure to take planning decision)” contained in regulations 15(4), 15(6) and 21(3) shall not have effect.

PART 2

Pre-Application Procedures

Pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement

8.—(1) Subject to paragraphs (2) to (6), before applying for planning permission or subsequent consent a developer may apply in writing to the council or, as the case may be, the Department asking it to give—

- (a) a determination as to whether a proposed development would or would not be an EIA development;
- (b) an opinion as to the information to be provided in the environmental statement to be submitted with an EIA application.

(2) A request under paragraph 1(b) may be made at the same time as a request under paragraph 1(a).

(3) When making a request under paragraph 1(a), a developer must, having taken into account so far as relevant the criteria set out in Schedule 3 and the available results of

other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), provide the following information—

- (a) a plan sufficient to identify the land;
- (b) a description of the development including in particular –
 - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
 - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geological areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the development;
- (d) a description of any likely significant effects, to the extent of the information available on those effects, of the development on the environment resulting from –
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(4) The developer making a request under paragraph (1)(a) may also provide a description of any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(5) A request under paragraph 1(b) in respect of planning permission shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a description of the proposed development, including its location and technical capacity; and
- (c) an explanation of the likely significant effects on the environment

(6) A request under paragraph (1)(a) or (1)(b) in respect of subsequent consent shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) sufficient information to enable the council or, as the case may be, the Department to identify any planning permission granted for the development in respect of which a subsequent application has been made and
- (c) the information that a developer would be required to provide in accordance with paragraph (3), but only to the extent that this relates to the likely significant effects on the environment which were not identified at the time that the planning permission was granted.

(7) Where the council or, as the case may be, the Department has to make a determination under paragraph (1)(a), the following matters must be taken into account –

- (a) any information provided by the developer;
- (b) where relevant, the results of other preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than legislation implementing the requirements of the Directive; and
- (c) such of the selection criteria set out in Schedule 3 of these Regulations as are relevant to the proposed development.

(8) Subject to paragraph (10), the council or, as the case may be, the Department shall inform the applicant, in writing, of its determination under paragraph (1)(a) within 4 weeks from the date of receipt of the application, or within such extended period, not exceeding 90 days, as may be agreed in writing between the council or, as the case may be, the Department and the applicant. The Department shall send a copy of its determination to the council in whose district the proposed development is to be situated.

(9) Where the council or, as the case may be, the Department consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development that it is not practicable for the council or, as the case may be, the Department to adopt a screening determination within the period of 90 days beginning with the date of the request, the council or Department may extend that period by notice in writing to the applicant.

(10) Where the council or, as the case may be, the Department considers that it has not been provided with sufficient information to enable it to respond to a request under paragraph (1)(a) or (b) it shall notify the developer of the particular points on which further information is required, and the period for making the determination or for giving opinion on the content of the environmental statement shall not commence until receipt of that additional information.

(11) Subject to paragraph (14), the council or, as the case may be, the Department shall not give an opinion in response to a request under paragraph (1)(b) until it has consulted such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences, but shall respond to such a request within 6 weeks of receipt of that request or such longer period as may be agreed in writing with the applicant. The Department shall send a copy of its opinion to the council in whose district the proposed development is to be situated.

(12) If, in response to a request under paragraph (1)(a), the council or, as the case may be, the Department determines that an application would be an EIA application, it shall provide with the determination a written statement giving the main reasons for requiring an environmental impact assessment with reference to the relevant selection criteria.

(13) If, in response to a request under paragraph (1)(a), the council or, as the case may be, the Department, determines that an application would not be an EIA application, it shall provide with the determination a written statement giving the reasons for that conclusion with reference to the relevant selection criteria and, where proposed by the developer, state any features of the development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(14) Where the council or, as the case may be, the Department gives a determination under paragraph (12) and the applicant has also requested an opinion under paragraph (1)(b), the council or, as the case may be, the Department shall respond to the request for the opinion within 6 weeks of the date of issue of its determination under paragraph (12) or such longer period as may be agreed in writing with the applicant.

(15) In giving an opinion in response to a request under paragraph (1)(b), the council or, as the case may be, the Department shall take into account—

- (a) any information provided by the developer about the proposed development;
- (b) the characteristics of the development; and
- (c) the likely significant effects of the development on the environment

(16) Where, following receipt of an opinion under paragraph (14), an applicant wishes to proceed with the submission of an environmental statement, the applicant shall by notice in writing inform the council or, as the case may be, the Department to such effect within 4 weeks of the date of the opinion.

(17) Where the applicant wishes to proceed with the proposed development the applicant shall by notice in writing inform the council or, as the case may be, the Department that the applicant either—

- (a) accepts the council's or, as the case may be, the Department's determination under paragraph (12) and proposes to provide an environmental statement; or
- (b) does not accept the council's or, as the case may be, the Department's determination and proposes to seek a hearing before the Commission.

(18) The notice referred to in paragraph (17) shall be served on the council or, as the case may be, the Department within 4 weeks of the date of the determination.

(19) Where the council or, as the case may be, the Department has given an opinion under paragraph (1)(b) or where it has received a statement under regulation 6(2)(a) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

PART 3

Preparation of Environmental Statements

Procedure to facilitate preparation of environmental statements

9.—(1) A developer may give the council or, as the case may be, the Department notice in writing under this paragraph that the developer intends to submit an environmental statement.

(2) A notice under paragraph (1) shall include or be accompanied by the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving notice proposes to refer in the environmental statement.

(3) Where the council receives—

- (a) such a notice as is mentioned in paragraph (1); or
- (b) such a statement as is mentioned in regulation 8(17)(a);

it shall notify—

- (i) any other council in the area in which the land to which the proposal relates is situated of the details of the proposed development; and
- (ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences,

of the name and address of the developer and of the duty imposed on them by regulation 10(1) to make information available to the developer; and

- (iii) inform the developer in writing of the names and addresses of the bodies so notified.

(4) Where the Department receives—

- (a) such a notice as is mentioned in paragraph (1) or
- (b) such a statement as is mentioned in regulation 8(17)(a)

it shall notify—

- (i) the council or councils in the area in which the land to which the proposal relates is situated of the details of the proposed development; and
- (ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences,

of the name and address of the developer and of the duty imposed on them by regulation 10(1) to make information available to the developer; and

- (iv) inform the developer in writing of the names and addresses of the bodies so notified.

Provision of information

10.—(1) Subject to paragraph (2), any body notified by the council or, as the case may be, the Department pursuant to regulation 9(3) or (4) shall, if requested by the person who intends to submit the environmental statement, or may without such request, enter into consultation with that person with a view to ascertaining whether the body has

information in its possession which that person or they consider relevant to the preparation of the environmental statement, and shall make that information available to that person.

(2) Any body which receives a request for information under paragraph (1) shall treat it as a request for information under regulation 5(1) of the Environmental Information Regulations 2004⁽¹⁵⁾.

Environmental statements

11.—(1) An application for planning permission for EIA development must be accompanied by an environmental statement for the purposes of these Regulations.

(2) An environmental statement is a statement that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but which includes at least the information referred to in Part 2 of Schedule 4.

(3) The environmental statement referred to in paragraph (1) must –

- (a) be prepared by persons who have sufficient expertise to ensure the completeness and quality of the statement;
- (b) contain a statement by or on the behalf of the developer setting out how the requirements of paragraph (3)(a) have been complied with;
- (c) where an opinion has been issued in accordance with regulation 8, be based on the most recent opinion issued (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion); and
- (d) be prepared, taking into account other environmental assessments, with a view to avoiding duplication of assessment.

(4) The council or, as the case may be, the Department must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

PART 4

Procedures on Receipt of Application

Application which appears to require determination as to need for environmental impact assessment

12.—(1) Where it appears to the council or, as the case may be, the Department that an application for planning permission—

- (a) is a Schedule 1 application or a Schedule 2 application; and
- (b) the development in question has not been the subject of a determination as to whether the application is or is not an EIA application; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the council or, as the case may be, the Department shall make a determination as to whether the application is EIA development.

(2) Where this regulation applies, paragraphs (7), (8), (9), (12) and (13) of regulation 8 shall apply as if receipt of the application in paragraph (1) were a request made under paragraph (1)(a) of regulation 8.

(3) Where the council or, as the case may be, the Department considers that it has not been provided with sufficient information to enable it to make a determination, it shall notify

⁽¹⁵⁾ S.I. 2004/3391

the applicant of the particular points referred to in regulation 8(3) on which further information is required.

(4) Where the council or, as the case may be, the Department determines under this regulation that the application is an EIA application, the application shall subsequently be subject to the requirements of regulation 15.

Subsequent application where environmental information previously provided

13.—(1) This regulation applies where it appears to the council or, as the case may be, the Department that—

- (a) an application which is before it for determination—
 - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
 - (ii) has not itself been the subject of a determination as to whether the application is or is not an EIA application; and
 - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(2) Where it appears to the council or, as the case may be, the Department that the environmental information previously submitted in relation to the original application is adequate to assess the environmental effects of the subsequent application, it shall take that information into consideration in its decision for subsequent consent.

(3) Where it appears to the council or, as the case may be, the Department that the environmental information already before it is not adequate to assess the environmental effects of the development, it shall serve a notice seeking further information in accordance with regulation 21(1).

Subsequent application where environmental information not previously provided

14.—(1) Where it appears to the council or, as the case may be, the Department that—

- (a) an application—
 - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
 - (ii) has not itself been the subject of a determination as to whether the application is or is not an EIA application; and
 - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the council or, as the case may be, the Department shall make a determination as to whether the application is EIA development.

(2) Where this regulation applies, paragraphs, (7), (8), (9), (12) and (13) of regulation 8 shall apply as if receipt of the application in paragraph (1) were a request made under paragraph (1)(a) of regulation 8.

(3) Where the council or, as the case may be, the Department considers that it has not been provided with sufficient information to enable it to make a determination, it shall notify the applicant of the particular points referred to in regulation 8(6) on which further information is required.

(4) Where the council or, as the case may be, the Department determines under this regulation that the application is an EIA application, the application shall subsequently be subject to the requirements of regulation 15.

