EXPLANATORY MEMORANDUM TO

Envirnomental Impact Assessment (Agriculture) (Amendment) Regulations (Northern Ireland) 2017

S.R. 2017 No. 172

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Agriculure, Environment and Rural Affairs (DAERA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule amends our existing implementation of the Environmental Impact Assessment (EIA) Directive 2011/92/EU to bring into effect changes made in 2014 by the EU Directive 2014/52/EU (the 2014 Directive).

2.2. The EIA Directive ensures that projects likely to have significant effects on the environment are subject to an environmental assessment prior to their approval or authorisation. In respect of agricultural projects, the original EIA Directive was implemented into national legislation by The Environmental Impact Assessment (Agriculture) Regulations 2007, as amended. The original EIA Directive was then amended by the 2014 Directive and it is these amendments which need to be transposed into national legislation.

2.3. In addition to amendments made to comply with the 2014 Directive, we have also made some minor technical amendments.

3. Background

3.1. National legislation is required to transpose the 2014 Directive. In line with the Government's Better Regulation policy we have sought to minimise additional regulatory burden by copying out the text of the Directive, except where an alternative approach was considered beneficial. There has been liaison with other Government Departments to ensure that, as far as possible, a consistent approach has been followed.

3.2. The main changes made by the 2014 Directive, which this Statutory Rules gives effect to, are:

Article 1(2)(g) - A definition of the EIA process (see Regulation 9A)

Article 2(3) - Introduction of a co-ordinated procedure for projects that are subject to the Habitats or Wild Birds Directives as well as the EIA Directive. We have opted for a co-ordinated procedure, as this gives a greater flexibility to the process (see Regulation 17(7)).

Article 4(4) - Has introduced a more detailed list of information that the applicant must provide for the screeing application. This gives greater clarity about the issues to be considered. These changes have been copied out into the Regulations at Schedule 2.

Clarification of the options for screening and amendments to the information that is required when screening projects to determine whether the EIA Direcitve applies - Article 4, Annex IIA and Annex III. Applicants must provide results of any other assessments on a project's effects on the environment at the screening stage (currently these are provided later in the EIA process). These changes will focus assessments on cases where there really is a likelihood of significant effects on the enviornment and are transposed into the Regulations at Schedule 2A, paragraph 6.

Article 4(5) and (6) - Have introduced a requirement that the competent authorities must publish their screening decisions and explain the reasons why an EIA is needed or not. This requirement is transposed at Regulation 8(4). There is also a new requirement that the competent authority must make its screening decision as soon as possible and within 90 days from the date the developer provides all the information required. The Department will continue with its current 35 day maximum period for decisions and will use the the 90 day maximum as a backstop. This is set out at Regulation 8(5) and (5A).

Amendments to the information to be included in the environmental statement - Annex IV. This has been copied into the Regulations at Schedule 3.

Article 5(3) - The Directive has introduced a requirement that the applicant must ensure that an environmental statement is prepared by competent experts, and that the competent authority (DAERA) must also have sufficient expertise to assess the environmental statement. These changes are transposed at Regulation 2(1) (definition paragraph) "Environmental Statement", 15A and Schedule 3 Part 1.

Article 6(7) - A requirement to introduce a new minimum time period of 30 days for public consultations. This is an increase from 28 days and has been transposed at Regulations 11(2), 12(4), 13(2) and 16(3).

Article 8a - The Directive now details what information should be provided within decision notices. The information to be provided within a decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions to reduce the risk of significant adverse effects on the environment. Where a decision refuses consent, the main reasons for the refusal must be given. A notice of a decision must also include any planned monitoring measures. This has been transposed at Regulation 16.

Article 9a - This requires the avoidance of conflicts of interest. This has

not been copied out as DAERA already has a duty to act in a fair manner to avoid conflicts of interest.

3.3. In addition to what was required by the new Directive we have updated the list of consultation bodies provided at Schedule 5 to reflect changes to Departmental names and to remove reference to organisations which are no longer active.

We have also made some minor techinical amendments to the Regulations to correct cross-references to other relevant legislation; to update EU Directives; to include 'last amended' references; and to correct regulations 37 and 38.

4. Consultation

4.1. Consultation on the amending Regulations opened on 22 May 2017 and closed on 19 June 2017.

4.2. A total of five responses were received. The majority of responses supported the proposed changes but asked that EIA guidance be updated to provide clarity. Further details are included in the Government response.

5. Equality Impact

5.1. A Section 75 assessment was completed for the Regulations. No negative impact on any section 75 group was identified. Therefore, the Regulations were screened out.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum and Transposition note on the legislation.gov.uk website.

7. Financial Implications

7.1. Applicants are required to pay for competent experts if an environmental statement is required. Farmers or landowners may receive financial penalties if the Regulations are breached, as was the case with the 2007 Regulations.

8. Section 24 of the Northern Ireland Act 1998

8.1. This Statutory Rule does not have any human rights implications nor or they incompatible with EU Law. It is therefore deemed to comply with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. This Statutory Rule transposes EU Directive 2014/52/EU, which amends EU Directive 2011/92/EU.

10. Parity or Replicatory Measure

10.1. Similar legislation will implement the EU Directive in the UK and the Republic of Ireland.

11. Additional Information

11.1. Not applicable