

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

Response to the Public Consultation on the EIA Amendment Directive

**Consultation period
December 2016 – February 2017**

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1. INTRODUCTION

To facilitate the proper transposition and implementation of European Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) into Northern Ireland subordinate legislation, the Department for Infrastructure (“the Department”) sought comments by way of public consultation on its proposals. This paper sets out the objectives of the EIA Directive, the Department’s perspective, along with a comprehensive analysis of the responses to the consultation.

The purpose of the consultation was to seek comments on the approach we have taken in transposing the EIA Directive and whether this appropriately implements the mandatory and optional requirements set out in the EIA Directive. Member States have to implement certain requirements of the EIA Directive to prevent potential EU infraction proceedings, however discretion does exist in the process or method of implementation.

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 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.

The Department received 47 substantive responses to the consultation paper. The representations came from a range of interests including councils, business groups and environmental groups. An overview of the questions

asked in the consultation paper, along with a statistical summary of the responses received, is set out in the Annex.

The range of responses indicated broad support for the Department's approach to the transposition of the EIA Directive with many respondents welcoming the proposals.

2. CONSULTATION ANALYSIS

The questions set out in the consultation paper were intended to help establish the extent to which consultees either agreed or did not agree with the Department's proposals for transposing the EIA Directive into Northern Ireland subordinate legislation.

This paper provides a general overview of the main findings of the EIA public consultation exercise (December 2016 – February 2017). It is not intended to be a comprehensive report on every comment received, but rather a summary of the key issues raised in the responses. Subsequent analysis of the consultation returns is therefore presented showing the total number of responses relating to each question (including its percentage of the overall total of 47 substantive responses), together with a numerical and percentage breakdown of those who responded in terms of whether they agreed or did not agree with the proposals (where this was considered appropriate as some respondents presented their own proposals). The analysis further provides a synopsis of the responses to each question, extracting the salient issues raised, followed by the Department's consideration and response and ultimately whether the Department, taking account of the comments made, intends to either amend the proposals or to proceed as set out in the consultation document and the legislation as drafted.

It should be noted that 18 individuals responded to the EIA consultation with virtually identical responses. The Department thought it appropriate to include all 18 responses in its synopsis and statistical analysis.

Contributions from respondents have assisted the Department in further developing legislative proposals to give effect to the requirements of the Directive.

The Department has noted the views of respondents and hereby confirms its commitment to producing guidance to inform and assist with the implementation and practical aspects of the EIA process.

Issues raised by respondents which fell outside the scope of the consultation have been addressed where appropriate.

The Department would like to take this opportunity to thank all those who contributed to the consultation exercise.

3. ASSESSMENT PROCESS

3.1 Consultation Paper Proposal

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 Statement 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.

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.

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.

Finally, this aspect of the assessment process 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. The Department did 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.

3.2 Consultation Response

Question 1	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 1: Do you agree with proposals to provide for a coordinated rather than joint procedure?	45	98%	25	56%	20	44%

The majority of respondents were in favour of the Department's proposals to implement the coordinated, rather than joint, procedure, with two respondents recognising that this reflects current practice.

Benefits of the coordinated procedure recognised by respondents include greater flexibility for developers, smarter regulation and the potential to drive efficiencies and streamline EIA processes.

One respondent felt that the coordinated procedure could help avoid duplication and minimise the time required to carry out the procedure, while another highlighted the potential to further protect decisions against legal challenge by delivering an appropriate assessment of all the impact of all environmental concerns.

Three respondents provided their views on the joint procedure with two viewing it as impractical and economically unviable, particularly if it required other permits to be granted prior to construction taking place. The third respondent was similarly opposed to the introduction of the joint procedure highlighting the risk that individual standards for each regime may be incorrectly applied and outputs misinterpreted through such a procedure.

Twenty respondents were opposed to the coordinated procedure, preferring the joint approach, believing that this might give an equal balance to the Habitats and/or Birds Directives. It was also felt that its single assessment would help clarify the relationship between EIA and HRA and would be more sensible and manageable for a council.

Question 2: Do you have any comments in relation to the possible practical issues arising from the proposed approach to co-ordination?	No statistical analysis available for question 2 as it asked for comments only from respondents.
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Several respondents took the opportunity to repeat their support for the coordinated approach with reasons including greater flexibility, allowing developments to progress in a phased manner, streamlining the process, reducing the administrative burden and minimising duplication.