Application without an environmental statement

15.—(1) Where an EIA application, including an application determined as such under regulation 12 or 14, is not accompanied by an environmental statement or a statement referred to by the applicant as an environmental statement, the council or, as the case may be, the Department shall notify the applicant in writing that the submission of such a statement is required, giving clearly and precisely the full reasons for its view. The Department shall send a copy of its notification to the council in whose district the proposed development is to be situated.

(2) The council or, as the case may be, the Department shall notify the applicant in accordance with paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(3) An applicant receiving a notification pursuant to paragraph (1) shall, within 4 weeks from the date of the determination, inform the council or, as the case may be, the Department, in writing, that the applicant—

- (a) accepts the determination and proposes to provide an environmental statement; or
- (b) does not accept the determination and proposes to seek a hearing before the Commission.

(4) If the applicant does not inform the council or, as the case may be, the Department in writing in accordance with paragraph (3), the permission or subsequent consent sought shall be deemed to be refused at the end of the relevant 4 week period. Such a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 (appeals) or section 60 (appeal against failure to take planning decision).

(5) Where, following receipt of a notification pursuant to paragraph (1), an applicant proposes to seek a hearing before the Commission, the applicant shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.

(6) Where the council or, as the case may be, the Department determines, or following a hearing by the Commission confirms, that an environmental statement is required, the statement shall be submitted within 6 months from the date of determination or such extended period as may be agreed in writing between the applicant and the council or the Department, and if not so submitted, the application for planning permission or subsequent application shall be deemed to be refused. Such a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 (appeals) or section 60 (appeal against failure to take planning decision).

(7) Where, following a hearing by the Commission, the council or, as the case may be, the Department withdraws its determination that an environmental statement is required, the period within which the application for planning permission or subsequent application is to be determined shall be calculated from the date of notice to the applicant of the council's or Department's withdrawal.

(8) Where the council or, as the case may be, the Department makes a determination under regulation 12(1) or 14(1) that an environmental statement is required or confirms a determination under paragraph (6), regulations 9 and 10 shall apply.

Application referred to the Department under section 29 without an environmental statement

16.—(1) Where an application has been referred to the Department under section 29 for determination, and it appears to the Department that—

- (a) it is an EIA application; and
- (b) the development in question—
 - (i) has not been the subject of a determination as to whether the application is or is not an EIA application; or
 - (ii) in the case of a subsequent application, was the subject of a determination before planning permission was granted to the effect that it is not EIA development; and
- (c) the application in question is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (7), (8), (9), (10), (12) and (13) of regulation 8 shall apply as if the referral of the application were a request made by the applicant pursuant to regulation 8(1)(a).

(2) Where an application has been referred to the Department under section 29 for determination, and—

- (a) it is an EIA application, and
- (b) it is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the Department shall notify the applicant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the council in whose district the proposed development is to be situated.

(3) The Department shall notify the applicant in accordance with paragraph (2) within 4 weeks from the date of receipt of the application or such longer period as may be reasonably required.

(4) An applicant receiving a notification pursuant to paragraph (1), where the application has subsequently been determined to be EIA development, or paragraph (2) shall, within 4 weeks from the date of the determination, inform the Department, in writing, that the applicant—

- (a) accepts the determination and proposes to provide an environmental statement; or
- (b) does not accept the determination and proposes to seek a hearing before the Commission.

(5) If the applicant does not inform the Department in writing in accordance with paragraph (4), the permission or subsequent consent sought shall be deemed to be refused at the end of the relevant 4 week period.

(6) Where, following receipt of a notification pursuant to paragraph (1), where the application has subsequently been determined to be EIA development, or paragraph (2), an applicant proposes to seek a hearing before the Commission, the applicant shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.

(7) Where the Department determines, or following a hearing by the Commission confirms, that an environmental statement is required, the statement shall be submitted within 6 months from the date of determination or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted, the application for planning permission or subsequent application shall be deemed to be refused.

(8) Where, following a hearing by the Commission, the Department withdraws its determination that an environmental statement is required, the period within which the

application for planning permission or subsequent application is to be determined shall be calculated from the date of notice to the applicant of the Department's withdrawal.

(9) Where the Department receives a statement as is mentioned in paragraph (4)(a) or confirms a determination under paragraph (7), regulations 9(4) and 10 shall apply.

Extension of the period for council's or Department's decision on an application for planning permission or subsequent application

17. Where an application for planning permission or subsequent application is an EIA application, Articles 12 and 20 of the General Development Procedure Order shall have effect as if—

- (a) in Article 12 for the reference to a period of 8 weeks from the date the application was received; and
- (b) in paragraph (2)(b) of Article 20 for the reference to a period of 8 weeks from the date the application was received

there were substituted a reference to a period of 16 weeks; and

- (c) after paragraph (3)(b) of Article 20 there were inserted—
 - “(ba) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and
 - (bb) in the case of an application falling within regulation 12(1), or 14(1) where the council or, as the case may be, the Department has requested further information in order to make a determination under regulation 12(3) or 14(3), when that information was received; and
 - (bc) where evidence verifying information in the environmental statement has been requested, when that evidence was received; and”;
- (d) the date when an application is received for the purposes of Article 12 were the date when each of the events referred to in Article 20(3) (ba) to (bc) has occurred in relation to that application.

PART 5

Publicity and Consultation

Publicity where an environmental statement is submitted

18. Where an environmental statement is submitted, the developer shall make it available to the public, and the council or, as the case may be, the Department shall, when it receives the environmental statement—

- (a) publish notice of the application for planning permission or subsequent application by local advertisement, allowing the public a period of 30 days from the date on which the notice is first published, in which to make representations;
- (b) state in the notice that—
 - (i) the application for planning permission or subsequent application is accompanied by an environmental statement; and,
 - (ii) in the case of a subsequent application, that a copy of the planning permission and supporting documents for the development in respect of which the application has been made may be inspected by members of the public at all reasonable hours at the relevant office of the council or, as the case may be, the Department;

- (c) give in the notice, a postal address (within the locality in which the land proposed to be developed is situated) at which copies of the environmental statement may be obtained from the developer, so long as stocks last, and if a charge is to be made for a copy, state the amount of the charge; and
- (d) where it is aware of any particular person who is or is likely to be affected by, or has an interest in, the application for planning permission or subsequent application, and who is unlikely to become aware of it by means of a local advertisement, send a notice to such person containing the details set out in paragraphs (a) – (c) and the address of the relevant office of the council or, as the case may be, the Department.

Availability of copies of environmental statement

19. A developer who submits an environmental statement shall—

- (a) ensure that a reasonable number of copies are made available at the address given in the notice pursuant to regulation 18(c); and
- (b) provide the council or, as the case may be, the Department with sufficient copies of it, or parts of it, to enable the council or, as the case may be, the Department to comply with regulation 20 and 3 additional copies.

Consultation where environmental statement submitted

20.—(1) Where the council receives an environmental statement in relation to a proposed development, it shall consult any other council and bodies mentioned in regulation 9(3) and inform them that they may make representations.

(2) Where the Department receives an environmental statement in relation to a proposed development, it shall consult the council or councils and bodies mentioned in regulation 9(4) and inform them that they may make representations.

(3) The council or, as the case may be, the Department shall give not less than 30 days notice to any council and bodies consulted under paragraph (1) or (2) that environmental information is to be taken into account in determining the application for planning permission or subsequent application.

Further information and evidence relating to environmental statement

21.—(1) Where the applicant has submitted a statement which he refers to as an environmental statement and the council or, as the case may be, the Department is of the opinion that the statement should contain further information in order to be an environmental statement, it shall require the applicant, by notice in writing, to submit such further information.

(2) The council or, as the case may be, the Department may, by notice in writing, require an applicant to produce such evidence as it may reasonably call for to verify any information in the environmental statement.

(3) On receipt of a request under paragraphs (1) and (2) the applicant shall submit the further information or evidence within three months from the date of the request or such extended period as may be agreed in writing between the applicant and the council or, as the case may be, the Department, and if not so submitted the application shall be deemed to be refused. Such a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 (appeals) or section 60 (appeal against failure to take planning decision).

(4) Subject to paragraph (6), regulations 20 to 22 shall apply where such further information and any other information is received by the council or, as the case may be, the Department, as if references to “environmental statement” were references to “further information and any other information”.

(5) Subject to paragraph (6), where information is requested under paragraph (1) or any other information is received by the council or, as the case may be, the Department, it shall suspend determination of the application and shall not determine it before the expiry of the period of 30 days after the date on which notice of that information was published under regulation 18, or the expiry of the period of notice given to bodies consulted about that information under regulation 20, whichever is the latest.

(6) Paragraphs (4) and (5) shall not apply to further information and any other information provided for the purposes of a public local inquiry or hearing held under section 26(10) and (11), (Department's jurisdiction in relation to developments of regional significance) or section 29(6) and (7) (call-in of applications, etc. to Department).

(7) Where a public local inquiry or hearing is to be held under section 26(10) or (11) or section 29(6) or (7) in relation to an EIA application, the Department shall, not less than 30 days before the inquiry or hearing is to be held, publish notice of it by local advertisement.

(8) Every notice published pursuant to paragraph (7) shall contain:

- (a) a clear statement of the date, time and place of the inquiry or hearing;
- (b) details of where and when copies of any information provided for the purposes of the inquiry or hearing may be inspected and, where practicable, copied by the public.

(9) Where a public local inquiry or hearing is to be held under section 26(10) or (11) or section 29(6) or (7) in relation to an EIA application the Commission or, as the case may be, the person appointed by the Department shall, not less than 30 days before the inquiry or hearing is to be held, afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any information provided for the purposes of the inquiry or hearing.

(10) For the purposes of paragraph (9), an opportunity is to be taken as having been afforded to a person where the person is notified of—

- (a) publication on the Commission's website or, publication on a website accessible by the person appointed by the Department of any information provided for the purposes of the inquiry or hearing;
- (b) the address of that website; and
- (c) the place on the website where that information may be accessed, and how it may be accessed.

