Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

Guidelines for Planning Authorities and An Bord Pleanála

Guidelines for Planning Authorities and An Bord Pleanála on carrying out

Environmental Impact Assessment

Department of the Environment, Community and Local Government

March 2013

Ministerial Foreword

Environmental impact assessment (EIA) is a critical tool in managing and clarifying the complex interrelationships between development and the environment. It is, in essence, a process that provides for an examination of the environmental consequences of development actions in a systematic, holistic and multidisciplinary way. As such it is a critical aid to decision making. However it is not decision making in itself.

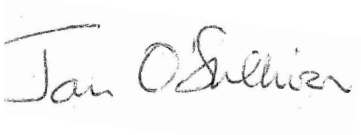
Sustainability and the better management of development in harmony with the environment should be a fundamental aspiration of any development consent system. It is an aspiration that I hold for the Irish planning system. EIA – an instrument for sustainable development – provides all stakeholders in the Irish planning system with a vehicle through which we can all seek to make continuous improvement.

Since the first iteration of the EIA Directive in 1985 there have been changes to the legislation itself and to the practice of carrying out EIA both in Ireland and throughout the European Community.

The policy and operational context for all stakeholders – competent authorities, project sponsors/developers, local communities and third parties has become significantly more complex in that time as a result. Changes in legislation on the EIA requirement contained in the 2010 Act, and subsequent amendments thereto, need to be clarified so that all parties involved understand the obligation on competent authorities.

The purpose of these Guidelines is therefore to provide practical guidance to planning authorities and An Bord Pleanála on procedural issues and the EIA process arising from the requirement to carry out an environmental impact assessment in relevant cases. It is envisaged that the guidelines will result in greater consistency in the procedures adopted by competent authorities. The Guidelines should also assist developers, EIA practitioners, NGOs and other participants in the planning process.





Jan O'Sullivan, T.D.,
Minister of State, Department of the Environment, Community and Local Government, with special responsibility for Housing and Planning

1

Introduction

1

1. Introduction

1.1 Environmental Impact Assessment (EIA) is a very significant instrument in the implementation of EU environmental policy. The EIA Directive, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC of 3 March 1997, Directive 2003/35/EC of 26 May 2003 and Directive 2009/31/EC of 23 April 2009, now codified in Directive 2011/92/EU of 13 December 2011, is designed to ensure that projects likely to have significant effects on the environment are subject to a comprehensive assessment of environmental effects prior to development consent being given. The full text of the codified Directive is contained in Appendix. 1.

1.2 Assessing the effects of a proposed development on the environment is an integral part of considering whether the development is in the interests of the proper planning and sustainable development of any area. Such effects must accordingly be taken into account in determining any application for consent under the provisions of the Planning and Development Act, 2000, as amended. Competent authorities should also have regard to the objectives and purposes of the EIA Directive as set out in the preamble thereto when deciding on the merits of a relevant proposed development. Assessing environmental effects facilitates a more informed decision and should result in the avoidance or reduction of adverse environmental effects.

1.3 The EIA Directive was first transposed into Irish law by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) which amended the Local Government (Planning and Development) Act, 1963 (and other legislation) to provide for environmental impact assessment. These Regulations, together with the Local Government (Planning and Development) Regulations, 1990, (S.I. No. 25 of 1990), which made more detailed provision in relation to planning consents, came into effect on 1 February 1990.

1.4 EIA provisions in relation to planning consents are currently contained in the Planning and Development Act, 2000, as amended, (Part X) and in Part 10 of the Planning and Development Regulations, 2001, as amended. A revised Planning and Development Act, 2000, incorporating all amendments to date, is available on the website of the Law Reform Commission. The Planning and Development Act, 2000, as amended, is referred to throughout these Guidelines as “the Planning Act”.

1.5 Part X of the Planning Act was significantly amended by

- the Planning and Development (Amendment) Act 2010 (number 30 of 2010) – amendment commenced 19/08/2010 (by S.I. No. 405 of 2010),

- the European Union (Environmental Impact Assessment and Habitats) Regulations 2011, S.I. No. 473 of 2011 – commenced 21/09/2011,
- the European Union (Environmental Impact Assessment and Habitats) (No. 2) Regulations 2011, S.I. No. 584 of 2011 – commenced 15/11/2011,
- the European Union (Environmental Impact Assessment) (Planning and Development Act, 2000) Regulations 2012 (S.I. No. 419 of 2012) – commenced 31/10/2012.

Prior to these amendments applicants were required, for projects subject to the EIA Directive which were likely to have significant effects on the environment, to submit an environmental impact statement (EIS) with applications for consent. The public and prescribed bodies were notified of the application and EIS and they had a right to make submissions. The competent authority was obliged to consider whether or not the EIS contained the required information and to take account of the EIS and all relevant submissions prior to determining the application.

1.6 The European Court of Justice in its decision on Case C-50/09 (3 March 2011) held that Irish legislation, on the relevant dates applicable to the Court's decision, did not adequately transpose Article 3 of the EIA Directive which makes the competent authority responsible for carrying out an environmental impact assessment (in relevant cases).

1.7 Section 172 of the Planning Act, as amended in the instruments referred to, now specifically requires planning authorities and An Bord Pleanála (the Board) to carry out an environmental impact assessment in relevant cases. The factual situation whereby planning authorities and/or the Board carry out an assessment of effects on the environment in relevant cases is now formally recognised in the legislation.

1.8 Circular Letter PHP 10/11 of 20 December 2011 stated that further guidance would issue on EIA. Since then and since the draft of these Guidelines was issued (July 2012) section 172 has been further amended (see 1.5 above). These Guidelines, of course, refer to the revised/current law

1.9 A new section 171A, defining EIA, was inserted into the Planning Act by section 53 of the Planning and Development (Amendment) Act 2010 (commenced on 19 August 2010). The definition of EIA is based on Article 3 of the EIA Directive and the European Court of Justice decision in case C-50/09.

1.10 The full texts of sections 172 and 171A are set out in Appendices 2 and 3.

1.11 Appendix 4 contains a glossary of terms used in these guidelines.

2

Status, Scope, Purpose and Objectives of the Guidelines

2. Status, Scope, Purpose and Objectives of the Guidelines

2.1 These Guidelines are issued to planning authorities and the Board under section 28 of the Planning Act and both are required under the section to have regard to the Guidelines in the performance of their functions under the Act.

2.2 The purpose of the Guidelines is to provide practical guidance to planning authorities and the Board on legal and procedural issues arising from the requirement to carry out an EIA in relevant cases. The Guidelines relate essentially to the responsibilities on planning authorities and the Board as contained in the current section 172 of the Planning Act. It is envisaged that the Guidelines will result in greater consistency in the procedures adopted by competent authorities.

2.3 The Guidelines deal with the specific requirement on planning authorities and the Board to carry out EIA in relevant cases as now contained in section 172 of the Planning Act. Section 171A is referred to for the purpose of defining what is meant by EIA for the purpose of the Guidelines.

2.4 The Guidelines deal with the matter of competent authorities carrying out an EIA. They do not cover all issues relating to the EIA Directive. Separate guidance on screening for EIA is contained in the Department's *Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development* (August 2003). Guidance on the information to be contained in environmental impact statements is given in the document entitled *Guidelines on the Information to be contained in Environmental Impact Statements* published by the Environmental Protection Agency (EPA) in March 2002. (Article 94 of the Planning and Development Regulations, 2001 specifies the information to be contained in an EIS). Additional advice is contained in the *Advice Notes on Current Practice (in the preparation of Environmental Impact Statements)* published by the EPA in September 2003.

2.5 The guidance and advice contained in the publications referred to in 2.4 are generally still relevant. Planning authorities and the Board should therefore continue to have regard to these publications. It is envisaged that the two EPA publications referred to above (prepared under section 72 of the Environmental Protection Agency Act, 1992) will be updated in the short to medium term. The revision and updating of the documents in question will result in updating of advice on the information to be contained in environmental impact statements to assist developers and competent authorities in fulfilling their obligations under the EIA Directive.

2.6 It should be noted in applying these Guidelines that they relate to the assessment carried out by the planning authority or the Board on an application for consent rather than to the more holistic and iterative meaning given to the phrase environmental impact assessment in the EPA Guidelines referred to above. (The EPA document notes that the environmental impact assessment procedure commences at the project design stage).

2.7 The core objectives of these Guidelines are:

- to facilitate better understanding by competent authorities of the requirements of the EIA process;
- to ensure that the requirements of the EIA Directive and planning legislation are complied with prior to the issue of development consent for relevant projects; and
- to ensure consistency of EIA processes adopted by competent authorities.

3

Outline of and guide to section 172 and section 171A

3. Outline of and guide to section 172 and section 171A

3.1 Section 172(1) requires that an EIA must be carried out by the planning authority or the Board, as the case may be, in respect of an application for consent for:

(a) proposed development of a class specified in Schedule 5 of the Planning and Development Regulations, 2001 which exceeds a quantity, area or other limit specified in that schedule or

(b) proposed development of a class specified in Schedule 5 which does not exceed the specified quantity, area or limit but which the planning authority or the Board determines is likely to have significant effects on the environment.

3.2 The developments and consents to which section 172 applies are set out in subsection (1A). The relevant developments are

- development requiring planning permission under Part III of the Act;
- development in a Strategic Development Zone under Part IX;
- certain development by local authorities under Part X and by state authorities and statutory undertakers under Part XI;
- development on the foreshore under Part XV;
- development requiring consent under section 43 of the Transport (Railway Infrastructure) Act, 2001;
- development requiring consent under section 51 of the Roads Act 1993.
- development the subject of an application for substitute consent under Part XA.

3.3 Section 172(1B) requires an applicant for consent for proposed development of a class specified in Schedule 5 of the Planning and Development Regulations, 2001 which exceeds a quantity, area, or other limit specified in that Schedule to submit an EIS to the planning authority or to the Board as the case may be. Consent should accordingly never be granted for a proposed development falling into that category in circumstances where an EIS has not been submitted as required. The options open to the competent authority in such circumstances are a refusal of consent, a refusal to deal with the application, a request for the submission of an EIS, or a declaration that the application is invalid. The appropriate option depends on the nature of the particular application for consent. In the case of a planning application to a planning authority, article 99 of the Planning and Development Regulations, 2001, as amended, provides that in such a case the application shall be invalid and the planning authority is required under article 26(5) to inform the applicant of this and that the application cannot be

considered by the planning authority. Article 109, however, allows the Board to require the submission of an EIS in a situation where an appeal relates to such a development and an EIS was not submitted to the planning authority.

3.4 Section 172(1C) specifies that where an application for consent for proposed development of a class specified in Schedule 5 of the Planning and Development Regulations, 2001, which does not exceed a quantity, area or other limit specified in that schedule, is not accompanied by an environmental impact statement, but where the planning authority or the Board determine that the proposed development would be likely to have significant effects on the environment, the authority or the Board, as the case may be, must require the applicant to submit an EIS. In the event of the applicant not submitting the required statement in the specified period, or any further specified period as may be allowed by the authority or the Board, the application for consent shall be deemed to be withdrawn. It is desirable in the interests of openness and transparency that the applicant and any persons who have made submissions/observations should be informed that the application has been deemed to be withdrawn in these circumstances. This should be done immediately after the expiration of the specified period unless an application to extend that period has been made prior to that date. If an application to extend the period is refused, the parties should be informed immediately after the expiry of the specified period or the date of refusal – whichever is the later.

