



Environmental Impact Assessment of Reserved Matters Applications

Consultation Document

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An Agency within the Department of the
Environment
www.doeni.gov.uk



INVESTORS IN PEOPLE

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1.0 INTRODUCTION

- 1.1 This consultation paper sets out the Department of the Environment's proposals for amending the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999¹ ('the 1999 Regulations') to take account of two related judgments of the European Court of Justice ('ECJ') in cases C-290/03 (R v London Borough of Bromley ex parte Barker) and C-508/03 (Commission v UK).
- 1.2 The essence of the ECJ judgments is that, where development consent comprises a multi-stage consent process (such as in an application for outline planning permission, where following outline consent, application has to be made to the planning authority for approval of certain reserved matters), the requirements of Environmental Impact Assessment ('EIA') must be applicable at the later stage. Further information on the Court judgments is set out in paragraphs 2.4 – 2.8.
- 1.3 The Department issued Interim Guidance to Planning Service staff on 15 September 2006 on this issue pending any legislative actions to comply with the ECJ judgments. The guidance emphasised that the requirements of the EIA Directive and the ECJ judgments must be met not only when considering outline planning applications but also at the subsequent approval of reserved matters stage even though this is not at present required by the 1999 Regulations.
- 1.4 A draft of the amending regulations is attached to this consultation document at Annex 1. As well as providing for EIA to be carried out at reserved matters stage for outline planning applications, the draft regulations provide for EIA to be applied in relation to conditions attached to certain full planning permissions, which require the submission of certain detailed matters and their approval by the planning authority before the development can proceed².
- 1.5 The Department of the Environment ('the Department') is the planning authority in Northern Ireland and the draft amending legislation contained in this consultation paper will apply to Northern Ireland only. Separate legislation has been introduced in Scotland and is being prepared for England and Wales to ensure compliance throughout the United Kingdom.

¹ S.R. 1999 No. 73

² Note that applications for the approval of reserved matters are used as an exemplar throughout this consultation paper.

2.0 BACKGROUND

Why the EIA regulations need to be changed

- 2.1 Directive 85/337/EEC ('the EIA Directive'), as amended, requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. The Directive aims to ensure that a planning authority giving consent for a project makes its decision with the full knowledge of any likely significant effects on the environment. It sets out a procedure known as Environmental Impact Assessment to assess a project's likely significant environmental effects. The Directive helps ensure that the importance of predicted environmental effects and the scope for reducing them are understood by the public and the planning authority before any development consent decision is made. Article 1.2 of the Directive defines 'development consent' as *'the decision of the competent authority or authorities which entitles the developer to proceed with the project'*.
- 2.2 Prior to the two ECJ judgments referred to in paragraph 1.1, the position in the UK was that for outline planning applications it was the outline permission that constituted the 'development consent' for the purposes of the Directive and that the approval of reserved matters was simply the 'detailed regulation' of that principal consent. In relation to EIA, the position was set out in paragraph 9.1 of the Department's Development Control Advice Note 10 – Environmental Impact Assessment: *"Where EIA is required for an outline planning application, the requirements of the Regulations must be fully met at the outline stage as approval of reserved matters are not subject to EIA."* This approach is consistent with advice published in the rest of the UK and was endorsed by the courts, notably in the cases of *R v Rochdale MBC ex parte Tew* [2000] Env.L.R.1 and *R v Rochdale MBC ex parte Milne* [2001] Env. L.R.22.
- 2.3 However, this interpretation was challenged by the European Commission in infraction proceedings against the UK which culminated in the two ECJ judgments referred to in paragraph 1.1. One of these cases (C-508/03 (Commission v UK)) concerned development proposals at Crystal Palace and the White City, which were the subject of outline planning applications. The other (C-290/03) related to a domestic court case concerning the Crystal Palace proposal which was appealed to the House of Lords. In view of the other case before the Court, the House of Lords sought a preliminary ruling from the ECJ on a number of questions about EIA and outline planning permission.

