

Appendix 1 – Recommended Response to Consultation on EIA Regulations

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

Summary:

There is a new requirement that where a proposal needs to be assessed under both the EIA Regulations and Habitats Directive, this is undertaken in a coordinated manner. If other types of assessment may be necessary, including the Water Framework Directive, Emissions Directive, SEA Directive and Waste Framework Directive, these may also be coordinated, although unlike in combination with the Habitats Directive, this is not mandatory.

Response:

Belfast City Council (BCC) would prefer the “coordinated” approach to assessments rather than a joint procedure requiring a single assessment. This will provide greater flexibility and is consistent with the approach taken by other UK jurisdictions.

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

Response:

A coordinated assessment pursuant to the EIA and Habitats Directives will require a significant degree of coordination between the Council and various statutory agencies, including central government. The Council will be reliant on the capacity of other agencies and Government Departments to feed into the assessment process, both in terms of the availability of expertise and timing of their advice. The Department should be satisfied that these external organisations have sufficient resources to provide a timely and informed coordinated response to the Councils. This should be monitored by the Department.

BCC is pleased that a coordinated assessment with other Directives, including the Water Framework Directive, Emissions Directive, SEA Directive and Waste Framework Directive, is not mandatory and only advisory.

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?

Response:

BCC is satisfied on this point.

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

Summary:

The new Regulations provide a definition of environmental factors:

- Population and human health;
- Biodiversity, with particular attention to species and habits protected under other Directives;
- Land, soil, water, air and climate;
- Material assets, cultural heritage and the landscape; and
- The interaction between the factors listed above.

There is also a requirement to consider the vulnerability of the project to risks of major accidents and/or disasters.

Response:

BCC is satisfied on this point.

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?

Summary:

The information required from a developer in making a screening request is now prescribed. The developer may now also set out features or mitigation to avoid or prevent what otherwise be significant environmental effects. This might negate the need for an Environmental Statement and may reduce the number of EIA developments.

All screening decisions must now be made available to the public along with reasons justifying any decision.

There is now a maximum time period for the Council to make a screening decision of 90 days from the date on which all the necessary information is provided. There is discretion on this maximum time limit in exception circumstances.

Response:

BCC is concerned that a 4-week period is a limited amount of time to undertake a screening decision, particularly where the screening process requires the input of outside agencies and Government departments. Response times from external consultees can be extremely inconsistent and there is concern that advice won't be readily available within the prescribed period. A longer period, such as at least six weeks, is recommended.

The new Regulations must make it clear that the determination period commences from the date when the last of the necessary information is submitted, not from the date of the application. This would more accurately reflect the Directive.

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

Response:

No further comments on this point.

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

Summary:

The information required to be include in an Environmental Statement has been refined and clarified. There is a new requirement that where a scoping opinion has been provided by the Council, the Environmental Statement must be “based” on that opinion.

Response:

BCC is satisfied on this point.

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

Summary:

The factors to be taken into account by the Council when issuing a scoping opinion have been amended by the Directive. This will impact on the information required from a developer when they make a request for a scoping opinion.

Response:

Belfast City Council is satisfied on this point.

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

Summary:

The Directive requires that experts involved in putting together an Environmental Statement should be qualified and competent. The Council should also have access to sufficient expertise to examine the Environmental Statement.

Response:

BCC is concerned about the requirement for the competent authority to have access to sufficient expertise to examine the Environmental Statement. External support may be required which might be costly to procure. The planning application fees for applications requiring an Environmental Statement should therefore be reviewed and should reflect the additional costs that councils may incur. Consideration should also be given to the requirement for a fee for providing screening and scoping opinions.

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

Summary:

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

Response:

BCC is satisfied on this point.

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

Summary:

The EIA process includes the requirement for the Council 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 planning permission process but the Directive now clarifies that this conclusion must be still “up-to-date” when the final decision whether to grant planning permission is made.

Response:

BCC is satisfied on this point.

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

Summary:

The Directive requires that the decision to grant planning permission should include, where appropriate, conditions 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.

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.

Response:

Belfast City Council is concerned that additional monitoring requirements around the regulation of significant environmental effects could have serious resource implications for the Council. The competent authority should have the ability to charge a fee for the monitoring of conditions so as to recover the full costs in doing so.

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

Summary:

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.

Response:

Belfast City Council is satisfied on this point.

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

Summary:

The Directive now expressly requires effective, proportionate and dissuasive penalties to be introduced for breaches of the requirements of the Directive. The new Regulations do not introduce any new penalties but rely on the existing planning enforcement powers to provide an appropriate penalty system for unlawful development. However, an explicit duty is placed on planning authorities to consider if the requirements and objectives of the EIA Directive have been met when considering enforcement action as set out in regulation 32 of the new Regulations.

Response:

Regulation 32, in requiring compliance with the Directive, is too wide and ranging and ambiguous and needs clarification.

ADDITIONAL POINTS:

The introduction of the new Regulations will have training implications for Department and Council staff involving in the EIA process. Belfast City Council would welcome DFI commissioning specific on-going professional training and support for council staff on administering the new Regulations and changes to the EIA process.