

Environmental Impact Assessment Directive

Comments by Northern Ireland Environment Link

9th February 2017

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 70+ Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are made on behalf of Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

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NIEL welcomes the opportunity to engage with the Department on the implementation of the EIA Amendment Directive.

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

Yes

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

We are satisfied that the coordinated approach will provide the necessary streamlining of environmental assessments to reduce administrative burden, while continuing to facilitate robust assessments.

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?

Regulation 5(2) emphasises assessing only the *significant* effects of a project. It is necessary to define 'significant' and outline the criteria that will be used to determine whether or not environmental effects are significant.

Regulation 5(3) appropriately refers to the inclusion of the expected effects deriving from the vulnerability of the project to major risks or accidents. Again 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.

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?

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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

A 'reasonable period of time' is vague and would merit greater clarification and definition.

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

It is questionable whether developments which appear to have significant negative effects on the environment should be given permission if there is no substantial evidence that these effects can be mitigated or offset.

Further clarification is required around the definition of, and criteria for judging, 'significant' environmental effects.

Ensuring developers adhere to mitigation measures and monitoring conditions is critically important.

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

Yes

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

Yes

Other Comments

It is concerning that Regulation 33 appears to suggest that after undertaking an **Environmental Impact Assessment** it may be possible to regularise unauthorised EIA development. If a development has already occurred, it is impossible to adequately assess the full environmental impact due to the inability to assess the condition of the site at the outset of the development. Therefore, in cases where unauthorised development has taken place, it should not **normally** be possible to regularise EIA development **retrospectively**. Any such attempt to regularise **unauthorised** EIA development **other than in exceptional circumstances** contravenes the position set out in C-215/06 ruling by the European Court.

Section 4.1 recognises that “planning authorities are to have access to sufficient expertise”. It is essential that Authorities have the necessary environmental and landscape expertise to undertake a robust EIA. Indeed, the EIA process lacks sufficient independence and Authorities require more expertise to assess very detailed and complex submissions.

While these amendments should bring us into line with other UK jurisdictions and EU Member States, we are lagging behind on a whole range of other environmental issues. For example, of relevance to this consultation is the issue of ‘independence’ around assessing, evaluating, monitoring environmental impacts and the associated need for effective enforcement. The catalogue of environmental failures in NI is well documented and we are increasingly perceived across the rest of the UK and EU as a ‘lawless’ society in respect of our environmental performance. This is detrimental to our ability to project and sustain a clean green image when trading across the EU, promoting tourism and economic development. The NI Executive needs to urgently review the need for an Independent Environmental Protection Agency. Attaining minimum acceptable environmental standards at the very least will be a key success factor in achieving a sustainable and prosperous future for Northern Ireland.

Implementation of the EIA Directive in NI allows for protection of the environment through the incorporation of environmental considerations into the preparation of projects. Given the current political situation in Northern Ireland, we are concerned that these Regulations will not be transposed into NI legislation in time, resulting in EIA projects not being processed, determined and monitored against the most robust, up to date environmental regulations. We therefore urge the Department to expedite this process and have these regulations signed off by the current Minister on or before 2 March 2017.