The ECJ Rulings

- 2.4 Case C-290/03 ('the Barker case') concerned an outline planning

permission ('OPP') to develop a leisure complex in Crystal Palace Park which was granted by the London Borough of Bromley as the relevant local planning authority in England. When OPP was granted the planning authority deemed that an EIA was not required. However, when an application for reserved matters was submitted there were calls for an EIA. The planning authority considered that, as a matter of UK domestic law, an EIA could only be carried out at the OPP stage and the approval of reserved matters was granted without an EIA.

- 2.5 Judicial review proceedings were initiated by Ms Barker regarding this decision ('the Barker Case'). Proceedings were referred to the House of Lords who sought a preliminary ruling from the ECJ.
- 2.6 Case C-508/03 ('Commission v UK') related to infraction proceedings against the UK by the European Commission in respect of two EIA cases which were considered together by the ECJ –
 - (a) the Barker Case; and
 - (b) a grant of OPP and the subsequent approval of reserved matters by the London Borough of Hammersmith and Fulham in 1996 for the development of retail and leisure facilities at White City.
- 2.7 On 4th May 2006 the ECJ ruled that OPP and the subsequent decision to approve reserved matters must be considered as multi-stage development consent within the meaning of Article 1.2 of the EIA Directive. The effect of this ruling is to require consideration of an EIA before determining an application for approval of reserved matters. Where an EIA was not carried out at the outline stage it may be required before an application for approval of reserved matters can be determined. Where an EIA was carried out at the outline stage the planning authority must consider whether the Environmental Statement needs updated or revised before determining a reserved matters application which may require the submission of further information by the applicant.
- 2.8 The full text of the ECJ rulings can be found at:
<http://curia.europa.eu/en/content/juris/index.htm>

The House of Lords Judgment

- 2.9 Following the ECJ judgment the House of Lords made its ruling on the Barker Case on 6th December 2006. The ruling clarified the circumstances in which an EIA may be required at the reserved matters stage stating that –

- (a) In the case of a Schedule 2¹ development the planning authority must decide if an EIA is required at the start of the process. An application for OPP should be accompanied by sufficient information to determine the need for an EIA and, if required, an EIA should be obtained and considered before an OPP is granted. The need for an EIA at the reserved matters stage will depend on the extent to which environmental effects have been identified at the earlier outline stage.
- (b) If provided with sufficient information at the outset, a planning authority should be able to determine if the EIA obtained at that stage will take account of all potential environmental effects likely to follow as consideration of an application proceeds through the multi-stage process. Conditions designed to ensure that the project remains within the scope of the EIA will reduce the risk that significant environmental effects will not be identified until reserved matters approval stage. In such cases the planning authority will usually be able to treat the EIA at the outline stage as sufficient for granting a multi-stage consent.
- (c) The planning authority may be obliged to carry out an EIA after OPP has been granted. This is because it is not possible to eliminate completely the possibility that the need for an EIA will not become apparent until a later stage in the multi-stage consent process. In such a case account will have to be taken of all aspects of the project which have not yet been assessed or have been identified for the first time as requiring assessment.

2.10 The full text of the House of Lords judgment can be found at:
<http://www.publications.parliament.uk/pa/ld200607/ldjudgmt/jd061206/barker-1.htm>

EIA and Outline Planning Permission

2.11 The result of these rulings is that where the EIA has not been fully carried out prior to approval at the outline planning permission stage, it must be carried out prior to approval of an application for approval of reserved matters. This necessitates a change to existing EIA Regulations.

Mitigation measures in approving a multi-stage application

2.12 Currently, the only conditions that can be imposed when reserved matters are approved are conditions that directly relate to the reserved matters in question and which do not derogate from the outline

¹ S.R. 1999 No 73 Schedule 2 (Regulation 2(2))

planning permission already granted. However, where the Department or the Commission consider environmental information at the reserved matters stage, it may prove necessary to impose conditions relating to the project as a whole. This could be either by way of conditions additional to those in the outline planning permission or by modification of existing conditions. It is anticipated that conditions beyond those connected to reserved matters would arise from consideration of environmental information when granting the multi-stage consent and would be for the purpose of mitigating the impact of the project on the environment. Although not provided for in the draft statutory rule included with this consultation paper, the Department therefore proposes to take a power to impose conditions in relation to the project (whether in relation to matters arising from the application for multi-stage consent or from the outline planning permission in respect of which such application is made) for the purpose of avoiding, reducing or offsetting the effect of the project on the environment.

