

1989 No. 20

EUROPEAN COMMUNITIES

PLANNING

**Planning (Assessment of Environmental Effects)
Regulations (Northern Ireland) 1989**

Made 25th January 1989

Coming into operation 1st March 1989

The Department of the Environment, being a department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on it by that section and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation and commencement

1. These regulations may be cited as the Planning (Assessment of Environmental Effects) Regulations (Northern Ireland) 1989 and shall come into operation on 1st March 1989.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these regulations—

“the 1972 Order” means the Planning (Northern Ireland) Order 1972(d);

“the Commission” means the Planning Appeals Commission;

“controlled waste” has the meaning assigned to that term by Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978(e);

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

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

“the Department” means the Department of the Environment;

(a) S.I. 1988/785

(b) 1972 c. 68

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

(d) S.I. 1972/1634 (N.I. 17)

(e) S.I. 1978/1049 (N.I. 19)

“environmental information” means the environmental statement prepared by an applicant or appellant, 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” shall be construed in accordance with Schedule 3;

“exempt development” means development which is the subject of a direction by the Department under regulation 17;

“the General Development Order” means the Planning (General Development) Order (Northern Ireland) 1973(a);

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission (other than an application made pursuant to Article 19 of the 1972 Order) for the carrying out of development of a description mentioned in Schedule 1 or Schedule 2 respectively, not being exempt development;

“special road” has the meaning assigned to that term by Article 2(2) of the Roads (Northern Ireland) Order 1980(b);

“special waste” has the meaning assigned to that term by regulation 3 of the Pollution Control (Special Waste) Regulations (Northern Ireland) 1981(c).

Application for planning permission requiring an environmental statement

3.—(1) Planning permission shall not be granted pursuant to:—

(a) a Schedule 1 application; or

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

unless the Department or the Commission as the case may require, shall first have taken into consideration environmental information.

(2) For the purposes of paragraph (1)(b) a proposed development shall be taken to be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location where:—

(a) the applicant and the Department agree that an environmental statement is required and the Department has notified its agreement in writing or;

(b) the Department has determined that an environmental statement is required under regulation 4, 5 or 6.

Application for a determination whether environmental statement required

4.—(1) Subject to paragraph (2) before applying for planning permission a developer may apply in writing to the Department for a determination—

(a) S.R. & O. (N.I.) 1973 No. 326

(b) S.I. 1980/1085 (N.I. 11)

(c) S.R. 1981 No. 252

- (a) whether a proposed development would fall within any of the descriptions mentioned in Schedule 1 or 2 and, if so, within which such description; and
 - (b) whether, if the proposed development would fall within a description in Schedule 2, it would be likely to have a significant effect on the environment.
- (2) An application under paragraph (1) shall be accompanied by—
- (a) a plan sufficient to identify the land on which the proposed development is to be carried out;
 - (b) a brief description of the nature and purpose of the proposed development; and
 - (c) such further information or representations as the applicant wishes to provide or make.

(3) The Department may consult the district council and the other statutory bodies referred to in regulation 8(2) before making its determination.

(4) Subject to paragraph (5) the Department shall inform the applicant in writing of its determination within 4 weeks from the date of receipt of the application or within such extended period as may be agreed in writing between the Department and the applicant.

(5) Where the Department considers that it has not been provided with sufficient information to enable the application to be determined, it shall—

- (a) specify to the applicant in writing within the period or extended period mentioned in paragraph (4) the points on which it requires further information; and
- (b) determine the application within 4 weeks from the date on which the information required is received or within such extended period as may be agreed in writing between the Department and the applicant.

(6) Where the Department determines that the proposed development requires an environmental statement, it shall send the applicant a written statement giving the full reasons for its determination.

(7) If the applicant does not accept that determination he may by notice in writing inform the Department that he proposes to seek a hearing before the Commission.

(8) The notice referred to in paragraph (7) shall be served on the Department within 4 weeks from the date of the determination.

Application for planning permission made to Department without environmental statement

5.—(1) Where it appears to the Department that an application for planning permission is or may be a Schedule 1 or Schedule 2 application, the Department shall as provided in paragraph (2), determine whether an environmental statement is required.

(2) Paragraphs (3) to (8) of regulation 4 shall apply to a determination under this regulation subject to the modifications mentioned in paragraph (3).