A number of respondents were opposed to the introduction of mandatory coordination with the Water Framework Directive, the Industrial Emissions

Directive, the SEA Directive, the Waste Framework Directive and the SEVESO III Directive. Reasons for this included the potential to make the process more complicated given that the regimes have differing requirements; disproportionate delays in project consenting timescales; the possibility of permits issued prior to the start of construction being invalid by the time construction started; and, in certain circumstances, being unworkable as infrastructure may need to be constructed and tested before an enduring operational permit can be granted.

Of the two respondents in favour of mandatory coordination with the above EU Directives, one feared these Directives may be lost sight of if mandatory coordination was not introduced, while the other favoured mandatory coordination believing that this would avoid the risk of non-compliance with EU legislation.

Question 3	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
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?	23	49%	21	91%	2	9%

The vast majority of respondents considered that the Department’s approach to the transposition of Article 1 and 2 appropriately implements the requirements of the Directive. Three respondents focussed on the interpretation and assessment of “significant effects”, with one calling for guidance to support a consistent approach.

3.3 Department’s Consideration and Response

The Department welcomes the support for its proposals on the introduction of a coordinated approach for the EIA process and supporting the Department’s approach to the transposition of Article 1 & 2 of the EIA Directive in relation to the assessment process.

The Department has considered all issues raised in the consultation responses and confirms that a coordinated approach will not diminish the appropriate weight to be attached to any EU Directive. The Department therefore has concluded on balance to adopt the coordinated approach and the transposition into legislation establishes a statutory requirement consistent with the approach adopted in the other UK jurisdictions.

In addition to the mandatory coordination required by the EIA Directive, a planning authority may also coordinate any assessments required under the Water Framework Directive, the Industrial Emissions Directive, the SEA Directive, the Waste Framework Directive, and the SEVESO III Directive, where these can be streamlined.

The procedures and processes to be put in place to effectively implement the legislation and the proper resourcing to deliver these new requirements will be a matter for each planning authority.

The Department considers that all aspects of the Assessment Process have been appropriately transposed into the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (“the 2017 EIA Regulations”).

4. INFORMATION TO BE ASSESSED

4.1 Consultation Paper Proposal

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 EIA Directive. The EIA Directive also clarifies that the EIA should only be assessing significant effects of the project on the environment.

Assessing the Risk of Major Accidents

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

4.2 Consultation Response

Question 4	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 4: Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%

Respondents were in firm agreement with the Department’s approach to the transposition of information to be assessed with 91 percent of respondents broadly agreeing to the proposal, although some called for further information and guidance, particularly around how “significant effects” (three respondents) and “the risk of major accidents and/or disasters” (seven respondents) should be defined and assessed.

Four respondents emphasised the importance of clarifying that the EIA process should only assess significant effects of a development on the environment, while one respondent suggested that “significant effects” should be defined in the 2017 EIA Regulations.

One other respondent raised a point relating to the risk of major accidents that all assessments should be proportionate and consideration should be given to the vulnerability of a project to risks of specific relevance to the type of development.

Two respondents highlighted that the new requirements may have an impact on staff and resourcing.

4.3 Department’s Consideration and Response

The Department was pleased with the support in the consultation response to this area of the transposition of the EIA Directive. On this basis the Department will legislate in line with the published proposals.

Issues in relation to the assessment of “significant effects” are dependent upon the particular circumstances of a development proposal. While this cannot be appropriately defined in legislation, this will be included in forthcoming operational guidance.

5. SCREENING

5.1 Consultation Paper Proposal

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 EIA 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 EIA 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.

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.

Maximum Timeframe for a Screening Determination

The EIA 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 EIA 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.

5.2 Consultation Response

Question 5	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
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?	43	91%	37	86%	6	14%

The majority of respondents agreed with the retention of the current timescale of four weeks for a screening determination.

Of those opposed to the retention of four weeks, one recommended that the timescale should be extended to six weeks, while another two suggested that consideration be given to standardising the timescales across all UK jurisdictions where they range from three to four weeks.

