

**CONSULTATION ON PROPOSED NEW WATER RESOURCES  
ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS TO  
IMPLEMENT EUROPEAN DIRECTIVE 2014/52/EU ON THE  
ASSESSMENT OF THE EFFECTS OF CERTAIN PUBLIC AND  
PRIVATE PROJECTS ON THE ENVIRONMENT**

**SYNOPSIS OF RESPONSES**

**Department of Agriculture, Environment and Rural Affairs**

**June 2017**

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<http://www.daera-ni.gov.uk>

## **1. Introduction**

In March 2017, the Department published a consultation paper on proposals to make new environmental impact assessment regulations in respect of water management projects for agriculture in order to transpose [Directive 2014/52/EU](#) which relates to the assessment of the effects of certain public and private projects on the environment. Directive 2014/52/EU amended Directive 2011/92/EU, known as the environmental impact assessment Directive, with the aim of reducing the administrative burden and improving the level of environmental protection associated with the environmental impact assessment process.

Directive 2011/92/EU was originally transposed in Northern Ireland through several pieces of legislation covering areas such as planning, drainage, marine works and forestry. Amongst the regulations for which DAERA has responsibility are [The Water Resources \(Environmental Impact Assessment\) Regulations \(Northern Ireland\) 2005](#) which transposed the Directive in respect of agricultural water management projects involving the abstraction, diversion or impoundment of 200 cubic metres (or more) of water in any 24 hour period which are likely to have significant effects on the environment. The consultation proposed that the 2005 Regulations would be replaced and revoked by a new set of Regulations in order to reflect the changes introduced by Directive 2014/52/EU.

## **2. Consultation**

The Department launched the consultation on proposed new water resources environmental impact assessment regulations on 1st March 2017 and it ran until 26th April 2017. The public consultation gave stakeholders the opportunity to provide their views on the proposals made by the Department and on the Department's assessment of the impact of proposed new Regulations.

## **3. Engagement with stakeholders**

Information on the consultation and links to the consultation paper were provided to the normal statutory consultees and relevant water stakeholders. The consultation was also advertised on the Department's website.

## **4. Responses to consultation**

The consultation paper sought views on the proposed new water resources environmental impact assessment Regulations. A total of 7 responses were received. Two of the respondents raised no objections to the making of the Regulations. The following sections provide an overview of the main comments contained in the other responses and the Department's reply to these comments. 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. Please note that as the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 ('new water resources EIA Regulations') were made on 15th May 2017, the Department's response will refer to the final content of these Regulations.

### **Scope of Regulations**

Three respondents considered that the proposed new regulations should not be limited to consideration of water management projects relating to agriculture and that non-agricultural water management projects which are not associated with any planning proposal should also be covered by the Regulations. Two of these respondents were also not in favour of retaining the current threshold to determine whether a project is a relevant project (under the 2005 Regulations, a project is not considered a relevant project if it involves the abstraction, diversion or impoundment of less than 200m<sup>3</sup> of water in any period of 24 hours). One of the respondents suggested that the use of the threshold may contradict the requirements of Annex II of Directive 2014/52/EU. One of these respondents also expressed the view that the scope of the Regulations should be widened to cover the screening of applications for landfill licences.

### *Departmental Response*

*The purpose of the new water resources EIA Regulations, as highlighted in the consultation document, is to replace and revoke the 2005 Regulations in order to reflect the changes introduced by Directive 2014/52/EU. The aim of the 2005 Regulations and the new water resources EIA Regulations is to ensure that the types of projects referred to in Annex II 1(c) of Directive 2011/92/EU, which are not covered under planning EIA legislation, are covered within the suite of EIA legislation*

*in Northern Ireland. Therefore the Department did not propose to (and did not) expand the scope of the new water resources EIA Regulations to cover other types of non-agricultural abstraction projects or to apply in respect of applications for landfill licences, nor does the Directive require it to do so. Existing legislation is already in place to regulate and protect the environment from the potential negative effects associated with landfills including the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 and the Landfill Regulations (Northern Ireland) 2003.*

