

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

Response to the Public Consultation on the EIA Amendment Directive

**Consultation period
13 March 2017 – 21 April 2017**



Department for

Infrastructure

An Roinn

Bonneagair

www.infrastructure-ni.gov.uk

May 2017

Contents

Introduction

Consultation Analysis

Assessment Process

Information to be Assessed

Screening

Environmental Statement

Assessment Quality and Expertise

Consultation and Publicity

Decisions

Monitoring

Conflict of Interests

Penalties

General queries

Introduction

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

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

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

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

The consultation paper set out the key changes to the EIA Directive that impact on Part V of the Roads Order 1993 as amended and which the Department is transposing through the 2017 EIA Regulations.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

The Department received 9 responses to the consultation paper. An overview of the questions asked in the consultation paper along with the responses received and the Department's response is set out below.

The range of responses indicated broad support for the Department's approach to the transposition of the EIA Directive with 5 of the 9 responses welcoming the proposals; 2 with no comment to make and 2 seeking clarifications and suggesting amendments.

Consultation Analysis

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

This paper provides a general overview of the main findings of the EIA public consultation exercise. 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.

Contributions from respondents have assisted the Department in further developing legislative proposals to give effect to the requirements of the Directive and some paragraphs in the draft regulations have been re-written to address concerns.

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

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

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

ASSESSMENT PROCESS

[Consultation paper proposal](#)

Definition of Environmental Impact Assessment Process

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

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

Exemptions – Defence/Civil Emergencies

The Directive allows for some projects to be made exempt from the requirements of the Directive e.g. projects serving national defence purposes. These exemptions have been extended and now also apply to projects which are solely in response to civil emergencies.

Coordinated Procedures

The newly amended EIA Directive aims to reduce administrative burdens and align the process with the principles of smart regulation while improving

Response to the EIA Amendment Directive Consultation Paper - Synopsis

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.

Consultation response

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

Of the nine responses received – three had no comment to make and six were in favour of the Department's proposals to implement the coordinated rather than joint procedure.

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

One respondent commented that whilst often overlapping, EIA and HRA ultimately serve different purposes. The two different processes reflect the different legislative requirements. Combining the two processes risks the individual standards being incorrectly applied and the outputs being

Response to the EIA Amendment Directive Consultation Paper - Synopsis

misinterpreted. They do not believe that joint procedures will allow for the necessary legal Screening processes for the two sets of Regulations. However, there is the possibility for EIA and HRA assessments to make use of common data with potential for cost savings and streamlining of the overall evidence base.

Two respondents stated that guidance will be essential to help competent authorities coordinate EIA and HRA processes and ensure compliance with both procedures. Updated guidance must also clarify who should be the lead authority in situations where an EIA falls under more than one Planning Authority or where more than one authority is involved in granting permission for a proposal. It will be essential that the coordinating body has access to expertise of relevance to both EIA and HRA.

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

Two respondents took the opportunity to repeat their support for the coordinated approach with one outlining the following:

The co-ordinated response could be strengthened further by introducing legislation which requires that no construction of any EIA development should take place until any operational permits or consents required under the Habitats and Birds Directives, Water Framework Directive, the Industrial Emissions Directive, the Waste Framework Directive or the SEVESO III Directive had been granted. The proposed change would avoid a significant risk of non-compliance with European legislation from EIA development starting without first getting operational permits or consents required under the Directives listed. The respondent would support the inclusion within the new EIA regulations for express provision that no construction of any EIA development may take place until any relevant operational permits required under the Directives listed have been granted.

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?

The majority of respondents considered that the Department's approach to the transposition of Article 1 and 2 appropriately implements the requirements of the Directive.

One respondent felt that the approach did not adequately implement the requirements for the following reasons: Directive Article 1(2)(g) (as transposed at Page 2 part (i) of the draft Regulations) states:

- 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;
- Article 1(2)(g) does not include the underlined text within part (i). It is considered that this provides unnecessary repetition as it is provided for elsewhere within the draft regulations. Furthermore, as it does not refer to 'relevant' environmental information (as required by Article 4.4 of the Directive), it could alter the focus of the assessment process.

Furthermore, it is unclear how Article 67(a) and (b) of the 2017 EIA regulations adequately implement that which is required and referred to in Article 5(1) and (2) of the Directive. It is therefore considered that Article 1(2)(g) has not been appropriately transposed.

Department's consideration and response

The Department welcomes the broad support for its proposals on the introduction of a coordinated approach for the EIA process and supporting the Department's approach to the transposition of Article 1 & 2 of the EIA Directive 2014/52/EU in relation to the assessment process.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

The Department assigns appropriate weight to all Directives and this will not be diminished by applying the coordinated procedure. The Department notes that the coordinated approach is considered best practice and is already reflected in Departmental procedures, therefore the transposition into legislation simply establishes the statutory requirement.

There have been significant amendments to Article 67(5) and (6) since the consultation began which should address the concerns raised above.

The procedures and processes will be put in place to effectively implement the legislation and the proper resourcing to deliver these new requirements.