3.5 Section 172(1D) requires the planning authority or the Board to consider whether any EIS submitted identifies and describes adequately the direct and indirect effects on the environment of the proposed development. Where it considers that the EIS does not do so, the planning authority or the Board must require the applicant to furnish such further information as it considers necessary to remedy such defect.

3.6 Section 172(1E) provides that the competent authority must require the applicant to furnish any further information considered necessary to enable it to carry out an EIA.

3.7 Section 172(1F) provides that where information required under section 172(1D) or section 172(1E) is not submitted within the period specified, or any further period that the competent authority may specify, the application shall be deemed to be withdrawn. It should be noted that this allows the competent authority to specify a further period for the submission of the information. The specification of any further period should be done on the basis of an application to extend the period made prior to the first specified period elapsing.

3.8 Section 172(1G) sets out a number of items which the competent authority must consider in carrying out an EIA. The items listed include the EIS, any further information submitted by the applicant, submissions or observations made in relation to environmental effects and the views of any other member state submitted under section 174 or Regulations made under that section.

3.9 Section 172(1H) provides that in carrying out an EIA a competent authority may have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisers. It should be noted that the reference to consultants, experts, etc. is not confined to consultants or experts employed by the competent authority. This allows for the adoption in whole or in part of the assessment contained in the EIS submitted, or in other consultant/expert reports submitted in relation to the application.

3.10 Section 172(1I) allows the competent authority to attach conditions to any grant of permission in order to avoid, reduce and, if possible, offset the major adverse effects of the proposed development on the environment. It should be noted, however, that section 99F of the Environmental Protection Agency Act, 1992, as amended, section 54 of the Waste Management Act, 1996, as amended, prohibit the attachment of conditions to any grant of permission or consent for development which are for the purpose of controlling emissions from an activity for which a licence from the EPA under the Environmental Protection Agency Act, 1992, as amended, or the Waste Management Act, 1996, as amended, is required. However, important new provisions in relation to the interface between planning authorities/the Board and the EPA in respect of projects which require both planning permission with EIA and a licence from the Agency were introduced in September 2012. These new measures are set out below at 5.22.

3.11 Section 172(1J) specifies various information which must be made available to the applicant and to the public by the competent authority when it has made a decision whether or not to grant consent. The bulk of the information referred to is already made available to the public and the applicant under various provisions in the Planning Act and Regulations including the main reasons and considerations for the decision and any conditions attached to the decision, a copy of all documents relating to the application including any report or study, information on procedures available to review the substantive and procedural legality of the decision and the views of any other member state submitted under section 174 of the Planning Act. It is now also a requirement that the information made available must **include an evaluation of the direct and indirect effects of the proposed development on the matters set out in section 171A**, and, where relevant, **a description of the main measures to avoid, reduce and if possible offset the major adverse effects**. The latter requirement may, in some cases, involve an elaboration on or addition to the conditions imposed, the reasons for the conditions, or the reasons and considerations on which the decision is based.

3.12 A new section, section 171A, was inserted into the Planning Act by section 53 of the Planning and Development (Amendment) Act 2010. This section came into effect on 19 August 2010 and was amended on 31 October 2012 (S.I. No. 419 of 2012).

3.13 Section 171A contains a definition of "environmental impact assessment" for the purposes of Part X of the Act. Environmental impact assessment is stated to be an assessment "carried out by a planning authority or the Board", i.e. the competent authority must itself carry out an assessment.

3.14 Section 171A sets out in detail, using wording similar to the EIA Directive, what the assessment must comprise. The assessment must include an examination, analysis and evaluation and it must identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the EIA Directive, the direct and indirect effects of a proposed development on the following:

(a) human beings, flora and fauna,
(b) soil, water, air, climate and the landscape
(c) material assets and the cultural heritage, and
(d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

3.15 Section 171A(2) states that a word or expression used in Part X and also in the EIA Directive has the same meaning in Part X as in the Directive unless the context requires otherwise.

4

Procedural Issues

4. Procedural Issues

4.1 The EIA Directive requires that EIA be carried out in an open and transparent manner with the public and bodies with specific environmental responsibility being given an opportunity to comment and participate in the process of assessment (Article 6 of the Directive). The public concerned and persons with sufficient interest must also be given an opportunity to challenge the substantive and procedural legality of the final decision. (Article 11 of the Directive).

4.2 In order to comply with the requirements of section 171A and section 172 and the requirements of Articles 6 and 11 of the EIA Directive, it is essential that an assessment of the environmental effects of relevant projects is carried out by the competent authority and that the assessment is clearly documented with a "paper trail" being available for public scrutiny and to facilitate and defend any legal challenge. To facilitate ease of communication etc., the "paper trail" should also be in electronic format.

4.3 In the case of applications being considered by a planning authority, internal planning authority reports (water services, environment, roads, etc.) on the proposed development should contain comments on the relevant information and assessment contained in the EIS e.g. reports from the water services/ environment section should comment on relevant issues relating to water quality. The main report on the planning application which would generally be prepared by the planner in the planning section/department (the planner's report) should co-ordinate the reports from various sections within the planning authority and should contain a section clearly identified as an "Environmental Impact Assessment" – this section of the planner's report will hereafter be referred to as "the EIA Report". That is, "the EIA Report" is a section or chapter of the planner's report, which section or chapter should be headed "Environmental Impact Assessment". (Chapter 6 of the Development Management Guidelines for planning authorities (June 2007) contains detailed advice in relation to planners' reports). In the case of an application being dealt with by the Board, an EIA Report should similarly be contained in the Inspector's Report unless a separate report is prepared on the EIA.

4.4 The EIA Directive and the Planning Act require that an assessment be carried out by the competent authority, i.e. the planning authority or the Board. It is, accordingly, necessary that the decision-maker in the planning authority (i.e. the manager or person to whom the decision-making power has been delegated) or in the Board, as appropriate, carries out an assessment. Therefore the decision-maker must indicate in a written statement that he or she has read the EIA Report referred to above and/or any other report, which the decision-maker relies on in carrying out the assessment and either has accepted the conclusions of the planner/Board's Inspector, in whole or in part or has not accepted such conclusions. Where the decision-maker does not accept some or all of the

conclusions drawn by the planner/Inspector in the EIA Report, he or she must in the written statement give reasons as to why he or she does not accept the conclusions in question. This written statement should be independent of the decision of the decision-maker as to whether to grant or refuse permission for the development. An example of a decision-maker's written statement, which may be appropriately adapted, is set out in Appendix 5.

5

Environmental Impact Assessment Process

5. Environmental Impact Assessment Process

5.1 Section 171A requires that the EIA includes an examination, analysis and evaluation and that it must identify, describe and assess in an appropriate manner the direct and indirect effects of the development on the various factors listed in the section, which reflect those referred to in Article 3 of the EIA Directive. It must also address any interactions between the various factors listed.

5.2 The requirement on a competent authority to carry out an EIA as defined in section 171A is a separate and different requirement from that imposed on the developer/applicant to submit an EIS. The EIA to be carried out by the competent authority is focused on the effects of the proposed development on various environmental factors. The information to be supplied by the developer focuses more on information, data and a description of the proposed development and on the aspects of the environment likely to be affected. The applicant/developer is, however, also required to submit a description of the likely significant effects of the proposed project on the environment. The applicant/developer must also submit an outline of the main alternatives studied, a non-technical summary of the information provided, and an indication of any difficulties encountered in compiling the required information.

5.3 The assessment required of the competent authority is specifically of the development proposed. The study of alternatives carried out by the applicant may, however, give useful guidance to the competent authority on its decision on the application and while it does not form part of the assessment as defined in section 171A, the EIA Report should comment on and assess the robustness of the applicant's conclusions on the environmental effects of the alternatives outlined. (It is noted in the High Court decision in the case of *Volkmar Klohn v An Bord Pleanála (2004 No. 544 JR*) that the development consent procedure does not require the competent authority to carry out an EIA of the possible alternatives). The EIS must contain a study of any alternative referred to by the competent authority when giving an opinion on the information to be contained in an EIS.

5.4 The assessment to be carried out by the competent authority involves an examination of the substance of information gathered as well as a consideration of the necessity/expediency of supplementing it, if appropriate, with additional data. The competent authority must undertake an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effect of the project on the factors listed in section 171A and of interactions. The overall assessment, including the examination and analysis, will have been done in part during the processing of the application and the EIA Report section of the planner's/Inspector's report should summarise the conclusions of the overall process.

5.5 Planning authorities will have a significant amount of information and data available in relation to environmental conditions within their functional areas. They will also have a significant amount of relevant local information which may be useful in evaluating the accuracy and veracity of information/data submitted by the applicant and others. The information available to planning authorities and the expertise of their own technical staff should be used to complete a full investigation and analysis of the likely significant environmental effects of a proposed development. This information should already be incorporated and factored into a well-prepared EIS.

5.6 In the event of weaknesses or deficiencies in the data/information submitted being identified, the applicant should be requested to submit the necessary information, e.g. adequate water or air quality monitoring may not have been carried out or the water or air quality testing carried out may not be that recommended for the particular purpose. Any deficiencies in the data/information should be identified as early as possible in the process in order to avoid undue delay. Section 172(1D) refers to situations where the EIS submitted is considered to be deficient and section 172(1E) refers to situations where the competent authority requires further information in order to carry out an EIA.

5.7 The EIA Report should contain commentary on the adequacy of the EIS submitted by the applicant, augmented where relevant by any additional information, data or assessment submitted subsequent to the lodgement of the application in the context of the requirements of the Planning Act/Planning Regulations. In any case where a written opinion has been given of the information to be contained in the EIS, the EIA Report should indicate the extent to which this has been complied with and should also contain a conclusion on the adequacy of the information provided.

5.8 The EIA should **identify** the likely significant direct and indirect effects of the proposed development on the environment. In any well prepared EIS these effects should have already been clearly identified. Observations submitted may also contribute to the identification of effects. The effects, as identified, should be referred to in the EIA Report.

5.9 The likely effects are dependent on the nature of the project proposed and the environmental conditions pertaining. The environmental sensitivity of the location may be of particular significance. The EPA publication Advice Notes on Current Practice (in the preparation of Environmental Impact Statements) published in September 2003 gives useful guidance on the typical environmental effects likely to occur from the various project types listed.

5.10 The EIA Report should **describe** the likely significant effects identified, including a description of any interaction between the factors listed in section 171A. The effects on the environment should be described without reference to any detailed mitigating measures which may be required and imposed as conditions in order to reduce or avoid such effects.

