

Consultation – Summary of responses

Review of the Environmental Impact Assessment (Agriculture) Regulations (NI) 2007

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

August 2017

Introduction

Purpose of the Consultation

The consultation sought views on proposed changes to the Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007 (the EIA Regulations) to transpose EU Directive 2014/52/EU, which amended the EIA Directive.

Environmental Impact Assessment (EIA) is a process that aims to provide a high level of protection to the environment by bringing environmental considerations into the preparation of projects.

The consultation on the review of the existing EIA Regulations proposed a number of changes. The changes were primarily to transpose mandatory requirements introduced by EU Directive 2014/52/EU.

Consultation Period and Distribution

The consultation document was published on the Department of Agriculture, Environment and Rural Affairs (DAERA) and Citizen Space websites, and was distributed to stakeholders via e-mail.

The consultation opened on 22 May 2017 and lasted for 4 weeks, closing on 19 June.

Five responses were received and these have been considered by the Department.

Summary of Responses

List of respondents:

Ulster Farmers Union (UFU)
National Trust
Northern Ireland Environment Link (NIEL)
Royal Society for Protection of Birds Northern Ireland (RSPB)
Butterfly Conservation

The consultation asked five questions in total. The responses received have been taken into account in developing the amending EIA Regulations.

Question 1: Co-ordinated Procedure - The Department proposes to copy out the requirements to allow for a co-ordinated procedure – Do you agree with this proposal? Please outline your reasons for your Answer.

All respondents agreed with the proposal in general.

The issue of how the process would be applied in practice in Northern Ireland was raised by two stakeholders. It was suggested that guidance should be updated to identify who should be the lead authority in situations where EIA falls under more than one Planning Authority. The guidance should specify the roles and responsibilities of each Department and contributor to the assessment process. It should also include a clear set of definitions, so that all parties are clear for example on what constitutes 'significant impact'.

It was suggested by one stakeholder that the Regulations and guidance should stipulate that the co-ordinating body must have access to expertise that is relevant to both environmental impact assessment and habitat regulation assessment. It was also suggested that the Regulations state that commencement of an EIA development should not take place until any operational permits or consents required under other EU Directive have been granted where relevant to the project in question.

Three stakeholders stated that the lead Department must have sufficient resources and access to all the necessary expertise to take a pro-active approach to meeting the full obligations of the EIA Directive.

DAERA Response

In Northern Ireland the requirements of the EIA Directive are implemented through various statutory systems affecting planning, land drainage, forestry, water and marine. The EIA (Agriculture) Regulations apply to land which is considered semi-natural or uncultivated.

Not all proposed semi-natural land projects fall under the remit of the EIA (Agriculture) Regulations and some may be subject to other statutory regimes, such as EIA (Planning) Regulations. The current guidance indicates where this would be the case.

The co-ordinated process will come into effect in circumstances where a project is also subject to a Habitat Regulation Assessment. The Department is satisfied that a co-ordinated process will allow more flexibility for the applicant around the phasing and timing of the two assessments. The Department has decided not to include additional EU assessments as part of the co-ordinated process, where an obligation for assessments arises for EIA and another EU Assessments, other than those falling under the habitats and bird directives.

DAERA aims to have sufficient resources and access to all necessary expertise required to fully meet EIA Directive obligations.

Question 2: Thresholds – The Department proposes to retain the existing thresholds - Do you agree with this proposal? Please outline your reasons for your answer.

Three out of five respondents disagreed with this proposal, stating that the 2ha threshold is too high and could discount valuable semi-natural habitat. Stakeholders also expressed concern that, as a result of the threshold, there has been a significant reduction in the amount of important grassland and the rich wildlife that it supports. Stakeholders asked that a review of the thresholds is carried out in order to prevent further habitat and species loss, and that consideration be given to replicating the 'no threshold' policy that operates in Wales.

Two respondents agreed that existing thresholds should be retained.

Two respondents suggested that a comprehensive national inventory of semi-natural grassland sites should be completed to enable the EIA Regulations to be more effective.

One respondent suggested that where undesignated habitat is a crucial and critical link between designated sites, screening notices should be issued to protect and conserve these areas.

DAERA Response

The proposal to retain the current thresholds received mixed views from respondents.

DAERA understands that appropriate thresholds are a key element to the effective administration of the EIA (Agriculture) Regulations.

DAERA will maintain the existing thresholds within the Regulations. However, the Department will seek to obtain evidence to allow it to review the appropriateness of the thresholds going forward.

Semi-natural areas are not designated areas and cannot be mapped definitely as environmental conditions change over time. There may be circumstances that sites can revert back to a semi-natural state. The mapping of all semi-natural sites would be difficult from a practical point of view but it would also imply a more restrictive approach to the application of the EIA Regulations.