INFORMATION TO BE ASSESSED

[Consultation paper proposal](#)

Environmental Impact Assessment Information

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

Assessing the Risk of Major Accidents

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

Consultation response

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

The following comments were received in relation to the above question:

One respondent commented that the scope of the EIA has been broadened to include biodiversity, which the draft Regulations should include. Guidance should provide an appropriate definition for 'biodiversity' and set out what the assessment should cover. This should include reference to the UN 'Aichi' targets, and UK Sustainable Development goals. Mitigation should contribute to avoiding any net loss in biodiversity and should aim for improvements in biodiversity wherever possible.

They also welcomed inclusion of the expected effects deriving from the vulnerability of the project to major risks or accidents. Clarification is required around how a major risk or disaster is defined and examples of such circumstances should be provided. For example, given the importance of climate resilience this Regulation should include considerations around the potential vulnerability of a project to climate impacts, such as flooding.

One of the respondents did not consider that Articles 3.1 and 3.2 of the Directive have been transposed in their entirety. Suggesting that they must be transposed in full into the amended draft regulations.

Seven respondents had no comment to make.

Department's consideration and response

There has been a major rewrite of the regulations since the consultation exercise. The Department has added paragraph 67(8) to address the issues raised above.

SCREENING

Consultation paper proposal

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.

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.

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.

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

Consultation response

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

Whilst seven respondents had nothing further to add in relation to this question, there were a number of concerns raised as follows:

The changes proposed to the screening process will place additional pressures on competent authorities to ensure they have sufficient information to underpin their screening decisions and to properly examine the additional information provided at screening stage. We are concerned that competent authorities and statutory agencies are under-resourced and do not have adequate access to independent ecological expertise to support the additional screening requirements. It is essential that these resourcing issues are addressed.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

One respondent commented regarding the difficulty in respect of the paragraph numbering rendering the cross-referencing of the Directive Articles with the Draft Regulations a somewhat difficult task. This task was even more difficult when the draft Regulations are silent on matters which should be transposed. In the circumstances, the respondent requests that Articles 4(4) and 4(5) of the Directive are transposed in full.

Department's consideration and response

There has been a major rewrite of the regulations since the consultation exercise.

The procedures and processes will be put in place to effectively implement the legislation and the proper resourcing to access independent expertise.

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.

ENVIRONMENTAL STATEMENT

Consultation paper proposal

Information to be provided in an Environmental Statement

The information to be included in the Environmental Statement has been refined and clarified. In addition, a new provision has been introduced requiring that where a scoping opinion is requested the Environmental Statement must be "based on" that opinion. However in the Department for Infrastructure

Response to the EIA Amendment Directive Consultation Paper - Synopsis

scenario where the Department is the developer and has appointed competent experts to provide it with an EIA this scoping opinion is not relevant.

Consultation response

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

Of the nine responses received, only one commented on this specific question.

A concern was raised that Article 5(1) has not been transposed in full and that the last part of sub-paragraph (d) of paragraph 6 has been reworded in the draft regulations, with the resultant effect that it does not specifically stipulate the need to take into account the effects of the project on the environment, reinterpreting this as 'taking into account the environmental effects. This should be recified in the amended regulations.

Department's consideration and response

Paragraph (5) has been substantially rewritten to address the concerns raised above.

ASSESSMENT QUALITY AND EXPERTISE

Consultation paper proposal

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.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

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.

Consultation response

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

Of the nine responses received, only one commented on this specific question.

The transposition of Article 5(3) of the Directive within the draft Regulations is incomplete. While Article 5(3) (a) of the Directive and the need for competent experts to prepare the Environmental Impact Statement appear to be transposed, the requirements set out in parts (b) and (c) do not however appear to have been transposed, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment. These requirements should be transposed in full within the amended draft Regulations.

Department's consideration and response

New paragraphs (7) and (10) address this point:

(7) In order to ensure the completeness and quality of the EIA report, the Department must where necessary obtain supplementary information about any matter referred to in paragraph (5) which is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.

(10) The Department must ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA

The Department is of the view that it has always been its responsibility to ensure that it has the appropriate expertise in the preparation of environmental Statements. Whilst the new regulations introduce the term “competent expert” the Department considers that it still stands that to ensure the completeness and quality of the environmental statement, irrespective of sourcing expertise or costs involved in resourcing expertise, the responsibility remains to effectively carry out the appropriate requirements related to the environmental statement.

CONSULTATION AND PUBLICITY

Consultation paper proposal

Timeframes for Consulting the Public

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

The existing timescale of 6 weeks for public consultation will remain

Consultation response

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

The majority of respondents considered that the Department’s approach to the transposition appropriately implements the requirements of the Directive.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

However, one respondent commented that the public should have an opportunity to be consulted on the whole of the EIA as a matter of course, not just the Report.

In order to fully comply with Articles 6(2) and 6(5) Electronic communication , the public should be able to access all relevant information on the EIA electronically (i.e. not just the EIA Report and decision). These Articles do not appear to have been transposed in the draft Regulations.

Department's consideration and response

This proposal based on the transposition of timeframes was well received.

The inclusion in the revised regulations of a definition stating what 'environmental information' means and new paragraphs 4, 4A, 4D 4E and 5 should address the concerns raised above.