*With regard to non-agricultural abstraction / impoundment licences, applications are processed under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (as amended). Under these Regulations, the Department is required to consider the impacts of the proposed activity when assessing an application and can attach terms and conditions to a licence which it considers necessary or expedient for the purpose of protecting the water environment. Similar to the provisions in the 2005 Regulations and the new water resources EIA Regulations, there are also requirements in these Regulations in respect of advertising applications which are likely to have a significant adverse impact on the water environment in order to allow interested persons to make representations to the Department. In granting any licence under the Regulations, the Department is required to have regard to all activities being carried on or likely to be carried on in the area of the water environment likely to be affected by the controlled activity to which the application relates. The Department is also required to comply with specific requirements in the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 around the protection of European sites (special areas of conservation, sites and areas protected under the Habitats and Wild Birds Directive etc) in respect of applications for licences that may affect such sites. The Department must undertake an appropriate assessment if it considers that the activity is likely to have a negative impact on the protected site's feature(s) before granting an abstraction licence.*

*The Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 also contain a review mechanism (reg. 12) whereby the abstraction licence conditions could be modified on an existing licence if it is felt that some activity may*

*have a negative impact on the protected site. The majority of applications for licences under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 are not related to a planning proposal. There are, therefore, requirements in place to ensure that the environment and the water environment are protected when considering applications for non-agricultural abstraction projects which are not associated with any planning proposal through the Department's abstraction licensing system.*

*With regard to the setting of thresholds in order to determine whether a project is a relevant project, Directive 2011/92/EU(as amended) allows for Member States to make such determinations on the basis of thresholds or criteria set by the Member State. The approach in the 2005 Regulations and the new water resources EIA Regulations is, therefore, consistent with the requirements of the Directive and is also consistent with the approach adopted in the rest of the UK. There is no evidence to suggest that the inclusion of the threshold within the 2005 Regulations had any negative impact on the environment and, as highlighted above, the Department assesses every application for an abstraction licence (whether or not the associated project falls within the scope of the new water resources EIA Regulations) in order to identify any potential negative effects on the water environment and can impose conditions on any licence granted in order to prevent these effects from occurring.*

*Further information on the assessment and regulation of applications for licences to abstract or impound water can be obtained NIEA at the following address and email:*

*Abstraction & Impoundment Licensing Team*

*Water Management Unit*

*NIEA*

*17 Antrim Road*

*Tonagh*

*Lisburn*

*County Antrim*

*BT28 3AL*

*Email: [AIL@daera-ni.gov.uk](mailto:AIL@daera-ni.gov.uk)*

## **Co-ordinated/Joint Procedure**

Two respondents expressed support for a coordinated procedure, in principle, to help streamline the process and reduce administrative burden. However, one of the respondents also expressed concerns about how a co-ordinated procedure will be applied in practice in Northern Ireland, highlighting that it is essential that the co-ordinating body has access to expertise of relevance to both EIA and HRA.

Two respondents expressed concerns that a co-ordinated approach would not improve the current environmental assessment process, whereas a joint approach should, in theory, remove any possibility of potential conflicts arising in future assessments.

One respondent recommended that the process required, whether a joint or co-ordinated approach, should be no more burdensome than the separate applications that would previously have been made.

## **Departmental Response**

*The new water resources EIA Regulations require the Department to co-ordinate assessments where the significant effects of a relevant project are being or are to be assessed in accordance with those Regulations and the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995. This is consistent with the approach being taken in the rest of the UK in respect of water management projects for agriculture and it is considered that a co-ordinated approach will provide the Department with the flexibility to ensure that the requirements of the Directive and other relevant Union legislation are met and that relevant sites are adequately protected.*

## **Exemptions**

One respondent expressed concern around the proposal to transpose Article 2(4) in the Directive, which allows for the exemption of a project from the Directive's provisions in exceptional circumstances.