- 2.13 As regards the existing outline planning permission, there is a risk that an EIA carried out at the reserved matters stage will identify significant effects on the environment which, had they been known about, would have resulted in refusal at OPP stage or different conditions. In such a case the Department may have to consider revoking or modifying the permission under the provisions of Article 38 of the Planning (Northern Ireland) Order 1991¹. If a planning permission is revoked or modified in that way, Section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965² provides that a person interested in the land can claim compensation from the Department.

Conditions attached to planning permissions

- 2.14 Although the ECJ judgments relate specifically to outline planning applications and approval of reserved matters, there are circumstances where conditions attached to full planning permission require the submission of details to and their approval by the planning authority, before development may commence. The Department considers that such approval could also be construed as part of a multi-stage consent. This view appears to be supported by the House of Lords determination which, in referring to the condition relating to reserved matters which accompanied the outline planning permission in the Crystal Palace case, stated that 'Any grant of planning permission which contains a condition in these terms must be regarded as a multi-stage development consent for the purposes of the Directive.' Furthermore, in the case of *R (oao Anderson) v Bradford MDC* [2006], which concerned the approval of conditions attached to the grant of

¹ S.I. 1991 No. 1220 (N.I.11)

² 1965 c.23 (N.I.)

full planning permission for an EIA application for the disposal of controlled waste into a quarry, the judgment noted that a further EIA could sometimes, though perhaps rarely, be required in a situation where approval of conditions was said to amount to a second stage in the consent procedure. The draft amending regulations therefore enable EIA to be required in such circumstances.

3.0 SUMMARY OF PROPOSED AMENDMENTS TO THE EIA REGULATIONS

- 3.1 The Department of the Environment's proposals for amending the 1999 Regulations are set out in this section. A copy of the draft amending legislation is provided at Annex 1 of this consultation paper. The 1999 Regulations and subsequent amending regulations are available at www.opsi.gov.uk
- 3.2 Regulation 3(1) adds the terms "application for multi-stage consent" and "multi-stage consent development" to regulation 2(2) (interpretation) of the 1999 Regulations. An "application for multi-stage consent" relates both to reserved matters approval and to approval required under a condition attached to a full planning permission prior to the development being commenced. "Multi-stage consent development" is development which has yet to be carried out and which is authorised by an existing planning permission in respect of which an application for multi-stage consent has been or is to be made.
- 3.3 Regulation 3(2) inserts a new Regulation 11A which applies the 1999 Regulations to applications for multi-stage consent and proposed multi-stage consent development.
- 11(A) (2) inserts a new provision into regulation 6(3) (pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement) of the 1999 Regulations which requires a developer to submit sufficient information to enable the Department to identify the original planning permission in respect of which the application for multi-stage consent is being made;
 - 11 (A) (3) amends regulation 9 (application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement) of the 1999 Regulations to make provision for consideration of applications for multi-stage consent which have previously been determined as not requiring EIA before planning permission was granted;
 - 11(A) (4) amends regulation 12 (publicity where an environmental statement is submitted) so that the newspaper notice will include a statement that copies of the planning permission, environmental statement and supporting documents may be inspected by the public.

4.0 PARTIAL REGULATORY IMPACT ASSESSMENT

- 4.1 A Partial Regulatory Impact Assessment in relation to these draft amending Regulations is provided at Annex 5. Comments are invited on the content of this assessment in the enclosed questionnaire.

5.0 RESPONDING TO THIS CONSULTATION DOCUMENT

Please note that responses to this consultation should be received by the Department no later than **11th February 2008**. In light of the ECJ judgment the Department has decided to reduce the consultation period from the usual 12 weeks to 8 weeks.