Charges

22.—(1) A reasonable charge reflecting the cost of printing and distribution of an environmental statement, part of it, or further information or any other information, may be made by the developer in respect of copies made available under regulation 19(a).

(2) A body entering into consultation pursuant to regulation 10, may make a reasonable charge for the costs of making available to the developer information in its possession.

PART 6

Coordination, Decision-making, Monitoring and Notification of Decisions

Coordination of assessments

23.—(1) Where, in relation to EIA development, there, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, is also a requirement to carry out an assessment of the

effects on the environment arising from Directive 92/43/EEC and/or Directive 2009/147/EC, the council or, as the case may be, the Department must where appropriate ensure that the Habitats Regulation Assessment and the environmental impact assessment are coordinated.

(2) In this regulation, a “Habitats Regulation Assessment” means an assessment under regulation 43 of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995.

Consideration of whether planning permission should be granted

24.—(1) When determining an EIA application the council or, as the case may be, the Department must-

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the likely significant effects of the proposed development on the environment, taking into account the examination referred to in subparagraph (a) (and, where appropriate, its own supplementary examination); and
- (c) include that reasoned conclusion in the decision as to whether planning permission is to be granted.

(2) The reasoned conclusion referred to in paragraph (1b) must be up to date at the time that the decision as to whether planning permission is to be granted; but that conclusion shall be taken to be up to date if [in the opinion of the council or, as the case may be, the Department,] it addresses the significant effects that are likely to arise as a result of the development described in an EIA application.

(3) In cases where no statutory timescale is in place, the decision of the council or, as the case may be, the Department as to whether planning permission is granted must be taken within a reasonable period of time after an examination which, takes into account the nature and complexity of the proposed development, from the date on which the council or, as the case may be, the Department has been provided with the environmental information.

Monitoring

25.—(1) Where an EIA application is determined by the council or, as the case may be, the Department and the decision is to grant planning permission, the council or Department must consider whether it is appropriate to impose a condition requiring monitoring of any significant adverse effects on the environment of the proposed development (“a monitoring condition”).

(2) When considering whether to impose a monitoring condition under paragraph (1), and the nature of any such monitoring conditions, the council or, as the case may be, the Department must consider-

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and
- (c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

(3) Where mitigation measures or monitoring conditions are required, the council or, as the case may be, the Department must take steps to ensure that those measures and conditions are implemented.

Information to accompany decisions

26.—(1) Where an EIA application is determined by the council or, as the case may be, the Department, the applicant must be provided with the information specified in paragraph (2).

(2) The information is-

(a) if the decision is to grant planning permission-

(i) the reasoned conclusion of the council or, as the case may be, the Department on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 24(1)(a) and (b);

(ii) any environmental conditions to which the decision is subject;

(iii) a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset the likely significant adverse effects on the environment; and

(iv) any monitoring measures considered appropriate by the council or, as the case may be, the Department;

(b) if the decision is to refuse planning permission, the main reasons for the refusal; and

(c) information regarding the right to challenge the validity of the decision and the procedures for doing so.

Duty to inform the public of decisions

27.—(1) Where an EIA application is determined, the council or, as the case may be, the Department shall inform the bodies mentioned in regulation 9(3) or 9(4)(ii), as appropriate, in writing and the public, by local advertisement or by such other means as are reasonable in the circumstances, of the decision.

(2) Where an EIA application is determined by the Department it shall also—

(a) notify the council of its decision;

(b) provide the council with a statement containing—

(i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;

(ii) a summary of the results of the consultations undertaken and information gathered in respect of applications and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and

(iii) details of the matters referred to in regulation 26(2).

(3) Where, after environmental information has been taken into consideration, an EIA application is determined by the Commission, the Commission shall—

(a) notify the council of its decision; and

(b) provide the council with a copy of a statement containing—

(i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;

(ii) a summary of the results of the consultations undertaken and information gathered in respect of applications and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and

(iii) details of the matters referred to in regulation 26(2).

(4) The council shall, as soon as reasonably practicable after receipt of the notification under paragraph (3), comply with paragraph (1) as if the decision so notified was a decision of the council.

PART 7

Development by a council

Modifications where application is by a council

28. Where the council is also (or would be) the applicant (whether alone or jointly with any other person), these Regulations shall apply to an EIA application (or proposed application) subject to the following modifications—

- (a) regulations 8 and 9 shall not apply;
- (b) regulation 10(1) shall apply to any body from whom the council requests assistance as it applies to any body notified in accordance with regulation 9(3);
- (c) regulation 18 shall apply as if—
 - (i) for “Where an environmental statement is submitted, the developer shall make it available to the public, and the council or, as the case may be, the Department shall, when it receives the environmental statement”, there were substituted “Where a council submits an environmental statement it shall”;
 - (ii) in paragraph (b)(ii) and (d) the words “or, as the case may be, the Department” were omitted;
 - (iii) in paragraph (c) the words “from the developer” were omitted.
- (d) paragraph (b) of regulation 19 shall not apply;
- (e) regulation 20 shall apply as if—
 - (i) in paragraph (1) for the word “receives” there were substituted “submits”;
 - (ii) paragraph (2) were omitted;
 - (iii) in paragraph (3) the words “or, as the case may be, the Department” were omitted.

PART 8

Development Likely to Affect Other EEA States

Development in Northern Ireland likely to have significant effects on the environment in another EEA state

29.—(1) Where the council becomes aware of an EIA application which is likely to have significant adverse effects on the environment in another EEA State, the council must immediately notify the Department. Such notification must include a copy of the application and all related environmental information.

(2) Where—

- (a) it comes to the attention of the Department that proposed development in Northern Ireland is the subject of an EIA application and is likely to have significant effects on the environment in another EEA state;
- (b) the Department receives such notification from the council referred to in paragraph (1); or
- (c) another EEA state likely to be significantly affected by such development so requests,

the Department shall—

- (i) publish a notice in the Belfast Gazette giving the address of the proposed development, stating that it is accompanied by an environmental statement and that it is likely to have significant effects on the environment of another EEA state and giving an address at which further information may be obtained;
- (ii) send to the EEA state as soon as possible and no later than the date of publication of the notice referred to in paragraph (i), the particulars mentioned in paragraph (3) and, if the Department thinks fit, the information referred to in paragraph (4); and
- (iii) give the EEA state a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3)The particulars referred to in paragraph (2)(ii) are—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA state; and
- (b) information on the nature of the decision which may be taken.

(4)Where an EEA state indicates in accordance with paragraph (2)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Department shall send to that EEA state—

- (a) a copy of the application concerned;
- (b) a copy of any planning permission relating to the development;
- (c) a copy of any environmental statement in respect of the development to which that application relates; and
- (d) relevant information regarding the procedure under these Regulations,

unless that information has already been provided to the EEA state earlier in accordance with paragraph (2)(ii).

(5)The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any further information and any other information to be made available, within a reasonable time, to the authorities referred to in Article 6.1 of the Directive and to the public concerned in the territory of the EEA state likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission or subsequent consent for the development is granted, to forward to the Department, within a reasonable time, their opinion on the information supplied.

(6)The Department shall in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with the EEA state concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the other EEA state, a reasonable period of time for the duration of the consultation period.

(7) Where an EEA state has been consulted in accordance with paragraph (4), on the determination of the application concerned, the Department shall inform the EEA state and shall forward to it details of the matters referred to in regulation 26(2).

Projects in another EEA state likely to have significant transboundary effects

30.—(1) Where the Department receives from another EEA state pursuant to Article 7.1 or 7.2 of the Directive information which the EEA state has gathered from the developer of a proposed project in that EEA state which is likely to have significant effects on the environment in Northern Ireland, the Department shall, in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with that EEA state regarding, amongst other things, the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that EEA state a reasonable period, before development consent for the project is granted, during which members of the public in Northern Ireland may submit to the competent authority in that EEA state representations pursuant to Article 7.3(b) of the Directive.

(2) The Department, in so far as it is concerned, shall also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Northern Ireland which it considers are likely to be concerned by the project by reason of their specific environmental responsibilities or local or regional competences, and to the public concerned in Northern Ireland;
- (b) ensure that those authorities and the public concerned in Northern Ireland are given an opportunity before development consent for the project is granted, to forward to the competent authority in the relevant EEA state, within a reasonable time, their opinion on the information supplied; and
- (c) make available to the public concerned, in an appropriate manner, any information received from the competent authority of the relevant EEA State in order to comply with Article 9.2 of the Directive.

PART 9

Unauthorised Development

Interpretation of Part 9

31. In this Part—

“deemed application” shall be construed in accordance with section 145(5) (appeal against enforcement notice — supplementary provisions relating to planning permission);

“enforcement notice” means a notice issued under section 138 (issue of enforcement notice by councils) or section 139 (issue of enforcement notice by department);

“ground (a) appeal” means an appeal under section 143 (appeal against enforcement notice), so far as brought on the ground mentioned in paragraph (3)(a) of that section.

Duty to ensure objectives of the Directive are met

32. The council or, as the case may be, the Department shall exercise their functions under the enactments relating to environmental impact assessments so as to secure compliance with the requirements of the Directive, including in relation to enforcement.

Prohibition on the grant of planning permission for unauthorised EIA development

33. The Commission shall not grant planning permission or subsequent consent under paragraph (1) of section 145 (appeal against enforcement notice — supplementary provisions relating to planning permission) in respect of unauthorised EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such an assessment the Commission has taken environmental information into consideration, and states in its decision that it has done so.

Determination as to need for environmental statement, etc.

34.—(1) Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise Schedule 1 or Schedule 2 development, the council or, as the case may be, the Department shall, before the enforcement notice is issued, make a determination, taking into account the selection criteria, the results of other environmental assessments, where relevant, and any such information as described in regulation 8(3) as may be available to the council or Department, as to whether the development is or is not EIA development.

(2) Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise or include EIA development the council or, as the case may be, the Department shall serve with a copy of the enforcement notice a notice (“regulation 34 notice”) which shall—

- (a) include a copy of the determination required by paragraph (1) and a written statement giving clearly and precisely full reasons for its conclusions; and
- (b) require a person who gives notice of an appeal under section 143 (appeal against enforcement notice) to submit to the Commission with the notice sufficient copies of the environmental statement relating to the unauthorised development to enable the Commission to comply with regulation 37.