(3) Those modifications are—

- (a) references to a determination shall be construed as references to a determination under paragraph (1);
- (b) references to the applicant shall be construed as references to the applicant for planning permission;
- (c) in paragraph (4) after the word "application" there shall be inserted the words "for planning permission";
- (d) in paragraph (5)—
 - (i) for the words "enable the application to be determined" there shall be substituted the words "make the determination";
 - (ii) in sub-paragraph (b), for the words "determine the application" there shall be substituted the words "make the determination".

(4) If the applicant does not inform the Department in accordance with regulation 4(7), as applied by paragraph (2), that he proposes to seek a hearing before the Commission, his application for planning permission shall be deemed to have been withdrawn.

(5) Where the Department determines, or, following a hearing by the Commission, confirms, that an environmental statement is required, it shall be submitted within 6 months from the date of the determination or such extended period as may be agreed in writing between the applicant and the Department and if not so submitted the application for planning permission shall be deemed to have been withdrawn.

(6) Where an application for planning permission has been deemed to have been withdrawn under paragraph (4) or (5) it shall be returned, along with any fee which accompanied it, to the applicant.

(7) Where, following a hearing by the Commission, the Department withdraws its determination that an environmental statement is required, the period within which the application for planning permission is to be determined shall be calculated from the date of notice to the applicant of the Department's withdrawal.

Hearing by Commission in relation to Department's determination

6.—(1) Where an applicant seeks a hearing before the Commission under regulation 4(7), or regulation 4(7) as applied by regulation 5(2), it shall afford the applicant the opportunity of appearing before and being heard by the Commission.

(2) Where a hearing is held the Department shall consider the report of the Commission and may confirm, amend or withdraw its determination.

Availability of information in relation to determination

7. The Department shall place a copy of a determination made under regulation 4 or 5 or confirmed or amended under regulation 6 on a register kept in pursuance of Article 21 of the 1972 Order.

Procedure to facilitate preparation of environmental statement

8.—(1) Where a developer informs the Department that he intends to submit an environmental statement with an application for planning permission he shall, if he has not already done so, furnish the Department with

the information necessary to identify the land and the nature and purpose of the proposed development and shall indicate the main environmental consequences to which he proposes to refer in his environmental statement.

(2) Where a developer informs the Department as mentioned in paragraph (1) and has complied with the requirements of that paragraph the Department, if it agrees that an environmental statement is required, shall—

- (a) notify the district council for the area in which the land to which the proposal relates is situated of details of the proposed development;
- (b) notify such other statutory bodies as appear to it to have an interest in the proposal;
- (c) inform those bodies whom it notifies pursuant to sub-paragraphs (a) and (b) that they have a duty, subject to regulation 9, to make available to the developer (whose address it shall give in the notice), any information in their possession which he or they may consider relevant to the preparation of the environmental statement;
- (d) supply a body whom it so informs with such further information in its possession about the proposed development as the body may reasonably request; and
- (e) inform the developer in writing of the names and addresses of the bodies so notified.

Provision of relevant information

9.—(1) Subject to paragraph (2), any body notified by the Department pursuant to regulation 8(2) shall, if requested by the developer, or may, without such request, enter into consultation with him with a view to ascertaining whether they have information in their possession which he or they consider relevant to the preparation of the environmental statement, and shall make that information available to him.

(2) Paragraph (1) does not require the disclosure of information which the body concerned is entitled or bound to hold in confidence.

Consultation where environmental statement submitted

10.—(1) Where, in relation to a proposed development the Department receives an environmental statement it shall—

- (a) place a copy of the environmental statement on the register required to be kept in pursuance of Article 21 of the 1972 Order; and
- (b) consult the district council and bodies mentioned in regulation 8(2) about the environmental statement and inform them that they may make representations.

(2) Where a developer submits an environmental statement to the Department he shall provide enough copies of it, or parts thereof, to enable the Department to comply with paragraph (1)(b) and 3 additional copies.

(3) The Department shall give not less than 4 weeks notice to bodies consulted under paragraph (1)(b) that environmental information is to be taken into consideration in determining the application for planning permission for the development and shall not take such information into consideration until after the expiration of the period of such notice.

