



Strategic Environmental Assessment

**Best Practice Guidance Note on
Transboundary Consultation and Land Use
Plans**



September 2010

The purpose of this Note is to provide best practice guidance on transboundary consultation between Northern Ireland and the Republic of Ireland in relation to land use plans and Strategic Environmental Assessment.

It attempts to simplify a complex area and to do so as straightforwardly as possible. Given its purpose as best practice guidance, its contents should not be relied upon as an authoritative interpretation of the law.

Introduction

1. EU Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, commonly referred to as the Strategic Environmental Assessment Directive (the “SEA Directive”) was implemented on 27th June 2001 and applies to plans or programmes for which the first formal preparatory action was taken on or after 21st July 2004. The Directive seeks to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development
2. The SEA Directive is transposed into legislation in Northern Ireland by the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 (the “EAPP Regulations”).
3. Under the provisions of both the SEA Directive and the accompanying Regulations where a plan or programme under preparation is considered likely to have effects on the environment in another Member State, consideration must then be given to the level and formality of discussions between Member States to either avoid or mitigate these effects.
4. On the island of Ireland and in the planning arena, the most likely opportunities for informal co-operation and discussion or, when appropriate, formal transboundary consultation will be between Northern Ireland and the Republic of Ireland in the context of the preparation of land use plans that might have significant cross-border environmental effects. In Northern Ireland such plans will generally include Area, Local or Subject plans prepared by the Divisional Planning Offices of the Planning Service - Department of the Environment or, alternatively, Regional and Sub Regional Strategies produced by the Department for Regional Development. In the Republic of Ireland such plans will include Regional Planning Guidelines, County Development Plans and Local Area Plans produced by Regional Authorities and Planning Authorities.
5. This note sets out best practice for Divisional Planning Offices regarding informal liaison and discussions on SEA, and, when considered appropriate, formal transboundary SEA consultation at Government level, in relation to land use plans that adjoin or are likely to affect the Republic of Ireland.

6. Information and guidance on SEA in the UK and relevant to Northern Ireland has issued in the form of the September 2005 Practical Guide to the Strategic Environmental Assessment Directive. This was developed jointly by the Office of the Deputy Prime Minister (ODPM), the Scottish Executive, the Welsh Assembly Government and the Department of the Environment (DOE) in Northern Ireland.
7. Equivalent guidance for the Republic of Ireland has issued in the form of the Guidelines for Regional Authorities and Planning Authorities on the Implementation of the SEA Directive published in November 2004 (DEHLG). Authorities are required under the Planning and Development Act 2000 to have regard to the Guidelines in the performance of their functions.
8. Formal arrangements for consultation on Environmental Reports are set out in the EAPP regulations and the Practical Guide to SEA referred to above. To address the transboundary dimension, it will be best practice for Divisional Planning Offices to engage informally early in the plan making process with the appropriate authorities in the Republic of Ireland, particularly in relation to environmental data exchange that will assist in consideration of potential cross boundary environmental impacts. This will facilitate a mutual appreciation of the key environmental issues likely to arise during the plan preparation and create effective lines of communication to address any issues arising at an early stage. Such an approach will reinforce the fundamental aim of sustainable planning and help avoid development which could adversely affect both the environment within the plan area and also that of the adjacent Member State. This approach will also assist in the consideration of potential cross border impacts as part of any Appropriate Assessment (also known as Habitat Regulations Assessment) to be undertaken during plan preparation
9. It is anticipated that through such an approach the majority of plans in Northern Ireland, which adjoin or border the Republic of Ireland, will resolve any concerns in relation to environmental effects through informal co-operation and discussion. As a consequence, there should only be a small number of plans that are likely to have significant effects on the environment of the Republic of Ireland and which would necessitate formal SEA transboundary consultation.

