



Department for
Infrastructure

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To All Consultees

Transport Strategy Division

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Email: Anne.McKeating@infrastructure-ni.gov.uk

Your reference:

Our reference: RPD/6/3/16/1

Date 10th March 2017.

Dear Consultee

PROPOSAL FOR THE HARBOUR WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS (NORTHERN IRELAND) - A CONSULTATION PAPER

The Department for Infrastructure, jointly with the Department of Agriculture, Environment and Rural Affairs, proposes to introduce legislation to transpose the requirements of European Council Directive 2014/52/EU in relation to the assessment of the effects of certain public and private projects on the environment. These Regulations apply to harbour works below the low water mark of medium tides, being works that are not subject to planning control nor the subject of a fish culture license.

Enclosed for your information, in respect of the proposal are the following:

- A Note regarding Exit from the European Union;
- A note setting out the background to the proposal and details of the changes;
- A copy of the proposed Harbour Works (Environmental Impact Assessment) Regulations;
- The Explanatory Note; and
- The list of consultees.

We would welcome any comments you may care to make on the proposed legislation, with particular regard to the potential impact it may have on equality of opportunity, human rights issues, rural impact and implementation costs. If you consider that this consultation should be copied to other interested parties, with whom we have not consulted, please contact me as soon as possible and I will ensure their inclusion.

We try to make our consultation procedure as thorough and open as possible. Following the end of the consultation we may publish details of the responses received. Information you provide in your response, including **personal information**, may be published or disclosed in accordance with access to information legislation: these are chiefly the Freedom of Information Act 2000 (FOIA); the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

For further information about the confidentiality of responses please contact the Information Commissioner's Office or email ni@ico.gsi.gov.uk or see web site at: www.ico.org.uk.

An electronic copy of the Consultation Paper is available on the Department for Infrastructure's Web Site at <https://www.infrastructure-ni.gov.uk/ProposalfortheHarbourWorksEnvironmentalImpactAssessmentRegulationsNorthernIreland>. This document is available in a range of formats, please contact us with your requirements

Comments, on the proposed Regulations should be made in writing and may be forwarded electronically via e-mail to me at anne.mckeating@infrastructure-ni.gov.uk or, alternatively, via post to Ms Anne McKeating, Department for Infrastructure, Transport Strategy Division, 3rd Floor, Clarence Court, 10-18 Adelaide Street, Belfast BT2 8GB.

The closing date for receipt of all responses is 4.00pm, Friday, 21st April 2017.

Yours faithfully

Anne McKeating

Anne McKeating
Transport Strategy Division



Department for

Infrastructure

www.infrastructure-ni.gov.uk

PROPOSAL FOR THE HARBOUR WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS (NORTHERN IRELAND) 2017

A CONSULTATION PAPER

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EXIT FROM THE EUROPEAN UNION

While the decision for the United Kingdom to leave the European Union has been made, until Article 50 of the Treaty on the European Union is triggered and arrangements for withdrawal formally completed, the United Kingdom remains part of the European Union and therefore continues to be governed by the relevant EU Directives.

BACKGROUND

The Environmental Impact Assessment Directive first came into force in 1985 as Council Directive 85/337/EEC. It was amended three times in 1997, 2003 and 2009. The 1985 Directive and its three amendments were codified by Directive 2011/92/EU in advance of the European Commission adopting a proposal in October 2012 to amend the current Directive. Following negotiations in the European Parliament and Council a compromise text was agreed. The amending directive entered into force on 15 May 2014 (as Directive 2014/52/EU). Member States have to transpose the Directive into domestic legislation by 16 May 2017.

The 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. It seeks to ensure that proposals for development (referred to as 'projects' in the directive) which are likely to have a significant effect on the environment by virtue, inter alia, of their nature, size or location are subject to a requirement for development consent and an assessment of those effects before the projects are allowed to proceed. Where an assessment is required, the developer must provide specified information to the relevant competent authority which enables the authority to make an informed decision on whether the project should proceed in the knowledge of any likely significant effects on the environment. It also requires that the public are consulted and given an opportunity to participate in the decision making process.

The Directive applies to a very wide range of project types ranging from nuclear power stations, oil refineries and long distant railways through to urban development and the use of uncultivated land or semi-natural areas for intensive agricultural purposes. The Directive has been transposed through a number of sets of regulations here.

Overall our intention is to minimise any additional regulatory burden whilst ensuring our environment remains well protected.

These proposed Regulations seek to transpose the amending Directive 2014/52/EU while consolidating existing Regulations, namely the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003 and the Harbour Works (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2007.

The Regulations relate solely to harbour works below the low water mark of medium tides, being works that are not subject to planning control nor the subject of a fish culture license, nor in response to civil emergencies.

The Regulations will be made jointly with the Department of Agriculture, Environment and Rural Affairs as the sponsor Department for fishery harbours.

DETAILS OF CHANGES

This consultation paper sets out the key changes to the EIA Directive which we propose to transpose through these Regulations, a draft of which is included in this package.