Departmental response to the EIA Amendment Directive Consultation Paper

While eighteen respondents agreed with the time scales they highlighted the need for adherence to a maximum extension to 90 days.

Three respondents requested that reasons for extensions be less prescriptive and more flexible while another emphasised the need to monitor extensions to ensure that they are for genuine reasons and not merely due to lack of resources.

The need for valid reasons for extensions was highlighted by two respondents who also recommended that justification for the extension be provided.

A further respondent also highlighted that not only is justification of the extension a requirement of the EIA Directive but that the council and/or Department needs to provide a date when the determination can be expected as per Article 4(6).

Two respondents also highlighted a discrepancy between the EIA Directive and the draft 2017 EIA Regulations where the EIA Directive requires the screening timescale to begin when all relevant information is received but in the Regulations the four week period begins when the request is received.

Question 6	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 6: Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%

While respondents were in broad agreement with the Department's approach to the transposition of the screening requirements, there were a number of suggestions for amendments including the simplification of regulation 8 of the draft 2017 EIA Regulations for ease of reading (one respondent) and the inclusion of a timescale within which the council/Department can request

additional information from the developer in order to make a screening determination (three respondents).

One respondent made a number of recommendations to the process including mandatory consultation at the screening stage, access to competent experts during the screening and scoping stages and only relying on tried and tested mitigation methods to inform screening determinations.

A number of respondents commented on the need for councils/Department to exercise the precautionary principle when selecting which development should be subject to an assessment, with a project assumed to have a significant effect unless these can be categorically ruled out.

One respondent commented regarding the existing confirmation process requiring a developer to confirm acceptance of a screening determination within 4 weeks and that this was not part of the amended EIA Directive but has been a feature of successive EIA Northern Ireland Regulations.

5.3 Department's Consideration and Response

The Department felt the responses to question 5 and 6 of the consultation were very positive with 86% and 91% respectively broadly agreeing with the proposals.

The Department already recognises that the precautionary principle underpins the whole process of identifying and correctly assessing development proposals. This is set out in the Department's Strategic Planning Policy Statement which sets the policy framework for all planning decisions.

The Department also considers it good practice to allow a period of 4 weeks for the developer to respond to a screening determination by either the council or Department.

Currently the start of the four week time period for screening determinations is the date the request was received. This will remain the case. Regulation 8(10) provides for cases where further information needs to be requested from the developer. In these cases, the four week time period begins from the date the further information was received. It is not considered necessary to introduce a time period within which this further information can be requested.

Taking into account the comments regarding Article 4.6 of the Directive, the Department has amended the Regulations to include the need to give reasons for requiring an extension for a screening determination beyond the 90 day timeframe and a requirement, in such cases, to provide the date when the screening determination can be expected.

In considering all the responses to screening, the Department believes that its proposals are appropriate and will legislate in line with the draft 2017 EIA Regulations, subject to the amendment to Regulations as described above.

6. ENVIRONMENTAL STATEMENT

6.1 Consultation Paper Proposal

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.

6.2 Consultation Response

Question 7	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 7: Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?	23	49%	22	96%	1	4%

There was a positive response to this area of the consultation with the majority of respondents welcoming and agreeing to the requirements concerning the content of the Environmental Statement.

A number of responses highlighted the additional engagement and focus at the scoping stage which will enhance the prospects of a detailed and meaningful Environmental Statement as this will be based on the most recent opinion.

A concern was raised on the ability of the planning authority to deliver a robust scoping opinion without the appropriate resources. The need for guidance, clarification on scoping and the adequacy of the information contained in the Environmental Statement were also highlighted.

Respondents highlighted that the Environmental Statement would be based on the most recent scoping opinion, with one concerned that this could lead to scoping opinions including additional matters that may not be necessarily

relevant in the Environmental Statement but which will have to be commented upon to meet the requirements of the legislation.

Another understood that the enhanced screening and scoping processes are intended to focus the use of the EIA process on developments that are likely to give rise to significant environmental effects and agreed with the Department's proposed approach.

6.3 Department's Consideration and Response

The response to this area of the transposition was very positive with 96% of respondents broadly agreeing with the Department's proposals and timeframes.

The Department considers that an accurate and meaningful Environmental Statement is critical to the EIA process and regards the scoping opinion as an integral part of this process.

