

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1 The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008

2. Purpose and Intended Effect of the Regulations

(i) The objective -

2.1 The regulations are being introduced to transpose into Northern Ireland planning legislation the requirements of Article 3 of European Council Directive 2003/35 (the “Public Participation Directive”), which amends the public participation and access to justice provisions of the Environmental Impact Assessment (EIA) Directive 85/337/EEC.

2.2 The regulations relate to projects requiring planning permission. Responsibility for similar amendments to EIA regulations in other sectors such as forestry, electricity and roads rests with the Northern Ireland department with functional responsibility for the matters in question.

2.3 The regulations amend the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999.

2.4 The Public Participation Directive applies throughout the UK and is being transposed separately in England, Scotland, Wales and Northern Ireland.

(ii) The background

2.5 The importance of increased public participation in environmental decision making was recognised at international level in the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (“the Aarhus Convention”). Directive 2003/35/EC is one of the legislative instruments that transpose the provisions of the UNECE Convention into European Community law. Article 3 aligns the EIA Directive with the public participation and access to justice provisions in the Convention.

(iii) Risk assessment

2.6 Inadequate transposition of the Public Participation Directive could result in significant costs through infraction proceedings by the European Commission.

3. **Options**

(i) Transpose Article 3 of Directive 2003/35/EC into Northern Ireland planning legislation.

(ii) Do nothing

3.1 The alternative to implementing Article 3 of the Public Participation Directive through appropriate NI regulations is to do nothing. This is not a realistic or desirable option as the UK is legally obliged to implement Directive 2003/35/EC. Failure to transpose would result in infraction proceedings by the European Commission.

4. **Benefits**

Option (i) Transpose Article 3 of Directive 2003/35/EC

4.1 Effective public participation in environmental decision making has environmental and social benefits. It enables the public to express, and the decision maker to take account of, opinions and concerns, which may be relevant to the decisions in question. This increases the accountability and transparency of the decision making process and contributes to public awareness of environmental issues. The current EIA regulations already contain a number of provisions aimed at securing effective public participation. The proposed amendments will serve to enhance those provisions.

Option (ii) Do nothing

4.2 There are no benefits associated with this option, as failure to transpose the Directive would result in infraction proceedings by the European Commission.

5. **Other Impact Assessments**

Environmental or Social Costs

5.1 There are not considered to be any environmental or social costs associated with introducing these regulations.

Equality Impact Assessment

5.2 The measures will not affect any racial group disproportionately.

Health Impact Assessment

5.3 The measures will not have any effects on health.

Rural considerations

5.4 The measures will not impact on those in rural or remote areas to a greater or lesser extent than those in urban areas.

6. **Costs**

(i) Compliance costs

6.1 The additional obligations on decision makers (Planning Service, or in the case of appeals, the Planning Appeals Commission) are considered to be relatively minor and do not involve significant costs. Planning Service is already responsible for publicising EIA applications which are accompanied by an Environmental Statement, and the only changes are that it will need to: notify bodies outside the local area whom it is aware of having a particular interest in the development; publicise information provided voluntarily by an applicant and keep such information on the planning register; publish determinations on its web site, and include information about the public participation process in the statement that accompanies determinations. Similar obligations will fall on the Planning Appeals Commission. It is considered that these additional obligations will result in only a marginal increase in the resources needed to deal with EIA applications.

(ii) Compliance costs for business

6.2 There are no additional obligations on businesses under the amendment regulations.

7. Competition Assessment

7.1 Not applicable. The proposals relate to the public sector, and will not impact on competition within UK markets. All EU Member States are required to transpose the Directive.

8. Consultation with Small Business: the Small Business Impact Test

8.1 As mentioned in paragraph 6.2 above, there are no additional obligations on businesses under the amendment regulations. It would be rare for small firms to seek planning permission for development that would have significant effects on the environment (thus requiring EIA). A small firms' impact test has not therefore been undertaken.

9. Enforcement and Sanctions

9.1 The EIA public participation requirements of the Directive apply mainly to central government which is bound by the requirements in the same way as by any other legislation. Failure to comply would run the risk of domestic legal challenge or infraction proceedings by the EC.

10. Monitoring and Review

10.1 The proposed changes mainly comprise relatively minor adjustments to our present provisions on public participation in the environmental impact assessment process. They relate essentially to making information about applications which are subject to EIA, available to the public. There is no easy way to monitor or evaluate such measures. However, breaches of EIA requirements run the risk of challenge by means of judicial review. Such cases would come to the Department's attention, and this provides one means of reviewing compliance with the new requirements.

11. Consultation

(i) Within Government

11.1 Representatives of other Government Departments and the administrations of England, Scotland, Wales and Northern Ireland have been consulted on the UK position in the negotiation of the Public Participation Directive.

(ii) Public Consultation

11.2 A full public consultation on draft regulations to implement the public participation requirements of the Directive for EIA projects subject to the planning process was carried out in Northern Ireland and this Regulatory Impact Assessment formed part of it.

11.3 The Consultation Paper was sent to a wide range of bodies and was also advertised in local newspapers and on the Department's website. Responses were received from 16 consultees, not all of whom commented on every aspect of the consultation. A further 9 consultees indicated they had no comment at all to offer. Although this may appear to be a low response rate, it reflects the relatively specialised nature of the subject matter and those who commented can be regarded as a reasonable cross-section of interested opinion. The consultation was generally welcomed by respondents with the proposals described as increasing inclusion and transparency.

12. Summary and Recommendation

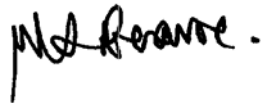
Option	Cost	Benefit
(i) – Transpose Article 3 of Directive 2003/35/EC	De minimus costs to business. Minor resource implications for EIA decision makers	Some small environmental and social benefits through more transparent public participation in the EIA process
(ii) - do nothing	Fines imposed by European Court for non-transposition	No economic, environmental or social benefits

12.1 The proposed amendments to the regulations are necessary in order to transpose the amendment of Directive 85/337/EEC made by the Public Participation Directive. The costs on business will be de minimus and those on the public sector will not be substantial. The risks and associated costs of not transposing are significant. It is, therefore, recommended that Article 3 of Directive 2003/35/EC in respect of projects falling within the planning system is transposed through the Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008.

DECLARATION

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed by a Senior Officer of the Department of the Environment

A handwritten signature in black ink, appearing to read 'Wilfrid Reavie'.

Date: 15 January 2008

Contact point:
Wilfrid Reavie
Department of the Environment
Planning Service
Millennium House
17-25 Great Victoria Street
Belfast BT2 7BN

Tel: 028 9025 6505
E-mail: Wilfrid.Reavie@doeni.gov.uk