



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

**The Roads (Environmental Impact
Assessment) Regulations (Northern
Ireland) 2017
EIA Amendment Directive
Consultation Paper
March 2017**

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ANNEX 1 – Draft of the Roads (EIA) Regulations (NI) 2017

ANNEX 2 – Draft Part V of Roads Order with Amendments Highlighted

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1. RESPONDING TO THIS CONSULTATION DOCUMENT

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

All responses should be made in writing and submitted to the Department no later than 4pm on Friday 21st April 2017

An electronic copy of the Consultation Paper is available on the Department's Internet site at <https://www.infrastructure-ni.gov.uk/consultations> and copies can also be made available in alternative formats, if so required.

Comments on the proposed regulations should be made in writing and may be forwarded via e-mail to annemarie.rogers@infrastructure-ni.gov.uk or una.kearney@infrastructure-ni.gov.uk, alternatively, via post to Anne-Marie Rogers/Una Kearney, Department for Infrastructure, Lands Branch, Transport Projects Division, Room 2-01, Clarence Court, 10–18 Adelaide Street, Belfast BT2 8GB.

The Department tries to make its consultation procedure as thorough and open as possible. Following the end of this consultation we shall publish details of the responses received. Information you provide in your response, including **personal information** could be published or disclosed under the Freedom of Information Act 2000 (FOIA). Under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with obligations of confidence. If you want the information that you provide to be treated as confidential it would be helpful if you could explain why. Although we will take full account of your explanation we cannot give an assurance that confidentiality can be maintained in all circumstances. Any automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Department.

For further information about the confidentiality of responses please contact the Information Commissioner's Office or see their website at: www.ico.gov.uk.

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

2. IMPACT ASSESSMENTS

Government bodies are required to screen the impact of new policies and legislation against a wide range of criteria, including equality and human rights. Preliminary Regulatory Impact Assessment and an Equality Impact Assessment Screening have been undertaken and are set out at Annexes 4 and 5 to this consultation paper.

The Department invites your views on the potential impact, if any, you consider that the proposed legislation might have on equality of opportunity, human rights issues and rural impact.

3. INTRODUCTION

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

The EIA Directive’s main aim is to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects with a view to reduce their impact on the environment.

The requirements of the EIA Directive form part of European law and the Department is responsible for the proper transposition of Directive 2014/52/EU into Roads legislation. The Department therefore proposes to further amend the Roads (Northern Ireland) Order 1993 with the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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

4. BACKGROUND

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

The EIA Directive requires the assessment of the effects of certain public and private projects on the environment before a decision is taken to give consent to proceed with a project. Its main aim is to ensure that the Department when making its decision whether or not to proceed with a project is in the full knowledge of any likely significant effects on the environment.

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

Its aims are to correct the shortcomings of the previous regime, reflect on-going environmental and socio-economic changes and challenges, and align it with the

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

principles of smart regulation. In addition, emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention are now reflected in the assessment process.

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

The Department for Infrastructure makes decisions about the future development of the Roads network. It considers where development projects should take place, taking proper account of the potential impact of such projects on their surroundings. Through a number of Strategic Road Plans the Department ensures the roads network is used and developed in a way that creates a high quality, sustainable infrastructure network. One of the aims is to balance the need for development and economic growth while ensuring the environment remains well protected. For the majority of small projects an EIA would not be required, however, for those projects greater than 1 hectare or in a sensitive area, Part V of the Roads Order, provides a means of assessing the environmental effects of the proposal through the EIA process.

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

This consultation paper sets out the key changes to the EIA Directive that impact on Part V of the Roads Order 1993 as amended and which the Department proposes to transpose through the 2017 EIA Regulations, a draft of which is attached at Annex 1. Some key changes to the EIA Directive include the following:

- Administrative burdens will be reduced and processes streamlined through the introduction of joint and/or coordinated procedures when a project also requires assessment under the Habitats/Wild Birds Directive.
- The environmental factors to be considered in the assessment have been refined and broadened to reflect emerging challenges that are important to the EU as a whole in areas such as resource efficiency, climate change, biodiversity and disaster prevention.
- The screening procedure, determining whether an EIA is required, is strengthened through new information requirements and a revision of the selection criteria to be considered when making decisions. The Directive also clarifies that only those developments with significant environmental effects should be subject to an assessment.
- The information to be contained within the Environmental Statement has been revised and clarified to improve their quality and content.
- Environmental Statements are to be prepared by competent experts and the Department is to have access to sufficient expertise to examine and assess the statements.
- The grounds for deciding to proceed or not with a project must be clear and considered and reasons for determinations and decisions must be provided and shared with the public. In addition, the Department needs to prove their objectivity to avoid conflicts of interest.

