

## Department for Infrastructure: The Planning (EIA) Regulations (Northern Ireland) 2017

3<sup>rd</sup> February 2017

### 1. INTRODUCTION

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties. Planning is a key issue for local government due to the huge impact it has on the shaping of local communities, the economy and sustainability. NILGA is pleased to be able to have an opportunity to comment on these regulations and we trust that our comments will be taken into account when developing the final policy and legislation.

The Department invites comments on proposals for implementing the European Directive 2014/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 consultation document sets out how the Department proposes to revoke the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and enact the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. Implementation of the EIA Directive in Northern Ireland allows for protection of the environment through the incorporation of environmental considerations into the preparation of projects.

A European Directive forms part of European law and is binding upon each Member State, however, it leaves open to the national authority the approach to be taken. This consultation seeks views as to whether the draft EIA Regulations appropriately implement these mandatory requirements.

Therefore 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 planning permission can be granted. Whilst a significant number of the EIA Directive's requirements are mandatory, the method or process for doing so is at the discretion of the Member State.

This EIA Directive will have direct implications for planning authorities in Northern Ireland and indeed resource implications for councils. The consultation summarises the proposed changes as follows:

- Administrative burdens will be reduced through the co-ordination of Habitats/Wild Birds Directive alongside EIA's, wherever possible.
- Environmental factors to be assessed have refined and broadened to include resource efficiency, climate change, biodiversity and disaster prevention.
- EIA 'Screening' procedure has been strengthened through new information requirements and a revised selection criteria.
- The information to be contained within an EIA Report has been revised and clarified to improve their quality and content.
- EIA Reports are to be compiled by 'competent experts' and planning authorities are to have access to sufficient expertise to assess the Reports.
- The grounds for planning permission decisions must be made clear. In addition, planning authorities will need to prove their objectivity to avoid conflicts of interest.
- A proportionate level of monitoring required for developments which appear to have significant negative effects on the environment.
- Effective, proportionate and dissuasive penalties are to be introduced for breaches of the requirements of the Directive.

NILGA broadly supports the transposition of the EIA Directive Amendments into the NI Regulations as a means of bringing us into line with other UK jurisdictions and EU Member States.

NILGA welcomes the inclusion of a definition of the EIA process, which outlines each step in the process from the submission of the Environmental Impact Assessment Report by the developer to the integration of the competent authority's reasoned conclusion into the decisions made on the development under consideration. NILGA through its engagement with councils is all too aware of the lack of guidance and understanding around undertaking impact assessments in general. The Association welcomes enhanced information which outlines the steps involved in the process and hopes that this will ensure that the requirements can be applied robustly. NILGA urges that the definition clarifies exactly what is required in the process at each step.

The consultation puts forward specific questions as means of ensuring proposals are adequately considered. NILGA, in our response will put forward views on each of these specific questions set by the Department.

## **2. KEY ISSUES**

### ***2.1 Coordinated Procedures***

**Question 1. Do you agree with the proposals to provide for a co-ordinated rather than joint procedure?**

The new EU Directive requires that member states adopt either a coordinated procedure or a joint procedure for the management of EIA projects which involve other environmental assessments.

A coordinated procedure would involve the planning authority taking responsibility for the coordination of the various individual assessments of the environmental impact of a particular project; e.g. Habitats Regulations Directive, Birds Directive, Water Framework Directive, Industrial Emissions Directive, SEA Directive, Waste Framework Directive etc. However under the joint procedure the planning authority would be required to consider a single assessment of the environmental impact of a particular project required by the relevant Union legislation examples of which are outlined above.

It is NILGA's view that a coordinated procedure offers greatest flexibility for developers around the phasing and timing of EIA and other assessments. A joint procedure, is concerning as it may result in a situation where no construction for an EIA development takes place until all relevant all relevant permits required under the Directives listed above have also been granted. NILGA considers such scenarios impractical and in many cases would be economically unviable to expect this prior to the determination of an application.

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

NILGA advocates the coordinated procedure as it is evident that this would afford the most flexibility, which is preferable to ensure that developments can be progressed in a phased manner.

It is apparent that this procedure could result in additional responsibilities for councils to coordinate individual assessments. However, the out-workings of this are unclear and therefore uncertainty around jurisdiction and responsibilities will prevail. It is incumbent on the Department to provide guidance to all local authorities as to the practical out workings, including clarification of roles.