5.11 The likely significant effects on the environment in the context of the factors listed in section 171A should be assessed and such assessment included in the EIA Report. The assessment should have regard to any mitigating measures which might be proposed in order to avoid, reduce or if possible offset any major adverse effects. The impact of residual effects should be assessed. The assessment to be carried out should include an evaluation and commentary on the significance of the likely effects of the development on the environment which have been identified and described.

5.12 Where mitigation measures are proposed to be included in any permission/ consent, conditions requiring such measures should comply with the criteria for conditions in planning permissions as referred to in the Development Management Guidelines for Planning Authorities (June 2007). This may require strengthening/editing of mitigating measures contained in the EIS submitted on behalf on the applicant. Any significant environmental impacts likely to arise from the mitigation measures should be assessed and referred to in the report, e.g. noise mitigation measures may have adverse visual impacts. Conditions should not be used to obtain information required to assess the significant effects of the development.

5.13 The EIA to be carried out should include an assessment of beneficial effects on the environment in addition to adverse effects, e.g. an effluent treatment plant may have significant beneficial effects in terms of water quality but may also have some adverse effects such as traffic, noise or odour generation.

5.14 The EIA should be carried out and reported on in an objective, scientific and impartial manner. It should be robust and where possible it should be based on standard descriptive methods and replicable prediction techniques. **All** significant impacts should be referred to and the **timescale** of such impacts should be identified, e.g. short, medium, long term, temporary, permanent, continuous, or intermittent. The **magnitude** of impacts should also be evaluated, e.g. the impact on water or air quality in terms of internationally/nationally adopted/ recommended standards, the geographical extent of noise pollution likely to arise, or the number of people likely to be affected. The probability of impacts occurring and the consequences of such impacts should be referred to.

5.15 The significance of effects on the environment is determined by a combination of objective/scientific and subjective/social concerns. Objective/scientific criteria are not always available in relation to some of the factors which may be affected, e.g. effects on landscape or cultural heritage. In assessing the significance of effects on factors where scientific criteria are not available, it is desirable that the effects are considered and assessed in an objective professional manner informed by societal value systems rather than the personal subjective view of the person carrying out the assessment. A societal value system response can be gauged for example, by whether or not the item or factor affected is listed as being of particular importance in the development plan for the area or in any inventory of sites, areas or items of importance. Planning authorities and the Board will also be aware of the suite of guidelines issued in relation to various aspects of development management such as *Framework and Principles for the Protection of Archaeological Heritage* and *Architectural Heritage Protection Guidelines for Planning Authorities*. Adherence to such guidelines will result in a more objective approach to the required assessment and evaluation.

5.16 The effects on the environment to be assessed are the full effects of the proposed development rather than merely the effects of the works to be carried out. Direct, indirect and cumulative effects should be evaluated. The assessment should also take account of the different stages of the development including construction, operation and decommissioning where relevant.

5.17 Planning authorities and the Board have significant expertise and skills available within their existing staff. They have considerable experience in carrying out environmental impact and similar assessments. Normally therefore the requirement to carry out an EIA will not give rise to a requirement for the use of additional consultancy services by the planning authorities and the Board. In the event of specific projects giving rise to a need for particular specialist expertise, this should be obtained in the normal manner.

5.18 In carrying out its evaluation and assessment it is reasonable for the competent authority to have regard to the qualifications and expertise of the persons involved in preparing the EIS and in making submissions in relation to the environmental effects of the development. However, conclusions of the assessment carried out by the consultants who prepared the EIS may not be accepted without analysis. In the event of the competent authority's own expertise conflicting with that in the EIS, or there being conflicting expert views or opinions contained in the submissions, it will be necessary for the competent authority to resolve the issue and form its own view on the likely significant effects. This may, on occasion, require the engagement of appropriate specialist consultancy services. The official with responsibility for assessing the significant effects of the development on the environment, on behalf of the competent

authority, may also consider it necessary to obtain additional reports and assessments from other departments. This may be necessary in order to give proper consideration to submissions made and/or to reconcile conflicting expert views or opinions on specific topics.

5.19 In identifying, describing and assessing the likely significant effects of a development on the environment, the EIA Report may refer to the EIS and any additional information submitted by the applicant and to submissions made in the course of considering the application. It is not necessary or desirable to repeat in detail the contents of the EIS or other documentation submitted.

5.20 The EIA Report should clearly indicate that the EIS and all submissions/ observations received which are relevant to impacts on the environment have been considered and taken into account in the EIA. Submissions considered would of course include any submissions made in relation to transboundary effects in accordance with the Planning Regulations giving effect to Article 7 of the EIA Directive. (Section 172(1G) of the Planning Act is relevant in respect of the documentation etc. which the competent authority must consider in its assessment).

5.21 Some application types, where both planning permission/consent and a licence/ authorisation from the EPA under the provisions of the Environmental Protection Agency Act, 1992, the Waste Management Act, 1996 or the Waste Water Discharge (Authorisation) Regulations 2007 are required, give rise to particular considerations in terms of EIA. In cases where there is a legal restriction on the planning authority or the Board on imposing conditions for controlling emissions from the licensable activity or controlling the waste water discharge where authorisation from the EPA is required under the 2007 Regulations, detailed consultations between the relevant planning authority/the Board and the EPA will be required prior to any planning permission/consent being granted. The purpose of such consultation is to ensure that a comprehensive, holistic assessment of likely effects on the environment is carried out prior to the determination of the application by the planning authority or the Board and the determination of the licence application by the EPA.

5.22 The European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012 and the European Union (Environmental Impact Assessment) (Waste) Regulations 2012 (S.I. Nos. 282 and 283 of 2012), which came into operation on 30 September 2012, place an onus on the EPA to carry out an EIA as respects the matters that come within the functions of the Agency prior to determining relevant applications for licences. The Regulations in question require the Agency to consult with the relevant planning authority or the Board as appropriate in such cases and require the

relevant authority to furnish observations to the Agency within 4 weeks of such being requested (new sections 173A and 173B of the Planning Act). The Regulations also provide for the competent authorities and the Agency entering into consultations in relation to any environmental impacts of the proposed development comprising or for the purposes of the activity to which the licence application relates. A licence may not be granted for any such activity prior to consent being granted by the competent authority of the Planning Act. Planning authorities and the Board should co-operate with the Agency to ensure the efficient and effective operation of these Regulations. A detailed guidance Circular Letter on the provisions of the new Regulations, Circular Letter PHFPD 06/12, issued on 27 August 2012 and process maps in relation to the process of consultation/interaction between the planning authorities/the Board and the EPA have now been prepared, in consultation with planning authorities and the Board. The Circular and the process maps are attached at Appendix 6.

5.23 An EIA must identify, describe and assess the effects of a proposed development on various factors, including flora and fauna. This can, on occasion, result in an overlap with requirements contained in Part XAB of the Planning Act (which replaced and updated the transposition of Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora contained in the 1997 European Communities (Natural Habitats) Regulations). The provisions of Part XAB set out the new legislative regime for implementing the requirements of the Habitats Directive in so far as consents under the Planning Act are concerned. Where EIA under Part X, and appropriate assessment under Part XAB, are both required, separate assessments should be carried out by the competent authority prior to any decision to grant permission/consent. The different assessments should be clearly identified in the relevant reports. Unlike the EIA process, the conclusions of an appropriate assessment may be determinate as to whether or not planning permission/consent can be granted.

Appendices

Appendix 1

Appendix 1

Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance

Official Journal L 026 , 28/01/2012 P. 0001 - 0021

Directive 2011/92/EU of the European Parliament and of the Council

of 13 December 2011

on the assessment of the effects of certain public and private projects on the environment

(codification)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [3] has been substantially amended several times [4]. In the interests of clarity and rationality the said Directive should be codified.

(2) Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.

(3) The principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment. The Member States may lay down stricter rules to protect the environment.

(4) In addition, it is necessary to achieve one of the objectives of the Union in the sphere of the protection of the environment and the quality of life.

(5) The environmental legislation of the Union includes provisions enabling 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.

(6) General principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.

(7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.

(8) Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment.

(9) Projects of other types may not have significant effects on the environment in every case and those projects should be assessed where the Member States consider that they are likely to have significant effects on the environment.

(10) (Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.

(11) When setting such thresholds or criteria or examining projects on a case-by-case basis, for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive. In accordance with the subsidiarity principle, the Member States are in the best position to apply those criteria in specific instances.

(12) For projects which are subject to assessment, a certain minimal amount of information should be supplied, concerning the project and its effects.

(13) It is appropriate to lay down a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment. Member States, in the framework of this procedure, may require the developer to provide, inter alia, alternatives for the projects for which it intends to submit an application.

(14) The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure

maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.

(15) It is desirable to lay down strengthened provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level. The European Community signed the Convention on Environmental Impact Assessment in a Transboundary Context on 25 February 1991, and ratified it on 24 June 1997.

(16) 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.

(17) 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.

(18) The European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 25 June 1998 and ratified it on 17 February 2005.

(19) Among the objectives of the Aarhus 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.

(20) Article 6 of the Aarhus 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.

(21) Article 9(2) and (4) of the Aarhus 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 that Convention.

(22) However, this Directive should not be applied 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.

(23) Furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission and to the public concerned.

(24) Since the objectives of this Directive 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 Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in

Article 5 of the Treaty on European Union. 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 those objectives.

(25) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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, the following definitions shall apply:
   (a) "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;
   (b) "developer" means the applicant for authorisation for a private project or the public authority which initiates a project;
   (c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;
   (d) "public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
   (e) "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;
   (f) "competent authority or authorities" means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.
3. 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 those purposes.
4. 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. Those 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.
3. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control [5].
4. 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 that 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 decision granting exemption 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 European Parliament and 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 12, the direct and indirect effects of a project on the following factors:

(a) human beings, fauna and flora;

(b) soil, water, air, climate and the landscape;

(c) material assets and the cultural heritage;

(d) the interaction between the factors referred to in points (a), (b) and (c).

Article 4

1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.
2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

   (a) a case-by-case examination;

   or

   (b) thresholds or criteria set by the Member State.

   Member States may decide to apply both procedures referred to in points (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, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 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) a description of the project comprising information on the site, design and size of the project;

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

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

(d) 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;

(e) a non-technical summary of the information referred to in points (a) to (d).

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, 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 that 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 by 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 at which, and the 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 [6], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive 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.

   The Member State in whose territory the project is intended to be carried out 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 points (a) and (b) of Article 6(3).

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 the authorities referred to in Article 6(1) 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 shall 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:
   (a) the content of the decision and any conditions attached thereto;
   (b) 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;
   (c) 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 laws, 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 11

1. 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.

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

3. 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 that 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 point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. 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.

5. 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.

Article 12

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. On the basis of that exchange of information, the Commission shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.

Article 13

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 14

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 15

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 16

This Directive is addressed to the Member States.

Done at Strasbourg, 13 December 2011.

For the European Parliament

The President

J. Buzek

For the Council

The President

M. Szpunar

[1] OJ C 248, 25.8.2011, p. 154.

[2] Position of the European Parliament of 13 September 2011 (not yet published in the Official Journal) and decision of the Council of 15 November 2011.

[3] OJ L 175, 5.7.1985, p. 40.

