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Mr Robert Mackey
Planning Service Headquarters
Consultation on the Draft Planning
(Environmental Impact Assessment)
(Amendment) Regulations (Northern Ireland)
2005
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Dear Mr Mackey

CONSULTATION RESPONSE FROM COLERAINE BOROUGH COUNCIL

Please find enclosed the Consultation response from **Coleraine Borough Council** on the Draft Planning (Environmental Impact Assessment) (Amendment) Regulations 2005.

I would be grateful if you would acknowledge receipt of the response to me at the above address.

Yours sincerely

Peter W Fleming

for **BDP Planning Ltd**

cc. BMcG Coleraine Borough Council

Consultation Paper on the Draft Planning
(Environmental Impact Assessment)
[Amendment) Regulations 2005

Response Note from
Coleraine Borough Council

September 2005



**COLERAINE
BOROUGH COUNCIL**

**CONSULTATION PAPER ON THE DRAFT
PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)
(AMENDMENT) REGULATIONS 2005**

Draft Response

from

Coleraine Borough Council

September 2005



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1.0 INTRODUCTION

Context for the Response

- 1.1 This Response Note provides the comments of Coleraine Borough Council on the Consultation Paper titled "*The Draft Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2005*". The Consultation Paper was published by the DoE Planning Service on 4th August 2005 with a deadline of 30th September 2005 for the receipt of comments.
- 1.2 The Consultation Paper contains the Department's proposals for implementing Article 3 of European Directive 2003/35/EC (the '*Public Participation Directive*?).
- 1.3 The Council notes the following in relation to the Consultation Paper:
- (a) Consultation Responses: the Consultation Paper does not seek comments on the terms of the European Directive (as it has already been adopted) but on the following:
 - '*the measures contained in the draft regulations to transpose the provisions of the Directive into domestic law*' and
 - '*the procedural amendments*' to the EIA procedures proposed by the DoE.
 - (b) scope: the proposals in the Consultation Paper apply to projects falling within the planning sector;
 - (c) EIA Applications: the DoE have included a number of additional changes to EIA procedures, in the draft legislation, in order to streamline the processing of EIA Applications;
 - (d) DOE & PAC obligations: the draft legislation, set out in the Consultation Paper, places additional obligations on the Planning Service and the Planning Appeals Commission.
- 1.4 The detailed comments of the Council are set out under the section headings and sub-headings used in the Consultation Paper in section 2.0 of this Response.
- 1.5 Section 3.0 of this Response highlights the key comments of the Council on the Consultation Paper.

2.0 COMMENTS ON CONSULTATION PAPER

Section 1.0 of Consultation Paper: 'Introduction'

2.1 The Council notes the following:

- the consultation paper sets out the Department's proposals for implementing Article 3 of European Directive 2003/35/EC (the '*Public Participation Directive*'), which amends Council Directive 85/337/EEC (the Environmental Impact Assessment or '*EIA Directive*');
- the proposals in the Consultation Paper apply to the implementation of the EIA Directive for projects within the planning sector. '*Responsibility for amendments to current EIA regulations in other sectors such as transport and forestry as a result of the Public Participation Directive rests with the Department concerned*';
- '*the draft amending legislation contained in this consultation paper will apply to Northern Ireland. Separate legislation will be introduced in England, Wales and Scotland to implement the requirements of the Public Participation Directive*'.

2.2 The Council's comments have been prepared following consideration of the Consultation Paper, the draft Amendment Regulations, the Public Participation Directive and the consolidated version of the EIA Directive.

Section 2.0 of Consultation Paper: 'Background Note on Public Participation Directive'

2.3 The Council notes the range of alterations to the EIA Directive (85/337/EEC) and that the main amendments relate to Article 6 of the EIA Directive as this Article contains the main EIA public participation requirements.

2.4 The Council notes that Article 10A is a new provision which "*gives the public the right of access to a review procedure if they wish to challenge a competent authority's handling of the public participation provisions*".

Section 3.0 of Consultation Paper: 'The Draft Regulations'

2.5 **Draft Regulation 3:** the Council notes the amendment to the 1999 regulations and agrees with the Department that it is not necessary to define the terms "*the public*" and "*the public concerned*". The Council welcomes the fact that "*the public concerned*" includes non-governmental organisations (NGO's) which promote environmental protection.

2.6 **Draft Regulation 4:** the Council welcomes the replacement of the current exemption from EIA for all projects serving national defence purposes with an exemption which applies on a case by case basis. The Council also welcomes the removal of some of the Member State's discretion relating to the availability of information for the public.

- 2.7 **Draft Regulation 7:** the Council welcomes the improved notification arrangements, to take account of NGO's, when the Department receives an environmental statement.
- 2.8 **Draft Regulation 8b:** the Council welcomes the improved arrangements for publicising additional information provided voluntarily by an applicant after the initial publicity for an environmental statement.
- 2.9 **Draft Regulation 9:** the Council welcomes the improved arrangements relating to the publication of determinations of EIA applications and the obligations on the PAC in relation to information on the public participation process and on the right to challenge the validity of decisions and the procedures for doing so. The Council notes the relevance of the current judicial review procedures for challenging the legality of decisions, acts or omissions.
- 2.10 **Draft Regulations 10 & 11:** the Council welcomes the improved arrangements relating to publicity concerning development likely to have significant environmental effects in another Member State and the reciprocal arrangements where development in another Member State is likely to have significant effects on the environment in Northern Ireland.
- 2.11 **Draft Regulations 12-18:** the Council notes the changes set out in Draft Regulations 12-18 relating to, inter alia, publicity for environmental statements, definitions and availability of information. The Council welcomes the introduction of a new project category into the Regulations to cover a change or extension of a Schedule 1, project (i.e. projects for which EIA is mandatory).

Part 2 - Amendments to EIA Procedures

- 2.12 **Draft Regulation 5:** the Council welcomes the setting of a timescale for an applicant, who wishes to proceed with the submission of an Environmental Statement following the receipt of a scoping opinion, to advise the Department.
- 2.13 **Draft Regulation 6:** the Council welcomes the clarification provided as to the events that need to occur before the Department consider that an EIA application is 'received' and 'processing' has commenced.
- 2.14 **Draft Regulation 8a:** the Council welcomes the setting of a specified time frame for the submission, by an applicant, of additional information and notes that an extended period may be agreed with the Department where, for example, seasonal data may be required.

Planning Appeals Commission (PAC)

- 2.15 The Council notes that the provisions relating to the PAC are not included in the draft regulations but that the Department would welcome comments on the proposals to:
- provide statutory authority for the PAC to make EIA determinations in appeal cases where a determination has not been made or the Commission disagrees with the Department's determination;

- enable the PAC to carry out the full range of administrative procedures associated with the EIA determination process;
- insert a time period for an applicant to notify the Commission of his intention to seek a hearing in relation to a determination by the Department that an Environmental Statement is required.

2.16 The Council welcomes the above provisions and notes that they are still under consideration. The Council requests that consultation takes place on the provisions before they are included in the new regulations. The Council considers that such consultation is essential in light of the proposed new obligations for the PAC.

Sections 4.0 Equality Impact Assessment & Human Rights Compliance

2.17 The Council notes that there is no adverse differential impact anticipated and that the proposed legislation is compatible with the Human Rights Act 1998.

Section 5.0 Draft Regulatory Impact Assessment

2.18 The Council notes the findings of the draft RIA and, in particular, the following:

- failure to transpose the Directive would run the risk of infraction proceedings by the European Commission;
- the benefits which flow from the improved arrangements for public participation in environmental decision making;
- the costs of the proposed changes on business will be de minimus and on the public sector will not be substantial.

2.19 The Council fully supports the recommendation in the RIA that Article 3 of the Directive is transposed through the Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2005.

3.0 KEY COMMENTS

- 3.1 The Council notes the excellent definition of '*effective public participation*' in the '*Public Participation Directive*'.

Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

- 3.2 The Council recognises the benefits of making amendments to the Environmental Impact Assessment (EIA) Directive to improve public participation and access to justice provisions.

- 3.3 The Council notes and welcomes the additional changes to EIA procedures, proposed by the Department, which are designed to '*streamline the processing of EIA applications*'.

- 3.4 In relation to changes to EIA procedures, the Council would request that the Department consider the introduction of time limits which would apply to consultation responses from Consultees. Such time limits would assist the Department's overall objective of streamlining the processing of EIA applications. In addition, the time limits would complement those proposed under Draft Regulations 5, 6 and 8a for the applicant.

- 3.5 In relation to monitoring the application and effectiveness of the Directive in Northern Ireland the Council would suggest that focused research could be undertaken by the Department. The Council notes that the draft Regulatory Impact Assessment identifies judicial review as one means of reviewing compliance and would suggest that research into good practice would also assist monitoring and review.