In relation to the point raised on the scoping opinion including additional matters of no relevance, responsibility rests with the developer to supply all relevant information to enable the planning authority to make its scoping opinion on the proposed development. The Department is of the view that the scoping opinion will address all the issues relevant to the proposed development.

The Department is content that Regulation 11 of the draft 2017 EIA Regulations covers the requirements on Environmental Statements set out in the EIA Directive and will legislate in line with this.

7. SCOPING

7.1 Consultation Paper Proposal

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 EIA Directive. This has had a subsequent impact on the information the developer is required to provide when making a scoping request.

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 planning authority in order to carry out an effective scoping opinion.

7.2 Consultation Response

Question 8	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 8: Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?	23	49%	20	87%	3	13%

The majority of respondents were very much in agreement with the transposition on scoping with some highlighting its importance in delivering a proportionate and effective EIA process.

Responses also pointed out that a reasoned, justified and robust scoping opinion would allow developers to then provide appropriate information on the significant effects of the project on the environment for the Environmental Statement.

Respondents recognised that factors to be taken into account by the council/Department when issuing a scoping opinion have been amended by the EIA Directive and that this will impact on the information required from a developer when they make a request for a scoping opinion.

Some respondents were concerned that the Regulations did not explicitly require the planning authority to take into account consultation responses from bodies with specific environmental responsibilities or local or regional competences.

7.3 Department's Consideration and Response

The Department was pleased with the response to this topic of the consultation and maintains that scoping is a fundamental aspect of the EIA process as it establishes the basis for the Environmental Statement.

The Department believes that a thorough and effective scoping exercise will ensure that the Environmental Statement is both meaningful and complete, a view shared by many respondents.

It is recognised that a development proposal may be subject to a degree of change overtime. A planning authority will make a judgement call on the appropriateness of a scoping opinion in light of any subsequent changes in the circumstances prevailing at that time.

One of the points raised as part of the consultation response related to the Regulations not explicitly requiring the planning authority to take into account consultation responses from bodies with specific environmental responsibilities or local or regional competences. The Department has taken this point into consideration and has amended Regulation 8(17)(d) to ensure these representations will now be taken into account.

The Department intends to legislate in line with its proposals set out in regulation 8 of the draft 2017 EIA Regulations, subject to the amendment to regulation 8(17)(d) as outlined above.

8. ASSESSMENT QUALITY AND EXPERTISE

8.1 Consultation Paper Proposal

Competent Experts

To improve the quality of the environmental impact assessment process, the EIA Directive requires that experts involved in the preparation of Environmental Statements should be qualified and competent. Furthermore the EIA 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 planning authorities relating to the particular circumstances of the development proposals.

8.2 Consultation Response

Question 9	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 9: Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?	42	89%	39	93%	3	7%

The majority of respondents were content with this area of the consultation, with a number highlighting the importance of having sufficient and appropriate expertise available to either draw up the Environmental Statement or to review and assess the Environmental Statement.

A number of responses highlighted potential costs involved in resourcing this area of work to ensure the Environmental Statement was of the required standard.

A number of respondents suggested the term “competent expert” would be open to interpretation and suggested further clarification and guidance from the Department with one respondent suggesting one way would be to stipulate that the expert should be a member of a recognised certification body.

One respondent commented on the proposed approach to transposing Article 5(3)(a) “competent expert” into regulation 11(3)(a) of the draft 2017 EIA Regulations, highlighting that it attempts to redefine the concept of a “competent expert” as having “sufficient expertise”. The EIA Directive makes a clear distinction between a “competent expert” (Article 5(3)(a)) and “sufficient expertise” (Article 5(3)(b)) and the respondent felt that the inferred interchangeability of the two terms would be of concern.

Some respondents suggested that the planning application fees for applications requiring an Environmental Statement should be reviewed to reflect the additional costs that councils may incur, with one respondent feeling that consideration should also be given to the requirement for a fee for providing screening and scoping opinions.

8.3 Department’s Consideration and Response

This area of the consultation saw 39 respondents broadly agreeing with the proposal, however a number of points were raised in relation to a competent expert and sufficient expertise.