Formal Transboundary Consultation

10. Article 7 of the SEA Directive provides that where a Member State considers that the implementation of a plan being prepared in relation to its territory is likely to have significant environmental 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 plan is being prepared shall, before its adoption, forward a copy of the draft plan and its associated Environmental Report to the other Member State.
11. Article 7 also makes provision for formal consultation between Member States, including public consultation in the Member State affected concerning the likely transboundary environmental effects of implementing the plan and the measures envisaged to reduce or eliminate such effects.
12. Divisional Planning Offices should note that formal transboundary consultation therefore takes place between Member States at Government level. In the case of land use plans this would be specifically between the Department of the Environment (through the auspices of DOE Planning Service Headquarters) and Department of Environment Heritage and Local Government (DEHLG) in the Republic of Ireland. For Regional or Sub Regional Strategies such consultation would be between the Department for Regional Development in Northern Ireland and DEHLG.
13. In all cases where a Divisional Planning Office expects a plan to require formal transboundary consultation, it must bear in mind the time needed for contact to be established between the relevant Government Departments, identification of and consultation with the public and environmental authorities in the affected Member State, and consideration of the resulting comments.

Informal Co-operation and Discussions

14. To help inform discussion as to whether formal transboundary consultation as provided for under the SEA Directive is required, it is therefore important that Divisional Planning Offices initiate informal discussions at an early stage in the plan preparation process and maintain such discussions and information exchange, with relevant planning and environmental authorities in the Republic of Ireland, as the plan making process evolves.

15. In screening for SEA and in scoping the preparation of an Environmental Report, there should be regular informal contact between the relevant planning and environmental authorities, north and south of the border to ensure the exchange of essential baseline information concerning environmental conditions etc.
16. Such co-operation and information exchange should assist in the early identification of any potential adverse effects by a plan making authority on the environment of the Republic of Ireland as well as possible mitigation measures. This is intended to help ensure that such effects can be informally addressed and resolved without the need to elevate and progress such discussions by way of formal transboundary consultation at Government level.
17. The relevant Divisional Planning Office should as a matter of course highlight the nature and outcome of discussions on the issue of transboundary effects in decisions on screening and in any Scoping Report and the Environmental Report. All documents should clearly state:
 - what transboundary effects, if any, are perceived likely to arise;
 - whether such effects are considered significant;
 - where significant adverse effects on the environment of the Republic of Ireland are identified, whether they can be satisfactorily mitigated for by the plan making authority;
 - or if mitigation cannot eliminate or reduce the significant effect, what changes have been made to the plan to date as a result of informal co-operation and discussion;
 - whether based on the foregoing, formal transboundary consultation at Government level, is anticipated.

Procedure for Confirming the Absence of Significant Transboundary Environmental Effects

18. In all cases where the relevant Divisional Planning Office considers there are no significant adverse transboundary environmental effects or such effects can be satisfactorily controlled through mitigation, then a statement to this effect should be communicated by the Divisional Planning Office to DOE Planning Service Headquarters.

19. It will be the responsibility of DOE Planning Service Headquarters to agree through informal discussion with the relevant Divisional Planning Office that significant adverse transboundary effects on the environment of the Republic of Ireland are unlikely to arise or where it does not agree, to specify an appropriate course of action.

Adverse Transboundary Environmental Effects

20. As stated previously, a key objective in land use planning is to promote sustainable development and activity that will not have significant adverse impact on the quality of the environment, including that of adjacent Member States. For adverse environmental effects to be significant, the potential effects must be substantial and commensurate with the nature of the plan concerned.

21. It is also important to distinguish between:

- (1) significant adverse effects that can either be resolved or mitigated;
and
- (2) significant adverse effects for which no mitigation is proposed.

22. In relation to (1), a good example would be where a land use plan adjacent to the border with the Republic of Ireland, for good planning reasons, aims to build up the population of a sub-region and focus growth on a specific location. In such a scenario, the existing waste water treatment facilities for the town or city could continue to, and potentially increase, discharge into receiving waters that are designated as Natura 2000 sites in the Republic of Ireland.

23. As a result there could potentially be significant adverse transboundary effects on the environment of the Republic of Ireland. However, proposed mitigation measures by the plan making authority, such as linkage of development consents to the availability of wastewater treatment capacity or environmental monitoring and upgrades to wastewater treatment infrastructure, together with early discussion on such issues with their plan making counterparts and the relevant environmental authorities in the Republic of Ireland should ensure the potential adverse transboundary effects are negated or effectively controlled. In such circumstances the need for formal transboundary consultation may not arise.