(3) Where the council issues a regulation 34 notice it shall send a copy of the notice to—

- (a) the Commission;
- (b) any other council for the area in which the land to which the unauthorised development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised development by reason of their specific environmental responsibilities or local or regional competences; and
- (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(4) Where the Department issues a regulation 34 notice it shall send a copy of the notice to—

- (a) the Commission;
- (b) the council or councils in the area in which the land to which the unauthorised development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised development by reason of their specific environmental responsibilities or local or regional competences; and

(d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(5) Where the council or, as the case may be, the Department serves the Commission with a copy of a regulation 34 notice it shall also provide it with a list of the other persons to whom, in accordance with paragraph (3) or (4), a copy of the notice has been or is to be sent.

(6) Where a person gives notice of appeal under section 143 and the council or, as the case may be, the Department has served on that person a regulation 34 notice with which they do not agree, that person may by notice in writing, within 4 weeks of the service of the enforcement notice, inform the council or, as the case may be, the Department that they propose to seek a hearing before the Commission.

(7) Where, in relation to paragraph (6), a person proposes to seek a hearing before the Commission, that person shall by notice in writing, inform the Commission to such effect within 4 weeks of the service of the enforcement notice.

Time period for submission of environmental statement

35. Where the council or, as the case may be, the Department determines, or following a hearing by the Commission confirms that an environmental statement is required, it shall be submitted to the Commission within 6 months from the date of the determination or such extended period as may be agreed in writing between the applicant and the Commission and if not so submitted the deemed application for planning permission and the ground (a) appeal (if any) shall lapse at the end of that period.

Provision of information

36.—(1) Subject to paragraph (2), any person on whom a copy of a regulation 34 notice is served pursuant to regulation 34(3)(b) to (d) or regulation 34(4)(b) to (d) (“the consultee”) shall, if requested by the person on whom the regulation 34 notice was served, or may without such request, enter into consultation with that person to determine whether the consultee has in their possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to the prospective applicant.

(2) Regulation 10(2) and 22(2) shall apply to information under paragraph (1) as they apply to information under regulation 10(1).

Procedure where the Commission receives an environmental statement

37.—(1) Where the Commission receives an environmental statement, or a statement referred to by the appellant as an environmental statement, in connection with an enforcement appeal it shall serve a copy on the council or, as the case may be, the Department and those bodies on whom a copy of the regulation 34 notice was served.

(2) The Commission shall give not less than 30 days notice to the council or, as the case may be, the Department and the bodies referred to in paragraph (1) that environmental information will be taken into consideration in determining the ground (a) appeal (if any) and inform them that they may make representations.

Further information and evidence respecting environmental statements

38.—(1) Regulation 21(1) and (2) shall apply in relation to further information as if “the Commission” was substituted for the reference to “the council or, as the case may be, the Department” and the word “appellant” was substituted for the word “applicant”.

(2) If an appellant on whom notice has been given under paragraph (1) fails to provide the further information within the period specified in the notice, the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(3) Regulations 37 (procedure where the Commission receives an environmental statement) and 39 (publicity for environmental statements and decisions) shall apply in relation to further information received by the Commission in accordance with paragraph (1) as if references in those regulations to an environmental statement were references to the further information.

(4) The Commission shall send the council or, as the case may be, the Department a copy of any notice sent to the applicant under paragraph (1).

(5) Where the Department receives a notice under paragraph (4), it shall copy the notice to the council.

Publicity for environmental statements and decisions

39.—(1) Where the Commission receives a copy of an environmental statement, or a statement submitted by the appellant referred to as an environmental statement either of which is accompanied by further information and any other information, in connection with an enforcement appeal it shall publish by local advertisement a notice stating—

- (a) the name of the appellant and that the appellant has appealed to the Commission against the enforcement notice;
- (b) the address or location of the land to which the notice related and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the environmental statement and further information and any other information may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality at which the statement and further information and any other information may be inspected and the latest date it will be made available for inspection, being a period of 30 days from the date of the first publication of the notice;
- (f) that any person wishing to make representations about any matter dealt with in the statement and further information and any other information should make them in writing, no later than 30 days after the date of the first publication of the notice; and
- (g) the address to which such representations are to be sent.

(2) Where the Commission determines the ground (a) appeal it shall inform the council or, as the case may be, the Department of its decision and the provisions of regulation 27 (duty to inform the public of decisions) shall apply to any grant of planning permission under section 145 as they apply to a grant of planning permission under Part 3 of the 2011 Act.

Involvement of other EEA states

40. Regulation 29 (development in Northern Ireland likely to have significant effects on the environment in another EEA state) shall have effect as if—

- (a) for regulation 29 (2)(a) there were substituted—

“(a) on the consideration of an appeal under section 143 (appeal against enforcement notice), the Commission is of the opinion that matters which are alleged to constitute the breach of planning control comprise or include EIA development and the development has or is likely to have significant

effects on another EEA state, it shall notify the council or, as the case may be, the Department; or”;

- (b) regulation 29(2)(b) did not apply;
- (c) in regulation 29(2)(i) the word “proposed” was omitted;
- (d) in regulation 29(4)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”; and
- (e) in regulation 29(4)(c) the words “that application” were replaced by the words “the deemed application under section 145(5)”.

PART 10

Permission in Enterprise and Simplified Planning Zones and Permission Granted by Development Orders

Restrictions on grant of permission by old enterprise zone schemes

41.—(1) Any Order designating an enterprise zone or adoption of a modified scheme⁽¹⁶⁾ under the Enterprise Zones (Northern Ireland) Order 1981⁽¹⁷⁾ which has effect immediately before the commencement of these Regulations to grant planning permission shall, on and after that date cease to have effect to grant such permission for—

- (a) Schedule 1 development; or
- (b) Schedule 2 development unless the council or, as the case may be, the Department has made a determination that the proposed development is not EIA development.

(2) Paragraph (1) shall not affect the completion of any development begun before the commencement of these Regulations.

Restrictions on the grant of permission by simplified planning zone schemes and enterprise zone schemes

42. After the commencement of these Regulations—

- (a) the adoption of a simplified planning zone scheme under section 34 (or the alteration of such a scheme under section 37);
- (b) an order designating an enterprise zone under the Enterprise Zones (Northern Ireland) Order 1981 and the modification in relation to an approved enterprise zone under that Order,

shall not grant planning permission for—

- (i) Schedule 1 development; or
- (ii) Schedule 2 development unless the council or, as the case may be, the Department has made a determination that the development is not EIA development.

Development Orders

43. A development order under section 32 made after the commencement of these Regulations shall not grant planning permission for—

- (a) Schedule 1 development; or

⁽¹⁶⁾ See Article 19 of S.I. 1991/1220 (N.I. 11)

⁽¹⁷⁾ S.I. 1981/607 (N.I. 15)

- (b) Schedule 2 development unless the council or, as the case may be, the Department has made a determination that the development is not EIA development.

PART 11

Miscellaneous

Objectivity and bias

44. (1) The council or, as the case may be, the Department is to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) In such cases where the council or, as the case may be, the Department is also (or would be) the applicant, the council or Department must ensure a functional separation, when performing any duty under these Regulations, between those persons seeking planning permission and those responsible for determining whether that permission should be granted.

Availability of information in relation to determinations, opinions, decisions, etc.

45. (1) The council shall make available for public inspection at all reasonable hours at the place where a register pursuant to Article 24 of the General Development Procedure Order is kept, a copy of—

- (a) any determination or opinion given pursuant to regulation 8(1), 12(1), 14(1), or 16(1), notification under regulation 15(1) or 16(2), or determination confirmed or amended under regulation 46(2) together with the accompanying statement of reasons, the relevant request and the documents which accompanied it;
- (b) any environmental statement and further information and any other information received under these Regulations; and
- (c) where environmental information has been taken into consideration in determining an application for planning permission or subsequent application or appeal, a statement containing—
 - (i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
 - (ii) a summary of the results of the consultations undertaken and information gathered in respect of applications and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and
 - (iii) details of the matters referred to in regulation 26(2).

(2) a register pursuant to Article 26 of the General Development Procedure Order is kept, a copy of—

- (a) every regulation 34 notice served by the council or, as the case may be, the Department;
- (b) every determination made by the council or, as the case may be, the Department in accordance with regulation 34(2) or notice confirmed or amended under regulation 46(2) in respect of a deemed application under Part 8;
- (c) every environmental statement or additional information received by the council or, as the case may be, the Department by virtue of regulation 37(1); and

(d) every notice received by the council or, as the case may be, the Department under regulation 38(4) or (5).

(3) a register kept pursuant to Article 27 of the General Development Procedure Order is kept, a copy of any direction given by the Department pursuant to regulation 3(1)(a) and (b), and any information obtained under regulation 3(2).

(4) Where the registers kept under this regulation are kept using electronic storage, the council may make the registers available for inspection by the public on a website maintained by the council for that purpose.

Hearing by the Commission in relation to the council's or Department's determination

46.—(1) Where a person seeks a hearing before the Commission under regulations 8(17), 15(3) or 34(6) it shall afford that person the opportunity of appearing before and being heard by the Commission.

(2) Where a hearing is held, the council or, as the case may be, the Department shall consider the report of the Commission and may confirm, amend or withdraw its determination.

Use of electronic communications

47.—(1) Paragraph (2) applies where a person uses electronic communications to make an application under regulation 8 (pre-application determination as to the need for environmental impact assessment and opinion as to content of environmental statement), and except where a contrary intention appears, the applicant shall be taken to have agreed—

- (a) to the use of electronic communications for all purposes relating to the application which is capable of being effected using such communications;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application;
- (c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in writing that the person wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.

(2) In paragraphs (3)(a), 5(a) and 6(a) of regulation 8 the requirement for the application to be accompanied by a plan sufficient to identify the land to which the application relates is satisfied where the applicant identifies the land on an electronic map provided by the council or, as the case may be, the Department and for this purpose a map is taken to be provided where the council or, as the case may be, the Department has published it on its website.