Publicity where environmental statement submitted

11. Where an environmental statement is submitted the developer shall make it available to the public and the Department shall, when it receives the environmental statement—

- (a) publish notice of the planning application in the manner required by Article 15(a) of the 1972 Order;
- (b) state in the notice that the planning application is accompanied by an environmental statement; and
- (c) give in the notice an address (within the locality in which the land proposed to be developed is situated) at which copies of the environmental statement may be obtained from the developer and if a charge is to be made for a copy state the amount of the charge.

Availability of copies of an environmental statement

12. A developer who submits an environmental statement shall ensure that a reasonable number of copies of it is available at the address given in the notice pursuant to regulation 11(c).

Charges

13.—(1) A reasonable charge reflecting the costs of printing and distribution may be made by the developer for copies of an environmental statement made available under regulation 12.

(2) A body entering into consultation pursuant to regulation 9, may make a reasonable charge for the costs of making available to the developer information in their possession.

Time period for Department's decision on application for planning permission requiring environmental statement

14.—(1) Where an environmental statement is required in relation to an application for planning permission Article 7 of the General Development Order shall have effect as if—

- (a) for the reference to two months in paragraph (1) of that Article there were substituted a reference to 16 weeks; and
- (b) the said period so substituted were calculated from the date of receipt of the environmental statement by the Department.

(2) An application for planning permission in relation to which an environmental statement is required shall not be determined before the end of the period of 4 weeks from the date of receipt of the environmental statement.

Application of Article 22 of the 1972 Order

15. Where an environmental statement is required to be submitted with an application for planning permission and the Department decides that the application for planning permission is one to which Article 22 (major planning applications) of the 1972 Order shall apply, that Article shall have effect as if—

- (a) for the reference to two months in paragraph (1) of that Article there were substituted a reference to 16 weeks;

- (b) the said period of 16 weeks were calculated from the date of receipt of the environmental statement by the Department.

Appeals to the Commission for developments for which an environmental statement is required

16. An appeal to the Commission under Article 23 or 24 of the 1972 Order in respect of a Schedule 1 or Schedule 2 application with which an environmental statement was submitted to the Department shall be accompanied by a copy of that statement and the Commission may in writing require the appellant to provide such further information as it may specify concerning any matter which is required to be, or may be, dealt with in the environmental statement.

Directions

17. The Department may direct that a specific development is not development in respect of which the consideration of environmental information is required before planning permission can be granted.

Sealed with the Official Seal of the Department of the Environment on
25th January 1989.

(L.S.)

Douglas B. McIlldoon
Assistant Secretary

Descriptions of Development

(1) The carrying out of building or other operations, or a material change of use of buildings or other land to provide any of the following—

1. A crude-oil refinery (excluding an undertaking manufacturing only lubricants from crude oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. A thermal power station or other combustion installation with a heat output of 300 megawatts.
3. An integrated works for the initial melting of cast-iron and steel.
4. An installation for the extraction of asbestos or for the processing and transformation of asbestos or products containing asbestos:—
 - (a) where the installation produces asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products; or
 - (b) where the installation produces friction material, with an annual production of more than 50 tonnes of finished products; or
 - (c) in other cases, where the installation will utilise more than 200 tonnes of asbestos per year.
5. An integrated chemical installation that is to say, an industrial installation or group of installations where two or more linked chemical or physical processes are employed for the manufacture of olefins from petroleum products, or of sulphuric acid, nitric acid, hydrofluoric acid, chlorine or fluorine.
6. A special road; a line for long-distance railway traffic; or an aerodrome with a basic runway length of 2100m or more.
7. A trading port, an inland waterway which permits the passage of vessels of over 1350 tonnes or a port for inland waterway traffic capable of handling such vessels.
8. A waste-disposal installation for the incineration or chemical treatment of special waste.

(2) The carrying out of operations whereby land is filled with special waste, or a material change of use of land to use for the deposit of such waste.

Descriptions of Development

Development for any of the following purposes—

1. *Agriculture*

- (a) water-management for agriculture
- (b) poultry-rearing
- (c) pig-rearing
- (d) a salmon hatchery
- (e) an installation for the rearing of salmon
- (f) the reclamation of land from the sea.