24. In relation to (2) if for example, a substantial industrial proposal is zoned for the outer rural margins of the plan area, but immediately adjacent to an urban area in the Republic of Ireland, and there has been no mention in any of the draft plan or SEA documents of potential transboundary effects or possible mitigation, then, in the absence of any Member State agreement on the issue through informal co-operation and discussion, formal transboundary consultation is likely to be required as laid out in the Directive. This will enable the Republic of Ireland, at Government level, to formally enter into transboundary consultation with the Government here on those parts of the plan that the Republic of Ireland Government considers would have the potential to cause significant adverse transboundary effects in the Republic of Ireland before the plan is finalised and adopted. This may ultimately result in the need for changes to the plan.

Summary of Recommended Approach

25. In essence, the above can be summarised in terms of a **three step approach** as follows:

Step 1: Plan Making (Including informal co-operation and discussion)

26. The relevant Divisional Planning Office prepares its plan in the normal way and from an early stage in the plan preparation process liaises with and draws upon sources of information, from the relevant bodies north and south of the border. As a result, the Divisional Planning Office may either find that:

- (a) The plan will have no significant adverse transboundary effects;
- (b) Potential significant adverse transboundary effects can be successfully mitigated to the extent that they no longer pose a significant risk to the environment of the Republic of Ireland; or
- (c) In rare cases, the plan might give rise to potential significant adverse transboundary effects in the Republic of Ireland for which no, or only limited, mitigation has been proposed.

Step 2: Confirmation of Findings at Member State Level

27. Whatever the findings from Step 1, the relevant Divisional Planning Office should communicate the results in writing to DOE Planning Service Headquarters who will consider the matter within a short period thereafter, working within the relevant plan making and consultation schedules and either:

- (a) Agree with the Divisional Planning Office; or
- (b) Disagree with the Divisional Planning Office's findings and in doing so to specify an appropriate course of action including inter alia further analysis, the consideration of mitigation (or additional mitigation) measures, or ultimately the recommendation of an alternative policy approach.

28. Above all, the aim will be to avoid policies and proposals in plans that would have any significant adverse transboundary effects on the environment of the Republic of Ireland.

Step 3: Communication of Findings

29. When any discussions between DOE Planning Service Headquarters and the Divisional Planning Office as set out in Step 2 above are fully completed and DOE Planning Service Headquarters determines that the land use plan has the potential to give rise to significant environmental effects on the Republic of Ireland, irrespective of the plan including proposed appropriate mitigation measures, then DOE Planning Service Headquarters will subsequently forward a copy of the draft plan and associated environmental report to DEHLG

30. Having received that draft and report, DEHLG will be requested to indicate whether or not it wishes to enter into formal transboundary consultations at a Member State level before the adoption of the plan. If it so indicates, then the two Governments shall enter into formal consultation concerning the likely transboundary environmental effects of implementing the plan and the measures envisaged to reduce or eliminate such effects. Clearly it would be anticipated this will not arise for those plans which have identified measures to successfully mitigate the effects particularly where these have been the subject of informal discussions and liaison with authorities in the Republic of Ireland as recommended in this guidance note.

31. In those cases where it is decided that formal transboundary consultation is required, the two Governments shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) of the Directive and the public referred to in Article 6(4) are informed and given an opportunity to forward their opinion within a reasonable time-frame.

32. In addition, each Member State must agree a number of procedural issues including:
- (1) Timescale for consultation in line with national legislative provisions with regard to public consultation on plans;
 - (2) Public consultation – arrangements for newspaper notices;
 - (3) Apportionment of costs in relation to public consultation;
 - (4) Transmission of comments from the public consultation in the affected Member State.
33. Divisional Planning Offices should also note that the Republic of Ireland Government is able to initiate formal transboundary consultation with the Department of the Environment in all cases where it considers it is likely to be significantly affected by a plan or programme under preparation in Northern Ireland. It is however anticipated that where plan making authorities adhere to this best practice guidance such a situation is unlikely to arise.

Conclusion

34. The SEA Directive will continue to be fully implemented by the Department of the Environment in order to ensure that, where applicable, the preparation and production of land use plans in Northern Ireland does not give rise to significant effects on the environment in Northern Ireland. It will be a matter for DOE Planning Service Headquarters to liaise with the relevant Republic of Ireland Departments at regular intervals on the operation of the SEA Directive and any findings, as they are made, under Step 2 above.
35. It should be noted that equivalent best practice guidance has been prepared by DEHLG in the Republic of Ireland similarly recommending early informal contact and liaison to facilitate a mutual appreciation of key environmental issues in a transboundary context.