[4] See Annex VI, Part A.

[5] OJ L 24, 29.1.2008, p. 8.

[6] OJ L 41, 14.2.2003, p. 26.

ANNEX I

PROJECTS REFERRED TO IN 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. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
   (b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors [1] (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:
      (i) for the production or enrichment of nuclear fuel;
      (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;
      (iii) for the final disposal of irradiated nuclear fuel;
      (iv) solely for the final disposal of radioactive waste;
      (v) 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. (a) Integrated works for the initial smelting of cast iron and steel;
   (b) 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 20000 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, utilisation 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:
   (a) for the production of basic organic chemicals;
   (b) for the production of basic inorganic chemicals;
   (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
   (d) for the production of basic plant health products and of biocides;
   (e) for the production of basic pharmaceutical products using a chemical or biological process;

(f) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports [2] with a basic runway length of 2100 m or more;

(a) Construction of motorways and express roads [3];

(b) 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 10 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 1350 tonnes;

(a) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste [4] under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC 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 that 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 2000 million cubic metres/year and where the amount of water transferred exceeds 5 % of that flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment [5].

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500000 cubic metres/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 with a diameter of more than 800 mm and a length of more than 40 km:

(a) for the transport of gas, oil, chemicals;

(b) for the transport of carbon dioxide (CO2) streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than:

(a) 85000 places for broilers, 60000 places for hens;

(b) 3000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

18. Industrial plants for the production of:

(a) pulp from timber or similar fibrous materials;

(b) 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 200000 tonnes or more.

22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide [6].

23. Installations for the capture of CO2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO2 is 1,5 megatonnes or more.

24. 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.

[1] Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

[2] For the purposes of this Directive, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

[3] For the purposes of this Directive, "express road" means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

[4] OJ L 312, 22.11.2008, p. 3.

[5] OJ L 135, 30.5.1991, p. 40.

[6] OJ L 140, 5.6.2009, p. 114.

ANNEX II

PROJECTS REFERRED TO IN 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:
      (i) geothermal drilling;
      (ii) drilling for the storage of nuclear waste material;
      (iii) 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);

(j) Installations for the capture of CO2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

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 pre-treatment (operations such as washing, bleaching, mercerisation) 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. NFRASTRUCTURE 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 transhipment 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, canalisation 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 and pipelines for the transport of CO2 streams for the purposes of geological storage (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 motorised 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 campsites and caravan sites;

(e) Theme parks.

13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);

(b) 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:

(a) the size of the project;

(b) the cumulation with other projects;

(c) the use of natural resources;

(d) the production of waste;

(e) pollution and nuisances;

(f) 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:

(a) the existing land use;

(b) the relative abundance, quality and regenerative capacity of natural resources in the area;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

(i) wetlands;

(ii) coastal zones;

(iii) mountain and forest areas;

(iv) nature reserves and parks;

(v) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds [1] and to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [2];

(vi) areas in which the environmental quality standards laid down in Union legislation have already been exceeded;

(vii) densely populated areas;

(viii) 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 in points 1 and 2, and having regard in particular to:

(a) the extent of the impact (geographical area and size of the affected population);

(b) the transfrontier nature of the impact;

(c) the magnitude and complexity of the impact;
(d) the probability of the impact;
(e) the duration, frequency and reversibility of the impact.

[1] OJ L 20, 26.1.2010, p. 7.
[2] OJ L 206, 22.7.1992, p. 7.

ANNEX IV
INFORMATION REFERRED TO IN ARTICLE 5(1)

1. A description of the project, including in particular:
   (a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;
   (b) a description of the main characteristics of the production processes, for instance, the nature and quantity of the materials used;
   (c) 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 interrelationship between the above factors.
4. A description [1] of the likely significant effects of the proposed project on the environment resulting from:
   (a) the existence of the project;
   (b) the use of natural resources;
   (c) the emission of pollutants, the creation of nuisances and the elimination of waste.
5. The description by the developer of the forecasting methods used to assess the effects on the environment referred to in point 4.
6. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
7. A non-technical summary of the information provided under headings 1 to 6.
8. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

[1] 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.

ANNEX V

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 14)

Council Directive 85/337/EEC (OJ L 175, 5.7.1985, p. 40)	
Council Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5)	
Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17)	Article 3 only
Directive 2009/31/EC of the European Parliament and of the Council (OJ L 140, 5.6.2009, p. 114)	Article 31 only

PART B

List of time limits for transposition into national law

(referred to in Article 14)

Directive	Time limit for transposition
85/337/EEC	3 July 1988
97/11/EC	14 March 1999
2003/35/EC	25 June 2005
2009/31/EC	25 June 2011

ANNEX VI

Correlation table

Directive 85/337/EEC	This Directive
Article 1(1)	Article 1(1)
Article 1(2), first subparagraph	Article 1(2), introductory wording
Article 1(2), second subparagraph, introductory wording	Article 1(2)(a), introductory wording
Article 1(2), second subparagraph, first indent	Article 1(2), point (a), first indent
Article 1(2), second subparagraph, second indent	Article 1(2), point (a), second indent
Article 1(2), third subparagraph	Article 1(2), point (b)
Article 1(2), fourth subparagraph	Article 1(2), point (c)
Article 1(2), fifth subparagraph	Article 1(2), point (d)
Article 1(2), sixth subparagraph	Article 1(2), point (e)
Article 1(3)	Article 1(2), point (f)
Article 1(4)	Article 1(3)
Article 1(5)	Article 1(4)
Article 2(1)	Article 2(1)
Article 2(2)	Article 2(2)
Article 2(2a)	Article 2(3)
Article 2(3)	Article 2(4)
Article 3, introductory wording	Article 3, introductory wording
Article 3, first indent	Article 3, point (a)
Article 3, second indent	Article 3, point (b)
Article 3, third indent	Article 3, point (c)
Article 3, fourth indent	Article 3, point (d)
Article 4	Article 4
Article 5(1)	Article 5(1)
Article 5(2)	Article 5(2)
Article 5(3), introductory wording	Article 5(3), introductory wording
Article 5(3), first indent	Article 5(3), point (a)
Article 5(3), second indent	Article 5(3), point (b)
Article 5(3), third indent	Article 5(3), point (c)
Article 5(3), fourth indent	Article 5(3), point (d)
Article 5(3), fifth indent	Article 5(3), point (e)
Article 5(4)	Article 5(4)
Article 6	Article 6
Article 7(1), introductory wording	Article 7(1), first subparagraph, introductory wording

Article 7(1), point (a)	Article 7(1), first subparagraph, point (a)
Article 7(1), point (b)	Article 7(1), first subparagraph, point (b)
Article 7(1), final wording	Article 7(1), second subparagraph
Article 7(2)-7(5)	Article 7(2)-7(5)
Article 8	Article 8
Article 9(1), introductory wording	Article 9, introductory wording
Article 9(1), first indent	Article 9(1), point (a)
Article 9(1), second indent	Article 9(1), point (b)
Article 9(1), third indent	Article 9(1), point (c)
Article 9(2)	Article 9(2)
Article 10	Article 10
Article 10a, first paragraph	Article 11(1)
Article 10a, second paragraph	Article 11(2)
Article 10a, third paragraph	Article 11(3)
Article 10a, fourth and fifth paragraphs	Article 11(4), first and second subparagraphs
Article 10a, sixth paragraph	Article 11(5)
Article 11(1)	Article 12(1)
Article 11(2)	Article 12(2)
Article 11(3)	—
Article 11(4)	Article 12(3)
Article 12(1)	—
Article 12(2)	Article 13
—	Article 14
—	Article 15
Article 14	Article 16
Annex I, point 1	Annex I, point 1
Annex I, point 2, first indent	Annex I, point 2(a)
Annex I, point 2, second indent	Annex I, point 2(b)
Annex I, point 3(a)	Annex I, point 3(a)
Annex I, point 3(b), introductory wording	Annex I, point 3(b), introductory wording
Annex I, point 3(b), first indent	Annex I, point 3(b)(i)
Annex I, point 3(b), second indent	Annex I, point 3(b)(ii)
Annex I, point 3(b), third indent	Annex I, point 3(b)(iii)
Annex I, point 3(b), fourth indent	Annex I, point 3(b)(iv)
Annex I, point 3(b), fifth indent	Annex I, point 3(b)(v)
Annex I, point 4, first indent	Annex I, point 4(a)
Annex I, point 4, second indent	Annex I, point 4(b)
Annex I, point 5	Annex I, point 5

Annex I, point 6, introductory wording | Annex I, point 6, introductory wording |

Annex I, point 6(i) | Annex I, point 6(a) |

Annex I, point 6(ii) | Annex I, point 6(b) |

Annex I, point 6(iii) | Annex I, point 6(c) |

Annex I, point 6(iv) | Annex I, point 6(d) |

Annex I, point 6(v) | Annex I, point 6(e) |

Annex I, point 6(vi) | Annex I, point 6(f) |

Annex I, points 7-15 | Annex I, points 7-15 |

Annex I, point 16, introductory wording | Annex I, point 16, introductory wording |

Annex I, point 16, first indent | Annex I, point 16(a) |

Annex I, point 16, second indent | Annex I, point 16(b) |

Annex I, points 17-21 | Annex I, points 17-21 |

Annex I, point 22 | Annex I, point 24 |

Annex I, point 23 | Annex I, point 22 |

Annex I, point 24 | Annex I, point 23 |

Annex II, point 1 | Annex II, point 1 |

Annex II, point 2(a), (b) and (c) | Annex II, point 2(a), (b) and (c) |

Annex II, point 2(d), introductory wording | Annex II, point 2(d), introductory wording |

Annex II, point 2(d), first indent | Annex II, point 2(d)(i) |

Annex II, point 2(d), second indent | Annex II, point 2(d)(ii) |

Annex II, point 2(d), third indent | Annex II, point 2(d)(iii) |

Annex II, point 2(d), final wording | Annex II, point 2(d), final wording |

Annex II, point 2(e) | Annex II, point 2(e) |

Annex II, points 3-12 | Annex II, points 3-12 |

Annex II, point 13, first indent | Annex II, point 13(a) |

Annex II, point 13, second indent | Annex II, point 13(b) |

Annex III, point 1, introductory wording | Annex III, point 1, introductory wording |

Annex III, point 1, first indent | Annex III, point 1(a) |

Annex III, point 1, second indent | Annex III, point 1(b) |

Annex III, point 1, third indent | Annex III, point 1(c) |

Annex III, point 1, fourth indent | Annex III, point 1(d) |

Annex III, point 1, fifth indent | Annex III, point 1(e) |

Annex III, point 1, sixth indent | Annex III, point 1(f) |

Annex III, point 2, introductory wording | Annex III, point 2, introductory wording |

Annex III, point 2, first indent | Annex III, point 2(a) |

Annex III, point 2, second indent | Annex III, point 2(b) |

Annex III, point 2, third indent, introductory wording | Annex III, point 2(c), introductory wording |