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

1. The questionnaire accompanying the consultation document can be completed and sent to:

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

2. The questionnaire is also available in Microsoft Word format for downloading from the Planning Service website at www.planningni.gov.uk. It can be completed on your computer, printed out and sent to the postal address above, or can be e-mailed to reservedmatters@doeni.gov.uk
3. Completed questionnaires may also be sent by fax to 028 9041 6960.

Comments are invited on the proposed amendments and the attached draft regulations. Views are also sought on the accompanying Partial Regulatory Impact Assessment.

Additional copies of the consultation document and questionnaire, and copies in alternative formats are available from the address above and may be requested by Telephone 028 9041 6966, Fax 028 9041 6960 or Textphone 028 9054 0642.

Responses to this consultation may be made available on request or published on the Planning Service website. Before you submit your response please read Annex 2, 'Freedom of Information Act 2000 – Confidentiality of Consultations'.

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

2008 No. xxx**PLANNING****The Planning (Environmental Impact Assessment)
(Amendment) Regulations (Northern Ireland) 2008**

Made - - - - - ***

Coming into operation - - - - - ***

The Department of the Environment, is a designated ⁽¹⁾ Department for the purposes of section 2 (2) of the European Communities Act 1972⁽²⁾ in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.

The Department of the Environment makes the following Regulations in exercise of the powers conferred on it by that section.

Citation and commencement

1.—(1) These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 and shall come into operation on xx xxx xxxx.

(2) The Interpretation Act (Northern Ireland) 1954⁽³⁾ shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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

2.—(1) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999⁽⁴⁾ shall be amended in accordance with regulation 3.

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

(1) after the definition of “local advertisement” insert—

““application for multi-stage consent” means an application to the Department or the Commission in compliance with a condition —

(a) imposed on a grant of planning permission requiring further approval of matters specified in the permission; and

⁽¹⁾ S.I. 1988/785

⁽²⁾ 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51)

⁽³⁾ 1954 c. 33 (N.I.)

⁽⁴⁾ S.R. 1999/73 as amended. [A further statutory rule is to be introduced before these regulations are finalised. The insertion of the definition “local advertisement” in Regulation 2(2) and of paragraph (d) in Regulation 12 are amendments to be made by that rule.]

- (b) that approval must be sought and granted before all or part of the development concerned may be carried out;

“multi-stage consent development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which an application for multi-stage consent has been or is to be made.

(2) After Regulation 11 (application of Article 31 of the 1991 Order) insert—

“Applications for multi-stage consent

11A.—(1) These Regulations shall apply to—

- (a) an application for multi-stage consent as they apply to an application for planning permission;
- (b) proposed multi-stage consent development as they apply to development in respect of which an application for planning permission is, has been, or is to be made;
- (c) a person making an application for multi-stage consent as they apply to an applicant for planning permission;
- (d) the determination of an application for multi-stage consent as they apply to the granting of a planning permission,

subject to the following modifications and additions.

(2) In regulation 6 (pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement) after paragraph (3) (a) insert—

“(aa) sufficient information to enable the Department to identify the planning permission in respect of which the application for multi-stage consent is being made;”.

(3) In regulation 9 (Application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement) for sub-paragraph (1) (b) substitute—

“(b) has not been the subject of a determination as to whether the application is or is not an EIA application or in the case of an application for multi-stage consent, was subject to a determination before the planning permission was granted, to the effect that it is not EIA development;”.

(4) In regulation 12 (Publicity where an environmental statement is submitted) —

- (a) after paragraph (c) omit “and”;
- (b) in paragraph (d) omit “.” and insert—

“; and

“(e) in the case of an application for multi-stage consent –

- (i) where planning permission has been granted, provide sufficient information in the notice to identify that planning permission;
- (ii) state in the notice that a copy of the planning permission and supporting documents may be inspected by members of the public at all reasonable hours at the relevant office of the Department;
- (iii) state in the notice that a copy of the environmental statement, where submitted with the application for planning permission may be inspected by members of the public at all reasonable hours at the relevant office of the Department.”.