The Department is of the view that it has always been the responsibility of both the developer and the planning authority to ensure that they have the appropriate expertise to draw up the Environmental Statement or review the Environmental Statement respectively, including the sourcing of expertise and costs involved. The new Regulations reinforce this position and for clarity

introduce the terms “competent expert” and “sufficient expertise” as required by the Directive.

In relation to the suggestions to define a “competent expert”, given the diverse range of EIA topics and different areas of specialist expertise the Department feels that it would not be appropriate to define this in the 2017 EIA Regulations. However, regulation 11(3)(a) requires that the Environmental Statement shall “be prepared by competent experts to ensure the completeness and quality of the statement” and 11(3)(b) that the Environmental Statement shall “contain a statement by or on behalf of the applicant setting out how the requirements of 11(3)(a) have been complied with”.

The concern raised by one respondent relating to the use of “competent expert” and “sufficient expertise” in relation to the preparation of the Environmental Statement was considered by the Department. Consequently regulation 11(3)(a) of the draft 2017 EIA Regulations has been amended to clarify the requirement that the Environmental Statement be prepared by competent experts to ensure the completeness and quality of the Statement.

As regards the point raised in connection to planning fees, the Department does not consider this to be an appropriate measure to introduce at this time through the EIA Regulations.

Following consideration of the issues raised during consultation the Department intends to legislate in line with its published proposals, subject to the accepted need for amendment to regulation 11 that the Environmental Statement be completed by competent experts.

9. CONSULTATION AND PUBLICITY

9.1 Consultation Paper Proposal

Timeframes for Consulting the Public

The EIA 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.

9.2 Consultation Response

Question 10	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 10: Do you consider the new timeframes appropriately implement the requirements of Directive?	43	91%	41	95%	2	5%

The responses to this question in the consultation paper were overwhelmingly in favour of the new timeframes with agreement on the proposal implementing correctly the requirements of the EIA Directive.

Some respondents did highlight that the EIA Directives minimum timeframe had been adopted as the maximum timeframe in the draft 2017 EIA Regulations. However, other respondents were of the view that new timeframes of 30 days appropriately implements the requirements of the EIA Directive and it offered the public, and other interested bodies, sufficient time to make comments on the EIA development.

A number of respondents suggested that 30 days should be a minimum time frame for consulting the public. They also suggested that an option should be available for time extensions in projects depending on the site and the likely

significant effects on the environment, as well as invasive, extensive and strategic projects which should have a minimum time frame of 90 days for public consultation relating to the Environmental Statement.

One response pointed out that the draft 2017 EIA Regulations should include a backstop date relating to public consultations to provide developers with a greater degree of certainty in relation to the length of the process.

9.3 Department's Consideration and Response

This proposal based on the transposition of timeframes was very well received by respondents to the consultation with 95% in broad support.

While it was highlighted that the Department has adopted the minimum period set out in the EIA Directive, the Department is content that the approach of not less than 30 days is an appropriate timeframe to respond with issues or concerns relating to public consultations.

The Department therefore intends to take forward the provisions on publicity and consultation, as set out in Part 5 of the draft 2017 EIA Regulations.

10. DECISIONS

10.1 Consultation Paper Proposal

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 process but the EIA Directive now clarifies that this conclusion must be still “up-to-date” when the final decision on 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 on the grant of planning permission.

Information to be Included in a Decision

The EIA 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 planning 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, planning 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.

Informing the Public of the Decision

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

10.2 Consultation Response

Question 11	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 11: Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?	25	53%	20	80%	5	20%

A large number of respondents approved of the Department’s transposition on this issue, with a number outlining how it appropriately implements the requirements of the EIA Directive and that it will enable a reasoned decision which will have regard to current knowledge and methods of assessment and which will address the likely significant effects of the development on the environment.

It was noted by respondents that the reasoned conclusion is already an integral part of the planning process but that the EIA Directive now stipulates that it must be “up to date” when the final decision is taken on whether or not to grant planning permission. Concerns were raised that this requirement would appear to introduce increased risk regarding the likelihood of challenge on the basis of timing and content of decision-making, thereby adding to the burden on planning authorities.

A number of respondents highlighted that the transposition of this Article in Regulation 24 remains vague as to what these timeframes will be and outlines that where no statutory timescales are in place the decision must be granted

within a “reasonable period of time”. They suggested the need for further clarity and definition with regard to these timeframes to provide developers with greater certainty and consistency of approach as to whether planning permission is to be granted.

