

## **Human Rights Act Impact Assessment Proforma**

This proforma will help you to articulate any human rights issues in the policy/proposal that you are working on. It is necessary for you to have read the OFMDFM guidance on human rights entitled “Get in on the Act; a practical guide to the Human Rights Act for public authorities in Northern Ireland” before completing this proforma.

If the policy/proposal is relevant to some rights but does not interfere with or limit them, your assessment must be signed off by a Senior Responsible Officer (Grade 7, equivalent or above). If you find that it does interfere with or limit one or more of the Convention rights, and your Senior Responsible Officer agrees, you must seek legal advice, even if it is considered that the interference or limitation is justified.

This proforma is available at [www.ofmdfmi.gov.uk/human-rights](http://www.ofmdfmi.gov.uk/human-rights) If you fill in the form electronically, there is no restriction as to the amount you can type in each box.

Your answers in the rest of this proforma will help you draft a clearer note to your legal advisor.

### **1. Policy title and aims**

Please state the title and objective of the policy/proposal you are working on.

The EU has adopted Directive 2014/52/EU which amends Directive 2011/92/EU covering the assessment of the effects of certain public and private projects on the environment (known as the Environmental Impact Assessment or EIA Directive). The amending Directive forms part of the European legislature and, as such, DfE is responsible for considering the proper transposition of its content into legislation. This will cover the EIA process for its Offshore Electricity Development consenting regime i.e. the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 (“2008 Regulations”) in order to ensure that it is aligned with other European and UK regions and to avoid potential infraction proceedings in the future. In considering the implications of the revised Directive, DfE has identified overlap with other EIA legislation related to the marine licensing regime i.e. the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended)(“2007 Regulations”). As such DfE sought legal opinion upon which it is planning to revoke the 2008 Regulations in favour of the 2007 Regulations .



## **2. Rights which the policy/proposal engage**

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right, i.e. how the policy/proposal you are working on could involve the right. Explain how the right is engaged

*Please note that the rights have been abbreviated so you should see the relevant Article in the Guide referred to above for the full title and explanation of the right.*

| <b>Right</b>   | <b>Yes/No</b> | <b>Explanation</b>  |
|--|---------------|---|
| Article 2<br>Right to life   | No            | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to life, protected by law, in accordance with Article 2 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and have no impacts on right to life of individuals</p>                |
| Article 3<br>Prohibition of torture, inhuman and degrading treatment | No            | <p>The revocation of the 2008 Regulations will not engage or effect the prohibition of torture, inhuman and degrading treatment or punishment in accordance with Article 3 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and have no relationship to Article 3.</p> |

| Right   | Yes/No | Explanation  |
|---|--------|--|
| Article 4<br>Prohibition of slavery and forced labour | No     | <p>The revocation of the 2008 Regulations will not engage or effect the prohibition of slavery and forced labour in accordance with Article 4 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry where workers rights are protected by law.</p>           |
| Article 5<br>Right to liberty                         | No     | <p>The revocation of the 2008 Regulations will not engage or relate to the right to liberty and security in accordance with Article 5 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and have no effect on rights related to arrest or detention.</p> |

| Right                                  | Yes/No | Explanation  |
|--|--------|--|
| Article 6<br>Right to a fair trial     | No     | <p>The revocation of the 2008 Regulations will not engage or effect the right to a fair and public hearing in accordance with Article 6 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry where grounds for prosecution are covered by other pieces of legislation.</p>  |
| Article 7<br>No punishment without law | No     | <p>The revocation of the 2008 Regulations will not engage or effect someone's right not to be found guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed in accordance with Article 7 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry where prosecutions are dealt with via other pieces of legislation.</p> |

| Right   | Yes/No    | Explanation   |
|---|-----------|---|
| <p>Article 8<br/>Right to respect for private and family life</p> | <p>No</p> | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to respect for private and family life, home and correspondence in accordance with Article 8 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and have no impacts on the rights of individuals in a private capacity.</p> |
| <p>Article 9<br/>Freedom of thought conscience and religion</p>   | <p>No</p> | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to freedom of thought, conscience and religion in accordance with Article 9 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry employees of which will be protected by existing equality and employment law.</p>            |

| Right   | Yes/No | Explanation  |
|---|--------|--|
| Article 10<br>Freedom of expression               | No     | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to freedom of expression in accordance with Article 10 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry which are governed by equality and employment law.</p>   |
| Article 11<br>Freedom of assembly and association | No     | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to freedom of peaceful assembly and association with others in accordance with Article 11 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry where freedom to be part of a trades Union is enshrined in law.</p> |

| Right   | Yes/No | Explanation  |
|---|--------|--|
| Article 12<br>Right to marry and found a family | No     | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to marry and found a family in accordance with Article 12 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry where employment rights are governed by law including the rights to maternity and paternity leave.</p>  |
| Article 14<br>Prohibition of discrimination     | No     | <p>The revocation of the 2008 Regulations will not engage or relate to the prohibition of discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in accordance with Article 14 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and its duty to protect equality under Section 75 of the Northern Ireland Act 1998.</p> |



| Right                                       | Yes/No | Explanation  |
|---|--------|--|
| Protocol 1, Article 1<br>Right to property  | No     | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to peaceful enjoyment of their possessions in accordance with Protocol 1, Article 1 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007), including impacts on visual amenity, proximity and subjection to noise. As such they relate directly to the energy industry and should not impact on the rights of individuals.</p> |
| Protocol 1, Article 2<br>Right to education | No     | <p>The revocation of the 2008 Regulations will not engage or relate to someone's right to education in accordance with Protocol 1, Article 2 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and should not impact on the rights of individuals.</p>   |

| Right  | Yes/No | Explanation  |
|--|--------|--|
| Protocol 1, Article 3<br>Right to free elections | No     | <p>The revocation of the 2008 Regulations will not engage or relate to the right to free elections in accordance with Protocol 1, Article 3 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and, should not impact on the rights of individuals.</p> |

If you have answered yes to any of these questions you must complete the rest of the proforma. If you have answered no to **all** of the questions, you may proceed to Question 9.