Sealed with the Official Seal of the Department of the Environment on xxx xxx xxxx.

A senior officer of the Department of the Environment

Freedom of Information Act 2000 – Confidentiality of Consultations

1. Please note that the Department may 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 web site at: <http://www.informationcommissioner.gov.uk/>).

**DOE SECTION 75 EQUALITY OF OPPORTUNITY SCREENING
ANALYSIS FORM**

1. Please insert below a brief description of the policy/legislation, including the title and all the main aims and objectives

- Title** The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008
- Aims** To amend the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to implement a European Court of Justice case, C508/03, Commission v UK. This case found that the UK had failed to correctly transpose Council Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC, by requiring Environmental Impact Assessment (EIA) only before the grant of planning permission and not at the later stage when reserved matters are approved.

2. On whom will the policies/legislation impact? Please specify

The additional obligations under the new regulations will fall on the decision makers in the EIA process i.e. the Department of the Environment's Planning Service, the Planning Appeals Commission (PAC) and statutory consultation bodies will be subject to the additional procedural requirements introduced by the legislation. The legislation will also impact on developers, particularly large scale developers whose developments are more likely to require Environmental Impact Assessment.

3. Who is responsible for (a) devising and (b) delivering the policy, eg is it DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

- (a)** The policy originated with the European Union and is delivered via the transposition of Directive 85/337/EEC as amended by 97/11/EC and 2003/35/EC in each Member State. In NI this process is undertaken by the DOE.
- (b)** The Department of the Environment's Planning Service is responsible for granting planning consent having complied with the requirements of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999. In the case of planning appeals this function is exercised by the Planning Appeals Commission.

4. What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

The Planning Appeals Commission conducts and reports on hearings as required by the regulations and applies the regulations in the determination of planning appeals.

5. What data are available to facilitate the screening of this policy/legislation?

None. The requirement to prepare an Environmental Statement is imposed on developers proposing projects that will have a significant effect on the environment. Section 75 groups will have an equal opportunity to comment on proposed projects.

6. Is additional data required to facilitate screening? If so, give details of how and when it will be obtained.

No. The requirement for Environmental Impact Assessment applies equally to all Section 75 groups should they become involved in projects requiring an Environmental Assessment or wish to comment on a proposed project.

Screening Analysis

7. Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

Please give details

All Section 75 groups are equally required to comply with the regulations where they submit planning applications or applications for approval of reserved matters which require Environmental Impact Assessment (EIA).

8 Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

Please give details

No differential impact is anticipated on any Section 75 group as a result of this legislation.

9. Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

Please give details of any consultations carried out, and any problems identified.

There have been no consultations with specific Section 75 groups. This draft legislation is being subjected to a general public consultation which will provide an opportunity for Section 75 groups to identify differential impacts (if any). In the absence of any quantitative evidence the Department's view as informed by its understanding of the policy issues and subject matter, is that there will be no differential impact on any of the Section 75 groups.

10. **Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?**

Yes No
 x

Please give details

Equal opportunities already exist for all groups within the scope of the EIA regulations. They are not related in any way to community relations.

11. **It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:**

Not applicable.

12. **Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.**

Please give details

The Department believes that the requirements for Environmental Impact Assessment already apply equally to all Section 75 groups and that there is therefore no need for changes that would promote better equality of opportunity or good relations.

EQIA Recommendation

- 13 **Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation.**

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			X
Effect on people's daily lives.			X
Effect on economic, social and human rights.			X
Strategic significance			X
Financial significance			X

Please give details

The legislative amendments relate to changes to existing statutory procedures and are designed to ensure compliance with the EIA Directive. Negligible impact is anticipated on the categories outlined above.

14. In view of the considerations in the Screening Analysis and EQIA Recommendation do you consider that this policy/legislation should be subject to a full EQIA

There is no evidence to suggest that the introduction of this legislation will have a differential impact on any Section 75 group. Therefore it is not considered necessary to subject this legislation to a full EQIA.