Annex III, point 2, third indent, point (a) | Annex III, point 2(c)(i) |

Annex III, point 2, third indent, point (b) | Annex III, point 2(c)(ii) |

Annex III, point 2, third indent, point (c) | Annex III, point 2(c)(iii) |

Annex III, point 2, third indent, point (d) | Annex III, point 2(c)(iv) |

Annex III, point 2, third indent, point (e) | Annex III, point 2(c)(v) |

Annex III, point 2, third indent, point (f) | Annex III, point 2(c)(vi) |

Annex III, point 2, third indent, point (g) | Annex III, point 2(c)(vii) |

Annex III, point 2, third indent, point (h) | Annex III, point 2(c)(viii) |

Annex III, point 3, introductory wording | Annex III, point 3, introductory wording |

Annex III, point 3, first indent | Annex III, point 3(a) |

Annex III, point 3, second indent | Annex III, point 3(b) |

Annex III, point 3, third indent | Annex III, point 3(c) |

Annex III, point 3, fourth indent | Annex III, point 3(d) |

Annex III, point 3, fifth indent | Annex III, point 3(e) |

Annex IV, point 1, introductory wording | Annex IV, point 1, introductory wording |

Annex IV, point 1, first indent | Annex IV, point 1(a) |

Annex IV, point 1, second indent | Annex IV, point 1(b) |

Annex IV, point 1, third indent | Annex IV, point 1(c) |

Annex IV, points 2 and 3 | Annex IV, points 2 and 3 |

Annex IV, point 4, introductory wording | Annex IV, point 4, first subparagraph, introductory wording |

Annex IV, point 4, first indent | Annex IV, point 4, first subparagraph, point (a) |

Annex IV, point 4, second indent | Annex IV, point 4, first subparagraph, point (b) |

Annex IV, point 4, third indent | Annex IV, point 4, first subparagraph, point (c) |

Annex IV, point 4, final wording | Annex IV, point 5 |

Annex IV, point 5 | Annex IV, point 6 |

Annex IV, point 6 | Annex IV, point 7 |

Annex IV, point 7 | Annex IV, point 8 |

— | Annex V |

— | Annex VI |

Appendix 2

Appendix 2

Section 172 of the Planning and Development Act 2000, as amended

"Section 172.—

(1) An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for—

(a) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limit specified in that Schedule, and

(b) proposed development] of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment.

(1A) In subsection (1)—

(a) 'proposed development' means—

(i) a proposal to carry out one of the following:

(I) development to which Part III applies;

(II) development that may be carried out under Part IX;

(III) development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;

(IV) development on the foreshore under Part XV;

(V) development under section 43 of the Act of 2001;

(VI) development under section 51 of the Roads Act 1993; and

(ii) notwithstanding that development has been carried out, development in relation to which an application for substitute consent is required under Part XA;

(b) 'consent for proposed development' means, as appropriate—

(i) grant of permission;

(ii) a decision of the Board to grant permission on application or on appeal;

(iii) consent to development under Part IX;

(iv) consent to development that may be carried out by a local authority under Part X or development that may be carried out under Part XI;

(v) consent to development on the foreshore under Part XV;

(vi) consent to development under section 43 of the Act of 2001;

(vii) consent to development under section 51 of the Roads Act 1993; or

(viii) substitute consent under Part XA.

(1B) An applicant for consent to carry out a proposed development referred to in subsection (1)(a) shall furnish an environmental impact statement to the planning authority or the Board, as the case may be, in accordance with the permission regulations.

(1C) Where the planning authority or the Board receives an application for consent for proposed development referred to in paragraph (b) of subsection (1) in relation to which the authority or the Board has made a determination referred to in that paragraph, and the application is not accompanied by an environmental impact statement, the planning authority or Board, as the case may be, shall require the applicant to submit an environmental impact statement and where the environmental impact statement is not submitted within the period specified, or any further period as may be specified by the planning authority or the Board, the application for consent for the proposed development shall be deemed to be withdrawn.

(1D) The planning authority or the Board, as the case may be, shall consider whether an environmental impact statement submitted under this section identifies and describes adequately the direct and indirect effects on the environment of the proposed development and, where it considers that the environmental impact statement does not identify or adequately describe such effects, the planning authority or the Board shall require the applicant for consent to furnish, within a specified period, such further information as the planning authority or the Board considers necessary to remedy such defect.

(1E) In addition to any requirement arising under subsection (1D), the planning authority or the Board, as the case may be, shall require an

applicant for consent to furnish, within a specified period, any further information that the planning authority or the Board considers necessary to enable it to carry out an environmental impact assessment under this section.

(1F) Where information required by the planning authority or the Board under subsection (1D) or subsection (1E) is not furnished by the applicant for consent within the period specified, or any further period as may be specified by the planning authority or the Board, the application for consent for the proposed development shall be deemed to be withdrawn.

(1G) In carrying out an environmental impact assessment under this section the planning authority or the Board, as the case may be, shall consider—

(a) the environmental impact statement;

(b) any further information furnished to the planning authority or the Board pursuant to subsections (1D) or (1E);

(c) any submissions or observations validly made in relation to the environmental effects of the proposed development;

(d) the views, if any, provided by any other Member State under section 174 or Regulations made under that section.

(1H) In carrying out an environmental impact assessment under this section the planning authority or the Board, as the case may be, may have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisers.

(1I) Where the planning authority or the Board, as the case may be, decides to grant consent for the proposed development, it may attach such conditions to the grant as it considers necessary, to avoid, reduce and, if possible, offset the major adverse effects on the environment (if any) of the proposed development.

(1J) When the planning authority or the Board, as the case may be, has decided whether to grant or to refuse consent for the proposed development, it shall inform the applicant for consent and the public of the decision and shall make the following information available to the applicant for consent and the public:

(a) the content of the decision and any conditions attached thereto;

(b) an evaluation of the direct and indirect effects of the proposed development on the matters set out in section 171A;

(c) having examined any submission or observation validly made,

(i) the main reasons and considerations on which the decision is based, and

(ii) the main reasons and considerations for the attachment of any conditions, including reasons and considerations arising from or related to submissions or observations made by a member of the public;

(d) where relevant, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects;

(e) any report referred to in subsection (1H);

(f) information for the public on the procedures available to review the substantive and procedural legality of the decision, and

(g) the views, if any, furnished by other Member States of the European Union pursuant to section 174.

(2) In addition to the matters set out in section 33(2), the Minister may make permission regulations in relation to the submission of planning applications which are to be accompanied by environmental impact statements.

(3) (a) At the request of an applicant or of a person intending to apply for permission, the Board may, having afforded the planning authority concerned an opportunity to furnish observations on the request, and where the Board is satisfied that exceptional circumstances so warrant, grant in respect of a proposed development an exemption from a requirement of or under regulations under this section to prepare an environmental impact statement, except that no exemption may be granted in respect of a proposed development if another Member State of the European Communities or other state party to the Trans boundary Convention, having been informed about the proposed development and its likely effects on the environment in that State, has indicated that it intends to furnish views on those effects.

(b) The Board shall, in granting an exemption under paragraph (a), —

(i) consider whether the effects, if any, of the proposed development on the environment should be assessed in some other form, and

(ii) make available to members of the public the information relating to the exemption decision referred to under paragraph (a), the reasons for granting such exemption and the

information obtained under any other form of assessment referred to in subparagraph (i),

and the Board may apply such requirements regarding these matters in relation to the application for permission as it considers necessary or appropriate.

(c) The Board shall, as soon as may be, notify the planning authority concerned of the Board's decision on any request made under paragraph (a), and of any requirements applied under paragraph (b).

(d) Notice of any exemption granted under paragraph (a), of the reasons for granting the exemption, and of any requirements applied under paragraph (b) shall, as soon as may be—

(i) be published in Iris Oifigiúil and in at least one daily newspaper published in the State,

(ii) be given, together with a copy of the information, if any, made available to the members of the public in accordance with paragraph (b), to the Commission of the European Communities.

(4) (a) A person who makes a request to the Board for an exemption under subsection (3) shall, as soon as may be, inform the planning authority concerned of the making of the request and the date on which it was made.

(b) Notwithstanding subsection (8) of section 34, the period for making a decision referred to in that subsection shall not, in a case in which a request is made to the Board under subsection (3) of this section, include the period beginning on the day of the making of the request and ending on the day of receipt by the planning authority concerned of notice of the Board's decision on the request.

(5) In addition to the matters provided for under Part VI, Chapter III, the Minister may prescribe additional requirements in relation to the submission of appeals to the Board which are to be accompanied by environmental impact statements."

Appendix 3

Appendix 3

Section 171A of the Planning and Development Act 2000

"Section 171A.—

(1) In this Part—

'environmental impact assessment' means an assessment, which includes an examination, analysis and evaluation, carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following:

(a) human beings, flora and fauna,

(b) soil, water, air, climate and the landscape,

(c) material assets and the cultural heritage, and

(d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

(2) Subject to this Part, a word or expression that is used in the Part and that is also used in the Environmental Impact Assessment Directive has, unless the context otherwise requires, the same meaning in this Part as it has in the Environmental Impact Assessment Directive."

Appendix 4

Appendix 4

Glossary of Terms

Competent authority means the body i.e. planning authority or An Bord Pleanála to which an application for proposed development, as defined in subsection 172 (1A)(a) of the Planning and Development Act, 2000, as amended, is submitted.

Consent means the relevant permission, approval or other authorisation which may be given by the competent authority for development under the various headings listed in subsection 172(1A)(b) of the Planning and Development Act, 2000, as amended.

Decision-maker means the legal entity or person legally entitled to grant or refuse consent as defined above.

EIA means an environmental impact assessment carried out by the competent authority unless the context implies otherwise.

EIS means an Environmental impact Statement as defined in the Planning and Development Act, 2000, as amended, i.e. a statement of the effects, if any, which proposed development, if carried out, would have on the environment and shall include the information specified in Annex IX of Council Directive No. 2011/92/EU. The legislation requires that such a statement must be submitted by the developer in relevant cases.

EPA means the Environmental Protection Agency.

Appendix 5

Appendix 5

Template of decision-maker's written statement on EIA

It is noted that the environmental impact assessment carried out by the (Senior Planner) (Inspector) and reported on in the report dated _____ has been carried out giving full consideration to the environmental impact statement submitted with the application, the additional information submitted on _____ pursuant to a request under subsection 172 (1D or 1E) of the Planning and Development Act, 2000, as amended, all submissions and observations validly made in relation to the environmental effects of the development (and the views provided by the Planning Service of Northern Ireland – under section 174 of the Planning and Development Act 2000, as amended).

It is considered that the report dated _____(generally) contains a fair and reasonable assessment of the likely significant effects of the development on the environment. The assessment as reported is adopted as the assessment of (name of planning authority or the Board), (with the exception of the conclusion that the development would have a significant long term adverse effect due to its visual impact on the landscape. Having regard to the character of the landscape in the area, which is indicated to be of low landscape value with low sensitivity in the landscape character assessment contained in the current development plan, to the fact that there are other structures of similar scale and height located in the general area and to the landscaping proposals submitted, it is considered that any negative impact on the landscape would be only moderate in the short term and slight to negligible in the long term).