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 proposed harbour works also require 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 with 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 appropriate Departments are to have access to sufficient expertise to examine and assess the statements.
- The grounds for decisions on proposed harbour works must be clear and considered and reasons for determinations and decisions must be provided and shared with the public. In addition, the appropriate Departments need to prove their objectivity to avoid conflicts of interest.
- Monitoring, proportionate to the nature, location and size of the development, will be required for developments which appear to have significant negative effects on the environment. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.
- Effective, proportionate and dissuasive penalties are to be introduced for breaches of the requirements of the Directive.

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 the developer 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.

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 Statement in the Regulations.

This article is mandatory and has been transposed in regulation 4 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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.

Defence is a reserved matter therefore provisions concerning defence would be covered in the relevant UK legislation. The exemption for civil emergencies is incorporated in Regulation 3 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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.

In line with the approach adopted in all other UK Member States we consider 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 article is mandatory and has been transposed in regulation 5 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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 Directive. The Directive also clarifies that the EIA should only be assessing **significant** effects of the project on the environment.

This article is mandatory and has been transposed in regulation 4 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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.

This article is mandatory and has been transposed in regulation 4(3) in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Information to be Provided for Screening

Screening is the process whereby the appropriate Department determines whether the proposed harbour works should be subject to an environmental impact assessment. As in the previous Directive, the developer can request a prior opinion on a development proposal, however, the information to be provided by the developer when making this request is now prescribed in the Directive.

When providing this information the developer 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 developer 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.

This article is mandatory and has been transposed in regulation 7(3) and 9(3) in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Screening Determination

Screening determinations, both positive and negative, must be based on information provided by the developer 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 screening determination must be made available to the public with reasons justifying any decision.

This article is mandatory and has been transposed in regulation 10 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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.

The Directive also allows discretion in the maximum time limit in exceptional circumstances relating to the nature, complexity, location or size of the project.

The current legislative timeframe to make a screening determination is 4 weeks. In transposing the requirements we propose to maintain the current 4 week period but specify that where an extension needs to be agreed it will not exceed 90 days, except in the exceptional circumstances outlined above.

This article is mandatory and has been transposed in regulation 7(5), 8(4), 8(5), 9(2), 9(4) and 9(5) in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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 prior opinion is requested the Environmental Statement must be “based on” that opinion.

As stated above, the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 refer to an Environmental Statement which equates to the Environmental Impact Assessment Report in the EIA Directive.

This article is mandatory and has been transposed in regulation 6 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Annex IV of the Directive sets out information in detail that can be included in the Environmental Statement. This is mandatory and has been transposed in references to Annex IV in the draft Regulations.

Prior Opinion

Currently a developer can require the appropriate Department to issue a prior opinion setting out the information to be included in the Environmental Statement. This has an important role to play in delivering a proportionate and effective EIA process. In order to gain the full benefits of EIA, developers are encouraged to engage, where appropriate, with the appropriate Department and with the consultation bodies during the early stages of any proposed harbour works.

The factors to be taken into account by the appropriate Department when issuing a prior opinion have been amended in the Directive. This has had a subsequent impact on the information we require the developer to provide when making a prior opinion request.

The developer will be responsible for supplying the appropriate information as set out in regulation 7(3) in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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 appropriate Department 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 appropriate Department relating to the particular circumstances of the proposed harbour works.

This article is mandatory and has been transposed in regulation 6 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Timeframes for Consulting the Public

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

The current existing timescale of 4 weeks for public consultation will be updated to 30 days.

This article is mandatory and has been transposed in regulation 10 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Up-to-date Reasoned Conclusion

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

We propose that the reasoned conclusion should be considered up to date if the appropriate Department is satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the development on the environment at the time of the decision.

This article is mandatory and has been transposed in regulation 14 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Information to be Included in a Decision

The Directive clarifies the information to be included in a decision to grant consent. The first part reflects the requirement in Article 1(2)(g)(v) that the appropriate 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, the appropriate Department 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 the consent.

This article is mandatory and has been transposed in regulation 14 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

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 appropriate Department must promptly inform the public once a decision whether to grant consent has been made.

This article is mandatory and has been transposed in regulation 14 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Monitoring Requirements

The Directive requires that the decision to grant consent should include, where appropriate, monitoring measures for harbour works 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.

This article is mandatory and has been transposed in regulation 15 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Conflicts of Interest - 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 appropriate Department, there must be an appropriate separation between functions.

This article is mandatory and has been transposed in regulation 18 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Enforcement and 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 could be quashed. Unlawful EIA development, like other forms of unlawful development, may be subject to enforcement proceedings.

We consider that the existing enforcement provisions provide an appropriate penalty system for unlawful development.

This article is mandatory and has been transposed in regulation 20 and 21 in the proposed Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

STATUTORY RULES

LIST OF CONSULTEES

- Belfast Harbour Commissioners
- Coleraine Harbour Commissioners
- Larne Harbour Ltd
- Londonderry Port and Harbour Commissioners
- Warrenpoint Harbour Authority
- Department of Agriculture, Environment and Rural Affairs (Fisheries Branch and Marine Licensing Branch)
- Northern Ireland Fishery Harbour Authority
- Northern Ireland Environment Agency
- Northern Ireland District Councils
- Department for Transport (London)
- Crown Estates Commissioners
- Maritime and Coastguard Agency
- The Commissioner for Irish Lights
- Northern Ireland Political Parties & Westminster representatives
- Those bodies listed in the Department's Equality Scheme and identified as being suitable Consultees