Application to the Crown

48. These Regulations shall apply to the Crown.

Revocation, saving and transitional provisions

49.—(1) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015⁽¹⁸⁾ are revoked.

(2) Where by virtue of paragraph 2 of Schedule 2 to the Planning (2011 Act) (Commencement No. 3) and (Transitional Provisions) Order (Northern Ireland) 2015⁽¹⁹⁾ an application is to be treated

⁽¹⁸⁾ S.R. 2015 No.74

- (a) as if it had been made to the council under the 2011 Act;
- (b) as if it were an application to which section 26 applies; or
- (c) as if the Department had given a direction under section 29 that an application was to be referred to it,

then where that application is also an EIA application under the 2012 Regulations, anything done by or in relation to the Department in connection with any of its functions under the 2012 Regulations shall be treated as if it had been done by, to or in relation to the council or, as the case may be, the Department in connection with its functions under these Regulations.

(3)The Regulations specified in paragraph (4) which continued to apply by virtue of Regulation 40 of the 2012 Regulations (as that regulation had effect immediately before the coming into operation of these Regulations) in respect of the matters specified in paragraph 2(a) to (c) of that regulation shall continue to have effect in relation to those matters subject to the amendments specified in Schedule 5; and anything done by, to or in relation to the Department in connection with its functions under those Regulations shall be treated as if it had been done by, to or in relation to the council or, as the case may be, the Department in connection with its functions under those Regulations as amended by Schedule 5.

(4)The Regulations referred to in paragraph (3) are

- (a) the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999⁽²⁰⁾;
- (b) the Planning (Electronic Communications) Order (Northern Ireland) 2006⁽²¹⁾;
- (c) the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2008⁽²²⁾; and
- (d) the Planning (Environmental Impact Assessment) (Amendment No. 2) Regulations (Northern Ireland) 2008⁽²³⁾.

(5)Nothing in this regulation shall affect the generality of section 29 of the Interpretation Act (Northern Ireland) 1954.

Sealed with the Official Seal of the Department for Infrastructure on [DATE]



Angus Kerr
A senior officer of the
Department for Infrastructure

⁽¹⁹⁾ S.R. 2015 No. 49 (C.5)
⁽²⁰⁾ S.R. 1999. No. 73
⁽²¹⁾ S.R. 2006 No. 276
⁽²²⁾ S.R. 2008 No. 17
⁽²³⁾ S.R. 2008 No. 372

SCHEDULE 1

Regulation 2(2)

Descriptions of development for the purposes of the definition of “Schedule 1 development”

Interpretation

In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)⁽²⁴⁾;

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975⁽²⁵⁾;

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor shall not be treated as development of the description mentioned in paragraph 2(b) of this Schedule.

Descriptions of development

The carrying out of development to provide any of the following—

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2.

(a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and

(b) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.

(a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed—

(i) for the production or enrichment of nuclear fuel,

(ii) for the processing of irradiated nuclear fuel or high-level radioactive waste,

(iii) for the final disposal of irradiated nuclear fuel,

(iv) solely for the final disposal of radioactive waste,

(v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4.

(a) Integrated works for the initial smelting of cast-iron and steel;

(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

⁽²⁴⁾ See Command Paper 6614

⁽²⁵⁾ See Command Paper 6993

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

- (a) for asbestos–cement products, with an annual production of more than 20,000 tonnes of finished products;
- (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
- (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

6. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

- (a) for the production of base organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous–, nitrogen– or potassium–based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;
- (e) for the production of basic pharmaceutical products using a chemical or biological process;
- (f) for the production of explosives.

7.

- (a) Construction of lines for long–distance railway traffic and of airports with a basic runway length of 2,100 metres or more;
- (b) Construction of motorways and express roads;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length.

8.

- (a) Inland waterways and ports for inland–waterway traffic which permit the passage of vessels of over 1,350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC), of the European Parliament and of the Council on waste and repealing certain directives⁽²⁶⁾, under heading D9) or landfill of hazardous waste (as defined in regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005)⁽²⁷⁾.

10. Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.

- (a) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages

⁽²⁶⁾ O.J. No. L312, 22.11.08, p.3.
⁽²⁷⁾ S.R. 2005 No. 300

of water and where the amount of water transferred exceeds 100 million cubic metres per year;

- (b) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC⁽²⁸⁾.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres:

–for the transport of gas, oil or chemicals, or

–for the transport of carbon dioxide streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than—

(a) 85,000 places for broilers or 60,000 places for hens;

(b) 3,000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

18. Industrial plants for—

(a) the production of pulp from timber or similar fibrous materials;

(b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 kilometres.

21. Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

22. Any change to or extension of development listed in this Schedule where such a change or extension itself meets the thresholds, if any, or description of development set out in this Schedule.

23. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide⁽²⁹⁾.

24. Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

⁽²⁸⁾ O.J. No. L135, 30.5.91, p.40

⁽²⁹⁾ O.J. No. L140, 5.6.2009, p.114

SCHEDULE 2

Regulation 2(2)

Descriptions of development and applicable thresholds and criteria for the purposes of the definition of “Schedule 2 development”

25. In the Table below—

“area of the works”, includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“floorspace”, means floorspace in a building or buildings;

“waterway” and “underground strata” have the meanings assigned to them by Article 2(2) of the Water (Northern Ireland) Order 1999⁽³⁰⁾.

26. The Table below sets out the descriptions of development and applicable thresholds and criteria for the purposes of classifying development as Schedule 2 development.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
The carrying out of development to provide any of the following—	
27. Agriculture and aquaculture	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the development exceeds 0.5 hectare.
(b) Water management projects for agriculture, including irrigation and land drainage projects;	The area of the works exceeds 1 hectare.
(c) Intensive livestock installations (unless included in Schedule 1);	The area of floorspace exceeds 500 square metres.
(d) Intensive fish farming;	The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year.
(e) Reclamation of land from the sea.	All development.
28. Extractive industry	
(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1);	All development (except the construction of buildings or other ancillary structures where the floorspace does not exceed 1,000 square metres).
(b) Underground mining;	
(c) Extraction of minerals by fluvial or marine dredging;	All development.
(d) Deep drillings, in particular—	(iv) In relation to any type of drilling the area of the works exceeds 1 hectare; or (v) in relation to geothermal drilling and drilling for the storage of nuclear waste material only, drilling is to be undertaken
(i) geothermal drilling;	
(ii) drilling for the storage of nuclear waste material;	
(iii) drilling for water supplies; with the exception of drillings for	

⁽³⁰⁾ S.I. 1999 No. 662 (N.I. 6) as amended by S.I. 2006 No. 3336 (N.I. 21)

Column 1 Description of development	Column 2 Applicable thresholds and criteria
investigating the stability of the soil;	within 100 metres of any waterway or water in underground strata.
(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.
29. Energy industry	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(c) Transmission of electrical energy by overhead cables (unless included in Schedule 1);	(i) The nominal voltage of the electric line exceeds 33kV; and (ii) the purpose of the line is the provision of a supply to more than one consumer; (iii) where the modification of an existing line is proposed, it is outside the tolerances specified in the Overhead Lines (Exemption) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 118).
(d) Surface storage of natural gas; (e) Underground storage of combustible gases; (f) Surface storage of fossil fuels;	(i) the area of any building, deposit or structure exceeds 500 square metres; or (ii) a building, deposit or structure is to be sited within 100 metres of any waterway or water in underground strata.
(g) Industrial briquetting of coal and lignite;	The area of floorspace exceeds 1,000 square metres.
(h) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);	(i) The area of floorspace exceeds 1,000 square metres; or (ii) the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993.
(i) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
(j) Installations for the harnessing of wind power for energy production (wind farms).	(i) the development involves the installation of more than 2 turbines; or (ii) the hub height of any turbine or height of any other structure exceeds 15 metres.
(k) Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not included in Schedule 1.	All development

30. Production and processing of metals

<ul style="list-style-type: none"> (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting; (b) Installations for the processing of ferrous metals— <ul style="list-style-type: none"> (i) hot-rolling mills; (ii) smitheries with hammers; (iii) application of protective fused metal coats. (c) Ferrous metal foundries; (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.); (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process; (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines; (g) Shipyards; (h) Installations for the construction and repair of aircraft; (i) Manufacture of railway equipment; (j) Swaging by explosives; (k) Installations for the roasting and 	The area of floorspace exceeds 1,000 square metres.
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Column 1 Description of development	Column 2 Applicable thresholds and criteria
sintering of metallic ores.	
31. Mineral industry	
<ul style="list-style-type: none"> (a) Coke ovens (dry coal distillation); (b) Installations for the manufacture of cement; (c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1); (d) Installations for the manufacture of glass including glass fibre; (e) Installations for smelting mineral substances including the production of mineral fibres; (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain. 	The area of floor space exceeds 1,000 square metres.
32. Chemical industry (unless included in Schedule 1)	
<ul style="list-style-type: none"> (a) Treatment of intermediate products and production of chemicals; (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides; 	The area of floorspace exceeds 1,000 square metres.
<ul style="list-style-type: none"> (c) Storage facilities for petroleum, petrochemical and chemical products. 	<ul style="list-style-type: none"> (i) The area of any building or structure exceeds 0.05 hectare; or (ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.
33. Food industry	
<ul style="list-style-type: none"> (a) Manufacture of vegetable and animal oils and fats; (b) Packing and canning of animal and vegetable products; (c) Manufacture of dairy products; (d) Brewing and malting; (e) Confectionery and syrup manufacture; (f) Installations for the slaughter of animals; (g) Industrial starch manufacturing installations; 	The area of floorspace exceeds 1,000 square metres.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
(h) Fish-meal and fish-oil factories; (i) Sugar factories.	
34. Textile, leather, wood and paper industries	
(a) Industrial plants for the production of paper and board (unless included in Schedule 1); (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles; (c) Plants for the tanning of hides and skins; (d) Cellulose-processing and production installations.	The area of floor space exceeds 1,000 square metres.
35. Rubber industry	
Manufacture and treatment of elastomer-based products.	The area of floor space exceeds 1,000 square metres.
36. Infrastructure projects	
(a) Industrial estate development projects; (b) Urban development projects, including the construction of shopping centres and car parks; (c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(d) Construction of railways (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in Schedule 1);	(i) The development involves an extension to a runway; or (ii) the area of the works exceeds 1 hectare.
(f) Construction of roads (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(g) Construction of harbours and port installations, including fishing harbours (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(h) Inland-waterway construction (unless included in Schedule 1), canalisation and flood-relief works;	The area of the works exceeds 1 hectare.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
<p>(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);</p> <p>(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;</p>	
<p>(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1);</p> <p>(l) Installations of long-distance aqueducts;</p>	<p>(i) The area of the works exceeds 1 hectare; or,</p> <p>(ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.</p>
<p>(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;</p>	All development.
<p>(n) Ground water abstraction and artificial ground water recharge schemes (unless included in Schedule 1);</p> <p>(o) Works for the transfer of water resources between river basins (unless included in Schedule 1).</p>	The area of the works exceeds 1 hectare.
37. Other projects	
<p>(a) Permanent racing and test tracks for motorised vehicles;</p>	The area of the development exceeds 1 hectare.
<p>(b) Installations for the disposal of waste (unless included in Schedule 1);</p>	<p>(i) The disposal is by incineration; or</p> <p>(ii) the area of the development exceeds 0.5 hectare; or</p> <p>(iii) the installation is to be sited within 100 metres of any waterway or water in underground strata or, marine waters.</p>
<p>(c) Waste-water treatment plants (unless included in Schedule 1);</p>	The area of the development exceeds 1,000 square metres.
<p>(d) Sludge-deposition sites;</p> <p>(e) Storage of scrap iron, including scrap vehicles;</p>	<p>(i) The area of the deposit or storage exceeds 0.5 hectare; or</p>

