

Environmental impact assessment N.I.

67.—(1) In this Part—

“Annex” means an Annex to the Directive;

“the Directive” means Council Directive No. [2011/92/EU \(as amended by 2014/52/EU\)](#) of the European Parliament and Council;

[“competent authority” means that authority responsible for performing the duties arising from the Directive which in this Part is the Department.](#)

[“competent expert” in this Part means person\(s\) appointed by the Department who have sufficient expertise to ensure completeness and quality when producing an Environmental Impact Assessment](#)

[“Habitats Regulation Assessment” means an assessment under regulation 43 of the Conservation \(Natural Habitats etc.\) Regulations \(Northern Ireland\) 1995 as amended.](#)

[“independent scrutiny panel” means suitably qualified person\(s\) appointed by the Department, appropriately separated from the project so as not to have any conflict of interest when performing the duties arising from the Directive.](#)

[“environmental impact assessment” means a process consisting of:](#)

[\(i\) the preparation of an environmental statement by competent experts on behalf of the Department, as referred to in Article 67 \(5\) and \(6\), taking into account other environmental assessments with a view to avoiding duplication of assessment;](#)

[\(ii\) the carrying out of consultations as referred to in Article 67A and, where relevant, Article 67B;](#)

[\(iii\) the examination by the independent scrutiny panel of the information presented in the environmental statement and any supplementary information provided, where necessary, and any relevant information received through the consultations under 67A and, where relevant, Article 67B;](#)

[\(iv\) the reasoned conclusion by the independent scrutiny panel on the significant effects of the project on the environment, taking into account the results of the examination referred to in point](#)

[\(iii\) and, where appropriate, its own supplementary examination; and](#)

(v) the integration of the independent scrutiny panel's reasoned conclusion into any of the decisions referred to in Article 67A (7) and (8) (a)-(d).

'public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in this Part. For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

"EEA State" means a Member State, Norway, Iceland or Liechtenstein;

"member of the public" includes any body of persons;

"relevant project" means a project for constructing or improving a road where the area of the proposed works—

(a) exceeds 1 hectare; or

(b) is situated in whole or in part in a sensitive area.

—(2) In paragraph (1) in the definition of "relevant project"

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

"sensitive area" means any of the following—

(a) an area of special scientific interest, that is to say, land so declared under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;

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

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

(d) a World Heritage Site;

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

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

(3) If the Department is considering a project for constructing or improving a road the Department must, before details of the project are published, determine whether or not the project falls within points (4) (a) and (b) and if not falls within Annex I or II.

(4) The Department may direct if it considers that—

(a) in accordance with Article 2.4 of the Directive (but without prejudice to Article 67B) that a specific project is exempted from the Directive where the application of the Directive would result in adversely affecting the purpose of the project, provided the objectives of the Directive are met; or

(b) these Regulations do not apply in relation to a proposed project having the response to civil emergencies as its sole purpose and where the application of the Directive would result in adversely affecting the purpose of the project;

The Department shall only make a direction under paragraph (4)(a) or (b) in an exceptional case and where it does so, it shall—

(c) make available to the public by general and local advertisement the information considered in making the direction and the reasons for making the direction;

(d) consider whether in that case another form of assessment of the environmental effects of the proposed works or scheme in question would be appropriate;

(e) make available to the public the information obtained under that other form of assessment, information relating to the making of the direction and the reasons for making it.

(4A) The Department may direct in accordance with Article 2.5 of the Directive, but without prejudice to Article 67B, in cases where a project is adopted by a specific act of national legislation, that the project may be exempted from the provisions relating to public consultation as detailed in this Part, provided the objectives of this Directive are met. Where it so directs the Department must send a copy of any such decision to the Commission every two years from 16 May 2017.

(4B) Without prejudice to paragraph (4) or (4A) if the Department—

(a) considers that the project falls within Annex I; or

(b) considers that the project is a relevant project falling within Annex II and determines, having regard to the selection criteria contained in Annex III, that the project should be made subject to an environmental impact assessment in accordance with the Directive.

It must, not later than the date when details of the project are published, prepare an environmental statement publish notice of it in accordance with paragraphs (3), (3A) and (9) of Article 67A and Article 67B as appropriate.

(4C) The determination referred to above in (4B) (b) shall be informed by the information outlined in Annex IIA and shall be verified by the independent scrutiny panel

(4D) If the Department, having regard to the definition of a relevant project, the criteria set out in Annex III and if appropriate the available results of other environmental assessments required under EU legislation (other than legislation implementing the requirements of the Directive), considers that the proposed project is not likely to have significant effects on the environment, it shall, publish as detailed in 67A (9)a)-(c) —

(a)that it proposes to carry out the works in question;

(b) describe briefly the nature, size and location of the proposed works;

(c) state that it does not propose to prepare an environmental statement in respect of the works, and the main reasons why with reference to the relevant project definition and criteria in Annex III;

(d) state any features of the project and/or measures envisaged to avoid or prevent any significant adverse effects on the environment;

(e) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed works at an address specified in the notice within 30 days of the date of the publication of the notice in the Belfast Gazette; and

(f) describe what other information relating to the environmental effects of the proposed works is available and give details of where it can be obtained.