- Monitoring, proportionate to the nature, location and size of the project, will be required for projects which appear to have significant negative effects on the environment. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.

5. ASSESSMENT PROCESS

5.1 Definition of Environmental Impact Assessment Process

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

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

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

The actual wording of the Directive is as follows:

Article 1(2)(g)

"environmental impact assessment" means a process consisting of:

- ***the preparation of an environmental impact assessment report by the developer...***
- ***the carrying out of consultations ...;***
- ***the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer ...***
- ***and any relevant information received through the consultations...;***
- ***the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in Article 1(2)(g)(iii) and, where appropriate, its own supplementary examination; and***
- ***the integration of the competent authority's reasoned conclusion into any of the decisions***

This article is mandatory and has been transposed by the inclusion of relevant definitions in paragraph 2 (2) (a) in the 2017 EIA Regulations.

5.2 Exemptions – Defence/Civil Emergencies /National Law

The Directive allows for some projects to be made exempt from the requirements of the Directive e.g. projects serving national defence purposes.

These exemptions have been extended and now also apply to projects which are solely in response to civil emergencies.

The actual wording of the Directive is as follows:

Article 1(3)

Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil

emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

Article 2(4) and (5)

Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met

Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.

Defence is a reserved matter therefore provisions concerning defence are covered in the relevant UK legislation. The exemption for civil emergencies and in respect of National Laws has been transposed in paragraph 2 (2) (b) in the 2017 EIA Regulations.

5.3 Coordinated Procedures

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

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

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

The actual wording of the Directive is as follows:

Article 2(3)

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

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.

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

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

This article is mandatory and has been transposed by the inclusion of relevant definitions in paragraph 2 (2)(a) and paragraph 2 (2)(d) in the 2017 EIA Regulations.

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

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

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

6. INFORMATION TO BE ASSESSED

6.1 Environmental Impact Assessment Information

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

The actual wording of the Directive is as follows:

Article 3(1)

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).

This article is mandatory and has been transposed by the inclusion of Annex IV from the Directive and in paragraph 2 (2)(d) in the 2017 EIA Regulations.

6.2 Assessing the Risk of Major Accidents

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

The actual wording of the Directive is as follows:

Article 3(2)

The effects referred to in Article 3(1) on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

This article is mandatory and has been transposed by the inclusion of Annexes III and IV from the Directive and reference to this in paragraph 2 (2) (b) and (d) in the 2017 EIA Regulations.

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

7. SCREENING

7.1 Information to be Provided for Screening

Screening is the process whereby the Department determines whether the proposed project should be subject to an environmental impact assessment. The Department has set out in previous Regulations via its definition of a relevant project the criteria to be met to establish if an EIA is required and this has now been enhanced. Specific criteria to be considered by the Department when deciding if an EIA is required is detailed in Annex III of the Directive. When reviewing this information the Department needs to take account of the available results of other relevant assessments of the effects on the environment carried out under other EU legislation.

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

Article 4(4)

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

This article is mandatory and has been transposed by the inclusion of Annex III and IV from the Directive and reference to this in paragraph 2 (2) (b) in the 2017 EIA Regulations.

7.2 Screening Determination

Decisions on whether or not to proceed, both positive and negative, must be based on information reviewed by the Department 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 determination must be published with reasons justifying any decision.

The actual wording of the Directive is as follows:

Article 4(5)

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

The determination shall be made available to the public and:

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

b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state

any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

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

7.3 Maximum Timeframe for a Screening Determination

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

However in the Department for Infrastructure scenario the 90 day requirement is not applicable as the Department is the developer and this stage is a fully internal process. It is in the Departments interest not to delay proceedings in establishing whether or not an EIA is required.

The actual wording of the Directive is as follows:

Article 4(6)

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

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

This article is mandatory however it is not possible to transpose it within the 2017 EIA Regulations.

Question 5. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

8. ENVIRONMENTAL STATEMENT

8.1 Information to be provided in an Environmental Statement

The information to be included in the Environmental Statement has been refined and clarified. In addition, a new provision has been introduced requiring that where a scoping opinion is requested the Environmental Statement must be “based on” that opinion. However in the Department for Infrastructure scenario where the Department is the developer and has appointed competent experts to provide it with an EIA this scoping opinion is not relevant.

The actual wording of the Directive is as follows:

Article 5(1)

Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report². The information to be provided by the developer shall include at least:

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

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

(b) a description of the likely significant effects of the project on the environment;
(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
(e) a non-technical summary of the information referred to in points (a) to (d); and
(f) any additional information ... relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

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

This article is mandatory and has been considered transposed by referencing Annex IV from the Directive, detailing information to be included in the Environmental Statement, and by the inclusion of relevant definitions in paragraph 2 (2) (d) and (e) of 2017 EIA Regulations.

Question 6. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?