10.3 Department’s Consideration and Response

The Department is of the view that for the EIA process to work effectively all information must be up to date, therefore making it relevant to the decision making process which is a cornerstone of the amended EIA Directive.

The Department is content with the term “reasonable period of time” in regulation 24(3) of the draft 2017 EIA Regulations. This will be a matter of judgement for the planning authority in light of the particular circumstances of an individual development proposal and it would not be appropriate to specify a statutory timescale.

The Department, after considering the responses to this area of the EIA consultation, is content with its approach in transposing the EIA Directive into the draft 2017 EIA Regulations and that this properly meets the Directive’s intention. This view was supported by 80% of responses which were in broad agreement with the proposal.

11. MONITORING

11.1 Consultation Paper Proposal

Monitoring Requirements

The EIA 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.

11.2 Consultation Response

Question 12	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 12: Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?	24	51%	19	79%	5	21%

The majority of respondents agreed with this area of the consultation and that the approach to the transposition of monitoring appropriately implements the requirements of the EIA Directive, and provides local planning authorities with sufficient scope to exercise discretion in this area.

Some respondents stressed the need for monitoring to be proportionate to the potential effect on the environment and therefore in some situations increased frequency of measurement could be justified by the degree of potential risk. Others stressed the need for robust, effective, independent monitoring arrangements to be put in place.

A number of respondents suggested that councils will be required to undertake a greater level of monitoring for some projects and this will have very direct resource implications. It was highlighted that further guidance and clarity would be required from the Department on how this will be implemented, outlining the level of monitoring necessary and the perceived resource implication.

One respondent raised the point that although the consultation document notes that monitoring is not to be used as a general means of gathering environmental information, this has not been explicitly stated in the draft 2017 EIA Regulations. They recommended that the draft 2017 EIA Regulations be amended to reflect this intention.

Another respondent suggested the wording of Regulation 25 of the draft 2017 EIA Regulations should be strengthened so that monitoring must take place in respect of all significant adverse effects identified within the Environmental Statement. This should be the minimum requirement.

One respondent was of the opinion that the competent authority should have the ability to charge a fee for the monitoring of conditions so as to recover the full costs in doing so.

11.3 Department's Consideration and Response

This area of the consultation document received a favourable response from 19 out of the 24 who responded to this question in the consultation regarding the Department's transposition in relation to monitoring.

The Department would like to highlight that currently a monitoring condition can be considered by the planning authority as part of the 2011 Act in that it can impose conditions it thinks fit (which are appealable by the applicant). The Department agrees that monitoring conditions should not be used to gather more environmental information and it will address this issue in guidance.

It is the Department's view that it remains the planning authority's responsibility to identify and draw up monitoring conditions as it considers appropriate. The conditions should be justified and proportionate to the degree of risk associated with the development. The Department would suggest that any monitoring conditions should be discussed in a transparent and constructive manner with the developer and these should indeed be robust, effective and independent.

As outlined earlier in the Department's response to the consultation exercise it does not consider increasing planning fees appropriate at this time through the EIA Regulations. The Department would highlight that section 76 powers under the 2011 Planning Act provide scope for a planning authority to secure contributions associated with monitoring where appropriate through a planning agreement.

The Department considers that monitoring arrangements should be utilised where appropriate to ensure that agreed mitigation issues relating to protecting the environment are in place and operating effectively.

The Department also recognises the important role monitoring conditions may play as a mechanism to identify unforeseen significant effects on the environment in order to be able to undertake appropriate remedial action.

The Department, after considering all responses relating to the transposition of the EIA Directive regarding monitoring, is content with the approach taken in the draft 2017 EIA Regulations.

12. CONFLICT OF INTERESTS

12.1 Consultation Paper Proposal

Objectivity

The EIA 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 established planning processes but the draft 2017 EIA Regulations now include express provision for this.

12.2 Consultation Response

Question 13	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 13: Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%

It was clearly evident from the consultation responses that the vast majority of respondents were content with the Department's proposal and that the approach to the transposition of conflict of interest appropriately implements the requirements of the EIA Directive.