## Departmental Response

*Article 2(4) of Directive 2011/92/EU (as updated by Directive 2014/52/EU) provides Member States with the option of exempting a project from the provisions in the Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of the Directive are met. In order to ensure effective transposition of Directive 2014/52/EU, the Department has incorporated the requirements of Article 2(4) into the new water resources EIA Regulations.*

## **Screening/Scoping**

One respondent made a number of comments in respect of the screening and scoping stages in the process. This respondent:-

- recommended that, should there be any uncertainty over screening, then the default position should be that a full EIA is required;
- expressed concerns that competent authorities and statutory agencies are under-resourced and do not have adequate access to independent ecological expertise;
- expressed the view that screening information should be prepared by competent experts and competent authorities should have access to competent experts at the screening stage;
- welcomed the requirement to provide a clear justification for the screening decision and also expressed the view that scoping should be a mandatory part of the EIA process;
- highlighted that the screening stage must also take into consideration nationally and internationally designated sites, European sites, protected species, locally significant environmental interests, priority habitats and species and wider biodiversity;
- further highlighted that the application of Annex III criteria at the screening, scoping and reporting stages is critical to identifying if likely significant effects will occur in sensitive areas and to ensure the protection of a range of designations.



Another respondent expressed a view that scoping should not be made mandatory as the current voluntary basis would better facilitate productive communication. A further respondent believed that the requirement for more information at the screening stage is necessary while acknowledging that given the minimal number of projects falling within scope of Regulations, the change is unlikely to have a significant burden on applicants.

#### Departmental Response

*The provisions included in the new water resources EIA Regulations comply with the requirements of Directive 2011/92/EU, as amended by Directive 2014/52/EU. Screening will be used to determine whether a project is a relevant project taking into account the factors and criteria outlined in Annex IIA and Annex III of the Directive, as transposed by Schedules 1 and 2 of the new water resources EIA Regulations. Applicants can involve competent experts in the preparation of information to be provided for the purposes of determining whether a project is a relevant project but this is not mandatory.*

*Scoping has not been made mandatory under the new water resources EIA Regulations. This is consistent with the provisions of the Directive and approaches adopted elsewhere in the UK and provides applicants and potential applicants with the option of requesting an opinion from the Department on the scope of an environmental impact assessment or submitting an application and accompanying environmental impact assessment report which they are confident provides the relevant information as required by the Directive.*

#### **Electronic Publication**

One respondent, while raising no objection to the electronic publication of applications requiring an EIA, highlighted the importance of non-electronic notifications for those persons with poor digital access. Another respondent recommended that screening, scoping and post-consent information should all be made available to the public electronically.

### Departmental Response

*The new water resources EIA Regulations require that the outcomes of screening determinations and determinations around applications in respect of licences for relevant projects be made available to the public. This includes requirements to publish certain information on the Department's website and to provide details in newspaper notices (and on its website) of where copies of relevant documents relating to decisions regarding a project or relevant project can be inspected and obtained.*

### **Competent Expert**

One respondent requested that "competent experts" should be further defined. Another respondent recommended that competent experts should be involved at all stages of the EIA process.

### Departmental Response

*The Department considered that it would not be appropriate or necessary to define "competent expert" in the new water resources EIA Regulations and a definition has not been included in the Regulations. The new water resources EIA Regulations require environmental impact assessment reports to be prepared by a competent person and the report will have to state the relevant expertise and qualifications of the person. Applicants can involve competent experts at all stages of the process but are not required to do so. This provides applicants with flexibility in terms of the extent to which they wish to use competent experts prior to the completion of an environmental impact assessment report.*

### **Guidance/clarity around requirements of Regulations**

Some respondents requested that clarity be provided on particular issues and were in favour of guidance being issued in respect of the EIA process.

Two respondents requested clarification on what is meant by terms such as "significant effects" and "major accidents and/or disaster that are relevant to the project concerned" and the risk of these occurring and their likely significance on the environment. One of these respondents also felt that there should be guidance to

provide examples of the types of projects which are likely to be deemed national defence and civil emergency projects.

Another respondent felt that guidance was needed around screening, monitoring and the assessment of “cumulative impacts” with other existing and/or approved projects. The respondent suggested that outline guidance was developed so that co-ordinated applications would be treated consistently regardless of which lead authority were to manage the assessments.

### Departmental Response

*The Department will consider the need for guidance once the new Regulations have been in operation for a period of time. The experience of implementation of the 2005 Regulations suggests that there are unlikely to be many applications that fall within the scope of the new Regulations and, therefore, there is unlikely to be an urgent need for specific guidance in respect of the new water resources EIA Regulations but this issue will be kept under review.*

*While Directive 2014/52/EU introduced new wording around potential exemptions in respect of projects which have national defence and civil emergencies as their sole purpose, it is considered unlikely that these exemptions would need to be applied in respect of projects falling within the scope of the water resources EIA Regulations. Requirements in terms of environmental impact assessments apply in respect of a wide range of projects and such exemptions are more likely to apply in respect of projects covered under other EIA legislation.*

### **Penalties**

One respondent expressed a preference for not creating any new penalties if those under other legislation are considered sufficient.

Another respondent expressed the view that penalties must be high enough to act as a deterrent and also that competent authorities and regulators need to be adequately resourced in order to undertake enforcement action and apply penalties.

### Departmental Response

*The Department considers that the penalties currently set out in the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006, are sufficient for the purposes of the new water resources EIA Regulations.*

### **Mitigation/Monitoring**

One respondent recommended that mitigation measures should only be relied upon to inform screening decisions if they are clear, known to be effective and enforceable. The respondent further added that where a project has been screened out of EIA on the basis of mitigation measures, the proposal should be revisited and scrutinised. The respondent supported the full implementation of mitigation measures and the use of monitoring measures provided it was clear that monitoring is likely to be required in most cases.

Another respondent agreed that the measures around monitoring and the monitoring period should be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

A further respondent noted that robust monitoring and enforcement is essential and that further clarification is required around the definition of, and the criteria for judging, “significant” environment effects.

### Departmental Response

*Under regulation 10 of the new water resources EIA Regulations, the Department may potentially impose a monitoring or mitigation condition when granting an application for a licence, or the modification of a licence, for a relevant project. The Department can impose a monitoring condition in respect of a project and, if it does so, must ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the relevant project and the significance of its effects on the environment. The Department is also required to consider whether monitoring arrangements required under other Union legislation are more appropriate than imposing a monitoring condition under the water resources EIA Regulations. Where mitigation conditions or monitoring*

*conditions are required, the Department must take steps to ensure that those conditions are implemented.*

*In terms of the screening process, the Department will take into account all of the information provided by an applicant, including details on any features of the project proposed to avoid or prevent what might otherwise have been significant effects on the environment. The inclusion of such mitigation features does not mean that a project will automatically be screened out as the Department also has to take into account the results of any preliminary verifications or assessments carried out pursuant to any other EU obligation and the criteria set out in Schedule 2 of the new EIA Regulations. Screening determinations made by the Department will set out the main reasons for the Department's conclusion, including details on any mitigation features where the determination is that a project is not a relevant project.*

## **5. Next Steps**

The Department made the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 on 15 May 2017. These Regulations came into operation on 5th June 2017 and can be accessed at <http://www.legislation.gov.uk/nisr/2017/85/contents/made>.

## **ANNEX A**

### **List of Respondents**

The Water Appeals Commission

Ulster Angling Federation

The Central Association of Agricultural Valuers

River Faughan Anglers

Northern Ireland Environment Link

Council for Nature Conservation and the Countryside

Royal Society for the Protection of Birds Northern Ireland