9. ASSESSMENT QUALITY AND EXPERTISE

9.1 Competent Experts

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

Given the diverse range of EIA topics and different areas of specialist expertise, we do not propose to define in legislation any particular route to or procedures for accreditation in this respect. The assessment of relevant expertise will be a matter for the Department relating to the particular circumstances of the projects proposals. However the Department will set up an independent scrutiny panel of suitably qualified person(s) to examine the EIA.

The actual wording of the Directive is as follows:

Article 5(3)

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

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

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

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

This article is mandatory and has been transposed by the inclusion of the relevant definitions in paragraph 2 (2) (a) in the 2017 EIA Regulations.

Question 7. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

10. CONSULTATION AND PUBLICITY

10.1 Timeframes for Consulting the Public

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

The existing timescale of 6 weeks for public consultation will remain

The actual wording of the Directive is as follows:

Article 6(7)

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

This article is mandatory however as the current legislative position exceeds that required by the Directive this has not been amended in the 2017 EIA Regulations.

Question 8. Do you consider the current 6 week timeframes appropriately implement the requirements of Directive?

11. DECISIONS

11.1 Up-to-date Reasoned Conclusion

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

This reasoned conclusion is already an integral part of the process but the Directive now clarifies that this conclusion must be still “up-to-date” when the final decision whether to give consent to proceed with the project is made.

The actual wording of the Directive is as follows:

Article 8a(6)

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

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

11.2 Information to be Included in a Decision

The Directive clarifies the information to be included in a decision to give consent to proceed with a project. The first part reflects the requirement in Article 1(2)(g)(v) that the Department's reasoned conclusion must be integrated into any decision.

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

The actual wording of the Directive is as follows:

Article 8a(1)

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

(a) the reasoned conclusion ...;

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

This article is mandatory and has been transposed by the inclusion of relevant definitions in paragraph 2 (2) (a) and paragraphs 2 (2) (e) and 2 (3) (d) in the 2017 EIA Regulations.

11.3 Informing the Public of the Decision

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

The actual wording of the Directive is as follows:

Article 9(1)

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

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

(b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered ... and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State

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

Question 9. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

12. MONITORING

12.1 Monitoring Requirements

The Directive requires that the decision to give consent to proceed with a project should include, where appropriate, monitoring measures for projects which appear to have significant negative effects on the environment. The factors to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the development.

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

The actual wording of the Directive is as follows:

Article 8a(4)

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

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

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

This article is mandatory and has been transposed by paragraphs 2 (2)(d) and (3)(d) in the 2017 EIA Regulations.

Question 10. Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?

13. CONFLICT OF INTERESTS

13.1 Objectivity

The Directive introduces a new article dealing with a conflict of interest and stipulates that in cases where an organisation is both the developer and the competent authority, there must be an appropriate separation between functions. While there is already some separation of functions the 2017 EIA Regulations now include express provision for this. To reinforce this position the Department proposes to establish an independent scrutiny panel, of suitably qualified person(s), separated from the project so as not to have any conflict of interest when performing the duties arising from this Directive.

The actual wording of the Directive is as follows:

Article 9a

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

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

This article is mandatory and has been transposed by the inclusion of relevant definitions in paragraph 2 (2) (a) in the 2017 EIA Regulations.

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

14. PENALTIES

14.1 Rules on Penalties

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

Ultimately it will be a matter for the courts to determine whether any breach of EIA provisions has occurred, with the ultimate sanction that an existing consent or proposed project could be halted.

Given the Department for Infrastructure scenario where the Department is the developer we consider that the existing procedures provide an appropriate penalty system in that the plans of the Department can be halted by the results of public consultation and by judicial review. To reinforce this position we propose placing an explicit duty on the Department to consider if the requirements and objectives of the EIA Directive have been met when considering making a decision to give consent to proceed with a project. The actual wording of the Directive is as follows:

Article 10a

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

This article is mandatory and has been considered transposed in paragraph 2 (2) (e) of the 2017 EIA Regulations.

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

CONSULTATION QUESTIONS

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

Q1. YES/NO
Comment:

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

Q2. YES/NO
Comment:

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

Q3. YES/NO
Comment:

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

Q4. YES/NO
Comment:

Question 5. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?

Q2. YES/NO
Comment:

Question 6. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?

Q2. YES/NO
Comment:

Question 7. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?

Q2. YES/NO
Comment:

Question 8. Do you consider the current 6 week timeframes appropriately implement the requirements of Directive?

Q2. YES/NO
Comment:

Question 9. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?

Q2. YES/NO
Comment:

Question 10. Do you consider that our approach to transposition of monitoring appropriately implements the requirements of the Directive?

Q2. YES/NO
Comment:

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

Q2. YES/NO
Comment:

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

Q2. YES/NO
Comment: