



**THE DRAFT PLANNING (ENVIRONMENTAL IMPACT  
ASSESSMENT) (AMENDMENT) REGULATIONS  
(NORTHERN IRELAND) 2005**

**A CONSULTATION PAPER**

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## **1.0 Introduction**

1.1 This 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').

1.2 The requirements of Directive 85/337/EEC (as amended by Directive 97/11/EC) on the assessment of the effects of certain public and private developments on the environment were implemented for Northern Ireland by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 73) ("the 1999 regulations"). Article 3 of the Public Participation Directive makes amendments to the EIA Directive aimed at developing the public participation and access to justice provisions in EIA.

1.3 The proposals in this consultation paper apply to the implementation of the amended EIA Directive insofar as projects falling within the planning sector are concerned. 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. Consultees should therefore be aware that similar changes are being made to other sets of regulations to ensure full implementation of the Directive.

1.4 The Department is also taking this opportunity to include a number of additional changes to the 1999 regulations resulting from a recent review of the procedures associated with the EIA process. Further details of these changes are given in the appropriate sections of this paper.

1.5 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.

1.6 This consultation paper needs to be read in conjunction with the draft Amendment Regulations, the Public Participation Directive and consolidated version of the EIA Directive, which are appended to it.

## **2.0 Background Note on Public Participation Directive**

2.1 The Public Participation Directive is a Directive "providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC". Article 3 amends Directive 85/337/EEC (the EIA Directive), with which this consultation document is concerned.

2.2 The following articles of the EIA Directive have been altered.

- **Article 1**

Article 1 now incorporates definitions of "the public" and "the public concerned", with the latter including non-governmental organisations (NGOs) promoting environmental protection. It also amends the wording of the exemption for projects serving national defence purposes.

- **Article 2**

The wording of the exemption relating to "exceptional cases" has been altered to remove the discretion not to make information obtained under another form of assessment available to the public.

- **Article 6**

This Article contains the main EIA public participation requirements and has been widely amended. The current Articles 6.2 and 6.3 have been replaced by new Articles 6.2 to 6.6. The amended Article spells out in more detail the information which must be made public, specifying, for example, details of the application for consent, the fact that the development is subject to EIA, the name of the competent authority to which comments can be sent, and where and at what times the Environmental Statement can be viewed. The Department considers that the existing Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 largely comply with these requirements and, as such, is proposing only one relatively minor change to take account of the requirement in the new Article 6.3 (c) (see paragraphs 3.9 and 3.10).

- **Article 7**

There are some, mainly consequential, changes to this Article so that the information required under the amended Article 6 also applies in transboundary cases (where other European Union Member States are affected).

- **Article 9**

Details about the decision that have to be made publicly available by the competent authority must now include information about the public participation process. This includes the public in any Member State which has been consulted under transboundary arrangements.

- **Article 10A**

This 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. It also requires practical information on this to be made available to the public.

- **Annex 1 (projects for which EIA is mandatory)**

This Annex now includes a new category for a change or extension to an existing Annex 1 project where the change or extension itself meets the relevant Annex 1 threshold.

- **Annex 2 (projects which need to be screened for EIA)**

In line with the Annex 1 amendment, paragraph 13 of Annex 2 has been amended to make it clear that it does not include a change or extension to an Annex 1 project which itself meets the relevant Annex 1 threshold.

## **3.0 The Draft Regulations**

### **Part 1 - The Public Participation Directive**

#### **Draft Regulation 3**

3.1 There are amendments to the current definitions of "environmental information" and "exempt development" in regulation 2 of the 1999 regulations, and new definitions for "any particular person", "any other information" and "by local advertisement". References to these changes are contained in draft regulations 4, 7, 8(b), 9, 10, 12, 13 and 16.

3.2 We are not proposing to incorporate the definitions of "the public" and "the public concerned" which the Public Participation Directive has introduced into Article 1.2 of the EIA Directive as it seems clear that references to "the public" are intended to mean the wider public or public at large, while "the public concerned" are those directly affected by or with a direct interest in the proposal. As such, it is not considered necessary to define the terms in order to make that distinction. This is consistent with the approach in the other UK regions. The distinction has in fact always existed in the Directive even though the terms have not previously been defined. It should be noted, however, that the new definition of "the public concerned" includes non-governmental organisations (NGOs) promoting environmental protection.

#### **Draft Regulation 4**

3.3 Draft regulation 4 implements the amendments to Articles 1.4 and 2.3 of the EIA Directive, concerning exemptions from EIA requirements. The amendment to Article 1.4 replaces the current exemption from EIA for all projects serving national defence purposes, with an exemption which applies on a case by case basis and where compliance with EIA requirements would have an adverse effect on national defence purposes. Draft regulation 4 therefore introduces a provision enabling the Department to issue a direction exempting such a project from the requirement of the regulations where that criterion applies.

3.4 The present exemption under Article 2.3 of the Directive, which allows projects to be exempted from EIA requirements in "exceptional cases", requires Member States to consider whether another form of assessment (i.e. which is not fully EIA compliant) would be appropriate and, if so, whether to make the information collected under it available to

the public. The amendment to Article 2.3 removes some of the Member State's discretion by requiring this information to be made available to the public, though it is still left for the Member State to decide whether the assessment itself would be appropriate in the first place. Draft regulation 4 brings the current exemption into line with the revised wording.

### **Draft Regulation 5**

3.5 Comments on regulation 5 are provided at Part 2 of this summary.

### **Draft Regulation 6**

3.6 Comments on regulation 6 are provided at Part 2 of this summary.

### **Draft Regulation 7**

3.7 Draft regulation 7 adds a new provision to regulation 12 of the 1999 regulations requiring the Department, on receipt of an environmental statement, to notify "any particular person" it considers will be likely to be affected by or have an interest in the application. The purpose of this provision is to take account of relevant NGOs which, as part of "the public concerned", are now deemed to have an interest but which may not become aware of an application through the current publicity arrangements using local newspapers. A definition of "any particular person" to include NGOs promoting environmental protection is included in draft regulation 3.

### **Draft Regulation 8 (a)**

3.8 Comments on regulation 8 (a) are provided at Part 2 of this summary.

### **Draft Regulation 8 (b)**

3.9 The new Article 6.3(c) requires publicity for information which only becomes available after the initial publicity about the request for consent and the availability of the Environmental Statement has been provided. Under regulation 15 of the 1999 regulations the requirement to publicise "further information" is limited to information which the Department or the Planning Appeals Commission has specifically asked the applicant to provide. There is at present no provision for publicising additional information provided voluntarily by the applicant, although in the interests of good practice the Department considers that such voluntary

information should be subject to the same publicity requirements as "further information" required by the competent authority.

3.10 Draft regulation 8 (b) therefore amends regulation 15 so that any other information submitted is subject to the publicity requirements in regulation 15(3). Under the definition of "any other information" which has been included in draft regulation 3, such information is that which relates to the Environmental Statement. The definition of "environmental information" in the 1999 regulations has also been amended to include "any other information"; competent authorities are required to take the "environmental information" into consideration when determining planning applications.

### **Draft Regulation 9**

3.11 This introduces an amendment to the requirement in regulation 17 (1) of the 1999 regulations for the Department to publicise determinations of EIA applications. It requires publication "by local advertisement", which is defined in draft regulation 3 and requires the determination to be published both in at least one local newspaper, as now, and on the Department's website (provided this facility is available).

3.12 This draft regulation also provides that the statement which the Planning Appeals Commission is required to provide to the Department under regulation 17 (2) of the 1999 regulations should include, if relevant, information about the public participation process.

3.13 In addition, the statement referred to in paragraph 3.12 will be required to contain information about the right to challenge the validity of the decision and the procedures for doing so. This implements the new requirement at the end of Article 10a of the Directive for Member States to ensure that practical information is made available to the public on access to administrative and judicial review procedures. It is considered that the current judicial review procedures are sufficient to satisfy the main Article 10a requirement for the public to have access to a review procedure for challenging the legality of decisions, acts or omissions subject to the public participation provisions of the Directive.

3.14 Similar provisions are inserted in respect of regulation 34 (c) of the 1999 regulations, relating to the register of planning applications (see draft regulation 16).

### **Draft Regulation 10**

3.15 Regulation 18 of the 1999 regulations concerning development likely to have significant environmental effects in another Member State requires the Department to make certain information available to the Member State affected. Currently there is no requirement to make "further information" provided under regulation 15 available to the Member State in question. Draft regulation 10 therefore requires the Department to also send any "further information" required by the competent authority and "any other information" provided voluntarily by the applicant.

3.16 In line with the new provision described in paragraph 3.12 above, this draft regulation also requires the Department, following determination of the application, to provide the affected Member State with information about the public participation process.

### **Draft Regulation 11**

3.17 This amends regulation 19 which deals with development in other Member States likely to have significant effects on the environment in Northern Ireland. It requires details of the other Member State's decision, including, if relevant, information relating to the public participation process, to be made available by the Department to the public and to authorities in Northern Ireland likely to be concerned because of their specific environmental responsibilities.

### **Draft Regulation 12**

3.18 Draft regulation 12 inserts a provision at paragraph (1A) of regulation 25 requiring the Planning Appeals Commission, on receipt of an environmental statement in connection with an enforcement appeal, to inform "any particular person" it considers will be likely to be affected by or have an interest in the application.

### **Draft Regulation 13**

3.19 This draft regulation imports the requirement for publicity "by local advertisement" and the "further and any other information" provision into regulation 27 of the 1999 regulations, which currently cover publicity for Environmental Statements submitted in connection with an enforcement appeal.

### **Draft Regulation 14**

3.20 Draft regulation 14 provides for the information submitted by an appellant to be made available to the relevant Member State.

### **Draft Regulation 15**

3.21 This draft regulation amends the definition of the “EIA Regulations” in the General Development Order to include the EIA (Amendment) Regulations 2005.

### **Draft Regulation 16**

3.22 The Department will be required to make “any other information” submitted by the applicant available under the amended regulation 34, plus information on the public participation process and details of review procedures. As previously stated, it is considered that the current judicial review procedures are sufficient to satisfy the main Article 10a requirement of the Directive for the public to have access to a review procedure for challenging the legality of decisions, acts or omissions subject to the public participation provisions of the Directive.

### **Draft Regulation 17**

3.23 In line with the new category introduced into Annex 1 of the Directive, this introduces into Schedule 1 to the 1999 regulations a new project category, covering a change to or extension of a Schedule 1 project where the change or extension itself meets the Schedule 1 thresholds for that type of project.

### **Draft Regulation 18**

3.24 As a consequence of the new Schedule 1 category, and in line with the amendment of Directive Annex 2, this amends paragraph 13(a) of Schedule 2 to the 1999 Regulations to make it clear that this category can only include changes or extensions to Schedule 1 or 2 projects which do not themselves fall into Schedule 1.

## **Part 2 - Amendments to EIA Procedures**

### **Draft Regulation 5**

3.25 This regulation sets a timescale for an applicant who wishes to proceed with the submission of an Environmental Statement following receipt of a scoping opinion, to advise the Department of his intention. This is to ensure that the Department knows what to expect and to plan accordingly.

### **Draft Regulation 6**

3.26 Draft regulation 6 amends regulation 10 of the 1999 regulations to further clarify the events which need to occur before the date when an EIA application was 'received' is set for processing purposes. The amendment adds to the existing provision in relation to the submission of an Environmental Statement and accompanying documents by providing that where further information is requested in respect of a determination under regulation 9 (2) (application made to the Department without prior determination as to need for EIA or without an ES), and under the provisions of regulation 15 (further information relating to ES), the 16 week period for determination of the application will not start to run until that information is received.

### **Draft Regulation 8 (a)**

3.27 The Department is aware of delays in the EIA process as a result of the time taken by some applicants to submit additional information following a request under regulation 15. To speed up this part of the EIA process, the Department proposes to include an extra provision at regulation 15 (2A), requiring the applicant to submit any further information or any other information within a specified time frame of three months, or such extended period as may be agreed with the Department. The latter provision is inserted to provide an extension of time in cases where, for example, seasonal data collection may be required.

### **Planning Appeals Commission (PAC)**

3.28 The Department will also be providing statutory authority for a procedure, currently operated on an administrative basis by the PAC, enabling the Commission to make EIA determinations in appeal cases

where a determination has not been made or the Commission disagrees with the Department's determination.

3.29 The new provisions will enable the Commission to carry out the full range of administrative procedures associated with the EIA determination process, including publicity arrangements and consultation with the district council, with environmental authorities likely to be interested in the development and with relevant EU Member States.

3.30 The Department will also be inserting a time period for an applicant to notify the Commission of his intention to seek a hearing under regulations 9(6) and 22(5) of the 1999 regulations, in relation to a determination by the Department that an Environmental Statement is required. This will ensure that the Commission receives early notification of the applicant's intention.

3.31 These provisions are still under consideration and are not included in the draft regulations appended to this consultation paper. However, they will be finalised in due course and included in the new regulations.

**Although the provisions relating to the PAC are not included in the draft regulations, the Department would welcome any comments on the proposals outlined at paragraphs 3.28 to 3.31.**

## **4.0 Equality Impact Assessment and Human Rights Compliance**

4.1 An equality impact screening process has been carried out on the proposed Planning (Environmental Impact Assessment) (Amendment) Regulations. The conclusion is that there is no adverse differential impact anticipated for any of the groups specified in section 75 of the Northern Ireland Act 1998, as a result of the implementation of the legislative proposals.

4.2 The Department is of the view that the proposed legislation is compatible with the Human Rights Act 1998.

## **5.0 Draft Regulatory Impact Assessment**

### 5.1 Title of Regulations

The Draft Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2005

### 5.2 Purpose and Intended Effect of the Measures

The objective -

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 (as amended by 97/11/EC).

The draft regulations relate to projects requiring planning permission. Responsibility for similar amendments to extant EIA regulations in other sectors rests with the Northern Ireland department with functional responsibility for the matters in question.

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

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

### 5.3 Background

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.

## 5.4 Risk Assessment

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

## 5.5 Options

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

(ii) Do nothing.

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.

## 5.6 Benefits

### Option (i)

Effective public participation in environmental decision making has several 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 strengthen those provisions.

### Option (ii)

There are no benefits associated with this option, as failure to transpose the Directive would run the risk of infraction proceedings by the European Commission.

## 5.7 Costs

### Compliance costs

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. Failure to transpose the Directive could result in significant costs if the European Commission initiated infraction proceedings against the UK, and the European Court imposed financial penalties until compliance had been achieved.

#### Compliance costs for business

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

#### 5.8 Competition Assessment

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.

#### 5.9 Enforcement and Sanctions

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.

#### 5.10 Monitoring and Review

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.

Article 5 of Directive 2003/35/EC provides that by 25 June 2009, the European Commission must send a report on the application and effectiveness of the Directive to the European Parliament and Council. This provision also allows the Commission to review the Directive, taking into account the experiences acquired in the application of the Directive in the Member States. This Article does not impose an obligation on Member States to report to the Commission, but for the

Commission to report to the Council and Parliament and for the Commission to review the Directive.

### 5.11 Consultation

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.

A full public consultation on draft regulations to implement the public participation requirements of the Directive for EIA projects subject to the planning process is being initiated in Northern Ireland and this Regulatory Impact Assessment forms part of it.

### 5.12 Summary and Recommendations

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) 2005.

**DIRECTIVE 2003/35/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 26 May 2003**

**providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>, in the light of the joint text approved by the Conciliation Committee on 15 January 2003,

Whereas:

- (1) Community legislation in the field of the environment aims to contribute to preserving, protecting and improving the quality of the environment and protecting human health.
- (2) Community environmental legislation includes provisions for public authorities and other bodies to take decisions which may have a significant effect on the environment as well as on personal health and well-being.
- (3) 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.
- (4) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including *inter alia* by promoting environmental education of the public.

(5) On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). Community law should be properly aligned with that Convention with a view to its ratification by the Community.

(6) Among the objectives of the Århus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(7) Article 6 of the Århus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(8) Article 7 of the Århus Convention provides for public participation concerning plans and programmes relating to the environment.

(9) Article 9(2) and (4) of the Århus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of the Convention.

(10) Provision should be made in respect of certain Directives in the environmental area which require Member States to produce plans and programmes relating to the environment but which do not contain sufficient provisions on public participation, so as to ensure public participation consistent with the provisions of the Århus Convention, in particular Article 7 thereof. Other relevant Community legislation already provides for public participation in the preparation of plans and programmes and, for the future, public participation requirements in line with the Århus Convention will be incorporated into the relevant legislation from the outset.

<sup>(1)</sup> OJ C 154 E, 29.5.2001, p. 123.

<sup>(2)</sup> OJ C 221, 7.8.2001, p. 65.

<sup>(3)</sup> OJ C 357, 14.12.2001, p. 58.

<sup>(4)</sup> Opinion of the European Parliament of 23 October 2001 (OJ C 112, 9.5.2002, p. 125 (E)), Council Common Position of 25 April 2002 (OJ C 170 E, 16.7.2002, p. 22) and Decision of the European Parliament of 5 September 2002 (not yet published in the Official Journal). Decision of the European Parliament of 30 January 2003 and Decision of the Council of 4 March 2003.

- (11) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment <sup>(1)</sup>, and Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control <sup>(2)</sup> should be amended to ensure that they are fully compatible with the provisions of the Århus Convention, in particular Article 6 and Article 9(2) and (4) thereof.
- (12) Since the objective of the proposed action, namely to contribute to the implementation of the obligations arising under the Århus Convention, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Objective

The objective of this Directive is to contribute to the implementation of the obligations arising under the Århus Convention, in particular by:

- (a) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;
- (b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC.

#### Article 2

##### Public participation concerning plans and programmes

1. For the purposes of this Article, 'the public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.
2. Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under the provisions listed in Annex I.

To that end, Member States shall ensure that:

- (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for such plans or programmes or

for their modification or review and that relevant information about such proposals is made available to the public including *inter alia* information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;

- (b) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made;
- (c) in making those decisions, due account shall be taken of the results of the public participation;
- (d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.

3. Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection.

The detailed arrangements for public participation under this Article shall be determined by the Member States so as to enable the public to prepare and participate effectively.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.

4. This Article shall not apply to plans and programmes designed for the sole purpose of serving national defence or taken in case of civil emergencies.

5. This Article shall not apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment <sup>(3)</sup> or under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(4)</sup>.

#### Article 3

##### Amendment of Directive 85/337/EEC

Directive 85/337/EEC is hereby amended as follows:

1. in Article 1(2), the following definitions shall be added:

<sup>(1)</sup> OJ L 175, 5.7.1985, p. 40. Directive as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

<sup>(2)</sup> OJ L 257, 10.10.1996, p. 26.

<sup>(3)</sup> OJ L 197, 21.7.2001, p. 30.

<sup>(4)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

“the public” means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

“the public concerned” means: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;’

2. in Article 1, paragraph 4 shall be replaced by the following:

‘4. Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.’;

3. in Article 2(3), points (a) and (b) shall be replaced by the following:

‘(a) consider whether another form of assessment would be appropriate;

(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it.’;

4. in Article 6, paragraphs 2 and 3 shall be replaced by the following paragraphs:

‘2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places where and means by which the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (\*), information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

(\* ) OJ L 41, 14.2.2003, p. 26.’

5. Article 7 shall be amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

‘1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

- (a) a description of the project, together with any available information on its possible transboundary impact;
- (b) information on the nature of the decision which may be taken,

and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).'

- (b) paragraph 5 shall be replaced by the following:

'5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.'

6. Article 9 shall be amended as follows:

- (a) Paragraph 1 shall be replaced by the following:

'1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,
- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,
- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.'

- (b) Paragraph 2 shall be replaced by the following:

'2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.;

7. the following Article shall be inserted:

*'Article 10a*

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively,
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.;

8. in Annex I, the following point shall be added:

'22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.;

9. in Annex II, No 13, first indent, the following shall be added at the end:

'(change or extension not included in Annex I).'

## Article 4

**Amendment of Directive 96/61/EC**

Directive 96/61/EC is hereby amended as follows:

## 1. Article 2 shall be amended as follows:

## (a) the following sentence shall be added to point 10(b):

‘For the purposes of this definition, any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds, if any, set out in Annex I.’;

## (b) the following points shall be added:

‘13. “the public” shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

14. “the public concerned” shall mean the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.’

## 2. in Article 6(1), first subparagraph, the following indent shall be added:

‘— the main alternatives, if any, studied by the applicant in outline.’

## 3. Article 15 shall be amended as follows:

## (a) paragraph 1 shall be replaced by the following:

‘1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:

- issuing a permit for new installations,
- issuing a permit for any substantial change in the operation of an installation,
- updating of a permit or permit conditions for an installation in accordance with Article 13, paragraph 2, first indent.

The procedure set out in Annex V shall apply for the purposes of such participation.’;

## (b) the following paragraph shall be added:

‘5. When a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures and shall make available to the public the following information:

(a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and

(b) having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.’;

## 4. the following Article shall be inserted:

‘Article 15a

**Access to justice**

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively,
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(14) shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.’;

5. Article 17 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.'

(b) the following paragraphs shall be added:

'3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State, which has been consulted pursuant to paragraph 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.'

6. an Annex V shall be added, as set out in Annex II to this Directive.

#### Article 5

#### Reporting and review

By 25 June 2009, the Commission shall send a report on the application and effectiveness of this Directive to the European Parliament and to the Council. With a view to further integrating environmental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experi-

ence acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals for amendment of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other plans and programmes relating to the environment.

#### Article 6

#### Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### Article 7

#### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### Article 8

#### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 May 2003.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

G. DRYS

## ANNEX I

## PROVISIONS FOR PLANS AND PROGRAMMES REFERRED TO IN ARTICLE 2

- (a) Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste <sup>(1)</sup>.
- (b) Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances <sup>(2)</sup>.
- (c) Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(3)</sup>.
- (d) Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste <sup>(4)</sup>.
- (e) Article 14 of Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste <sup>(5)</sup>.
- (f) Article 8(3) of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management <sup>(6)</sup>.

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<sup>(1)</sup> OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

<sup>(2)</sup> OJ L 78, 26.3.1991, p. 38. Directive as last amended by Commission Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1).

<sup>(3)</sup> OJ L 375, 31.12.1991, p. 1.

<sup>(4)</sup> OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

<sup>(5)</sup> OJ L 365, 31.12.1994, p. 10.

<sup>(6)</sup> OJ L 296, 21.11.1996, p. 55.

## ANNEX II

In Directive 96/61/EC, the following Annex shall be added:

'ANNEX V

**Public participation in decision-making**

1. The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided:
  - (a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 15(1), including the description of the elements listed in Article 6(1);
  - (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 17;
  - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
  - (d) the nature of possible decisions or, where there is one, the draft decision;
  - (e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;
  - (f) an indication of the times and places where, or means by which, the relevant information will be made available;
  - (g) details of the arrangements for public participation and consultation made pursuant to point 5.
2. Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned:
  - (a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with point 1;
  - (b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (\*), information other than that referred to in point 1 which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with point 1.
3. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.
4. The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.
5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Annex.

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(\*) OJ L 41, 14.2.2003, p. 26.'

## **APPENDIX 2**

### ***EIA Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC***

Consolidated version with no legal status

#### ***Article 1***

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

‘project’ means:

—the execution of construction works or of other installations or schemes,  
—other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

‘developer’ means:

the applicant for authorisation for a private project or the public authority which initiates a project;

‘development consent’ means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project;

‘the public’ means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

‘the public concerned’ means: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

3. The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.

4. Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.

5. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

#### ***Article 2***

1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for

development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

2a. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control.

3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.

In this event, the Member States shall:

- (a) consider whether another form of assessment would be appropriate;
- (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States. The Commission shall report annually to the Council on the application of this paragraph.

### **Article 3**

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.

### **Article 4**

1. Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

- (a) a case-by-case examination, or
- (b) thresholds or criteria set by the Member State whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.

### **Article 5**

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

—a description of the project comprising information on the site, design and size of the project;

—a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

—the data required to identify and assess the main effects which the project is likely to have on the environment;

—an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; and

—a non-technical summary of the information mentioned in the previous indents.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.

#### **Article 6**

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided;

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places where and means by which the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and

which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

### **Article 7**

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken, and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3) (a) and (b).

3. The Member States concerned, each insofar as it is concerned shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and

(b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

4. The Member States concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

### **Article 8**

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.

### **Article 9**

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,
- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,
- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

### **Article 10**

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.

### **Article 10a**

*Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:*

*(a) having a sufficient interest, or alternatively,*

*(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,*

*have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.*

*Member States shall determine at what stage the decisions, acts or omissions may be challenged.*

*What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.*

*The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.*

*Any such procedure shall be fair, equitable, timely and not prohibitively expensive.*

*In order to further the effectiveness of the provision of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.*

## **Article 11**

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).

3. Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

4. On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently coordinated manner.

### **Article 12**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 1999 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. If a request for development consent is submitted to a competent authority before the end of the time limit laid down in paragraph 1, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.

### **Article 13**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

### **Article 14**

This Directive is addressed to the Member States.

## **ANNEX I**

### **PROJECTS SUBJECT TO ARTICLE 4 (1)**

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
- 2.—Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and
  - nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors\* (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. (a) Installations for the reprocessing of irradiated nuclear fuel.
  - (b) Installations designed:
    - for the production or enrichment of nuclear fuel,
    - for the processing of irradiated nuclear fuel or high-level radioactive waste,
    - for the final disposal of irradiated nuclear fuel,
    - solely for the final disposal of radioactive waste,
    - solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4. —Integrated works for the initial smelting of cast-iron and steel;
  - Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.
6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
  - (i) for the production of basic organic chemicals;
  - (ii) for the production of basic inorganic chemicals;
  - (iii) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);
  - (iv) for the production of basic plant health products and of biocides;
  - (v) for the production of basic pharmaceutical products using a chemical or biological process;
  - (vi) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports <sup>1</sup> with a basic runway length of 2 100 m or more;  
(b) Construction of motorways and express roads<sup>2</sup>;  
(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 0 km or more in a continuous length.
8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 350 tonnes;  
(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC <sup>3</sup> under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC <sup>4</sup> applies).
10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;  
  
(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5% of this flow. In both cases transfers of piped drinking water are excluded.
13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC<sup>5</sup>.

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<sup>1</sup> For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

<sup>2</sup> For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

<sup>3</sup> OJ No L 194,25.7.1975,p.39.Directive as last amended by Commission Decision 94/3/EC (OJ No L 5,7..1994,p.15).

<sup>4</sup> OJ No L 377,31.12.1991,p.20.Directive as last amended by Directive 94/31/EC (OJ No L 168, 2.7.1994,p.28).

<sup>5</sup> OJ No L 135,30.5.1991,p.40.Directive as last amended by the 1994 Act of Accession.

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m<sup>3</sup>/day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 mm and a length of more than 40 km.
17. Installations for the intensive rearing of poultry or pigs with more than:
  - (a) 85 000 places for broilers, 60 000 places for hens;
  - (b) 3 000 places for production pigs (over 30 kg); or
  - (c) 900 places for sows.
18. Industrial plants for the
  - (a) production of pulp from timber or similar fibrous materials;
  - (b) production of paper and board with a production capacity exceeding 200 tonnes per day.
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.
20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.
22. *Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.*

## **ANNEX II**

### **PROJECTS SUBJECT TO ARTICLE 4 (2)**

#### **1. Agriculture, silviculture and aquaculture**

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (f) Intensive fish farming;
- (g) Reclamation of land from the sea.

#### **2. Extractive industry**

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
  - geothermal drilling,
  - drilling for the storage of nuclear waste material,
  - drilling for water supplies,
  - with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

#### **3. Energy industry**

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;
- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms).

#### **4. Production and processing of metals**

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
  - (i) hot-rolling mills;
  - (ii) smitheries with hammers;
  - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);

- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

#### **5. Mineral industry**

- (a)Coke ovens (dry coal distillation);
- (b)Installations for the manufacture of cement;
- (c)Installations for the production of asbestos and the manufacture of asbestos-products (projects not included in Annex I);
- (d)Installations for the manufacture of glass including glass fibre;
- (e)Installations for smelting mineral substances including the production of mineral fibres;
- (f)Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

#### **6. Chemical industry (Projects not included in Annex I)**

- (a)Treatment of intermediate products and production of chemicals;
- (b)Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
- (c)Storage facilities for petroleum, petrochemical and chemical products.

#### **7. Food industry**

- (a)Manufacture of vegetable and animal oils and fats;
- (b)Packing and canning of animal and vegetable products;
- (c)Manufacture of dairy products;
- (d)Brewing and malting;
- (e)Confectionery and syrup manufacture;
- (f)Installations for the slaughter of animals;
- (g)Industrial starch manufacturing installations;
- (h)Fish-meal and fish-oil factories;
- (i)Sugar factories.

#### **8. Textile, leather, wood and paper industries**

- (a)Industrial plants for the production of paper and board (projects not included in Annex I);
- (b)Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles;
- (c)Plants for the tanning of hides and skins;
- (d)Cellulose-processing and production installations.

#### **9. Rubber industry**

Manufacture and treatment of elastomer-based products.

#### **10. Infrastructure projects**

- (a)Industrial estate development projects;
- (b)Urban development projects, including the construction of shopping centres and car parks;
- (c)Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);

- (d) Construction of airfields (projects not included in Annex I);
- (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
- (f) Inland-waterway construction not included in Annex I, canalization and flood-relief works;
- (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
- (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (i) Oil and gas pipeline installations (projects not included in Annex I);
- (j) Installations of long-distance aqueducts;
- (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
- (m) Works for the transfer of water resources between river basins not included in Annex I.

#### **11. Other projects**

- (a) Permanent racing and test tracks for motorized vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

#### **12. Tourism and leisure**

- (a) Ski-runs, ski-lifts and cable-cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent camp sites and caravan sites;
- (e) Theme parks.

13. — Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex 1) ;
- Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

## **ANNEX III**

### **SELECTION CRITERIA REFERRED TO IN ARTICLE 4 (3)**

#### **1. Characteristics of projects**

The characteristics of projects must be considered having regard, in particular, to:

- the size of the project,
- the cumulation with other projects,
- the use of natural resources,
- the production of waste,
- pollution and nuisances,
- the risk of accidents, having regard in particular to substances or technologies used.

#### **2. Location of projects**

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas:
  - (a) wetlands;
  - (b) coastal zones;
  - (c) mountain and forest areas;
  - (d) nature reserves and parks;
  - (e) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC;
  - (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
  - (g) densely populated areas;
  - (h) landscapes of historical, cultural or archaeological significance.

#### **3. Characteristics of the potential impact**

The potential significant effects of projects must be considered in relation to criteria set out under and 2 above, and having regard, in particular, to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

## **ANNEX IV**

### **INFORMATION REFERRED TO IN ARTICLE 5 (1)**

1. Description of the project, including in particular:

—a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,

—a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,

—an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description <sup>6</sup> of the likely significant effects of the proposed project on the environment resulting from:

—the existence of the project,

—the use of natural resources,

—the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

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<sup>6</sup> This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

**2005 No.**

**PLANNING**

**The Planning (Environmental Impact Assessment)  
(Amendment) Regulations (Northern Ireland) 2005**

*Made* - - - - *xxx 2005*

*Coming into operation* - *xxx 2005*

The Department of the Environment, being a Department designated (a) for the purposes of section 2(2) of the European Communities Act 1972 (b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred upon it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation and Commencement**

1.—These Regulations may be cited as the Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on xxx 2005.

**Amendment of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999**

2. The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (c) shall be amended in accordance with regulations 3 to 18.

3.—In regulation 2(2) (interpretation)—

(a) after the definition of “further information” insert—

““any other information” means any other information relating to the environmental statement;  
“any particular person” includes any non-governmental organisation promoting environmental protection;”;

(b) in the definition of “environmental information” after “further information” insert “and any other information”;

(c) in the definition of “exempt development” omit “which comprises or forms part of a project serving national defence purposes or”;

(d) after the definition of “the land” insert—

““by local advertisement”, in relation to a notice, means—

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(a) S.I. 1988/785

(b) 1972 c. 68

(c) S.R. 1999 No. 73

- (a) publication of the notice in at least one newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
- (b) where the Department or the Commission maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;”.

**4. In regulation 3 (directions) for paragraph (3) (b) substitute—**

- “(b) these Regulations shall not apply to a project specified in the direction either—
- (i) in accordance with Article 2.3 of the Directive (but subject to Article 7 of the Directive), or
  - (ii) if the development comprises or forms part of a project serving national defence purposes and in the opinion of the Department compliance with these Regulations would have an adverse effect on those purposes.

**3A. Where a direction is given under regulation 3 (b) (i) the Department shall—**

- (a) make available the information considered in making the direction and its reasons for doing so;
- (b) consider whether another form of assessment would be appropriate; and
- (c) take such steps as it considers appropriate to bring the information obtained under the other form of assessment to the attention of the public.”.

**5. In regulation 6 (pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement), insert after paragraph (9)—**

“(9A) Where following receipt of an opinion under paragraph (9) an applicant wishes to proceed with the submission of an environmental statement, he shall by notice in writing inform the Department to such effect within 4 weeks of the date of the opinion.”.

**6. In regulation 10 (extension of the period for Department’s decision on a planning application), for paragraph (b) substitute—**

“(b) after paragraph (3) (b) of that article there were inserted—

- “(ba) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and
- (bb) in the case of an application falling within regulation 9 (1) where the Department has requested further information in order to make a determination under regulation 9 (2), when that information was received; and
- (bc) where further information relating to the environmental statement has been requested, when that information was received; and””.

**7. In regulation 12 (publicity where an environmental statement is submitted)—**

- (a) in paragraph (a) after “planning application” omit “in at least one newspaper circulating in the locality in which the land to which the application relates is situated” and insert—  
“by local advertisement”;
- (b) after paragraph (b ) omit “and”;
- (c) in paragraph (c) omit “.” and insert—  
“; and
- (d) inform any particular person whom it considers is or is likely to be affected by, or has an interest in, the application, by sending them a notice which contains those details set out in paragraphs (a) – (c) and the address of the relevant office of the Department.”.

**8. In regulation 15 (further information relating to environmental statement)—**

- (a) after paragraph (2) insert—

“(2A) On receipt of a request under paragraphs (1) and (2) the applicant shall submit the further information or evidence within three months of receipt of the request or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted, the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 or Article 33.”

(b) for paragraph (3) substitute—

“Regulations 12 to 14 shall apply where such further information and any other information provided by the applicant is received by the Department in relation to an environmental statement, as if references to “environmental statement” were references to “further information and any other information” unless the further information and any other information is provided for an inquiry under the 1991 Order and there is a statutory requirement to publicise such information as part of the inquiry procedure.”

**9.** In regulation 17 (duty to inform the public of decisions)—

(a) in paragraph (1) after “by publishing” insert “a” and omit “in at least one newspaper circulating in the locality in which the land is situated” and insert—

“by local advertisement”;

(b) in paragraph (2) (b) (ii) —

(i) after “on which the decision was based” insert—

“including, if relevant, information about the participation of the public”; and

(ii) after “;” delete the word “and”; and

(c) after paragraph (2) (b) (iii) omit “.” and insert—

“; and

(iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”

**10.** In regulation 18 (development likely to have significant effects on the environment in another Member State)—

(a) in paragraph (4) (a) after “in paragraphs (2) and (3)” insert “and any further information and any other information submitted by the applicant”;

(b) in paragraph (6) (b) after “on which the decision is based” insert “including, if relevant, information about the participation of the public”.

**11.** In regulation 19 (projects in another Member State likely to have significant transboundary effects), at the end of paragraph (2) (b) omit “.” and insert—

“; and

(c) so far as it has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant Member State; and in particular—

(i) any conditions attached to it;

(ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and

(iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.”

**12.** In regulation 25 (procedure where the Commission receives an environmental statement), after paragraph (1) insert—

“(1A) The Commission shall also inform any particular person whom it considers is or is likely to be affected by or has an interest in the deemed application by sending them a notice which contains the details set out in regulation 27 (1), paragraphs (a) – (f).”

**13.** In regulation 27 (publicity for environmental statements and decisions), in paragraph (1)—

- (a) after “or a statement submitted by the appellant referred to as an environmental statement” insert “either of which is accompanied by further information and any other information”;
- (b) for “in at least one newspaper circulating in the locality in which the land to which the enforcement notice relates is situated (“the locality”)” substitute—  
“by local advertisement”; and
- (c) in sub-paragraphs (c), (d) and (e) after “statement” insert “and further information and any other information”.

**14.** In regulation 28 (involvement of other Member States) —

- (a) in paragraph (c) after “;” delete “and”; and
- (b) in paragraph (d) omit “.” and insert—  
“; and
- (e) in regulation 18 (4) (a) for “applicant” substitute “appellant”.

**15.** In regulation 33 (amendment to the General Development Order), in paragraph (a) (i), after “1999” insert—

“as amended by the Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2005”.

**16.** In regulation 34 (availability of information in relation to determinations, opinions, decisions, etc)—

- (a) in paragraph (1) (b)—
  - (i) after statement delete “;”;
  - (ii) for the word “or” substitute “and”; and
  - (iii) after “further information” insert “and any other information”;
- (b) in paragraph (1) (c) (ii)—
  - (i) after “on which the decision is based” insert—  
“including, if relevant, information about the participation of the public”; and
  - (ii) after “;” delete the word “and”; and
- (c) in paragraph (1) (c) (iii) omit “.” and insert—  
“; and
- (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”.

**17.** In Schedule 1 (descriptions of Development for the purposes of the definition of “Schedule 1 development”), after paragraph 21, add—

“**22.** Any change to or extension of projects listed in this Schedule where such a change or extension in itself meets the thresholds, if any, set out in this Schedule.”.

**18.** In Schedule 2 (descriptions of Development and Criteria for the purposes of the definition of “Schedule 2 development”), in paragraph 13(a) in column 1 (description of development), after “in Schedule 1” insert “(other than a change or extension falling within paragraph 22 of that Schedule)”.

Sealed with the Official Seal of the Department of the Environment on 2005.



A senior officer of the Department of the Environment

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Regulations amend the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”) implementing Directive 2003/35/EC of the European Parliament of the Council of 26 May 2003. The Directive provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

Regulation 3 makes amendments to the definitions of “environmental information” and “exempt development”, and inserts a new definition “by local advertisement” which provides another means of publicity using electronic means.

Regulation 4 extends the Department’s ability to direct that a particular proposed development is exempted from the application of these regulations as a consequence of removing the blanket exemption for national defence projects. The Department may make such a direction if compliance with the regulations is likely to have an adverse affect on a national defence project.

Regulation 7 inserts a provision requiring the Department to notify persons likely to be affected by, or having an interest in, the application.

Regulations 8 (b) extends the requirements in relation to further information to any other information provided by the applicant relating to the environmental statement.

Regulation 9 amends regulation 17 and requires more extensive notification of decisions and the provision of information on the right to challenge the validity of a decision and the procedures for doing so.

Regulations 10 and 11 extend the public information requirements in respect of projects located within Northern Ireland that are likely to have significant effects on the environment of another Member State and for projects in another Member State that are likely to affect Northern Ireland.

Regulation 12 inserts a provision requiring the Commission to notify persons likely to be affected by, or having an interest in, the application.

Regulation 13 inserts provisions in relation to publicity arrangements for environmental statements and decisions.

Regulation 14 amends the existing transboundary provisions in relation to an appeal against an enforcement notice to provide for any further information and any other information received from the appellant to be made available to the appropriate authorities and public concerned in the affected Member State.

Regulation 15 amends the definition of “the EIA Regulations” in the General Development Order to include the Planning (Environmental Impact Assessment) (Amendment) Regulations 2005.

Regulation 16 extends the public information requirements in respect of the documents made available for inspection.

Regulations 17 and 18 amend Schedule 1 in line with the new category introduced into Annex 1 of the Directive. This new category of project is a change to or extension of a Schedule 1 project where the change or extension itself meets the Schedule 1 thresholds for that type of project.

The Regulations also contain a number of procedural amendments to the 1999 Regulations not related to Directive 2003/35/EC.

Regulation 5 provides that following receipt of a scoping opinion, an applicant who wishes to proceed with the submission of an environmental statement must inform the Department accordingly, in writing, within 4 weeks of the date of the opinion.

Regulation 6 inserts further provisions in respect of the date when an application was received to include, (i) in relation to applications falling within regulation 9 (1) where the Department has requested additional information in order to make a determination under regulation 9 (2), the submission of that additional information; and (ii) where further information relating to the environmental statement has been requested, when that information was received.

Regulation 8 (a) provides that any further information requested by the Department or the Planning Appeals Commission under regulation 15 (1) must be submitted within a specified timescale.

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Department of the Environment, Planning Service Headquarters, Millennium House, 17–25 Great Victoria Street, Belfast BT2 7BN (Tel: 028 9041 6936 or 028 9041 6982) or accessed at <http://www.planningni.gov.uk/>

## APPENDIX 4

### Responding to this Consultation Paper

Please note that responses to this consultation should be received by the Department no later than 30 September 2005.

There are a number of ways in which you can respond:

Comments may be sent:

By post to

Robert Mackey  
Planning Service Headquarters  
Consultation on the Draft Planning (Environmental Impact  
Assessment) (Amendment) Regulations (Northern Ireland) 2005  
3<sup>rd</sup> Floor  
Millennium House  
17-25 Great Victoria Street  
BELFAST  
BT2 7BN

By Fax

Fax No. (028) 9041 6960

Or by e-mail to [Robert.Mackey@doeni.gov.uk](mailto:Robert.Mackey@doeni.gov.uk)

The consultation paper is also available in Adobe Acrobat format for downloading from the Planning Service website at <http://www.planningni.gov.uk/> The Adobe Acrobat Reader 6 can be freely downloaded from [www.adobe.com](http://www.adobe.com) Viewers with visual difficulties may find it useful to investigate services provided to improve the accessibility of Acrobat documents – <http://access.adobe.com>

A free online PDF to HTML or text conversion service is also available at: [http://www.adobe.com/products/acrobat/access\\_onlinetools.html](http://www.adobe.com/products/acrobat/access_onlinetools.html)

Copies of this document can be made available on request in large print, disk, Braille and audio cassette. The document is also available in other languages on request.

We look forward to receiving comments and views concerning the proposals in this consultation paper. Further hard copies of the Consultation Paper are available from the address above and can be requested by Telephone 028 9041 6967, Fax 028 9041 6960 or Textphone 028 9054 0642.

Please bear in mind that we are not seeking comments on the terms of the European Directive. The Directive has already been adopted so its provisions are no longer subject to negotiation. The consultation is restricted to comments on the measures contained in the draft regulations to transpose the provisions of the Directive into domestic law; and to the procedural amendments set out in Part 2 of the summary at Section 3 of this paper.

In keeping with government policy on openness, responses to this consultation document may be made available upon request (see Appendix 5).

If you have comments or complaints about the consultation process itself (rather than the content of the document) these should be directed to the postal or e-mail addresses given above.

## **APPENDIX 5**

### **Freedom of Information Act 2000 – Confidentiality of Consultations**

1. Please note that the Department may in due course wish to publish responses to this Consultation Document or a summary of responses. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
  - the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature; and

- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see website at: <http://www.informationcommissioner.gov.uk/>).