15. If an EQIA is considered necessary please comment on the priority and timing in light of the factors in table 13.

Not applicable.

16. If an EQIA is considered necessary is any data required to carry it out /ensure effective monitoring?

Please give details

Not applicable

Endorsement

I can confirm that the proposed policy has been screened for equality of opportunity and good relations implications and has been screened out for equality impact assessment.

Signed:



Agency/Division: Planning Policy and Legislation Division

Date: 5 December 2007

The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008 - Environmental Impact Assessment of Reserved Matters Applications Consultation- Human Rights Act 1998

1. The purpose of this Annex is to review the Human Rights implications of the legislative proposals contained in this consultation document. The aim of the proposals is to provide for EIA procedures at the reserved matters stage of outline planning permission.
2. **Human Rights Assessment**

The Department considers that the proposals laid out in this consultation document are fully compliant with the Human Rights Act 1998.

Partial Regulatory Impact Assessment

1. Title of Proposal

The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008.

2. Purpose and Intended Effect

(i) The Objective

The purpose of these regulations is to implement two related rulings from the European Court of Justice ('the ECJ') to make it a statutory requirement that consideration must be given to the need for an Environmental Impact Assessment ('EIA') before determining an application for the approval of reserved matters.

(ii) The Background

The ECJ has ruled on cases C-290/03¹ and C-508/03² that outline planning permission ('OPP') and the decision that subsequently gives approval of reserved matters must be considered as constituting multi-stage development consent for the purposes of Article 1.2 of Directive 85/337/EEC³ ('the EIA Directive'). The effect of those rulings is to require consideration of the need for an Environmental Impact Assessment ('EIA') before an application for the approval of reserved matters is determined. At present the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 ('the 1999 Regulations'), only provide for EIA consideration prior to the determination of an application for OPP and not at the reserved matters stage.

The Directive aims to ensure that the authority giving the primary consent for a particular project to proceed makes its decision in the full knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure known as Environmental Impact Assessment as a means of assessing the effects of certain projects on the environment. This helps to ensure that a project's likely significant environmental effects and the scope for reducing them are understood by the public and the relevant competent authority before it makes its decision.

¹ R v London Borough of Bromley, ex parte Barker

² Commission v UK

³ Directive 85/337/EEC of 27 June 1985 as amended on the assessment of the effects of certain public and private projects on the environment

(iii) Risk Assessment

If the UK does not legislate to take account of the ECJ rulings it will be subject to continued infraction proceedings by the European Commission with the possibility of subsequent heavy fines for non-compliance.

3. Options

Option 1: Do Nothing

This is not a realistic option as failure to take action to remedy the breach in our regulations identified by the ECJ would result in continued infraction proceedings by the European Commission and the European Court of Justice which would result in the imposition of financial penalties on the UK.

Option 2: Amend Regulations

The proposed amendments to the 1999 Regulations will transpose into legislation in Northern Ireland the requirement that consideration must be given to the need for EIA before determining an application for the approval of reserved matters. This will ensure that the Directive requirement is properly transposed and avoid the risk of infraction proceedings by the European Commission.

Alternative Options Considered

A further option would be to abolish outline planning permission. However, we have rejected this as it would deny developers the opportunity to test the principle of a proposed development without the need to incur substantial, and potentially nugatory, expenditure on preparing detailed plans. This might in turn deter developers from bringing forward development and investment initiatives.

4. Benefits

Option 1: Do Nothing

There are no benefits to this option. The ECJ ruling places an obligation on the UK to transpose the EIA Directive fully as directed. Failure to act would result in continuing infraction proceedings by the European Commission.

Option 2: Amend Regulations

The proposed amendments will transpose into the 1999 Regulations the requirement to consider the need for EIA before determining an application for the approval of reserved matters. This will remove the risk of European Court infraction proceedings and subsequent heavy fines for non-compliance.