Some respondents considered that the separation between conflicting functions when performing the duties arising from the EIA Directive will have implications for staffing and resourcing within councils.

One respondent raised the issue that while the EIA Directive requires functional separation it does not establish how this should be achieved in practice and there remains the possibility of legal challenge.

12.3 Department's Consideration and Response

The Department considered this area of the consultation to be favourable in that 21 of the 23 respondents gave their broad support to the Department's proposal relating to the transposition of the EIA Directive concerning conflicts of interest.

The Department is of the view that it is the responsibility of the planning authority to ensure that robust and effective procedures are in place to adequately manage matters regarding conflict of interest as set out in the EIA Directive, irrespective of staffing or resource issues.

The Department is content with the regulation on objectivity and bias in the draft 2017 EIA Regulations as it effectively transposes the EIA Directive requirement.

13. PENALTIES

13.1 Consultation Paper Proposal

Rules on Penalties

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

13.2 Consultation Response

Question 14	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 14: Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?	41	87%	20	49%	21	51%

A small majority of respondents disagreed with the Departmental proposal on penalties in relation to the transposition. These respondents queried the effectiveness of the existing planning enforcement regime as the basis for providing effective penalties for breaches of the EIA Directive's requirements.

However, an almost equal number of respondents agreed with the position of the Department that the existing planning enforcement powers do provide an appropriate penalty system for unlawful development and further penalties are not required within the draft 2017 EIA Regulations.

A number of respondents pointed out that the Regulations do, however, place an explicit duty and new burden on councils 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 draft 2017 EIA Regulations.

One respondent pointed out that the proposed approach is too wide ranging and ambiguous and needs clarification.

13.3 Department's Consideration and Response

The Department is content that regulation 32 of the draft 2017 EIA Regulations requiring a planning authority to consider the exercise of their enforcement functions in such a way as to secure compliance with the objectives and requirements of the Directive appropriately transposes the Directive's requirements.

While the Department recognises the concerns raised regarding the effectiveness of the planning enforcement regime it would highlight that the 2011 Planning Act includes a range of provisions to strengthen planning enforcement including significant increases in the maximum levels of a number of fines. While the imposition of fines, and the level of any such fines, are matters for the courts, the Department believes that the recent changes under the 2011 Act increases the latitude available to the courts.

The Department is content that it has adequately covered this area of the EIA Directive in the draft 2017 EIA Regulations.

14. TRANSITIONAL ARRANGEMENTS

While no specific question was asked about the transitional arrangements in the consultation document, one respondent queried the arrangements to be contained within the final draft of the Regulations.

The Department has addressed this issue and included appropriate transitional arrangements in the 2017 EIA Regulations to properly transpose the requirements of the EIA Directive.

Breakdown of responses received and Department's response

Question from the consultation paper	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
Question 1: Do you agree with proposals to provide for a coordinated rather than joint procedure?	45	98%	25	56%	20	44%
Question 2: Do you have any comments in relation to the possible practical issues arising from the proposed approach to co-ordination?	QUESTION 2 - NOT REQUIRED FOR STATISTICAL ANALYSIS QUESTION BASED ON COMMENTS ONLY					
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?	23	49%	21	91%	2	9%
Question 4: Do you consider that our approach to transposition of information to be assessed appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%
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?	43	91%	37	86%	6	14%
Question 6: Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%
Question 7: Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?	23	49%	22	96%	1	4%
Question 8: Do you consider that our approach to transposition of scoping appropriately implements the requirements of the Directive?	23	49%	20	87%	3	13%
Question 9: Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?	42	89%	39	93%	3	7%
Question 10: Do you consider the new timeframes appropriately implement the requirements of Directive?	43	91%	41	95%	2	5%

Response to the EIA Amendment Directive Consultation Paper - Synopsis

Question from the consultation paper	Total of the 47 who responded to the consultation		Total of responses that broadly agreed with the proposal		Total of responses that disagreed with the proposal	
	Count	Percentage	Count	Percentage	Count	Percentage
Question 11: Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?	25	53%	20	80%	5	20%
Question 12: Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?	24	51%	19	79%	5	21%
Question 13: Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?	23	49%	21	91%	2	9%
Question 14: Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?	41	87%	20	49%	21	51%