Column 1 Description of development	Column 2 Applicable thresholds and criteria								
	(ii) a deposit is to be made or scrap stored within 100 metres of any waterway or water in underground strata or, marine waters.								
(f) Test benches for engines, turbines or reactors; (g) Installations for the manufacture of artificial mineral fibres; (h) Installations for the recovery or destruction of explosive substances; (i) Knackers' yards.	The area of floor space exceeds 1,000 square metres.								
38. Tourism and leisure									
(a) Ski-runs, ski-lifts and cable-cars and associated developments;	(i) The area of the works exceeds 1 hectare; or (ii) the height of any building or other structure exceeds 15 metres.								
(b) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.								
(c) Holiday villages and hotel complexes outside urban areas and associated developments; (d) Theme parks;	The area of the development exceeds 0.5 hectare.								
(e) Permanent camp sites and caravan sites.	The area of the development exceeds 1 hectare.								
39.									
(a) Any change to or extension of development of a description listed in paragraphs 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed. (b) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 22 of that Schedule) where that development is already authorised, executed or in the process of being executed.	The thresholds and criteria in the corresponding part of column 2 of this table applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment; The thresholds and criteria in column 2 of the paragraph of this table indicated below applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.								
	<table border="0"> <thead> <tr> <th data-bbox="801 1865 1082 1933">Paragraph in Schedule 1</th> <th data-bbox="1088 1865 1359 1933">Paragraph of this table</th> </tr> </thead> <tbody> <tr> <td data-bbox="801 1937 1082 1971">1</td> <td data-bbox="1088 1937 1359 1971">6 (a)</td> </tr> <tr> <td data-bbox="801 1975 1082 2009">2(a)</td> <td data-bbox="1088 1975 1359 2009">3 (a)</td> </tr> <tr> <td data-bbox="801 2013 1082 2047">2(b)</td> <td data-bbox="1088 2013 1359 2047">3 (h)</td> </tr> </tbody> </table>	Paragraph in Schedule 1	Paragraph of this table	1	6 (a)	2(a)	3 (a)	2(b)	3 (h)
Paragraph in Schedule 1	Paragraph of this table								
1	6 (a)								
2(a)	3 (a)								
2(b)	3 (h)								

Column 1 Description of development	Column 2 Applicable thresholds and criteria
	3 3 (h)
	4 4
	5 5
	6 6 (a)
	7(a) 10 (d) (in relation to railways) or 10 (e) (in relation to airports)
	7(b) and (c) 10 (f)
	8(a) 10 (h)
	8(b) 10 (g)
	9 11 (b)
	10 11 (b)
	11 10 (n)
	12 10 (o)
	13 11 (c)
	14 2 (e)
	15 10 (i)
	16 10 (k)
	17 1 (c)
	18 8 (a)
	19 2 (a)
	20 3 (c)
	21 6 (c)
	23 3 (k)
	24 3 (k)
(c) Development of a description mentioned in Schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.	All development

SCHEDULE 3

Regulation 2(2) definition of
"selection criteria"

Selection criteria referred to in Article 4.3 of the Directive

1. Characteristics of development

The characteristics of development must be considered having regard, in particular, to—

- (d) the size and design of the development;
- (e) the cumulation with other existing development and/or approved development;
- (f) the use of natural resources, in particular land, soil, water and biodiversity;
- (g) the production of waste;
- (h) pollution and nuisances;

- (i) the risk of major accidents and/or disasters which are relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
- (j) the risks to human health (for example due to water contamination or air pollution)

2. Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—

- (k) the existing and approved land use;
- (l) the relative abundance, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (m) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under EEA states' legislation; areas designated by EEA states pursuant to Council Directive 2009/147/EC on the conservation of wild birds⁽³¹⁾ and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora⁽³²⁾;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in Community legislation and relevant to the development or in which it is considered that this is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. Characteristics of the potential impact

The likely significant effects of development on the environment must be considered in relation to criteria set out under paragraphs 1 and 2 above with regard to the impact of the development on the factors specified in regulation 5(2), taking into account—

- (n) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (o) the nature of the impact;
- (p) the transboundary nature of the impact
- (q) the intensity and complexity of the impact;
- (r) the probability of the impact;
- (s) the expected onset, duration, frequency and reversibility of the impact;
- (t) the cumulation of the impact with the impact of other existing and/or approved developments;
- (u) the possibility of effectively reducing the impact.

⁽³¹⁾ O.J. No. L 20, 26.1.2010. p7

⁽³²⁾ O.J. No. L206, 22.7.92, p.7

Matters for Inclusion in Environmental Statement

PART 1

40. Description of the development, including in particular—

- (a) A description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including where relevant, requisite demolition works, and the land–use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular any production processes), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air soil and subsoil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

41. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant or appellant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

42. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of availability of environmental information and scientific knowledge.

43. A description of the factors specified in regulation 5(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage including architectural and archaeological aspects, and landscape.

44. A description of the likely significant effects of the development resulting from, inter alia:

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved developments, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

- (f) the impact of the development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
- (g) the technologies and the substances used.

45. The description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the development. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment including details of the difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

46. A description of the measures envisaged to avoid, prevent, reduce and where possible offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-development analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

47. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the development concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

48. A non-technical summary of the information provided under paragraphs 1 to 9 of this Part.

49. A reference list detailing the sources used for the descriptions and assessments included in the Environmental Statement.

PART 2

50. A description of the development comprising information on the site, design and size and other relevant features of the development.

51. A description of the likely significant effects of the project on the environment.

52. A description of the features of the development and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment.

53. A description of the reasonable alternatives studied by the applicant or appellant which are relevant to the development and its specific characteristics and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment.

54. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

55. Any additional information specified in Part 1 relevant to the specific characteristics of the development and to the environmental features likely to be affected.

PRELIMINARY REGULATORY IMPACT ASSESSMENT

Title: The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017	Regulatory Impact Assessment (RIA)
	Date:
	Type of measure: Secondary Legislation
Lead department or agency: Department for Infrastructure	Stage: Amending Legislation
	Source of intervention: EU
Other departments or agencies:	Contact details: Brian Gorman
	Planning Policy Division Room 1-01 Clarence Court 10-18 Adelaide Street Belfast BT2 8GB

Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum) The EU has amended Directive 2011/92/EU which covers the assessment of the effects of certain public and private projects on the environment (known as the Environmental Impact Assessment or EIA Directive). The amending Directive 2014/52/EU forms part of European law and the Department for Infrastructure is responsible for the proper transposition of the EIA Directive into planning legislation in the north to avoid the potential for infraction proceedings in the future.	
What are the policy objectives and the intended effects? (7 lines maximum) The EIA Directive's main policy objective 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 reduce their impact on the environment. It is intended to lighten unnecessary administrative burdens, reinforce the quality of decision-making, improve current levels of environmental protection and introduce a more harmonised regulatory framework, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term. It will also ensure the planning authority giving planning permission for a project makes its decision in the full knowledge of any likely significant effects on the environment.	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) The policy options considered were to either transpose the amended Directive as appropriate or to do nothing. While to do nothing was considered it was not the preferred option as the consequences of not transposing and implementing the amending EIA Directive would lead to potential infraction proceedings being carried out by the EU on failure to transpose. Therefore the preferred option is to transpose the amending Directive and this could only be achieved by way of the north's planning secondary legislation.	
Will the policy be reviewed? It will be reviewed	If applicable, set review date: Month/Year

Cost of Preferred (or more likely) Option

Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m

Does Implementation go beyond minimum EU requirements?		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
Are any of these organisations in scope?	Micro Yes <input type="checkbox"/> No <input type="checkbox"/>	Small Yes <input type="checkbox"/> No <input type="checkbox"/>	Medium Yes <input type="checkbox"/> No <input type="checkbox"/>
		Large Yes <input type="checkbox"/> No <input type="checkbox"/>	

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: Date:

Summary: Analysis and Evidence

Policy Option 1

Description:

ECONOMIC ASSESSMENT (Option)

Costs (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				
<p>Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines Easier access to necessary environmental information for developers for EIA development. Co-ordination of assessments. While this cannot be assessed in purely financial terms it is a lightening of the regulatory burden on business.</p>				
<p>Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines The amending EIA Directive is intended to lighten unnecessary administrative burdens, reinforce the quality of decision-making, improve current levels of environmental protection and introduce a more harmonised regulatory framework, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term in relation to decisions on applications for planning permission for EIA development proposals.</p>				
Benefits (£m)	Total Transitional (Policy) (constant price) Years		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				
<p>Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines As above this cannot be calculated as it is dependent upon the number, nature, scale and location of future development proposals.</p>				
<p>Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines Clarity on the environmental information required for EIA development proposals and source of information from key consultees/stakeholders</p>				
<p>Key Assumptions, Sensitivities, Risks Maximum 5 lines</p>				

BUSINESS ASSESSMENT (Option)

Direct Impact on business (Equivalent Annual) £m			
Costs:	Benefits:	Net:	

Cross Border Issues (Option)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines

Evidence Base

There is discretion for departments and organisations as to how to set out the evidence base. It is however desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing), with reference to the evidence base to support the option selection;
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business;
- Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

Inserting text for this section:

Text can be pasted from other documents as appropriate.