(4E) If the Department considers that the proposed project is likely to have significant effects on the environment, it shall, publish on the project website the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III;

(5) To the extent to which the Department considers—

(a) that it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it; and

(b) that the information may reasonably be gathered (having regard among other matters to current knowledge and methods of assessment),

the environmental statement must contain the information referred to in [paragraph \(6\)](#).

[\(6\) That information to be included in the environmental statement must include at least—](#)

[\(a\) a description of the project \(comprising information on the site, design and size of the project\);](#)

[\(b\) a description of the likely significant effects of the project on the environment;](#)

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

[\(d\) a description of the reasonable alternatives studied which are relevant to the project and its specific characteristics and an indication of the main reasons for the option choice taking into account the environmental effects;](#)

[\(e\) a non-technical summary of the information mentioned in sub-paragraphs \(a\) to \(d\); and](#)

[\(f\) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.](#)

[\(7\) Where the Department considers it appropriate to impose monitoring of any significant adverse effects on the environment \(“monitoring conditions”\). The Department must consider—](#)

[\(a\) whether monitoring measures are proportionate to the nature, location and size of the proposed project and the significance of its effects on the environment having regard in particular to the types of parameters to be monitored and the duration of the monitoring;](#)

[\(b\) in order to avoid duplication of monitoring, whether monitoring arrangements required under EU legislation \(other than legislation implementing the requirements of the Directive\) or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring condition; and](#)

(c) if monitoring conditions are to be required, whether provision should be made to require appropriate remedial action.

Where mitigation measures or monitoring conditions are required the Department must take steps to ensure that those measures and conditions are implemented.

(8) Without prejudice to the requirement of paragraphs (4B) for an environmental impact assessment to be carried out, if there is also a requirement to carry out a Habitats Regulation Assessment, the Department must where appropriate ensure that the Habitats Regulation Assessment and the environmental impact assessment are coordinated.

(9) The Department shall be satisfied that the independent scrutiny panel's reasoned conclusion is up to date when any consent decision is given.

(10) The Department shall be satisfied that the requirements and objectives of the Directive have been met when any consent decision is given.

(11) The Department shall maintain statistics on projects for which it deemed an environmental impact assessment was required detailing the carrying out of development to provide any of the following:

(a) the number of projects referred to in Annexes I and II made subject to an environmental impact assessment

(b) the breakdown of environmental impact assessments according to the project categories set out in Annexes I and II;

(c) the number of projects made subject to a determination in accordance with the relevant project definition;

(d) the average duration of the environmental impact assessment process and

(e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.

The Department shall inform the Commission of these statistics every 6 years from 16 May 2017

(12) Without prejudice to the other provisions of Articles 67, 67A or 67B as appropriate, where the Department consider that the disclosure of information would adversely affect confidentiality of commercial, industrial information or intellectual property rights the Department may withhold such information.

Procedure N.I.

67A.—(1) The Department must publish any determination made by it as to whether or not a relevant project should be made subject to an environmental impact assessment in accordance with the Directive, [as soon as information can reasonably be provided](#).

(3) Notice of the environmental statement must be published, [detailed in \(9\)\(a\)-\(c\)](#), so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before the Department decides whether to proceed with the construction or improvement to which the assessment relates.

(3A) The notice must state—

(a) that the Department is considering implementing the project;

(b) the proposed location and nature of the project;

(c) that the project is subject to the environmental impact assessment procedure required by this Part and, where relevant, that Article 67B applies;

(d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under sub-paragraph (i);

(e) the times at which the copy of the environmental statement may be so inspected;

(f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under sub-paragraph (i);

(g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;

(h) that a copy of the environmental statement [and](#) non-technical summary may be inspected on the [project](#) website [used by the Department for the publication of information](#) during the period specified under sub-paragraph (i);

(i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Department at a specified address within a specified period, being not less than 6 weeks from the date of publication of the notice; and

(j) that the Department will take into consideration any representations ~~so~~ made before deciding whether or not to proceed with the project with or without modifications.

(3B) The Department shall ensure that during the period specified under sub-paragraph (3A)(i)—

(a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified in sub-paragraph (3A)(d);

(b) copies of the environmental statement are available to be obtained by any person from the address specified in sub-paragraph (3A)(f); and

(c) where under sub-paragraph (3A)(h), the notice states the address of a website, that a copy of the environmental statement and non-technical summary is available for inspection, by any person, on that website.

(3C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Department for the supply of a copy of the environmental statement—

(a) to a person, other than a consultation body; or

(b) to a consultation body to which one copy has already been supplied free of charge.

(4) The Department must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the environmental statement before the Department decides whether to proceed with the construction or improvement to which the assessment relates.

(5) After considering any opinions which have been expressed in relation to the statement the Department shall cause a local inquiry to be held if it appears to the Department to be necessary to do so.

