

**CONSULTATION ON AMENDING THE ENVIRONMENTAL IMPACT
ASSESSMENT (AGRICULTURE) REGULATIONS (NORTHERN IRELAND)
2007**

Date of issue: 22 May 2017

Responses by: 19 June 2017

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1 Consultation Arrangements

Topic of this consultation	The proposed approach to implementing European Directive 2014/52/EU, by amending Directive 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment.
Scope of this consultation	Where transposition is optional, this consultation seeks your views on proposed changes to The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007, as amended through the implementation of Directive 2014/52/EU. We will also inform you of the key changes imposed by the Directive where transposition is mandatory.
Geographical scope:	These proposals apply to area of uncultivated or semi-natural land in Northern Ireland.
Impact Assessment:	The 2014 Directive's changes aim to reduce the burden on applicants and public bodies by reducing the number of cases that go through the EIA process where the risks to the environment are considered low.
To:	This is a public consultation and anyone with an interest in the proposals is welcome to respond.
Body responsible for the consultation:	This consultation is being run by the Department of Agriculture, Environment and Rural Affairs (DAERA).
Duration:	Consultation starts: 22 May 2017 Consultation ends: 19 June 2017
Enquiries:	During the consultation, if you have any enquiries or wish to receive a copy of the document, please contact email: leanne.mcgrath@daera-ni.gov.uk Tel: 02890 524623
How to respond:	Responses must be submitted by 19 June 2017. If necessary, written responses can be submitted by: (a) emailing: leanne.mcgrath@deara-ni.gov.uk (b) posting to: EIA Consultation, Environmental Farming Branch, Department of Agriculture, Environment and Rural Affairs, Room 651, Dundonald House, Upper Newtownards Road, Ballymiscaw, Belfast, BT4 3SB
After the consultation:	At the end of the consultation period we will summarise the responses and place the summary on the DAERA website.

	<p>Responses received will be analysed and taken into account by the Department in its consideration of the proposals for amending the Regulations. The consultation responses will be published. If you wish your response not to be published, please make that clear in your reply.</p>
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2 Freedom of Information Act 2000

The Department will 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 with respect to the confidentiality of consultations, as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act 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 treated as confidential.

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 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 response please contact:-

Information Commissioner's Office – Northern Ireland
3rd Floor, 14 Cromac Place
Gasworks
Ormeau Road
Belfast
BT7 2JB

Telephone: 02890 278757 / 0303 1231114

Alternatively your request can be sent electronically to ni@ico.org.uk

3 Explanation of the Consultation

3.1 Introduction

Directive 2011/92/EU, known as the Environmental Impact Assessment Directive (EIA Directive), forms part of European law and is, therefore, incorporated into our national legislation.

Environmental impact assessment is a process. It aims to provide a high level of protection to the environment and to help bring environmental considerations into the preparation of projects to reduce their impact on the environment. It seeks to ensure that proposals for development (referred to as 'projects' in the EIA Directive) that are likely to have a significant effect on the environment, for instance by virtue of their nature, size or location, are subject to a requirement for development consent and an assessment of those effects before the development is allowed to proceed.

EU Directive 2014/52/EU (the 2014 Directive) amended the EIA Directive by simplifying the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation in order to lighten unnecessary administrative burdens. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

The European Commission has produced an unofficial consolidated version of the Directive which is available here:-

http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf.

3.2 What is the purpose of this consultation?

The purpose of this consultation is to invite views on proposed changes to the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007 (SR 2007 No. 421) in order to reflect amendments introduced by the 2014 Directive.

The Regulations provide protection to areas of uncultivated or semi-natural land in Northern Ireland, which is home to many rare species of flora and fauna in their natural habitats.

This consultation invites views on the Department's proposed changes in respect of its environmental impact assessment legislation relating to agricultural projects. Consultees are invited to consider the proposals in their totality and provide any comments.

3.3 Implications of the EU referendum

The outcome of the referendum held on 23 June 2016 was that the UK should leave the European Union. Importantly before, and during the negotiations, the UK continues to participate in EU activities, the EU institutions, and abides by EU law. Therefore, until the completion of the negotiations Northern Ireland is obliged to make legislation to transpose the requirements of the 2014 EIA Directive.

4 Background to Directive 2014/52/EU

4.1 History

The EIA Directive first came into force in 1988. It has been amended since then, including in December 2011 when the Directive and its amendments were brought together into one document - Directive 2011/92/EU. Further amendments were introduced by the 2014 Directive. It is these changes that now require modifications to a number of sets of regulations – this paper's focus is on the proposed changes to the Agriculture EIA Regulations.

