

Environmental Impact Assessment of Reserved Matters Applications Analysis of Consultation Responses

1. The consultation period ran from 17th December 2007 to 11th February 2008. The consultation paper was circulated to a wide range of consultees and advertised in the local press, on the Department's website plus the N.I. Departments' Consultation Register. At the closing date 15 substantive responses had been received. Given the subject matter and the consultation period this is a reasonable figure.

2. The respondents consisted of 2 business organisations, 4 District Councils, 1 Environmental Group, 3 Government Departments, 1 NDPB and 4 other organisations as set out in the table below.

Respondent type	Respondents	Total
Business	Development Planning Partnership LLP Royal Town Planning Institutes	2
District Council	Belfast City Council Antrim Borough Council Omagh District Council Armagh City and District Council	4
Environmental Group	Northern Ireland Environment Link	1
Government Department	DSD –URCDG DETI-GIS EHS – Natural Heritage	3
NDPB	Council for Nature Conservation and the Countryside (CNCC)	1
Other	Derryhale Residents' Association Ulster Angling Federation RSPB Ulster Wildlife Trust	4

3. The first part of the consultation questionnaire concerned mitigation measures in approving a multi-stage consent.

Question 1A: 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?

Fourteen out of the 15 respondents agreed with the Department's view that it should be possible at reserved matters stage to impose conditions relating to the project as a whole. A residents' group who disagreed with this view indicated that they would be in agreement only if the amending legislation precluded a successful compensation claim at public cost.

Question 1B: Please comment on your response to Question 1A

Generally the respondents considered that robust determination at the outline stage should mean that conditions would only rarely be imposed at the reserved matters

stage. One respondent gave the declaration of an ASSI under the Environmental Order 2002 as an example of a circumstance where conditions might be imposed at reserved matters stage. Another favoured new conditions at this stage only if they were related to environmental issues that might then arise. A further reply considered that increased dialogue between Planning Service and applicants or developers would ensure transparency in the EIA process while another commented that secondary effects within a project as a whole should be adequately assessed and appropriate mitigation applied.

Department's Response

The responses indicated a general acceptance of the reasoning behind this proposal. The expectation is that the imposition of conditions at reserved matters stage will be rare occurrence where there is a rigorous EIA determination at the outline stage of the process. The amendment of the EIA Regulations will allow for conditions relating to the project as whole to be applied at reserved matters stage.

Question 2A: Do you consider that 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 reserved matters stage?

All 15 respondents agreed that 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 reserved matters stage.

Q2B: Please comment on your response to Question 2A

Views on the degree of risk varied and appropriate assessment at outline stage was generally regarded as the best way of minimising such risk.

Department's response

There is an element of risk involved but it is not considered to be excessive. Existing provisions in the Planning (NI) Order 1991 relating to revocation or modification of planning permission, including related compensation provisions, will apply should the situation arise.

4. The next part of the consultation questionnaire concerned the proposed amendments to the 1999 EIA regulations as set out in Annex 1 of the paper.

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

Ten respondents commented on the proposed amendments to regulation 2(2) of the 1999 EIA Regulations. These were considered necessary and in several cases welcomed. Questions were raised about the Department defending a compensation claim resulting from the definition of "multi-stage consent" change and about applying the term to an approval required under a condition attached to a full planning permission prior to the development being commenced.

Department's response

The proposed amendments are being introduced to address the issues raised in both the ECJ judgments and domestic case law. Existing compensation provisions in the Planning (NI) Order 1991 will apply should it be necessary to revoke or modify existing planning permission.

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?

Thirteen of the 15 respondents agreed that the proposed draft of the Regulations would implement appropriately the ECJ Rulings of 4 May 2006 in the Barker case and in Commission v UK. The other 2 neither agreed nor disagreed.

Q4B: Please comment on your response to Q4A

Seven respondents offered comments. Three re-iterated their agreement at Question 4A. One respondent stated that clear guidance would be necessary as to the information required to enable the planning permission to be identified while others commented generally on the Department's responsibility in producing updated EIA guidance reflecting the new legislative framework and in particular the need to revise Development Control Note 10.

Department's response

The Department will amend the EIA regulations to take account of the ECJ judgments and domestic case law and ensure that current guidance is updated to reflect the amendments.

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

Five respondents offered additional comments on the proposed amendments. These included identifying a consequential need to revise the Guidance in Development Control Note 10; identifying a possible impact on the Department of Social Development's work on Comprehensive Development Schemes and Major Public Realm Schemes; a need to update the definition of ASSI in Regulation 2 (2) of the 1999 Regulations and to consider other amendments in light of revised environmental legislation and guidance

Department's response

The additional issues raised have been noted and were taken into account as appropriate in finalising the regulations.

5. The final part of the consultation questionnaire concerned the Partial Regulatory Impact Assessment at Annex 5 to the paper.

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

Eight respondents commented on the compliance costs outlined in Annex 5. Several thought that developers should absorb such costs while others thought that the legislation should be drafted so as to avoid litigation and potential compensation claims. The potential impact on resources within the Department and statutory consultees was highlighted as was the need to balance environmental considerations with potential cost to the public purse.

Department's response

The information obtained from consultation has confirmed the Department's view that amendment of the EIA regulations is necessary in order to comply with the EIA Directive and the ECJ rulings. No new information regarding costs or impacts has been identified. A Regulatory Impact Assessment will accompany the amendment regulations when made.

Q7: Which option do you think should be implemented?

All 15 respondents agreed that the Department should amend the regulations. Reasons included the need to comply with the courts' rulings and the avoidance of fines; ensuring cross compliance with nature conservation legislation, and the benefits that will ensue from making environmental considerations a priority throughout the planning process.

Department's response

The Department will proceed with the amendment of the EIA Regulations at the earliest opportunity.

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

Two respondents offered additional comments on the partial Regulatory Impact Assessment. They endorsed the proposed amendments and added that other potential costs such as compensation claims and EIA production costs will require consideration on a case by case basis adding that the Department should be mindful of the need for consistency in applying the amendment in Northern Ireland to the wider UK planning policy context.