



Questionnaire on the Environmental Impact Assessment of Reserved Matters Applications

Instructions on how to complete this Questionnaire:

1. This questionnaire can be completed on your computer and emailed to reservedmatters@doeni.gov.uk or printed and sent to the postal address below:

Robert Mackey
Planning Service Headquarters
3rd Floor
Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN

2. Completed questionnaires may also be sent by fax to (028) 9041 6960.
3. Completed questionnaires should be received by the Department no later than **11th February 2008**.

Respondent Information

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Mitigation Measures in approving a multi-stage consent

Q1A Do you agree with the Department's view that it should be possible at reserved matters stage to impose conditions relating to the project as a whole?

Yes

No

Q1B Please comment on your response to Q1A

Comments: Providing that the proposed conditions to be imposed are considered Wednesbury reasonable i.e. fair, relevant, reasonable, time-bound etc, then Council does not object to extending this right to reserved matters applications.

The proposed approach will ensure that environmental concerns remain a priority throughout the planning process, regardless of the choice of application methods. In the longer term, this development may also 'persuade' such companies and businesses to reconsider their environmental strategies and reviews through improved budgeting and awareness of policy requirements, leading to better quality and more thorough EIAs, thereby safeguarding environmental matters as a central consideration.

Q2A Do you consider there is a risk that imposing such conditions could result in outline planning permission being revoked or modified as a consequence of significant environmental issues being identified at the reserved matters stage?

Yes

No

Q2B Please comment on your response to Q2A

Comments: There is, undoubtedly, a degree of risk in what is suggested by the proposal, given the potential implications of uncovering serious environmental concerns at such a stage in the planning process, and normally at a stage when developers have already committed significant investment.

However, outline consent is intended to give an indication of permission in principle, whilst reserved matters has been the vehicle to address detailed matters. As such, the applicant should be aware of the potential risk undertaken by virtue of a multi-stage application. And further to the response to Q1, if the imposed conditions are Wednesbury reasonable, this should mitigate the likelihood of legal challenge. Ultimately, a definitive answer can only be produced by a legal test case.

Proposed Amendments to the EIA Regulations

Q3 Do you have any comments on the proposed amendments to regulation 2(2) of the 1999 EIA Regulations?

Comments: No - as per Paras 3.1-3.3, the terms "application for multi-stage consent" and "multi-stage consent development" appear to be reasonably self-explanatory. The proposed inclusion of the definitions of these terms in the legislation itself is helpful.

Q4A Do you consider that the draft Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008 as set out in this consultation paper implement appropriately the ECJ rulings of 4 May 2006 in the Barker case and in Commission v UK?

Yes

No

Q4B Please comment on your response to Q4A

Comment: It is our understanding that the issues raised in Paras. 2.2-2.9 of the Consultation Document accurately reflect the ECJ rulings in the stated legal cases. Given the weight and primacy of EU judgments, Council supports the need for the granting authority to have, at its disposal, the 'full knowledge of any likely significant effects on the environment', as sought by the EIA Directive 85/337/EEC.

The proposed amendments may also serve to close a potential legal loophole in terms of the current advice set out in DCAN 10 that, "approval of reserved matters are not subject to EIA". From this point on, environmental issues will retain priority throughout the planning process.

Q5 Do you have any other comments on the draft regulations?

Comments: None.

Partial Regulatory Impact Assessment (Annex 5)

Q6 Do you have any comments on the compliance costs outlined in Annex 5?

Comments: In respect of the compliance (financial) costs, presumably these will largely be made up of the resulting charges of providing supplementary and/or additional EIAs. Clearly, if the proposed amendments are accepted, then multi-stage applications may find themselves having to incur or absorb such additional charges.

Perhaps the Department or its statutory consultees could, by means of the recently implemented PADS scheme, offer an indication as to the likelihood of additional EIAs being required in relation to linked applications.

Q7A Which option do you think should be implemented? (Please tick one box)

- Option 1: Do nothing
- Option 2: Amend Regulations

Q7B Please provide a reason for your choice of option at Q7A

Comments: For the reasons outlined above, the decision to amend the EIA Regulations will ensure that environmental considerations and implications will remain a priority throughout the entire planning process.

Q8 Do you have any other comments on the Partial Regulatory Impact Assessment?

Comments: Council agrees that by endorsing the proposed amendments, the reduced risk of the UK being subject to continued infraction proceedings by the European Commission with the possibility of subsequent heavy fines for non-compliance would be of considerable benefit.

Other potential costs - such as compensation claims and EIA production costs - will have to be addressed on a case by case approach.