The EIA Regulations require an assessment of agricultural projects proposed on semi-natural and / or uncultivated land, they do not present a barrier to agricultural improvement. Since 2012 the Department has considered 34 screening applications of which 88% of these cases resulted in a positive decision.

It is not the intention or within the remit of the regulations to impose a screening notice on all semi-natural and / or uncultivated land. However there is provision within the regulations for the Department to issue a screening notice if it is aware

that a project is likely to take place on such land and it would likely have significant effect on the land.

Question 3 Timeframes – Screening Decision – The current Regulations allow 35 days to make a screening decision. The Department proposes to retain this timeframe - Do you agree with this proposal? Please outline your reasons for your answer.

Responses to this question were mixed.

Those in support of retaining the 35 days timeframe agreed that the Department should provide a screening decision as quickly as possible.

Those who disagreed held the opinion that the Department should be allowed 90 days to provide a decision, which is the maximum permitted timeframe by the EIA Directive.

Concern was expressed by two stakeholders that the 35 days timeframe would place authorities under increased pressure to issue decisions. It was also raised that the shorter timeframe would prevent the Department from being able to respond in full to applications, due to the time of year and the requirement for certain impact assessments or surveys. The concern was that if applications were not made at the correct time of year then the proper assessment of risk would not be able to be made.

One stakeholder suggested that if there is uncertainty over the screening decision, authorities should adopt the position that a full EIA is required.

DAERA Response

DAERA is content that the 35 day timeframe is retained. This will ensure that all applications are processed in a timely fashion and that screening decisions are communicated at the earliest opportunity.

Question 4 Penalties – The Department does not propose to change the existing regulatory provisions, which include penalties for infringements. - Do you agree with this approach? Please outline your reasons for your answer.

Most respondents neither agreed nor disagreed with the proposed approach. However, some commented on the application of penalties and enforcement.

Two stakeholders stated that there was a lack of an independent environmental agency in Northern Ireland to provide an impartial oversight.

Another stakeholder commented that penalties and infringements should be regularly reviewed to ensure that they remain effective, proportionate and dissuasive.

One stakeholder raised the issue of granting permission to projects which may have 'significant negative effects' on the environment if there is no substantial evidence that these effects can be mitigated or offset. Another stakeholder commented that it is essential that effective monitoring and enforcement ensures that developers adhere to agreed mitigation measures. They further commented that the transposing regulations should also include a duty on competent authorities to ensure compliance with EIA objectives and requirements.

All stakeholders agreed that breaches should carry sufficient penalties to deter violations of the regulations.

It was suggested by one stakeholder that Article 11 of the EIA Directive is 'copied out' to ensure adequate transposition of enforcement and penalty obligations.

The issue of the competent authority having adequate resources to ensure that appropriate enforcement action and penalties are imposed was also raised again.

DAERA Response

DAERA aims to have sufficient resources and access to all necessary expertise required to fully meet EIA Directive obligations.

The Department is satisfied that the regulatory provisions in regards to infringements and enforcement reflect the provisions of Article 11 of the EIA Directive, this article was not amended by 2014/52/EU. Article 10a was inserted and required the penalties to be effective, proportionate and dissuasive. The Department is satisfied that the provisions within Regulations 21 to 29 are such, with the penalties being measured on the standard scale.

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

Screening Process

Two stakeholders made the point that the screening process will place the competent authority under additional pressure as it is under-resourced and does not have access to independent ecological expertise to support the additional screening requirements. They suggested that the competent authority should have access to competent experts at the screening stage.

One stakeholder suggested that the information to be provided at the screening stage should be prepared by competent experts, and that there should be an opportunity for consultation with relevant bodies at this stage of the process.

One stakeholder stated that authorities should not rely on untested measures to inform a decision, and that mitigation measures should be included in the amending regulations to ensure legality. It was suggested that in circumstances where a project has been screened out on the basis of agreed mitigation measures, the

project should be revisited at a later date and scrutinised to ensure that the principle project details remain the same and that the mitigation measures are put in place.

One stakeholder offered the view that the amending Regulations should transpose in full Annexes IIA and III within EU Directive 2014/52/EU. The stakeholder further commented that the Regulations should be amended to make provision for consideration of Ramsar sites, National Nature Reserves and peatland habitat in Northern Ireland. It was further stated that the amending Directive 2014/52/EU makes provision for consideration of the results of other assessments, as part of the screening process. Therefore, they suggested that reference to 'relevant assessments' is made within the Regulations to ensure the screening process remains focused.

Two stakeholders asked that screening information be made available through a central portal or an easily accessible point of access.

Stakeholders recommended that the screening process is supported by updated guidance.