Problem under consideration

Following a report on the application and effectiveness of Directive 2011/92/EU and a wide public consultation, an amended EIA Directive (2014/52/EU) came into force on 15 May 2014 and it is the responsibility of the Department for Infrastructure to transpose this amending EIA Directive into legislation for the north of Ireland. Its aims are to correct the shortcomings of the previous regime, reflect on-going environmental and socio-economic changes and challenges, and align it with the principles of smart regulation. In addition, emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention are now reflected in the assessment process.

Rationale for intervention

With the introduction of the amended EIA Directive which was developed to strengthen and enhance the EIA process, it is incumbent upon the Department for Infrastructure as part of the Member State to transpose as appropriate the amended EIA Directive into planning legislation to prevent the possibility of infraction proceedings and to ensure the EIA process continues to operate effectively.

Policy objective

To implement the EIA Directive 2014/52/EU ensuring that it is operational in the north's planning legislation by 16th May 2017

Description of options considered (including do nothing), with reference to the evidence base to support the option selection

The amended Directive 2014/52/EU was developed to strengthen the EIA process within Member States. The options in relation to this matter were to either transpose the amending EIA Directive as appropriate or to do nothing. To do nothing while considered was not a realistic option as the amended EIA Directive would have to be implemented by the north and other jurisdictions within the Member State

to prevent the potential for infraction proceedings being carried out by the EU. The Department therefore had limited scope in putting into planning legislation for the north the requirements as set out in the amended EIA Directive.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

As the amended EIA Directive streamlines the already established requirements in relation to EIA it is considered by the Department for Infrastructure that this will not have any negative cost implications for businesses and may reduce costs as necessary environmental information will be more readily available and amendments will support greater predictability in decision-making. The Department is of the opinion that the resources required to fully implement the amended EIA Directive would be similar to the resources required to fully implement the 2011/92/EU Directive and this would include administrative matters.

Rationale and evidence that justify the level of analysis used in the RIA (proportionality approach)

A major analysis of this matter has not been carried out by the Department of Infrastructure in relation to the RIA, the rationale being that the amended EIA Directive has been developed to strengthen and enhance the EIA process and it is considered that no additional burden on resources or requirements will result.

Risks and assumptions

Risks would include infraction proceedings for non transposition and implementation. Environmental consequences for not transposing which would include not reflecting on-going environmental and socio-economic changes, challenges as well as issues with resource efficiency, climate change, biodiversity and disaster prevention. It is assumed by the Department for Infrastructure that the appropriate transposition of the amended EIA Directive will lead to a strengthening of the EIA process within the Member State and its various jurisdictions. Failure to transpose may mean that the benefits of improved streamlining will not be realised.

Direct costs and benefits to business

It is anticipated that the direct costs to business may decrease with the introduction of the amended EIA Directive into the north's planning legislation as procedures are streamlined. The EIA process is currently in place and well established with both the developer and planning authority aware of their responsibilities and requirements regarding EIA.

Wider impacts (in the context of other Impact Assessments in Policy Toolkit Workbook 4, economic assessment and NIGEAE)

The introduction of the amended EIA Directive will not have any impact on other assessments to be carried out in relation to the making of this legislation.

The amending EIA Directive states that the planning permission should set out the parameters and duration of any monitoring to be required and that this should be proportionate to the nature, location and size of the project and its significant effects on the environment, this may have an additional impact in the EIA process. Although monitoring should not be used as a general means of gathering environmental information and should not duplicate any monitoring required for other reasons.

DEPARTMENT FOR INFRASTRUCTURE

SECTION 75 EQUALITY OF OPPORTUNITY SCREENING ANALYSIS FORM

The purpose of this form is to help you to consider whether a new policy (either internal or external) or legislation will require a full equality impact assessment (EQIA). Those policies identified as having significant implications for equality of opportunity must be subject to full EQIA.

The form will provide a record of the factors taken into account if a policy is screened out, or excluded for EQIA. It will provide a basis for quarterly consultation on the outcome of the screening exercise, and will be referenced in the biannual review of progress made to the Minister and in the Annual Report to the Equality Commission.

Further advice on completion of this form and the screening process including relevant contact information can be accessed via the Department for Infrastructure (DfI) Intranet site.

HUMAN RIGHTS ACT

When considering the impact of this policy you should also consider if there would be any Human Rights implications. Guidance is at:

- <https://www.executiveoffice-ni.gov.uk/articles/human-rights-and-public-authorities>

Should this be appropriate you will need to complete a Human Rights Impact Assessment. A template is at:

- <https://www.executiveoffice-ni.gov.uk/publications/human-rights-impact-assessment-proforma>

Part 1. Policy scoping

The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.

Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

Information about the policy

Name of the policy Amended Environmental Impact Assessment Directive 2014/52/EU.
Is this an existing, revised or a new policy? Amendment to a existing policy
What is it trying to achieve? (intended aims/outcomes) The amending EIA Directive's objective is to strengthen and enhance the EIA process by providing a high level of protection to the environment while contributing to the integration of environmental considerations into the preparation of projects to reduce their impact on the environment.
Are there any Section 75 categories which might be expected to benefit from the intended policy? No
If so, explain how.
Who initiated or wrote the policy? The policy was initiated by amended EIA Directive 2014/52/EU and further developed by Planning Policy Division of the Department for Infrastructure.
Who owns and who implements the policy? Department for Infrastructure
Background The EIA Directive (85/337/EEC), which has been in force since 1985, has been amended several times, the most recent amendments were made by the 2011/92/EU directive which consolidated the changes that came before it. Following a report on the application and effectiveness of the Directive and a wide public consultation, an amended EU Directive (2014/52/EU) came into force on 15/5/2014 and the Department for Infrastructure is responsible for the

proper transposition and implementation into legislation for the north of Ireland as part of the UK Member State by 16/5/2017.

The amendment will strengthen and enhance the EIA process by providing a high level of protection to the environment which includes the requirement to make the Environmental Statement of a higher quality and content through the introduction of a competent expert to both prepare and assess environmental reports. This measure along with others will contribute to the integration of all environmental considerations into the preparation of projects to reduce their impact on the environment.

Implementation factors

Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision? **No**

If yes, are they

financial

legislative

other, please specify _____

Main stakeholders affected

Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

staff

service users

other public sector organisations

voluntary/community/trade unions

other, please specify

2.a.i.1.1 Other policies with a bearing on this policy

- what are they?

No policies of direct significance

- who owns them?

N/A

Available evidence

Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.

What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

Section 75 category	Details of evidence/ information
Religious belief	There is no evidence of higher or lower uptake of this section 75 group. As part of the statutory procedure, the screening form will be included in the Department's quarterly consultation exercise with section 75 consultees. Any issues identified at this stage relating to section 75 groups will be fully considered.
Political opinion	As above
Racial group	As above
Age	As above
Marital status	As above
Sexual orientation	As above
Men and women generally	As above
Disability	As above
Dependants	As above

Needs, experiences and priorities

Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories

Section 75 category	Details of needs/experiences/priorities
Religious belief	There are no specific needs identified for this group.
Political opinion	As above
Racial group	As above
Age	As above
Marital status	As above
Sexual orientation	As above
Men and women generally	As above
Disability	As above
Dependants	As above

Part 2. Screening questions

Introduction

In making a decision as to whether or not there is a need to carry out an equality impact assessment, the public authority should consider its answers to the questions 1-4 which are given on pages 66-68 of this Guide.

If the public authority's conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the public authority may decide to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, a public authority should give details of the reasons for the decision taken.

If the public authority's conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.

If the public authority's conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:

- measures to mitigate the adverse impact; or
- the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

In favour of a 'major' impact

- a) The policy is significant in terms of its strategic importance;
- b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;
- c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are

concerns amongst affected individuals and representative groups, for example in respect of multiple identities;

- e) The policy is likely to be challenged by way of judicial review;
- f) The policy is significant in terms of expenditure.

In favour of 'minor' impact

- a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

In favour of none

- a) The policy has no relevance to equality of opportunity or good relations.
- b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions given overleaf and indicate the level of impact on the group i.e. minor, major or none.

Screening questions

1 What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? minor/major/none		
Section 75 category	Details of policy impact	Level of impact? minor/major/none
Religious belief	The proposed amendment does not impact on equality of opportunity within this category.	None
Political opinion	As above	None
Racial group	As above	None
Age	As above	None
Marital status	As above	None
Sexual orientation	As above	None
Men and women generally	As above	None
Disability	As above	None
Dependants	As above	None

2 Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?		
Section 75 category	If Yes , provide details	If No , provide reasons
Religious belief		There is no opportunity to better promote equality of opportunity for any section 75 group
Political opinion		As above
Racial group		As above
Age		As above
Marital status		As above
Sexual orientation		As above
Men and women generally		As above
Disability		As above
Dependants		As above

3 To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group? minor/major/none		
Good relations category	Details of policy impact	Level of impact minor/major/none
Religious belief	No evidence of possible impact on good relations.	None
Political opinion	As above	As above
Racial group	As above	As above

4 Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?		
Good relations category	If Yes , provide details	If No , provide reasons
Religious belief		There are no identified opportunities to promote good relations between persons in this category.
Political opinion		As above
Racial group		As above

Additional considerations

Multiple identity

Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities? (*For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people*).