The overall objective of the EIA Directive is to ensure that projects which are likely to have a significant effect on the environment by virtue of, among other things, their nature, size or location are required to obtain consent under the appropriate EIA regulations. This consent may only be given after an assessment of the project's potential environmental impact.

The broad intention of the 2014 amendments is deregulatory – to simplify and clarify requirements, by focusing on environmental factors that are significantly impacted by development, rather than on any potential impact.

4.2 Implementation

The EIA Directive has been transposed through a number of regulations administered by different government departments. As well as the proposed changes to the Agriculture EIA Regulations, DAERA and the Department for Infrastructure will also be updating relevant EIA legislation in respect of planning, land drainage, marine works, fish farms, water resources and forestry - separate consultations will focus on the proposed changes in respect of those specific areas. For this consultation, 'applicants' are people, companies or organisations applying under the EIA process.

4.3 The Environmental Impact Assessment Process

Environmental Impact Assessment (EIA) is a process that aims to provide a high level of protection to the environment by bringing environmental considerations into the preparation of projects, with a view to reducing their impact on the environment. It seeks to ensure that proposals for projects which are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location are subject to a requirement for an assessment of those effects before the project is allowed to proceed.

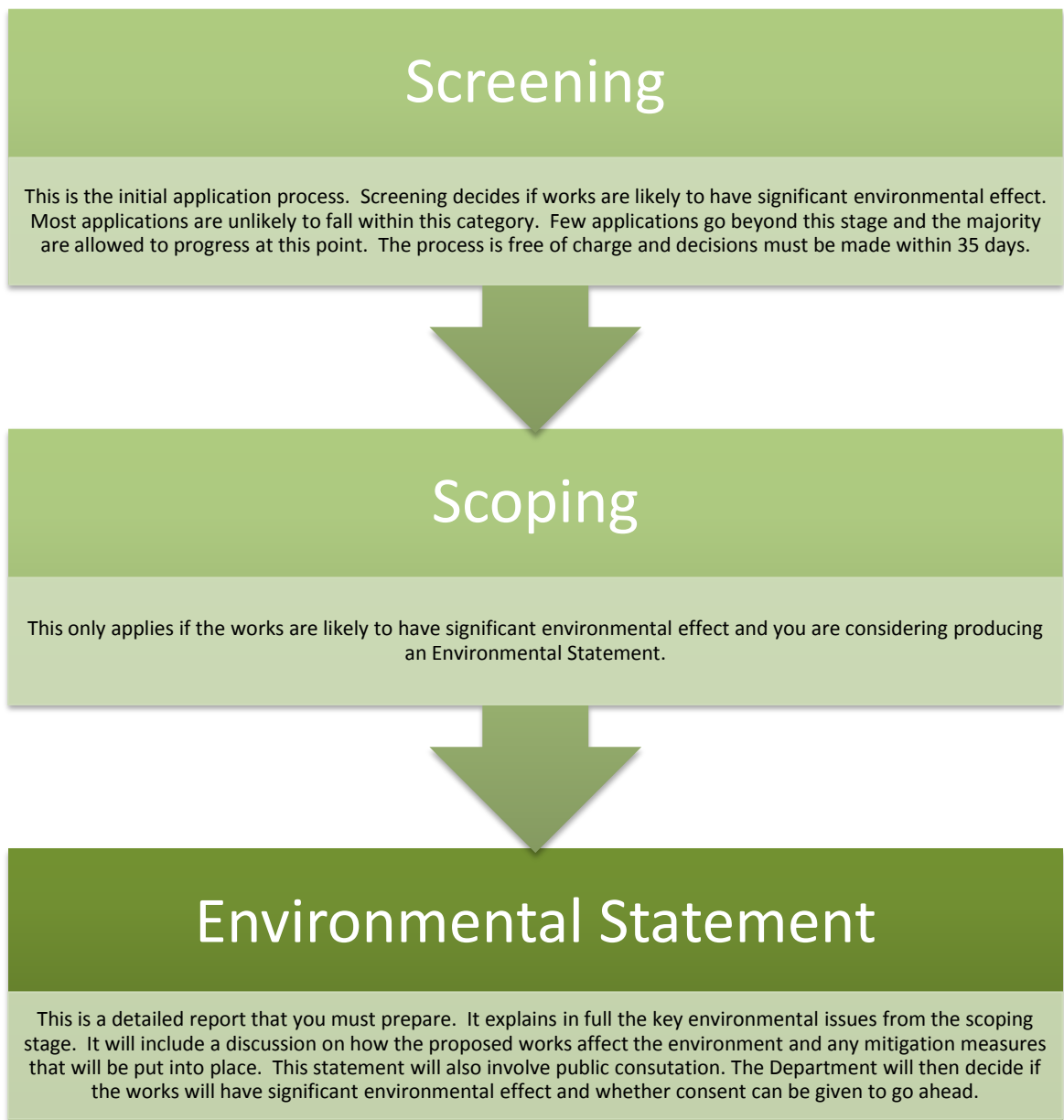
Some project types are always considered likely to have significant effects on the environment and must have an EIA in all cases. These project types are listed in Annex I of the EIA Directive and tend to be large in scale. They include power stations, motorway construction and oil refineries.

Other project types are only considered likely to have significant effects in some cases depending on their nature, size and location. These project types are listed in Annex II of the EIA Directive. Projects listed in Annex II are subject to an EIA only where it is considered they are likely to have significant effects on the environment.

The process for determining whether a project listed in Annex II is likely to have significant effects on the environment is usually referred to as 'screening'. Member States can decide whether a project listed in Annex II should be subject to EIA through a case-by-case examination and/or by setting thresholds or criteria.

Where an EIA report is required, the applicant must provide specified information to the competent authority (DAERA). The information enables DAERA to make an informed decision on whether the project should be given EIA consent to proceed. It also requires that public and other bodies are consulted and given an opportunity to participate in the decision making process.

The main steps in the process are illustrated as follows:



Since 2012 the Department has considered 34 screening applications for uncultivated or semi-natural land projects. No applications were received for restructuring projects, which are physical operations that give a significantly different physical structure to the arrangement of an agricultural land-holding. Examples of restructuring projects include the removal or addition of substantial lengths of field boundaries such as hedge-banks, walls, fences, ditches or tracks.

Of the applications received, the Department decided that four cases required consent applications, including submission of an environmental statement. No consent applications were submitted.

4.4 Proposals for the Transposition

The approach set out in this consultation follows the Northern Ireland principles for transposition. These include ensuring that we do not go beyond the minimum requirements of the Directive (i.e. avoid 'gold plating').

The approach we have taken to determine which applications for semi natural and uncultivated land projects should be subject to EIA has been to use a combination of case by case examination and a threshold.

4.5 What would the changes mean?

In general terms, the main change proposed to the EIA process is that certain information currently required at the end of the EIA process (consent stage) is required upfront (screening stage). This should mean that the screening decision can be dealt with more effectively as there will be more detailed information available at this early stage. In principle, although this could potentially increase the costs in the initial stages of the process it should mean that the screening decision can be dealt with more effectively as there will be more detailed information available at this early stage.

5 The proposals we are consulting on / amendments to the Regulations

5.1 Transposing the 2014 EIA Directive

5.1.1 *Definitions: Article 1(1)(a) and 1(3) of the 2014 EIA Directive – amending Article 1(2)(g) and 3 of the EIA Directive*

The 2014 Directive has introduced a new definition of the “environmental impact assessment”. It is defined as a process consisting of:

- the preparation of an environmental impact assessment report by the applicant, as referred to in Article 5(1) and (2);
- the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
- 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 applicant in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
- the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the above examination and, where appropriate, its own supplementary examination;
- the integration of the reasoned conclusion by the competent authority into any of the decisions referred to in Article 8a”.

Article 1(3) of the 2014 Directive has changed the matters that the environmental impact assessment should identify, describe and assess in an appropriate manner, in the light of each individual case the direct and indirect significant effects of a project. The list of factors to consider has been amended to:

- a) population and human health;
- b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and wild birds protected under 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).

The EIA should also include, where relevant, the expected effects on the factors listed above, deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

As these Articles are mandatory and must be transposed, we propose to copy out this new definition and changes in to the regulations.

5.1.2 *Co-ordinated and joint procedures: Article 1(2)(a) of the 2014 EIA Directive – amending Article 2(3) of the EIA Directive*

The 2014 EIA Directive has introduced a new requirement at Article 2(3) of the EIA Directive. Where a project is subjected to an assessment under the EIA Directive and also under the Habitats and/or Birds Directives, the amended EIA Directive requires that either a ‘co-ordinated’ or a ‘joint’ procedure should be used.

The co-ordinated procedure is undertaken by designating a lead authority to co-ordinate separate assessments. The joint procedure, on the other hand, requires Member States to try to provide for a single assessment of a project’s impacts on the environment.