DAERA Response

DAERA aims to have sufficient resources and access to all necessary expertise required to fully meet EIA Directive obligations.

The EIA Directive only requires the use of competent experts in regards to the completion of the EIA Statement. Therefore, the Department will not go beyond EU requirements and require applicants to use competent experts at Screening stage.

The Department will copy out the provisions of Annex IIA and III of EU Directive 2014/52/EU into the amending Regulations.

The Department has included within the Regulations a definition of "EU environmental assessments" which the Department must take into account as part of its screening decision. It also includes a definition of "UK environmental assessments" which are to be taken into account by the competent experts and the applicant when they are preparing the Environmental Statement.

Environmental Effects

Two stakeholders were supportive of the proposed changes relating to environmental effects and welcome the inclusion of text which covers the risks of major accidents and disasters. However, it has been stressed that guidance on defining 'significant' environmental effects and what is 'a major risk or disaster' is essential to ensure a consistent and robust approach.

They suggested that guidance should include key information on how applicants are expected to consider vulnerability to major accidents and / or disasters, the risk of these occurring and the likely significance on the environment. It was suggested that

the guidance should also cover assessment of cumulative impacts with other existing and / or approved projects to ensure a consistent approach.

DAERA Response

Guidance will be updated to support the changes made to the legislation and EIA process.

Exemption from EIA

One response raised concern about the application of exemptions relating to 'National Defence' or 'Civil Emergency' and suggested that accompanying guidance should give example of what is a 'demonstrable adverse effect'.

Concern was also raised about exemptions under Article 2(4) of the EIA Directive relating to exceptional circumstances.

DAERA Response

The current EIA Regulations already include provision for exemptions and the Department will not amend this or extend it to include an exemption under Article 1(3) of the EIA Directive.

Competent Experts

One stakeholder requested a definition of a 'competent expert' in order to establish what standard must be met.

Two stakeholders raised the issue about Departmental resourcing and its access to sufficient expertise to examine the Environmental Statement.

DAERA Response

Definition of a competent expert will be included in the Regulations and supported by guidance.

DAERA aims to have sufficient resources and access to all necessary expertise required to fully meet EIA Directive obligations.

Scoping and EIA Process

One stakeholder suggested that the Scoping Stage should be a mandatory provision as this would reduce delays further down the line, and that it should be made available to the public electronically.

Comments were also received in relation to the proposed 'copy out' of Article 5(1) to fully transpose the EIA Directive. This would also include a copy out of the amended Annex IV.

It was suggested that in order to comply with the provisions provided for in Article 5(2) a reference to any other organisation or interested group should be included in the definition of consultation bodies.

It was also suggested that the definition of the EIA process includes a provision to integrate environmental impact into all stages of development design and decision making.

One stakeholder commented that to fulfil the transposition of the EIA Directive, DAERA must transpose Article 5(3)(a) to (c); however, the consultation document did not include reference to Article 5(3)(c).

DAERA Response

The Scoping Stage is not a mandatory provision within EIA Directive, which only requires member states to provide an opinion on an application. Therefore, DAERA will not go beyond the EU requirements and the scoping opinion will remain an optional stage of the EIA process.

The Department proposes to copy out in full the provisions provided for in Article 5(1) of the EIA Directive as amended by EU Directive 2014/52/EU.

The Department is satisfied that regulation 13 of the EIA Regulations implements the provisions of Article 5(3)(c) in regards to supplementary evidence.

The Department is satisfied that its definition of 'consultation bodies' transposes Article 6(1) and Article 5(2) of the EIA Directive. The Department has listed a number of consultation bodies it may consult with where relevant to a project. The Department also includes provision to consult with any other body it may consider to have an interest or to hold information relevant to the project.

Conflicts of interest

Two stakeholders raised the issue about possible conflicts of interest in relation to EIA decisions. It was suggested that the Regulations should include provision for objectivity and non-bias, and that EIA guidance should provide examples of when conflicts of interest may arise and how they should be managed.

DAERA Response

DAERA's internal controls ensure that there is no conflict of interest in relation to EIA applications.

Omissions

One stakeholder asked for clarification on how certain provisions within the EIA Directive (as amended by 2014/52/EU) have been transposed.

DAERA Response

The explanatory memorandum will detail how the EU Directive has been transposed. The draft Regulations have been scrutinised by Departmental solicitors to ensure that they fully meet the requirements.

Next Steps

The Department made the Environmental Impact Assessment (Agriculture) (Amendment) Regulations (Northern Ireland) 2017 on 31 August 2017. These Regulations will come into operation on 25 September 2017 and can be accessed at <http://www.legislation.gov.uk/id/nisr/2017/198>.