Appendix 6

Appendix 6

Circular Letter: PHFPD 06/12

27 August 2012

To: Directors of Planning

Borough and Town Clerks

An Bord Pleanála

EU (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012 (S.I. No. 282 of 2012) and EU (Environmental Impact Assessment) (Waste) Regulations 2012 (S.I. No. 283 of 2012)

Context

The Court of Justice of the European Union (CJEU) delivered its judgement in case C50/09 relating to Ireland's implementation of the Environmental Impact Assessment (EIA) Directive (2011/92/EU) on 3 March 2011. Irish legislation was found, *inter alia*, not to be fully in conformity with the EIA Directive with respect to projects involving both a land use consent (planning) and pollution control consent (licence). Specifically, the Court found that in a case where a project requiring EIA required both planning permission and a licence from the Agency, the fact that Irish legislation did not prevent the Agency from making a licensing decision before the planning permission application was decided,

and therefore before the EIA was completed, meant that part of the overall consent for the project (i.e. the licence) was being decided without an EIA being first carried out, contrary to Articles 2 and 4 of the EIA Directive.

In order to comply with the Court ruling it was necessary to make amendments to the Environmental Protection Agency Act, 1992 (the EPA Act), the Waste Management Act, 1996 (the Waste Management Act) and the Planning and Development Act, 2000 (the Planning Act) to, among other things, close the gap highlighted in paragraph 81 of the C50/09 judgement which states that *"it is not inconceivable that the Agency, as the authority responsible for licensing a project as regards pollution aspects, may make its decision without an environmental impact assessment being carried out in accordance with Article 2 to 4 of Directive 85/337".*

The above Regulations, which make the amendments referred to in the previous paragraph, have been signed by the Minister and will come into operation on 30 September 2012. Copies of the Regulations are attached.

Overview of Regulations

The European Union (Environmental Impact Assessment) (Integrated Pollution Prevention and Control) Regulations 2012 (S.I. No. 282 of 2012) amend the EPA Act and the Planning Act: the Planning Act is amended by the insertion of a new section 173A (see Regulation 8). The European Union (Environmental Impact Assessment) (Waste) Regulations 2012 (S.I. No. 283 of 2012) amend the Waste Management Act and the Planning Act: the

Planning Act is amended by the insertion of a new section 173B (see Regulation 10).

The principal amendments made are those to the EPA Act and the Waste Management Act.

Under the amended provisions the Agency may not in the future decide on an application for an Integrated Pollution Prevention and Control (IPPC) licence or a waste licence without ensuring that an EIA has been carried out if required by the EIA Directive. The Agency's responsibility in relation to EIA is confined to the matters coming within the remit of the Agency (i.e. the pollution control aspects): the Agency is required to ensure that an EIA has been carried out in relation to these issues. The Agency may satisfy this requirement in whole or in part by means of consultation with, or the submission of observations to, the planning authority or the Board as part of the development consent process (see new subsection 87(1G) of the EPA Act and new subsection 42(1G) of the Waste Management Act). The Agency will also be statutorily required in future to respond to planning authorities/the Board when notified about any proposed development requiring EIA which is associated with an activity requiring a licence, and to have any appropriate input into the EIA being carried out by the planning authority/Board.

In future, the Agency will not accept a licence application unless it is accompanied by:

- confirmation in writing from the planning authority/Board that an application for permission is currently under consideration together with a copy of the related EIS, if one is required, or confirmation in writing from the planning authority/Board that an EIA is not required, or
- a copy of the development consent together with the related EIS, if one was required, or confirmation in writing from the planning authority/Board that an EIA was not required.

This means that in a case where EIA is required, the Agency will not in future consider such a licence application unless the development consent process, including EIA, has been concluded or at least the application for the consent lodged with the planning authority/Board. Where consideration of the development consent application is ongoing at the time the licence application is submitted, the Agency may not make its decision until the development consent process, including EIA, has been completed.

The Agency has also been given the power to call for an EIS in the (unlikely) case of a project requiring EIA under the Directive which does not require any development consent.

The Agency's responsibility in relation to EIA and activities requiring an IPPC licence are set out in the new subsection (2A) inserted into section 83 of the EPA Act, and the new arrangements for processing an IPPC licence

application, in a case where EIA is required, are set out in the new subsections (1A) to (1H) inserted into section 87 of that Act.

The Agency's responsibility in relation to EIA and activities requiring a waste licence are set out in the new subsection (2A) inserted into section 40 of the Waste Management Act, and the new arrangements for processing a waste licence application, in a case where EIA is required, are set out in the new subsections (1A) to (1H) inserted into section 42 of that Act.

The amendments to the Planning Act – the new section 173A (re IPPC licences) and section 173B (re waste licences) – are relatively minor and consequential to the above, principally providing that:

- Where the planning authority or the Board are considering an application for permission for development comprising or for the purposes of an activity requiring a licence and are asked by the applicant to give written confirmation of that matter, they must do so as soon as possible (section 173A(2) and section 173B(2)).

- In giving this confirmation, in a case where the development does not require EIA the planning authority/Board must also include confirmation that the proposed development does not require EIA under the Planning Act (section 173A(3) and section 173B(3)).

- When consulted by the Agency in relation to a licence application, in a case where permission, as part of which EIA was carried out, for the associated development has been given prior to the making of the licence application, and asked to confirm that the activity in question is permitted by the permission given and to forward all documentation in relation to the EIA[1] and any observations it has on the licence application, the planning authority or the Board must respond within the period specified by the Agency, which will be 4 weeks (section 173A(4) and section 173B(4)).

- In making a determination as to whether an application for permission for sub-threshold development which the planning authority or the Board consider is development comprising of or for the purposes of an activity requiring a licence, requires EIA (on the grounds that it could have significant effects on the environment) the planning authority/Board must request the views of the Agency, and must consider any such views received in making its determination (section 173A(5) and section 173B(5)).

The paragraphs under the third heading below set out in more detail how the process of consent for a project requiring both a development consent under the Planning Act and an IPPC or a waste licence will operate after the new Regulations come into operation. The relevant consents under the Planning Act are:

---

[1] Not including the EIS, which will already been forwarded to the Agency by the licence applicant.

- an application for permission for development under Part III,
- an application for approval under section 175,
- an application for approval under section 177AE,
- an application for approval under section 181A,
- an application for approval under section 182A,
- an application for approval under section 182C,
- an application for approval under section 226,
- an application for substitute consent under section 177E.

The term “permission” is used in the Regulations, and below, in respect of these various consents.

Processing of licence applications and planning consents for projects requiring EIA

1. After the commencement of the new Regulations, in order to ensure that the licence application is made subsequent to either an application for, or the giving of, permission for the associated development, the Agency will only be able to consider an application for an IPPC licence or a waste licence where it is accompanied by:

   (a) a written confirmation from a planning authority or the Board that an application for permission for the associated development is currently under consideration or

   (b) a copy of the permission given for the associated development.

(New subsections 87(1B) and (1C) of the EPA Act and new subsections 42(1B) and (1C) of the Waste Management Act).

2. An application for a licence must **also** be accompanied by either:

   (a) a copy of the EIS if one was required to be submitted as part of the application for permission or
   (b) a screening decision from the planning authority/Board determining that EIA is not or was not required under the Planning Act.

   (New subsections 87(1B) and (1C) of the EPA Act and new subsections 42(1B) and (1C) of the Waste Management Act).

3. In order that applicants for a licence can meet the requirement under (1)(a) above, the new subsection 173A(2) and the new subsection 173B(2) of the Planning Act provide that where a planning authority or the Board is considering an application for permission for development relating to an activity requiring a licence, and is requested by the applicant to confirm in writing that such development is the subject of the application for permission, the planning authority or the Board shall give such confirmation as soon as possible.

4. In order that applicants for a licence can meet the requirement under (2)(b) above (i.e. a case where EIA is not required) the new subsection

173A(3) and the new subsection 173B(3) of the Planning Act provide that when confirming that an application for permission is under consideration, in a case where EIA of the development is not required under the Planning Act, the planning authority or the Board must also confirm that fact (i.e. EIA not required).

5. The Agency will ensure that before a decision is made on a licence application or a revised licence, in a case where the activity relates to development of a type listed in Schedule 5 of the Planning and Development Regulations, the licence application is made subject to an EIA as respects the matters that come within the functions of the Agency: the new subsection 83(2A) of the EPA Act and the new subsection 40(2A) of the Waste Management Act refer.

6. Where an EIS is received along with a licence application, the Agency will, in a case where an application for permission is under consideration when the licence application is made (new subsection 87(1D) of the EPA Act and new subsection 42(1D) of the Waste Management Act) notify the planning authority or the Board as appropriate within 2 weeks, and will ask that any observations that the planning authority/Board has on the licence application be furnished to the Agency within 4 weeks of the date of notification. Requests by the Agency for observations should be as specific as possible. All documents in relation to the licence application will be available on the Agency's website. The planning authority/Board should respond to Agency within this 4 week period. The Agency is

required to consider any observations received from the planning authority/Board and to enter into any consultations with the planning authority/Board that it, or the planning authority/Board, considers appropriate. The Agency may not decide on the licence application until a decision has been made by the planning authority/Board, as appropriate, and the period for any appeal has expired.

7. Where an EIS is received along with a licence application in a case where permission for the associated development has been given prior to the making of the licence application, the Agency will (new subsection 87(1E) of the EPA Act and subsection 42(IE) of the Waste Management Act), notify the planning authority or the Board as appropriate within 2 weeks, asking it to respond within 4 weeks -

(a) stating whether the activity for which a licence is now being sought is permitted by the permission given,
(b) furnishing all documents relating to the EIA carried out, and
(c) furnishing any views it has in relation to the licence application.

Under the new subsections 173A(4) and 173B(4) of the Planning Act, the planning authority/Board are required to comply with the request of the Agency within the 4 week period referred to. As stated above, all documents in relation to the licence application will be available on the Agency's website. Again, the Agency is required to consider any observations received from the planning authority/Board and to enter into

any consultations with the planning authority/Board that it, or the planning authority/Board, considers are appropriate.

8. As is currently the position, the Agency will make its provisional licensing decision available to certain statutory consultees (including planning authorities): these will now include the Board (section 87(2) of the EPA Act and section 42(2) of the Waste Management Act as amended) and will, following that consultation, conclude the licensing process. Section 83(4) and section 41(2A) respectively of the EPA Act and the Waste Management Act have been amended to provide that where it grants a licence, the Agency will attach such conditions to the licence as it considers necessary to avoid, reduce and is possible, offset the major adverse effects (if any) on the environment. When the Agency makes its decision on a licence application, the Agency informs the applicant and the public and makes specified information available to the applicant and the public: amended provisions in this regard are contained in the new subsection 87(9A) of the EPA Act and the new subsection 42(11A) of the Waste Management Act.