(6) Where a local inquiry is held any interested person shall be permitted to appear in person or by a representative and to be heard at the inquiry.

(7) Before deciding whether to proceed with the construction or improvement in relation to which an environmental impact assessment has been made, the Department must take into consideration—

(a) the environmental statement [including the independent scrutiny panel's reasoned conclusion](#);

(b) any opinion on that statement or the project which is expressed in writing by—

(i) any of the consultation bodies; or

(ii) any other person;

and is received by the Department within any period specified for the purpose;

(bb) where Article 67B applies, and the EEA State has indicated in accordance with paragraph (4) of that Article that it wishes to participate in the procedure required by this Part, any opinion on that statement or the project which is expressed in writing by—

(i) the EEA State;

(ii) a member of the public in the EEA State; or

(iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6(1) of the Directive;

and is received by the Department within the period specified under sub-paragraph (3A)(i);

(c) where a local inquiry is held, the report of the person who held the inquiry.

(8) When the Department has decided whether [or not](#) to proceed with the construction or improvement for which an environmental impact assessment has been made, it must publish its decision together with a statement confirming that it has complied with paragraph (7), and describing the right under Article 67BA(1) to challenge the validity of the decision, and must make available to the public documents containing -

(a) the content of the decision, [including the reasoned conclusion of the independent scrutiny panel](#) and any conditions attached to it;

(b) the main reasons and considerations on which the decision is based;

(c) [any conditions attached to the decision including](#) a description of [any](#) measures to avoid,

reduce and, if possible, offset the major adverse effects of the project, [as well as, where appropriate, any monitoring measures](#); and

(d) information about the consultation carried out in compliance with this Article and Article 67B, the representations received on consultation, and any changes made as a result of those representations.

(9) Publication by the Department in accordance with paragraphs (1), (3) and (8) shall be—

(a) in the Belfast Gazette;

(b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the road is proposed to be situated; and

(c) on the Department [al](#) project website ~~used~~ for the publication of information about projects that are subject to the procedure required by this Part.

(10) In this Article "the consultation bodies" means—

(a) any district council for the area in which the project for the construction or improvement of the road is situated; and

(b) other authorities likely to be concerned by the project by reason of their specific environmental responsibilities [or local and regional competences](#).

Other Member StatesN.I.

67B.—(1) This Article applies if—

(a) it appears to the Department that a project to which Article 67(4) applies is likely to have a significant effect on the environment in another EEA State; or

(b) an EEA State the environment of which is likely to be significantly affected by such a project asks the Department for information about the project.

(2) The Department must give the EEA State—

(a) a description of the project, together with any information available to the Department which suggests that the project may have a significant effect on the environment in the EEA State;

(b) any information which the Department has as to the nature of the decision which may be taken on the project;

(c) such information about the procedure required by this Part as the Department considers appropriate; and

(d) a reasonable period within which to indicate whether the EEA State wishes to participate in that procedure.

(3) Paragraph (2)(a) and (b) must be complied with no later than the date of publication referred to in Article 67A(1).

(4) If the EEA State indicates that it wishes to participate in the procedure required by this Part, the Department must give to the EEA State—

(a) a copy of the environmental statement for the project (if it has not already done so);

(b) the information required by Article 67A(3A) to be included in the notice under Article 67A(3); and

(c) any information about the procedure required by this Part which it considers appropriate to give and which has not already been given to the EEA State.

(5) The Department must ensure that those authorities and members of the public who are likely to be concerned have a reasonable opportunity to give the Department their views before it decides whether to give consent to proceed with the project to which the environmental impact assessment relates.

(6) The Department must, in accordance with Article 7(4) of the Directive -

(a) enter into consultations with the EEA State concerned regarding, among other matters, the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate those effects; and

(b) agree with that EEA State a reasonable period for those consultations.

(7) Where an EEA State has been consulted in accordance with paragraph (6) the Department must, after deciding whether to proceed with the project to which the environmental statement relates, inform the EEA State of the decision and give it documents containing the matters referred to in section 67A(8).

Validity of decisions N.I.

67BA.—(1) If a person aggrieved by a decision of the Department to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

(a) it is not within the powers of this Order; or

(b) any requirement of this Part has not been complied with in relation to the decision;

they may, within 6 weeks from the date on which the decision is first published under Article 67A(8), make an application for the purpose to the High Court.

(2) On any such application, the Court—

(a) may, by interim order, suspend the operation of the decision, or any aspect of it, either generally or insofar as it affects any property of the applicant, until the final determination of the proceedings; and

(b) if satisfied that the decision is not within the powers of this Order, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part, may quash the decision, or any aspect of it, either generally or insofar as it affects any property of the applicant.

(3) Subject to paragraph (2), a decision to which paragraph (1) applies shall not be questioned in any legal proceedings whatever.

Application N.I.

67C. This Part shall not apply to projects where an environmental statement or the details of the project were published before the coming into operation of the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999.