**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?**

Yes

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

NILGA notes the mandatory changes to the information to be assessed i.e. population and human health, land, cultural heritage and biodiversity. These elements of the environment are currently considered under the 2015 Regulations. These amended topics will require some adaptation current assessment methods which will result in a requirement for additional resources. NILGA does however recognise that these mandatory topics are set out in the Directive.

Also, with the change specific consideration will need to be given to impacts of a project on, and its resilience to climate change, and impacts on cultural heritage and landscape. Information on risks

from major accidents or disasters, cumulative effects with any existing or planned projects and any mitigation works which would reduce the environmental impacts would also need to be included. These changes will mean a more detailed level of information will have to be submitted to planning authorities and analysis of this will be required at an earlier stage. There are obvious implications involved for staff and resources.

The inclusion of the information to be assessed within the main body of the legislation (Regulation 5 (2)) rather than a Schedule to the rear of the regulations is a welcome amendment providing clarity and structure for all involved.

**Question 5. Are you content that the current timescale of 4 weeks for a screening determination is maintained subject to a maximum extension of 90 days?**

NILGA is content with the 4 week screening determination deadline and notes the introduction of a 90 day extension. As this will apply in only a small number of cases it is our view that this will limited impact on councils' day to day working. Where the need for an extension does arise NILGA considers that the reason for the extension should be less prescriptive other than to state that it should be exceptional circumstances and with the agreement of the developer.

**Question 6. Do you consider that our approach to transposition of screening appropriately implements the requirements of the Directive?**

NILGA supports the inclusion of the information that developers should provide if seeking a screening option. By doing so the onus will be on the developer to submit a sufficient level of information at the outset to enable councils to make informed decisions. It is also welcomed that this detailed list of information is also linked to the determination carried out on receipt of the application. In all cases where more detailed information is sought

at an early stage in the process there will always be resource implications for the assessment of this information.

**Question 7. Do you consider that our approach to transposition of requirements concerning the content of the Environmental Statement appropriately implements the Directive?**

Yes – however further clarification is required of what should be included in the report at scoping stage.

**Question 8. Do you consider that our approach to transposition of scoping appropriately implements the requirements of the directive?**

The clearer requirements for the assessment of the impact of projects, while generally covered in the past, in a less structured manner, they are likely to require increased emphasis in these areas and as such could result in increased workloads.

**Question 9. Do you consider that our approach to transposition of assessment quality and expertise appropriately implements the requirements of the Directive?**

NILGA considers that the term competent expert is open to interpretation and requires further clarification by the Department as part of the transposition to ensure that when there is a point of challenge councils have clear direction on what it means and that it is not widely open to interpretation.

Also, the need for more additional detailed information at an early stage in the process will again likely to have an impact on resources. Advice and guidance from the Department on this is required.

**Question 10. Do you consider the new timeframes appropriately implement the requirements of the Directive?**

Yes

**Question 11. Do you consider that our approach to transposition for decisions appropriately implements the requirements of the Directive?**

It is NILGA's understanding that the reasoned conclusion is already an integral part of the planning process, however the Directive now stipulates that to must be 'up to date' when the final decision is

taken on whether or not to grant planning permission. As a result planning officers will be required to be vigilant in this regard and possibly seeks clarification from expert consultees when necessary. Furthermore, this requirement appears to introduce increased risk and likelihood of challenge on the basis of timing and content of decision-making thereby adding to the burden on competent authorities.

NILGA asserts that a 'reasonable period of time' is vague and would merit from greater clarification and definition.

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

NILGA notes that the Directive now includes a mandatory monitoring element to ensure the implementation of mitigation measures and to measure their effectiveness. The Directive requires, where appropriate, monitoring measures to be included with development consents. Councils, will therefore be required to undertake a greater level of monitoring of such projects which will have very direct resource implications. Further guidance and clarity is therefore required by the department on how this will be implemented, outlining the level of monitoring necessary and the perceived resource implication.

**Question 13. Do you consider that our approach to transposition of conflict of interest appropriately implements the requirements of the Directive?**

NILGA considers that this mandatory requirement will have implications staffing / resources within Councils.

**Question 14. Do you consider that our approach to transposition of penalties appropriately implements the requirements of the Directive?**

NILGA welcomes that the Department consider the existing planning enforcement powers provide an appropriate penalty system for unlawful development and have not included any further penalty within the Regulations. The Regulations do however place an explicit duty on councils to consider if the requirements of the Directive have been met when considering enforcement action. NILGA consider the approach of DFI to the transposition of this issue appropriately implements the Directive.

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