Consideration of EIA at the reserved matters stage would give the public a better opportunity to make informed comment on the project and for the Department or Planning Appeals Commission ('PAC') to reach a more informed decision.

5. Costs

Option 1: Do Nothing

If no action is taken the European Commission will continue with infraction proceedings with subsequent heavy fines for non-compliance being imposed on the Northern Ireland government.

Option 2: Amend Regulations

The costs to business should be minimal as the requirement to prepare an EIA is not changing in most cases. If a statement requires updating or revising at reserved matters stage the costs are likely to be low compared with the cost of the original Environmental Statement ('ES') and planning fees.

In some cases the need for an EIA will not become apparent until the reserved matters stage. Under these limited circumstances an Environmental Statement may be required for the first time at reserved matters stage. The cost of preparing the ES would fall to the developer. The Department estimates that the costs involved in preparing an ES would range from £30,000 to £150,000 depending on the scale of the development however the number of cases is expected to be low with 67 Environmental Statements received by the Department in the calendar year 2006.

There is also the risk that implementing these Regulations could result in OPP being revoked, or modified, as a consequence of significant environmental issues being identified at the reserved matters stage which could result in claims for compensation under Section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965¹ (c.23). Section 26 provides that where it is shown that a person interested in the land-

- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification;

the Department shall pay that person compensation in respect of that expenditure, loss or damage. For the purposes of this Section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included

¹ 1965 c. 23 (N.I.)

in the expenditure incurred in carrying out that work. Subject to that provision, no compensation shall be paid under Section 26 in respect of-

(a) any work carried out before the grant of the permission which is revoked or modified; or

(b) any other loss or damage (not being loss or damage consisting of depreciation of the value of a compensatable estate in any land) arising out of anything done or omitted to be done before the grant of that permission.

6. Business Sectors Affected

The requirements of the EIA Directive are mainly limited to projects which are likely to have significant effects on the environment. Business sectors currently involved in such EIA projects are likely to be large scale developers. While these amendments would place some additional procedural and financial requirements on such developers it is anticipated that the numbers affected will be low. In 2006 the number of Environmental Statements received by the Department was 67.

The Department, the PAC and the statutory consultation bodies will also face some additional procedural requirements but in view of the low number of Environmental Statements received the impact is likely to be small.

7. Small Firms Impact Test

As the business sectors affected will be mainly large scale developers already involved in the process of EIA, a Small Firms Impact Test has not been carried out. However we would welcome views from any business which considers that it may be affected by these proposals.

8. Enforcement and Sanctions

The Department and the PAC will enforce the Regulations by applying the 1999 Regulations as amended to planning applications for projects with significant environmental effects. If the EIA Directive is not fully transposed into legislation and implemented the European Commission will initiate infraction proceedings and impose heavy fines for non-compliance.

9. Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

10. Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

11. Monitoring and Review

Planning permissions granted which do not follow the 1999 Regulations will continue to be vulnerable to court challenges.

12. Consultation

(i) Within Government

Representatives of the other UK planning administrations in England, Scotland and Wales have been consulted during the preparation of this consultation paper. Within government Planning Service is consulting with other Northern Ireland departments as part of the public consultation on the proposed amendments.

(ii) Public Consultation

A public consultation on the draft legislative proposals to deliver option 2 is being initiated in Northern Ireland and this Partial Regulatory Impact Assessment forms part of that consultation. While the Code on Consultation recommends a minimum consultation period of 12 weeks this consultation will be open for 8 weeks. This is because the Department needs to implement the amending legislation as soon as possible to comply with the ECJ ruling and avoid further EC infraction proceedings with the potential associated fines. Persons interested in the consultation topic are likely to be large scale developers and environmental groups who will be made aware of the consultation proposals on publication.

10. Summary and Recommendation

Option	Compliance with Directive	Risk of infraction Proceedings	Risk of Non-Compliance Fines
1:Do Nothing	No	High	High
2:Amend Regulations	Yes	Low	Low

Option 2 is the recommended option as it is the only option which ensures full compliance with the EIA Directive and the ECJ rulings. Option 1 carries a high risk of infraction proceedings and EC fines and is not a viable option.