DECISIONS

Consultation paper proposal

Up-to-date Reasoned Conclusion

The EIA process includes the requirement for the competent authority to make a reasoned conclusion on the significant effects of the development on the environment. This reasoned conclusion is already an integral part of the 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.

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

Response to the EIA Amendment Directive Consultation Paper - Synopsis

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.

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.

Consultation response

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

Of the nine responses received, only two commented on this specific section as follows:

While Article 8a (6) has been transposed at Paragraph 9 of the draft Regulations, it is important that the regulations include reference to the decision being up-to-date having regard to 'current knowledge and methods of assessment'. The term 'current knowledge' should be defined in guidance and should include provision of up to date survey work.

Response to the EIA Amendment Directive Consultation Paper - Synopsis

Article 8a(1) appears to be transposed only in part, seemingly integrating its requirements along with that of Article 9(1) into a single paragraph as contained in paragraph 8 (page 6) of the draft Regulations.

Turning to the provisions of Article 8a(1), the following text has been omitted from the draft Regulations:

(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.

*the draft Regulations are relying on the existing wording of 'major'.

A new provision should be included in the Transposing Regulations to ensure easy access to environmental information at all stages in the EIA process. A central portal of information should be provided, establishing a central sign-posting hub for all EIA information.

Department's consideration and response

New 67A (7) and (8) address the concerns in relation to the information to be included in any decision and the information informing the public.

New Paragraph (4E) states that 'The Department must make available to the public the EIA report, including any accompanying statement of reasons on a web-site used by the Department for the purpose of giving information to the public about projects.

MONITORING

Consultation paper proposal

Monitoring Requirements

The EIA Directive requires that the decision to grant planning permission should include, where appropriate, monitoring measures for developments which appear to have significant negative effects on the environment. The factors to be monitored and the duration of the monitoring should be proportionate to the nature, location and size of the development.

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

Consultation response

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

There was broad agreement with this area of the consultation and that the approach to the transposition of monitoring appropriately implements the requirements of the EIA Directive.

One comment was made: that at paragraph 7(b), the draft Regulations have changed the emphasis of the wording. In this regard, the wording of the Directive is 'may be used if appropriate', while the draft Regulations has stated 'are more appropriate'.

[Department's consideration and response](#)

Paragraph (7C) has been substantially rewritten to address the concerns raised above.

CONFLICT OF INTERESTS

[Consultation paper proposal](#)

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. Whilst there is already some separation of functions 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.

[Consultation response](#)

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

Of the nine responses received only one commented on this area of consultation.

Whilst the inclusion of an Independent Scrutiny Panel is welcomed within the definition section, there was a recommendation that a robust approach to implementing Article 9a of the Directive would be to include a new regulation on objectivity and bias within the amended draft Regulations.

[Department's consideration and response](#)

A new article on Objectivity and Bias was considered for inclusion, however, legal advice was against its inclusion and recommend this be dealt with administratively.

PENALTIES

[Consultation paper proposal](#)

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.

[Consultation response](#)

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

Of the nine responses received only one commented on this area of consultation.

Penalties and enforcement action must apply when applicants or competent authorities do not comply with EIA objectives and requirements – an explicit duty should be placed on competent authorities to have regard, when exercising their enforcement duties, to the need to secure compliance with EIA objectives and requirement – this should be set out in the Draft Regulations. Penalties must be

Response to the EIA Amendment Directive Consultation Paper - Synopsis

high enough to act as a deterrent and need to be set out in the Draft Regulations – this is essential to ensure compliance with Article 10a.

The Transposing Regulations should also specify which aspects of EIA should be subject to enforcement action and application of penalties (e.g. if mitigation or monitoring measures are not implemented or for knowingly or recklessly providing false information in relation to any part of the EIA or in respect of unlawful development) and what will happen if measures are not implemented including scope for remedial action.

Department's consideration and response

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.

General queries

Two respondents expressed concerns that the transition period proposed before these regulations apply is very broad, as they are proposed to not apply to published projects. One commented that the tighter definitions referred to in the directive should be used and urged the use of a time limit so scoping older than 5 years is not considered to have this derogation.

Department's consideration and response

The revised regulations have been amended to reflect the transitional arrangements as follows - 1(1) Where, in relation to a proposed project, the

Response to the EIA Amendment Directive Consultation Paper - Synopsis

Department is in the process of making a determination under Article 67(4)(b) of the Roads (Northern Ireland) Order 1993 before 16th May 2017, Article 67(4)(b) continues to have effect as it did before that date.

Where, in relation to a proposed project, the Department has prepared an environmental statement in accordance with Article 67(4) and (5) of that Order before 16th May 2017, Articles 67, 67A and 67B continue to have effect as they did before that date.

The Department accepts that in some cases there may be a delay in scheme progression between publication of the Environmental Statement and commencement of construction activities. In such instances, the Department's competent experts will monitor environmental features of the site, review the Environmental Statement and, where necessary, supplement the information contained within. This process will ensure that the assessment takes account of current best practice and that all appropriate environmental protection measures are implemented.