No

Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

There is no evidence that the policy has any impact on people with multiple identities.

Part 3. Screening decision

If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

The Department does not envisage or consider that there are likely to be any specific negative impacts associated with this policy. There is no evidence that existing or amended planning EIA legislation in the north will have any impact in terms of equality of opportunity or good relations. The policy will be subject to public consultation and any S75 issues raised will be considered. As part of the statutory process this screened form will also be circulated to Section 75 bodies. Any issues identified relating to any Section 75 group will be fully considered.

If the decision is not to conduct an equality impact assessment the public authority should consider if the policy should be mitigated or an alternative policy be introduced.

As above

If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

N/A

All public authorities' equality schemes must state the authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity. The Commission recommends screening and equality impact assessment as the tools to be utilised for such assessments. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

Mitigation

When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.

Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?

If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy.

N/A

Timetabling and prioritising

Factors to be considered in timetabling and prioritising policies for equality impact assessment.

If the policy has been '**screened in**' for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	
Social need	
Effect on people's daily lives	
Relevance to a public authority's functions	

Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority's Equality Impact Assessment Timetable should be included in the quarterly Screening Report.

Is the policy affected by timetables established by other relevant public authorities?

If yes, please provide details

Part 4. Monitoring

Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).

The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).

Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

Part 5 - Approval and authorisation

Screened by:	Position/Job Title:	Date:
Linda Buick	D.P	24-11-16
Approved by:		
Brian Gorman	Grade 7	28-11-16

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.

For Equality Team Completion:

Date received:	
Amendments requested?	
Date returned to Business Area:	
Date final version received:	
Date placed on S75 Screening Webpage:	

CONSULTEE LIST

20:20 Architects
Action on Hearing Loss
Action Renewables
Age NI
An Munia Tober
Aquaculture Initiative EEIG
Archbishop Of Armagh & Primate Of All Ireland
Arcus Architects
Arqiva
Association for Consultancy and Engineering
Atlas Communications
Autism NI
B9 Energy Services Ltd
Bahai Council for NI
Bar Library
Barnardos NI
BBC Engineering Information Department
Belfast Butterfly Club
Belfast Civic Trust
Belfast Harbour Commissioners
Belfast Hebrew Congregation
Belfast Healthy Cities
Belfast Hills Partnership
Belfast International Airport
Belfast Metropolitan College
Belfast Metropolitan Residents Group
Belfast Solicitors Association
Brennen Associates
British Deaf Association (NI)
British Telecom (NI)
Bryson House
Building Design Partnership
Cable & Wireless Communications
Campaign for Better Transport
Cara Friend
Carers Northern Ireland
Carey Consulting
Catholic Bishops of NI
Causeway Coast & Glens Heritage Trust
Chartered Institute of Architectural Technologists
Chartered Institute of Environmental Health
Chartered Institute of Housing
Chief Executive of the NI Judicial Appointments Commission
Chief Officers 3rd Sector
Children's Law Centre

Chinese Welfare Association
Church of Ireland
Chrysalis Women's Centre
Coiste – Na N-iarchimi
City of Derry Airport
Civil Aviation Authority
Civil Law Reform Division
Coleraine Harbour Commissioners
Committee for the Administration of Justice
Communities and Local Government
Community Development and Health Network (NI)
Community Places
Community Relations Council
Confederation of British Industry, NI Branch
Construction Employers Federation
Construction Register Ltd
Council for Catholic Maintained Schools
Countryside Access & Activities Network for NI
Courts and Tribunal Services
Crown Castle UK Ltd
Cruse Bereavement Care (NI)
Derryhale Residents' Association
Derry Well Woman
Development Planning Partnerships
Disability Action
Down's Syndrome Association
Energy Saving Trust Northern Ireland
Enniskillen Airport
Environment and Planning Law Association of NI
Environmental Health Services Department
Equality Coalition
Equality Commission for NI
Falls Community Council
Falls Women's Centre
Family Planning Association NI
Federation of Small Businesses
Ferguson & McIlveen
Fisher German LLP
Food Standards Agency NI
Foyle Women's Information Network
Friends of the Earth
Geological Survey of Northern Ireland
George Best Belfast City Airport
Gingerbread Northern Ireland
Health and Safety Executive Northern Ireland
Health And Social Services Boards and Trusts
HM Council of County Court Judges
HM Revenue & Customs
Human Rights Commission

Indian Community Centre
I-Document Systems
Information Commissioners Office
Institute of Professional Legal Studies
Institute Of Directors
Institute of Historic Building Conservation
Institution of Civil Engineers (NI Association)
International Tree Foundation
Invest NI
Kenneth Crothers, Deane & Curry
Lagan Valley Regional Park Officer
Landscape Institute NI
Larne Harbour Commissioners
Law Centre (NI)
Liz Fawcett Consulting
Local Government Staff Commission NI (LGSC)
Londonderry Port & Harbour Commissioners
Lord Chief Justice Office
Lough Neagh and Lower Bann Management Committees
LPG Association
Magherafelt Women's Group
Magistrates Court
Manufacturing Northern Ireland
Marks and Spencer
McClelland/Salter Estate Agents
MENCAP
Mens Action Network
Methodist Church In Ireland
Michael Burroughs Associates
Ministerial Advisory Group for Architecture and the Built Environment in
Northern Ireland
Ministry of Defence
Mobile Operators Association
Mono Consultants Limited
Mourne Heritage Trust
Multi-Cultural Resource Centre
National Air Traffic Services (NATS)
National Society for the Prevention of Cruelty to Children (NSPCC)
National Trust
Newry and Mourne Women Limited
Newtownards Aerodrome
NI Association for Mental Health
NI Association of Citizens Advice Bureau
NI Chamber of Commerce and Industry
NI Chamber of Trade
NI Independent Retail Trade Association
NI Islamic Centre
National Pensioners Convention, NI
NI Women's Aid Federation

NI Women's European Platform
NIACRO
NIC/ICTU
NICARE
NICOD
NIPSA
North West Architectural Association
Northern Builder
Northern Ireland 2000
Northern Ireland Agricultural Producers Association
Northern Ireland Ambulance Service
Northern Ireland Amenity Council
Northern Ireland Association Engineering Employer's Federation
Northern Ireland Blood Transfusion Service Agency
Northern Ireland Council For Ethnic Minorities
Northern Ireland Court Service
Northern Ireland District Councils
Northern Ireland Economic Council
Northern Ireland Education and Library Boards
Northern Ireland Electricity Plc
Northern Ireland Environment Committee
Northern Ireland Environment Link
Northern Ireland Federation of Housing Associations
Northern Ireland Fire and Rescue Service
Northern Ireland Government Departments
Northern Ireland Housing Council
Northern Ireland Housing Executive
Northern Ireland Law Commission
Northern Ireland Local Government Association
Northern Ireland MP's, MEP's, Political Parties and MLA's
Northern Ireland Office
Northern Ireland Public Health Agency
Northern Ireland Quarry Products Association
Northern Ireland Regional Medical Physics Agency
Northern Ireland Women's Rural Network
Northern Ireland Tourist Board
Northern Ireland Water Ltd
NSMC-NI Secretariat
O2
OFCOM
OFMDFM Central Management Unit (CMU)
Office of Attorney General for Northern Ireland
Orange
Ostick and Williams
Parenting NI
Participation & the Practice of Rights Project
Participation Network NI
Phoenix Natural Gas Ltd
Planning Appeals Commission

Planning Magazine
Playboard N.I. Ltd
POBAL
Policing Board Of Northern Ireland
Polish Association
Pragma Planning
Presbyterian Church In Ireland
PSNI
Quarryplan Ltd
Queens University
Renewable UK
RICS NI
Rivers Agency
RJM Architects
Robert Turley Associates
Royal National Institute of Blind People (RNIB)
Royal Society for Protection of Birds
Royal Society of Ulster Architects
Royal Town Planning Institute
Royal Town Planning Institute (Irish Branch, Northern Section)
RPS Group PLC
RTPI Irish Branch (Northern Section)
Rural Community Network
Rural Development Council for Northern Ireland
Rural Support
Save the Children
Scottish Government
SENSE NI
Society of Local Authority Chief Executives
Southern Waste Management Partnership
Sport NI
Statutory Advisory Councils (including Historic Buildings Council, Historic
Monuments Council and Council for Nature Conservation and the
Countryside)
Strangford Lough Advisory Council
Strangford Lough Management Committee
Sustrans
The Architectural Heritage Fund
The Board of Deputies of British Jews
The Cedar Foundation
The Commissioner for Older People for Northern Ireland
The Executive Council of the Inn of Court of NI
The General Consumer Council for NI
The Guide Dogs for the Blind Association
The Law Society of Northern Ireland
The NI Commissioner for Children and Young People
The NI Council for Voluntary Action
The Rainbow Project
The Senior Citizens Consortium Sperrin Lakeland
The Utility Regulator

The Women's Centre
Three
T-Mobile
Todd Planning
Town and Country Planning Association
Training for Women Network Ltd
Translink
Travellers Movement NI
Turley Associates
Tyrone Brick
Ulster Angling Federation
Ulster Architectural Heritage Society
Ulster Farmers' Union
Ulster Wildlife Trust
ULTACH
UNISON
University of Ulster
Urban and Rural Planning Associates
UTV Engineering Information Department
Virgin Media
Vodafone Ltd
Volunteer Now
Warrenpoint Harbour Authority
Waterways Ireland
Welsh Government
WDR & RT Taggart
Western Group Environmental Health Committee
Wildfowl and Wetland Trust
Women's Forum NI
Women's Resource and Development Agency
Women's Support Network
Woodland Trust
World Wildlife Fund (NI)
Youth Council For Northern Ireland

Freedom of Information Act 2000 – Confidentiality of responses

1. The Department may publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act 2000 gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
 - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
 - the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and
 - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk>).