Co-ordinated procedures provide the flexibility for applicants around the phasing and timing of EIA and Habitats Regulations Assessment (HRA). For joint procedures Member States try to provide for a single assessment of the environmental impact of a project.

The Department proposes to copy out the requirements to allow for a co-ordinated procedure.

Consultation Question 1 – Do you agree with this proposal? If yes, please outline why? If not, please outline why not.

5.1.3 *Screening: Article 1(4) of the 2014 EIA Directive – amending Article 4 of the EIA Directive*

The Department uses screening to decide if a proposal is likely to have significant environmental effects and, therefore, if an EIA is required.

The 2014 Directive has introduced a new detailed list of the information to be provided to enable screening of projects that exceed the relevant threshold. This will include a description of the aspects of the environment likely to be significantly affected by the project.

A change also introduced by the 2014 Directive is that applicants provide results of other assessments relating to the project’s effects on the environment at the screening stage. Currently these are provided later in the EIA process. This could include assessments under the Water Framework Directive (2000/60/EC), the Strategic Environmental Assessment Directive (2001/42/EC) and the Habitats Directive (92/43/EEC). The proposer/developer can also provide details of any features of the project designed to avoid or prevent significant adverse effects on the environment. Article 4(5) of the EIA Directive requires the competent authority (DAERA) to make its screening decision on the basis of the information provided by the applicant, taking into account, where relevant, the results of preliminary verifications or assessments carried out pursuant to Union legislation other than the EIA Directive.

The 2014 Directive has introduced a requirement that the competent authorities should publish their screening decisions and explain the main reasons why an EIA is needed or not. When an EIA is not needed, the published decision must list any features of the project and/or action to be taken to avoid or prevent what might otherwise be negative effects on the environment.

We propose to 'copy out' these new requirements as this is required under the new Directive.

5.1.4 Thresholds: Article 1(4) of the 2014 EIA Directive – amending Article 4(3), (4) and (5) of the EIA Directive

The 2014 Directive amends the process that allows Member States discretion to set thresholds beneath which projects are not required to undertake an EIA or the level to be met before an application needs to go through the scoping stage of the EIA process. The amendments also allow for absolute thresholds to apply, i.e. if EIA consent is automatically required.

The Agriculture Regulations already include thresholds to help determine when a project is likely to have a significant impact on the environment, more details of which can be found at the following link:

<https://www.daera-ni.gov.uk/publications/environmental-impact-assessment-application-forms-and-guidance>

These thresholds act as guidelines: exceeding the threshold does not automatically mean a project requires an EIA report - a decision is made through the screening process. Similarly, projects below the threshold may require EIA consent.

The Department proposes to retain the existing thresholds.

Consultation Question 2 – Do you agree with this proposal? If yes, please outline why? If not, please outline why not.

5.1.5 Time period for making screening decisions (Article 1(4) of the 2014 Directive – amending Article 4 of the EIA Directive)

The amending article also sets out a maximum timeframe for the Department to provide a screening decision. The decision, known as a 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 required information.

The current Regulations allow the Department 35 days to make a screening decision. The Department proposes to retain this timeframe.

Consultation Question 3 – Do you agree with this proposal? If yes, please outline why? If not, please outline why not.

5.1.6 Scoping and Environmental Impact Assessment: Article 1(5) of the 2014 EIA Directive – amending Articles 5(1) and 5(2) of the EIA Directive

After the screening stage, if a proposed project needs an Environmental Impact Assessment, it can go through the ‘scoping’ stage. This is voluntary and allows an applicant to ask that the Department outlines the scope and level of detail to be included in their Environmental Statement.

Before issuing a scoping opinion, DAERA will consult with other authorities that may have an interest in the proposals. The scoping opinion given must account for information provided by the applicant on the project, such as its location, technical capacity and its likely impact on the environment.

The EIA Directive sets out the minimum information that has to be provided for a screening opinion and the scoping opinion request. The EIA Directive includes this in Annex IV together with a longer list of topics that should be covered if relevant. The 2014 Directive has introduced minimum requirements to Article 5(1) of the EIA Directive, so that it sets out what should be included in an environmental impact assessment report. This includes mitigation measures, a non-technical summary, and a description of reasonable alternatives.

We propose to copy out these new requirements in the regulations.

5.1.7 Consulting others in the EIA process: Article 1(6) of the 2014 EIA Directive – amending Article 6 of the EIA Directive

The competent authority has to publish its notice of applications that require an EIA, giving the public and other stakeholders opportunity to review and comment on the EIA’s findings. Feedback must be considered before issuing a consent decision. The 2014 Directive requires that information is made available electronically, in addition to traditional methods. Competent authorities can add newspaper notices to the ways of consulting.

