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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 74**

**The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(1)</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011<sup>(2)</sup> and references to sections are references to sections in that Act;

“any other information” means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;

“any particular person” includes any non-governmental organisation promoting environmental protection;

“the Commission” means the Planning Appeals Commission;

“council” means a district council;

“the Department” means the Department of the Environment;

“developer” means a person carrying out or proposing to carry out development;

“the Directive” means Council Directive 2011/92/EU;

“documents” includes photographs, drawings, maps and plans;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented immediately prior to the commencement of these Regulations;

“EEA state” means:—

- (a) a state which is a member state; or
- (b) any other state which is a party to the EEA agreement;

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(1) 1954 c.33 (N.I.)

(2) 2011 c.25 (N.I.)

“EIA application” means—

- (a) an application for planning permission for EIA development; or
- (b) a subsequent application in respect of EIA development;

“EIA development” means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001<sup>(3)</sup>

“environmental information” means the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be consulted and any representations duly made by any other person about the likely environmental effects of the proposed development;

“environmental statement” means a statement that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but which includes at least the information referred to in Part 2 of Schedule 4;

“exempt development” means development in respect of which the Department has made a direction under regulation 3(1)(b);

“further information” has the meaning given to it in regulation 23(1);

“the General Development Procedure Order” means the Planning (General Development Procedure) Order (Northern Ireland) 2015<sup>(4)</sup>;

“the General Regulations” means the Planning General Regulations (Northern Ireland) 2015<sup>(5)</sup>;

“the land” means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“local advertisement”, in relation to a notice, means—

- (a) by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
- (b) where the Department, council, or the Commission maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 and Schedule 2 development respectively;

“Schedule 1 development” means development other than exempt development of a description mentioned in Schedule 1;

“Schedule 2 development” means development other than exempt development of a description mentioned in column 1 of the table in Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to that development;

“selection criteria” means the criteria set out in Schedule 3;

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(3) 2001 c.9 (N.I) (as amended by 2003 c.21)

(4) S.R. 2015 No. 72

(5) S.R. 2015 No. 39

“sensitive area” means any of the following—

- (a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002<sup>(6)</sup>;
- (b) an area of outstanding natural beauty, that is to say, an area so designated under Article 14(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(7)</sup>;
- (c) a National Park, that is to say an area so designated under Article 12(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (d) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage<sup>(8)</sup>;
- (e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995<sup>(9)</sup>;
- (f) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995<sup>(10)</sup>.

“subsequent application” means an application for approval of a matter where the approval—

- (a) is required by or under a condition to which a planning permission is subject; and
- (b) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” means consent granted pursuant to a subsequent application.

(3) Subject to paragraph (4), expressions used both in these Regulations and in the 2011 Act have the same meaning for the purposes of these Regulations as they have for the purposes of that Act.

(4) Expressions used in these Regulations and in the Directive (whether or not used in the 2011 Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) In these Regulations any reference to a Council Directive is a reference to that Directive as amended immediately prior to the commencement of the Regulations.

(6) In these Regulations, and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;
- (b) references to plans, notices or other documents or to copies of such things include references to such documents or copies of them in electronic form.

(7) Paragraphs (8) to (11) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(8) The requirement shall (except in the case of service of a notice under regulation 31) be taken to be fulfilled where the notice or other document transmitted by means of electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and

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<sup>(6)</sup> S.I. 2002/3153 (N.I. 7)

<sup>(7)</sup> S.I. 1985/170 (N.I. 1)

<sup>(8)</sup> See Command Paper 9424

<sup>(9)</sup> S.I. 1995/1625 (N.I. 9)

<sup>(10)</sup> S.R. 1995 No. 380

(c) sufficiently permanent to be used for subsequent reference.

(9) In paragraph (8), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(10) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.

(11) A requirement in these Regulations that any application, notice or other document should be in writing is fulfilled where the document meets the criteria in paragraph (8).

### **Directions**

3.—(1) The Department may direct that—

- (a) a particular development of a description described in column 1 of the table in Schedule 2 and which does not meet the conditions in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” is EIA development; or
- (b) in accordance with Article 2.4 of the Directive (but without prejudice to Article 7 of the Directive) that a specific development is exempted in whole or in part from these Regulations.

(2) Where a direction is given under paragraph (1)(b) the Department shall—

- (a) send a copy of the direction to the council;
- (b) make available to the public the information considered in making the direction and the reasons for making the direction;
- (c) consider whether another form of assessment would be appropriate; and
- (d) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.

### **Prohibition on the grant of planning permission or subsequent consent without consideration of environmental information**

4.—(1) This regulation applies—

- (a) to every application for planning permission for EIA development received by a council or the Department on or after the commencement of these Regulations;
- (b) to every application for planning permission for EIA development made by a council pursuant to regulation 3 or 4 (applications for planning permission) of the General Regulations on or after that date;
- (c) to every subsequent application in respect of EIA development received by a council or the Department on or after the commencement of these Regulations; and
- (d) to every subsequent application in respect of EIA development made by a council pursuant to regulation 10 (other consents) of the General Regulations on or after that date,

and for the purposes of this paragraph, the date of receipt of an application by a council or the Department shall be determined in accordance with article 20 (time periods for decisions) of the General Development Procedure Order as applied by regulation 19.

(2) A council, the Department or the Commission, as the case may require, shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

### **Confirmation that development is EIA development**

5.—(1) Subject to any direction of the Department under regulation 3, the occurrence of an event mentioned in paragraph (2) shall determine, for the purposes of these Regulations, that development is EIA development.

(2) The events mentioned in paragraph (1) are—

- (a) the submission by the applicant or appellant, in relation to that development, of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
- (b) the determination by the council or by the Department, or following a hearing by the Commission, confirmation by the council or by the Department, that the development is EIA development.

### **Appeals under Section 58 or Section 60 of the 2011 Act**

6.—(1) Where an appeal is made to the Commission under section 58 (appeals) or 60 (appeal against failure to take planning decision), the functions conferred on the council or on the Department by Part 3 to Part 7 of these Regulations shall be exercisable by the Commission in respect of that appeal.

(2) For the purposes of paragraph (1), regulations 16(3) and 17(3) shall have effect as if substituted by the following provision—

“(3) An appellant receiving a notification pursuant to paragraph (1) shall, within 4 weeks from the date of the determination, inform the Commission, in writing, that the appellant—

- (a) accepts the Commission’s determination and proposes to provide an environmental statement; or
- (b) does not accept the Commission’s determination.”

(3) For the purposes of paragraph (1), regulations 16(5) and 17(5) do not apply.

(4) For the purposes of paragraph (1), the phrase “and the deemed refusal shall not give rise to an appeal to the Commission by virtue of section 58 (appeals) or section 60 (appeal against failure to take planning decision)” contained in regulations 16(4), 16(6) and 23(3) shall not have effect.