List of Consultees

20:20 Architects
Architecture and Planning Information Service
Arcus Architects
Association of Consulting Engineers
Atlas Communications
B9 Energy Services Ltd
Bar Library
BB Planning & Design
BBC Engineering Information Department
Belfast City Airport
Belfast Harbour Commissioners
Belfast International Airport
Belfast Solicitors' Association
Brennen Associates
British Telecom (N.I.)
Building Design Partnership
Cable & Wireless
Cabletel (NI) Ltd
Chartered Institute of Environmental Health
Chartered Institute of Housing
City of Derry Airport
Civic Forum
Civil Law Reform Division
Coleraine Harbour Commissioners
Community Technical Aid (NI) Ltd
Council for Nature Conservation and the Countryside
Crown Castle UK Ltd
Derryhale Residents' Association
Enniskillen Aerodrome
Environment and Planning Law Association of NI
Equality Commission for NI
Federation of Small Businesses
Ferguson & McIlveen
Forest of Belfast
Friends of the Earth
Human Rights Commission
Institute of Professional Legal Studies
Institute Of Directors
Institute of Historic Building Conservation
Institution of Civil Engineers (NI Association)
International Tree Foundation
Kenneth Crothers, Deane & Curry
Lagan Valley Regional Park Officer
Laganside Courts
Landscape Institute NI
Larne Harbour Commissioners

Law Centre (NI)
Londonderry Port & Harbour Commissioners
Lough Neagh and Lower Bann Management Committees
LPG Association
McClelland/Saulter Estate Agents
Mobile Operators Association
Mono Consultants Limited
Mourne Heritage Trust
Mournes Advisory Council
National Grid Wireless Group
National Trust
Newtownards Aerodrome
NICOD
North/South Ministerial Council
Northern Ireland 2000
Northern Ireland Agricultural Producers Association
Northern Ireland Amenity Council
Northern Ireland Assembly Environment Committee
Northern Ireland Association Engineering Employer's Federation
Northern Ireland Association of Citizens Advice Bureau
Northern Ireland Chamber of Commerce and Industry
Northern Ireland Court Service
Northern Ireland District Councils
Northern Ireland Economic Council
Northern Ireland Electricity Plc
Northern Ireland Environment Link
Northern Ireland Government Departments
Northern Ireland Health And Social Services Boards and Trusts
Northern Ireland Law Commission
Northern Ireland Local Government Association
Northern Ireland MPs, MEPs, Political Parties and MLAs
Northern Ireland Ombudsman
Northern Ireland Quarry Owners Association
Northern Ireland Quarry Products Association
Northern Ireland Resident Magistrates' Association
Northern Ireland Residents Coalition
NTL Cabletel
O2
OFREG
Orange
Ostick and Williams
Phoenix Natural Gas Ltd
Planning Appeals Commission
Playboard N.I. Ltd
POBAL
Pragma Planning
Queen's University of Belfast
Research and Information Services
Robert Turley Associates
Royal Institution of Chartered Surveyors in Northern Ireland

Royal Society for Protection of Birds
Royal Society of Ulster Architects
Royal Town Planning Institute
Royal Town Planning Institute (Irish Branch, Northern Section)
RPS
Rural Community Network
Rural Development Council for Northern Ireland
Society of Local Authority Chief Executives
Strangford Lough Advisory Council
Strangford Lough Management Committee
Sustrans
The British Wind Energy Association
The Executive Council of the Inn of Court of NI
The General Consumer Council for NI
The Law Society of Northern Ireland
Three
T-Mobile
Transport 2000
Ulster Anglers Association
Ulster Architectural Heritage Society
Ulster Society for the Preservation of the Countryside
Ulster Wildlife Trust
University of Ulster
URPA
UTV Engineering Information Department
Vodafone Ltd
Warrenpoint Harbour Authority
WDR & RT Taggart
Wildfowl and Wetland Trust
Woodland Trust
World Wildlife Fund (NI)