9. A new subsection (3A) has been inserted into section 87 of the EPA Act to provide that the Agency may, in consultation with the planning authority/Board, extend the period of 8 weeks provided in section 87(3) in which to issue its proposed determination of an IPPC licence application if -

(a) it is necessary to complete the consultations with the planning authority/Board as now provided for in subsections (1D), (1E), (1F) or (1H) of section 87, or

(b) to enable the Agency to comply with the new requirement in section 87(1D)(d) that the Agency may not make its proposed determination of an IPPC licence application until the development consent process, including EIA, has been completed.

The same time-constraints provided in section 87(3) of the EPA Act do not arise in the context of the Waste Management Act, accordingly similar amendments were not required to the Waste Management Act.

10. Where a planning authority or the Board are dealing with an application for permission for development of a type listed in Schedule 5 of the Planning and Development Regulations, the planning authority or the Board are required, unless the likelihood of significant effects on the environment can be excluded, to make a determination as to whether the proposed development would have significant effects on the environment such that EIA is required. The new subsection 173A(5) and the new subsection 173B(5) provide that where the planning authority or the Board consider that the development for which permission is being applied will require an IPPC licence or a waste licence, respectively, it must request observations from the Agency to assist it in making its determination as to whether EIA is required and must take any such observations into

account when making its determination. Such requests for observations should be as specific as possible

11. The Agency is now required, under the new subsection 87(1G)(b) of the EPA Act in respect of an IPPC licence and the new subsection 42(1G)(b) of the Waste Management Act in respect of a waste licence application, to respond to a request by the planning authority or the Board for observations to assist the planning authority or the Board in making its EIA determination and those subsections also provide that the Agency will accept the determination of the planning authority or the Board so made.

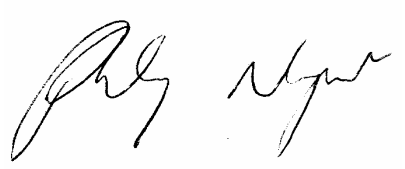
12. The current position (prior to the new Regulations) is, of course, that the planning authority/Board is required to notify the Agency in relation to any application for permission for development comprising of or for the purposes of an activity requiring an IPPC licence or a waste licence and to inform the Agency that it may make submissions/observations. The new subsection (1F) of section 87 of the EPA Act and the new subsection (1F) of section 42 of the Waste Management Act require the Agency (provided it is satisfied that the development comprises or is for the purposes of an activity) to forward to the planning authority/Board such observations as it has on the application for permission, including the EIS, and to enter into such consultations with the planning authority or the Board in relation to the environmental impacts of the proposed development as the Agency, or the planning authority/Board considers necessary to complete the EIA.

13. As is the current position, the planning authority or the Board must take submissions received from the Agency into account in making its decision as to whether to give the permission concerned.

The EPA and CCMA (through the LUTS Committee) will develop together in the coming weeks detailed working arrangements to facilitate the implementation of these Regulations and will make these arrangements publically available.

Any queries in relation to this Circular Letter should be addressed to Ms. Joan Murphy, Environment Policy and Awareness, tel: (053) 911 7342, email: joan.murphy@environ.ie or Mr. Conor O' Sullivan, Planning and Housing (Finance and Policy Development), tel: (01) 888 2810, email: conor_o'sullivan@environ.ie.

Is mise le meas,



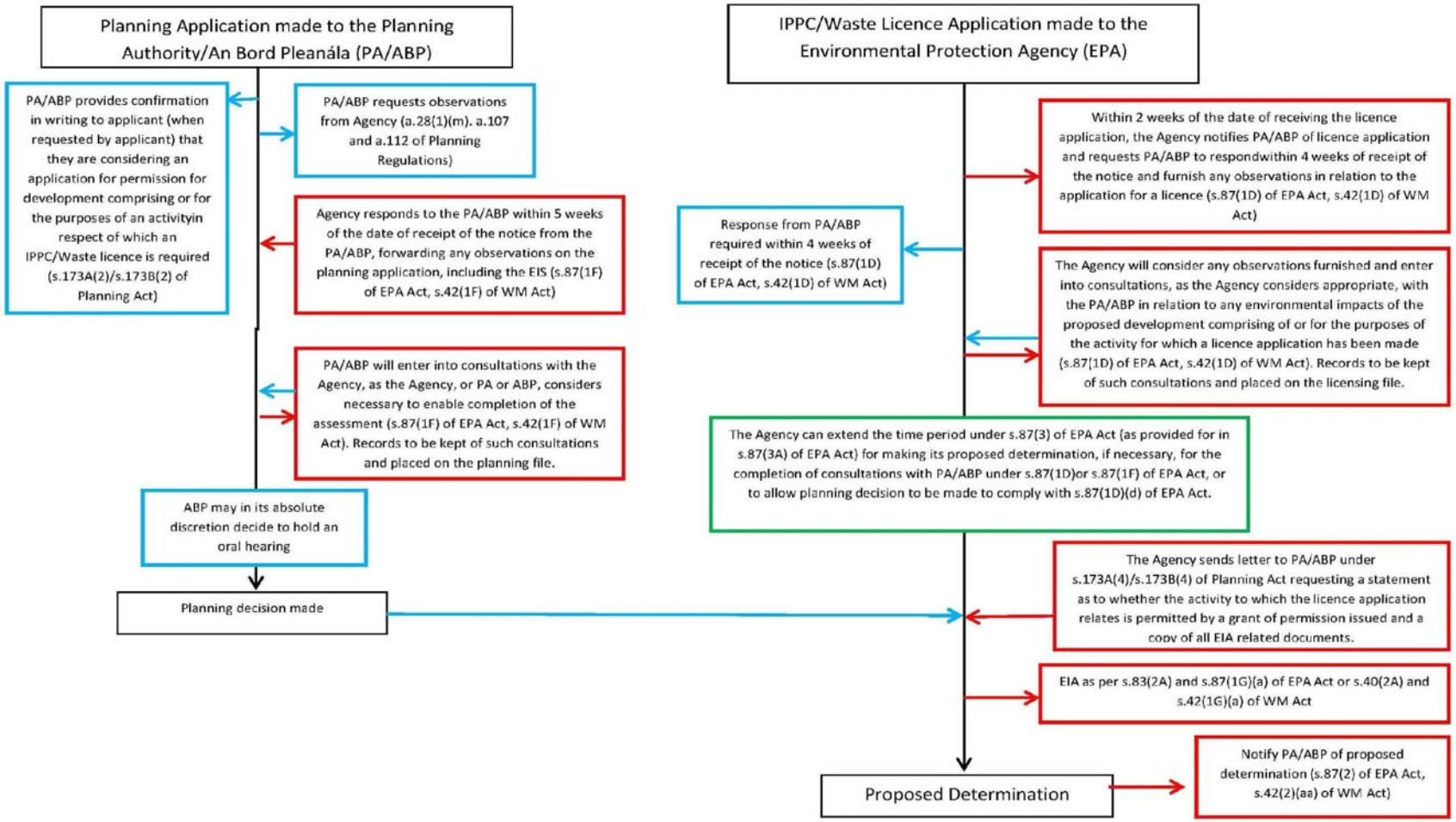
Philip Nugent

Principal Officer

Planning and Housing (Finance and Policy Development)

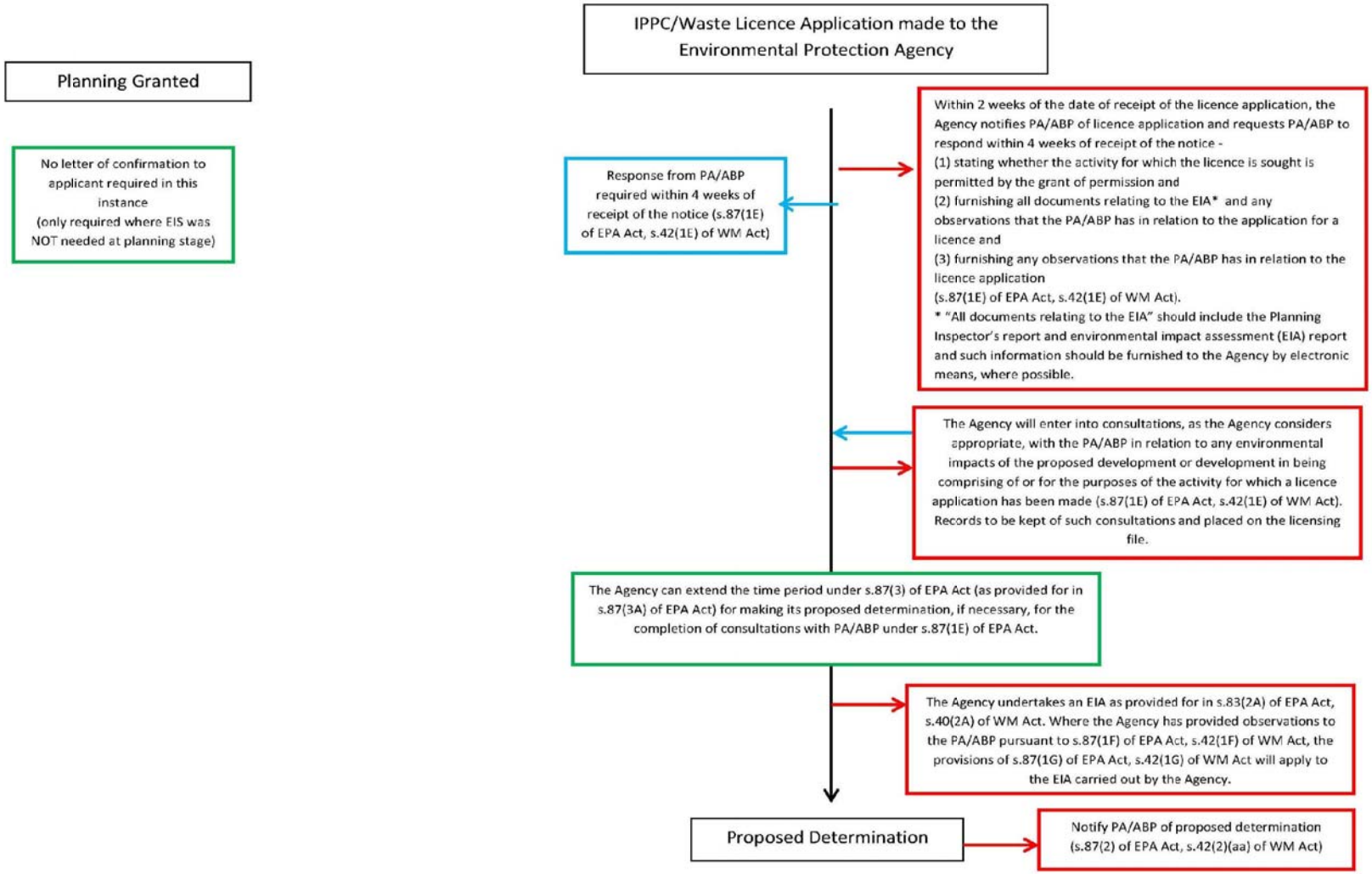
New Activity, Planning UNDER CONSIDERATION, EIA required

Sections 87(1B), (1D), (1F) and (1G) of EPA Act; Sections 42(1B), (1D), (1F) and (1G) of Waste Management Act