**3. Rights which the policy/proposal interferes with or limits**

Will the policy/proposal interfere with or limit any of the rights you identified as being engaged? If so, explain how the right is interfered with or limited.

*You should note that interference could be a negative impact on a right or a failure to take positive action where this is required under the Article in question. For further guidance on which Articles require positive action, please consult the Guide.*

| <b>Article</b> | <b>Interfered with or limited?</b><br><br><b>Yes/No</b> | <b>What is the interference/limitation?</b> |
|----------------|---|---|
| Not applicable |   | Not applicable                              |

**4. Those affected by the interference/limitation**

Identify who could be affected by the interference or limitation, e.g. sections of society or people with certain beliefs or opinions, and explain how they could be affected.

*It will help in identifying interferences or limitations to think about all the people who could be affected and be seen as a victim within the Human Rights Act.*

| <b>Who could be affected?</b> | <b>How could they be affected?</b> |
|-------------------------------|------------------------------------|
| Not applicable                | Not applicable                     |

**5. Legal basis for interference/limitation**

Is there a law which allows you to interfere with or limit the rights identified in Question 4?

Any interference with or limitation on a Convention right must have a legal basis. You therefore need to establish whether there is a law which allows the proposed interference or limitation.

*You may need legal advice to clarify this.*

Relevant legislation:

|                |
|----------------|
| Not applicable |
|----------------|

Alternatively, the policy/proposal may involve the creation of a new law which allows for the interference or limitation. If this is the case, please detail and explain in the box below:

|                |
|----------------|
| Not applicable |
|----------------|

## **6. Purpose of the policy/proposal**

Even if the interference or limitation in the policy/proposal is according to the law, there are further conditions which must be met. The purpose of the policy/proposal must pursue a legitimate aim or fall under one of the specific exceptions in the Article in question.

Consider each of the Articles which the policy/proposal will interfere with or limit, and for each one specify the exception or legitimate aim which allows the interference or limitation and explain why.

*If you are unsure of the exceptions or legitimate aims which are applicable for the rights interfered with or limited by the policy/proposal you are working on, you should refer to the text of the Convention and the Guide.*

| Article        | Exception / Limitation | Explanation    |
|----------------|------------------------|----------------|
| Not applicable | Not applicable         | Not applicable |

**7. Necessary in a democratic society**

Articles 8, 9, 10 and 11 specify that interferences or limitations must be necessary in a democratic society. If the policy/proposal interferes with or limits one of these rights, detail in the table below how the right is necessary in a democratic society i.e. does it fulfil a pressing social need?

*You may need to speak to the Senior Responsible Officer for clarification of this*

| Article affected | Explain why it is necessary in a democratic society |
|------------------|---|
| Not applicable   | Not applicable                                      |



## 8. Proportionality

Any interference with or limitation on a Convention right must be proportionate, i.e. the policy/proposal must interfere with or limit a right no more than is absolutely necessary to achieve its aims. For each Article which the policy/proposal interferes with or limits, explain how the interference or limitation is proportionate.

*For further information on proportionality please consult the Guide.*

| <b>Article affected</b> | <b>Explain why the interference / limitation is proportionate</b> |
|-------------------------|---|
| not applicable          | not applicable  |

## **9. Article 14 equality issues**

Even if it does not interfere with or limit a right or freedom, could the policy/proposal result in people being treated differently in relation to any of the Convention rights? Article 14 does not allow discrimination in the exercise of any of the other Convention rights.

*For further information on Article 14, please refer to the relevant pages in the Guide*

| <b>Convention Article affected</b> | <b>How are people treated differently?</b> | <b>Is this justifiable?</b> |
|------------------------------------|--|-----------------------------|
|------------------------------------|--|-----------------------------|

|  |                       |                       |
|--|-----------------------|-----------------------|
| <p>The revocation of the 2008 Regulations will not engage or relate to the prohibition of discrimination on the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status in accordance with Article 14 of the Human Rights Convention</p> <p>The Regulations address the need to assess the environmental impacts of the construction and operation of an electricity generating station in an offshore location in Northern Ireland (a provision that is identified as already being provided through amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007). As such they relate directly to the energy industry and its duty to protect equality under Section 75 of the Northern Ireland Act 1998.</p> | <p>Not applicable</p> | <p>Not applicable</p> |
|--|-----------------------|-----------------------|



You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to your legal advisor for further action and advice.

Please tick the statement that applies, and sign below.

- a) The policy/proposal does not engage any Convention rights.
- b) The policy/proposal does engage one or more of the Convention rights, but does not interfere with or limit it/them.
- c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.

Countersign, hold copy with policy papers and refer to your legal advisor

Signed by \_\_\_\_\_ (Official)

Date \_\_\_\_\_ Grade \_\_\_\_\_

Signed by \_\_\_\_\_ (Senior Responsible Officer)

Date \_\_\_\_\_ Grade \_\_\_\_\_

## Human Rights Act Referral to Legal Services Proforma

FAO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please see the attached Human Rights Act Impact Assessment Proforma for the following proposal/policy.

*Title and Objective of Policy/Proposal:*

Not applicable

I have identified the following rights as being interfered with/limited by this policy/proposal.

Not applicable

I would be grateful for your advice on this matter. All relevant papers are attached.

Your contact in this Department is:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_ Email: \_\_\_\_\_