The 2014 Directive adds a new minimum time for public consultations (on the EIA Report) of at least 30 days. This is an increase from 28 days.

We propose to copy out these new requirements into the regulations.

5.1.8 Consultation on transboundary effects of a project: Article 1(7) of the 2014 EIA Directive – amending Article 7(4) of the EIA Directive

Where a project is likely to have significant effect on the environment in another country in the EU, the 2014 EIA Directive adds that public consultations on projects can be run by an appropriate joint body.

The current Regulations contain provision for transboundary consultation. Therefore, we do not propose to incorporate into the regulations the option of consultations being run by an appropriate joint body.

5.1.9 Consent – Explaining decisions and Monitoring of significant environmental effects: Article 1(9) of the 2014 EIA Directive – inserts new provision Article 8a into the EIA Directive

Following consultation, where the competent authority decides to grant consent for a project, the decision is given in writing.

The decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions in the project to reduce the risk of significant adverse effects on the environment. Where the decision is to refuse consent, the main reasons for the refusal are given.

A notice of a decision will also include monitoring measures. The monitoring, including how long it happens, should be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

The authority will inform the public and the statutory consultation bodies about the decision and its content, including a summary of the results of the consultation.

No change to the current Regulations is proposed as DAERA already provides a statement setting out the reason for granting or refusing consent.

5.1.10 Competent experts (Article 1(5) of the 2014 Directive – amending Article 5(3) of the EIA Directive)

The 2014 Directive has introduced a requirement that the applicant must ensure that the environmental statement is prepared by competent experts. Also, the competent authority (DAERA) must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement. DAERA will be able to rely on the assistance of statutory consultation bodies.

We propose to copy out these provisions.

5.1.11 Conflicts of interest (Article 1(11) of the 2014 Directive – inserts Article 9a into the EIA Directive)

The 2014 Directive introduces a requirement that the competent authorities have to be objective and avoid conflicts of interest. Where the competent authority is also the applicant, there must be appropriate separation between the people making the application and the people carrying out the role as competent authority.

We do not propose a change to the EIA Agriculture Regulations. This is because DAERA, as a Government Department, is already subject to public law principles that require it to act in an objective manner and to avoid conflicts of interest.

5.1.12 Penalties (Article 1(13) of the 2014 Directive – inserts Article 10a into the EIA Directive)

The 2014 Directive requires that we must have penalties for infringements of our EIA regulations. The penalties have to be effective, proportionate and dissuasive.

The Department does not propose to change the existing regulatory provisions, which include penalties for infringements.

Consultation Question 4 – Do you agree with this approach? If yes, please outline why? If not, please outline why not.

5.2 Further amendments to the EIA (Agriculture) Regulations (NI) 2017

5.2.1 Definitions within the Interpretation section of the Regulations

The Department will add “the Birds Directive” to the Interpretation section of the Regulations, and will include text following each of the EU Directives ‘as amended from time to time’.

The Department will correct the text within “the Habitat Regulations” from ‘&c’ to ‘etc’ and include a footnote in the “sensitive area” definition in relation to the regulations quoted.

The ‘Department of Agriculture and Rural Development’ will be amended to the ‘Department of Agriculture, Environment and Rural Affairs’.

5.2.2 Amend Cross Reference to the EIA Directive

The Department will correct cross references to the EIA Directive at regulation 3 of the Regulations ‘Article 2(3)’ is to be amended to ‘Article 2(4)’.

In regulation 3(3) and (4) reference to ‘paragraph 2’ is to be amendment to ‘paragraph 2(b)’.

5.2.3 *Corrects input error*

Regulation 37 and 38 will be amalgamated as one regulation, in effect omitting regulation 38. This was an input error in the original drafting.

5.2.4 *Schedule 5*

The list of consultation bodies at Schedule 5 will be updated as required.

Consultation Question 5 – Do you have any other views on the proposed changes / approach to amending the EIA Agriculture Regulations?

6 Impact Assessments

6.1 Regulatory Assessment

The 2014 Directive's changes aim to reduce administrative burden by cutting the number of cases that go through the EIA process. The benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report.

6.2 Equality Screening

In Northern Ireland, Section 75 of the Northern Ireland Act 2008 places a statutory equality duty on public authorities.

In developing these proposals we have assessed the impact of the changes to our EIA regulations, having regard to the public sector equality duty. Based on our initial assessment of the other proposals, we think that there is likely to be no impact on Section 75 groups, but will keep this under review.