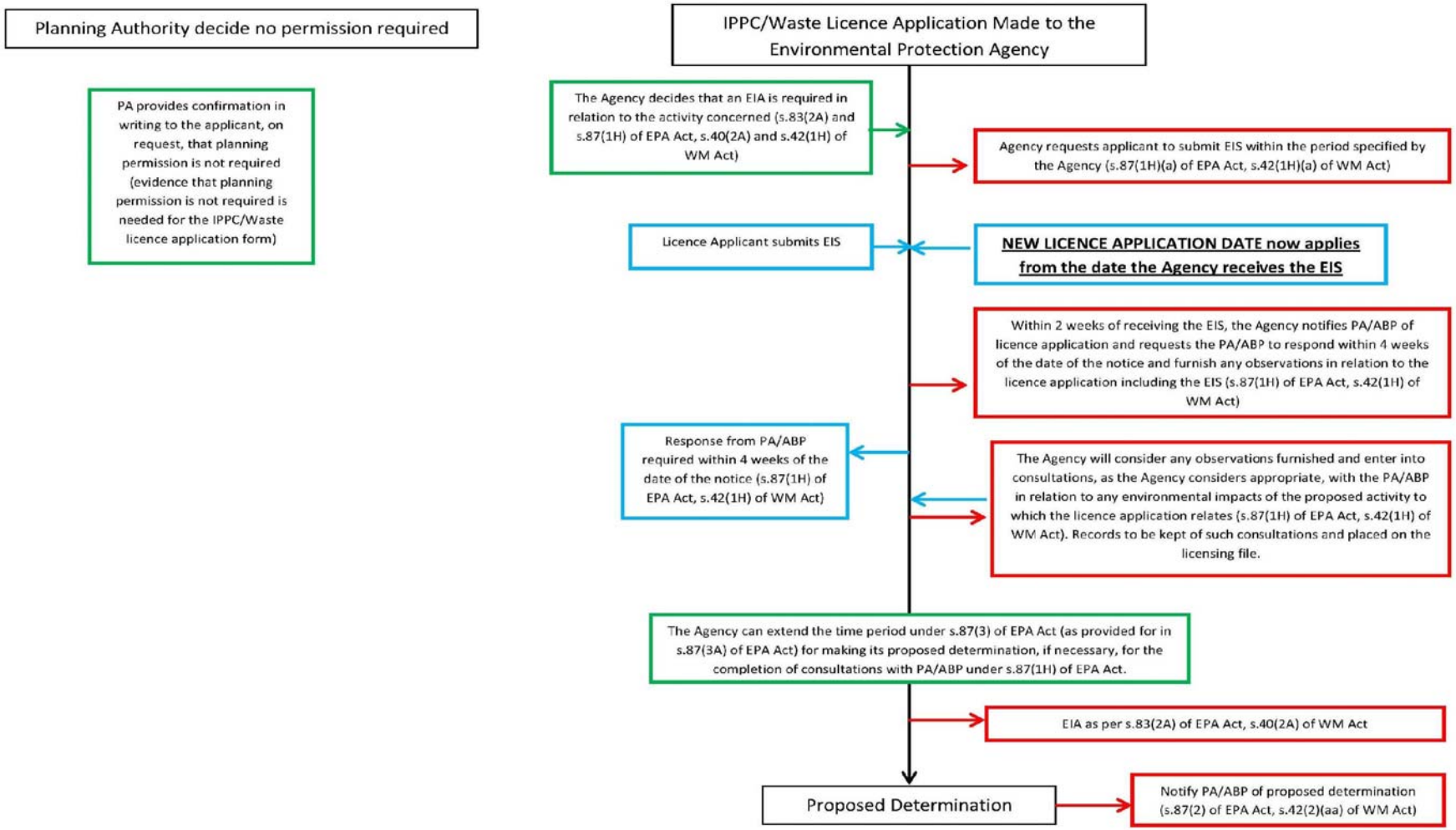
New Activity, Planning GRANTED, EIA required

Sections 87(1B) and (1E) of EPA Act; Sections 42(1B) and (1E) of Waste Management Act



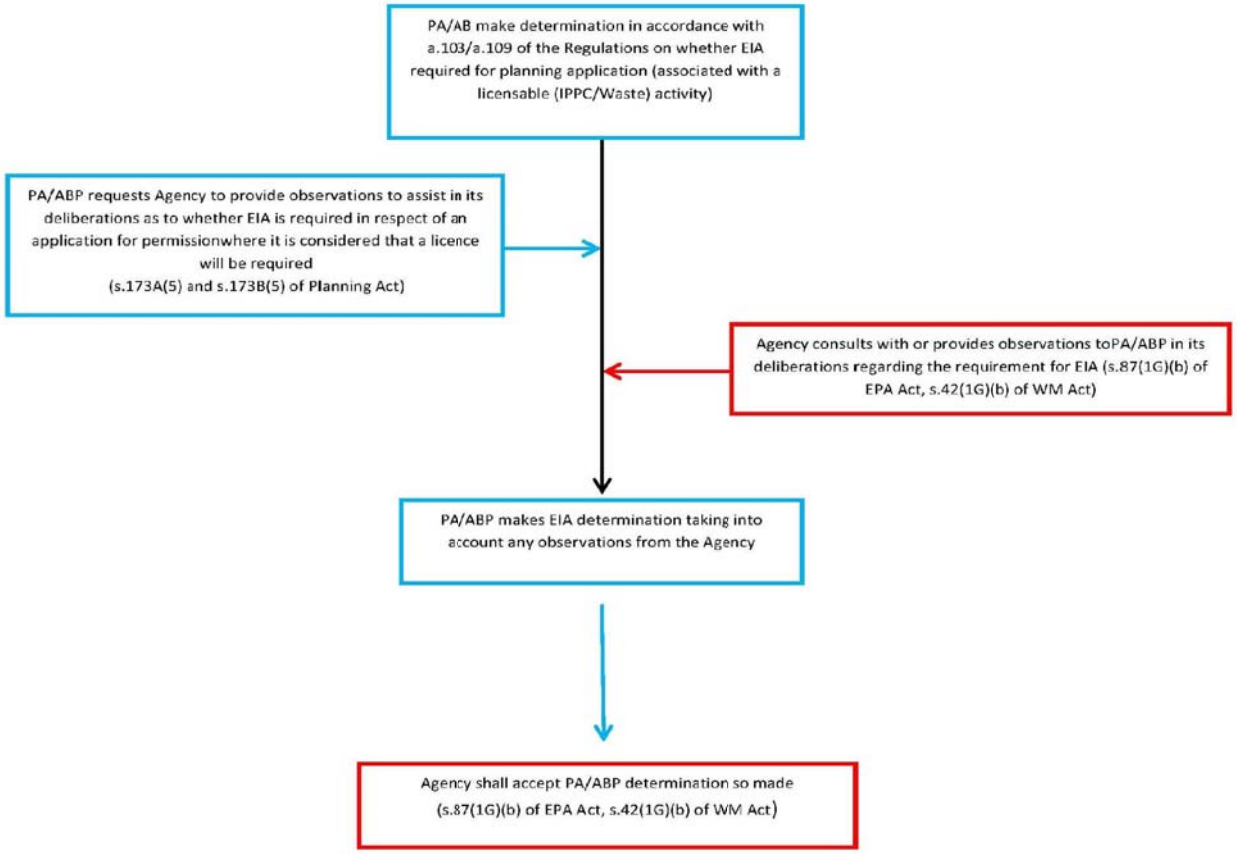
Licence needed, PLANNING NOT NEEDED, Agency decides EIA required

Section 87(1H) of EPA Act; Section 42(1H) of Waste Management Act

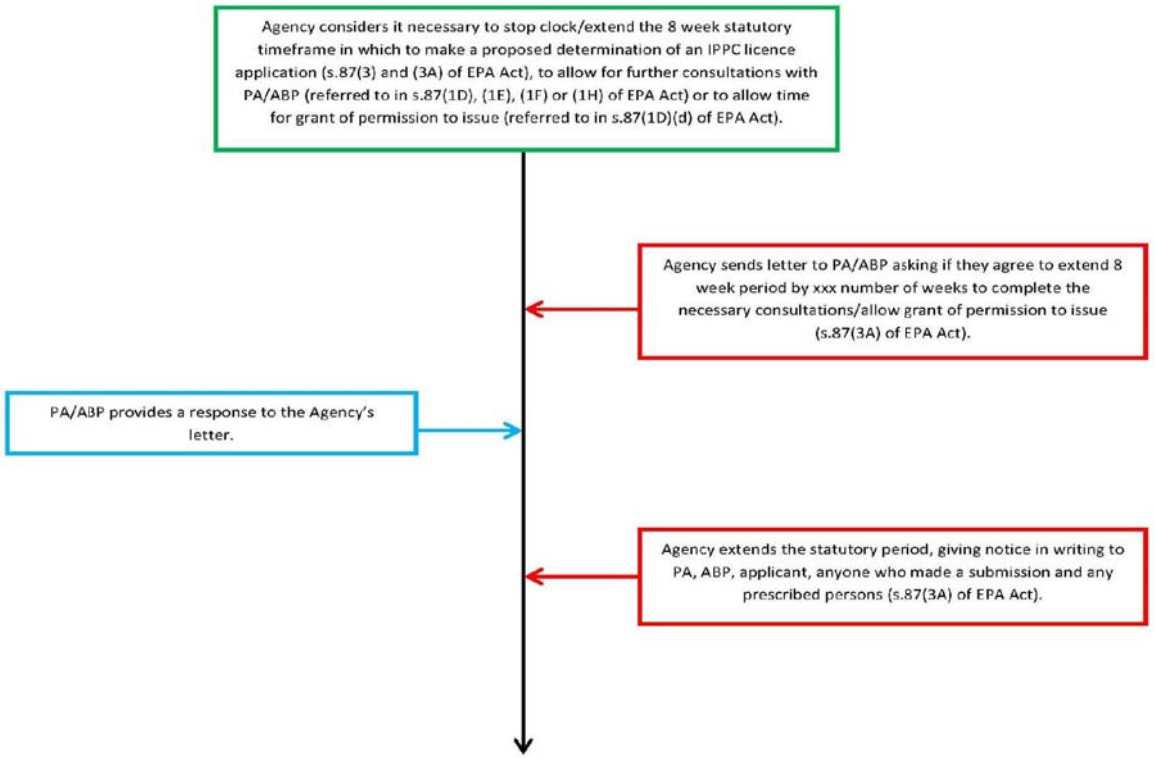


EIAScreening(for proposed development comprising or for the purposes of an activity requiring an IPPC/Waste licence)

Section 87(1G)(b) of EPA Act; Section 42(1G)(b) of Waste Management Act; Sections 173A(5)/173B(5) of Planning Act



Stopping Clock for Consultation
(Integrated Pollution Prevention and Control (IPPC) only)
Section 87(3A) of EPA Act



Note: an equivalent time-limit of 8 weeks as provided for under s.87(2) ands.87(3) of EPA Act for issuing a proposed determination in respect of an IPPC licence application does not arise under the Waste Management Act.