2. *Extractive industry*

- (a) extraction of peat
- (b) deep drillings, including in particular:
 - (i) geothermal drilling,
 - (ii) drilling for the storage of nuclear waste material,
 - (iii) drilling for water supplies,but excluding drillings for investigating the stability of the soil;
- (c) extracting minerals (other than metalliferous and energy-producing minerals) such as marble, sand, gravel, shale, salt, phosphates and potash
- (d) extracting of coal or lignite by underground mining or opencast mining
- (e) extracting petroleum
- (f) extracting natural gas
- (g) extracting ores
- (h) extracting bituminous shale
- (i) extracting minerals (other than metalliferous and energy-producing minerals) by open-cast mining
- (j) a surface industrial installation for the extraction of coal, petroleum, natural gas or ores or bituminous shale
- (k) a coke oven (dry distillation of coal)
- (l) an installation for the manufacture of cement.

3. *Energy industry*

- (a) an industrial installation for the production of electricity, steam and hot water (unless falling within Schedule 1)
- (b) an industrial installation for carrying gas, steam or hot water; or the transmission of electrical energy by overhead cables
- (c) the surface storage of natural gas
- (d) the underground storage of combustible gases
- (e) the surface storage of fossil fuels
- (f) the industrial briquetting of coal or lignite
- (g) an installation for hydroelectric energy production.

4. *Processing of metals*

- (a) an iron works or steelworks, including a foundry, forge, drawing plant or rolling mill (not being a works falling within Schedule 1)

- (b) an installation for the production (including smelting, refining, drawing and rolling) of non-ferrous metals, other than precious metals
- (c) the pressing, drawing or stamping of large castings
- (d) the surface treatment and coating of metals
- (e) boilermaking or manufacturing reservoirs, tanks and other sheet-metal containers
- (f) manufacturing or assembling of motor vehicles or manufacturing motor-vehicle engines
- (g) a shipyard
- (h) an installation for the construction or repair of aircraft
- (i) the manufacture of railway equipment
- (j) swaging by explosives
- (k) an installation for the roasting or sintering of metallic ores.

5. *Glass making*

the manufacture of glass.

6. *Chemical industry*

- (a) the treatment of intermediate products and production of chemicals, other than development falling within Schedule 1
- (b) the production of pesticides or pharmaceutical products, paints or varnishes, elastomers or peroxides
- (c) the storage of petroleum or petrochemical or chemical products.

7. *Food industry*

- (a) the manufacture of vegetable or animal oils or fats
- (b) the packing or canning of animal or vegetable products
- (c) the manufacture of dairy products
- (d) brewing or malting
- (e) confectionery or syrup manufacture
- (f) an installation for the slaughter of animals
- (g) an industrial starch manufacturing installation
- (h) a fish-meal or fish-oil factory
- (i) a sugar factory.

8. *Textile, leather, wood and paper industries*

- (a) a wool scouring, degreasing and bleaching factory
- (b) the manufacture of fibre board, particle board or plywood
- (c) the manufacture of pulp, paper or board
- (d) a fibre-dyeing factory
- (e) a cellulose-processing and production installation
- (f) a tannery or a leather dressing factory.

9. *Rubber industry*

the manufacture and treatment of elastomer-based products.

10. *Infrastructure projects*

- (a) an industrial estate development project

- (b) an urban development project
 - (c) a ski-lift or cable-car
 - (d) the construction of a road, or a harbour, including a fishing harbour, or an aerodrome, not being development falling within Schedule 1
 - (e) canalisation or flood-relief works
 - (f) a dam or other installation designed to hold water or store it on a long-term basis
 - (g) a tramway, elevated or underground railway, suspended line or similar line, exclusively or mainly for passenger transport
 - (h) an oil or gas pipeline installation
 - (i) a long-distance aqueduct
 - (j) a yacht marina.
11. *Other projects*
- (a) a holiday village or hotel complex
 - (b) a permanent racing or test track for cars or motor cycles
 - (c) an installation for the disposal of controlled waste or waste from mines or quarries, not being an installation falling within Schedule 1
 - (d) a waste water treatment plant
 - (e) site for depositing sludge
 - (f) the storage of scrap iron
 - (g) a test bench for engines, turbines or reactors
 - (h) the manufacture of artificial mineral fibres
 - (i) the manufacture, packing, loading or placing in cartridges of gunpowder or other explosives
 - (j) a knackers' yard.
12. The modification of a development which has been carried out, where that development is within a description mentioned in Schedule 1.
13. Development within a description mentioned in Schedule 1, where it is exclusively or mainly for the development and testing of new methods or products and will not be permitted for longer than one year.

SCHEDULE 3

Regulation 2

Environmental Statement

1. An environmental statement comprises a document or series of documents providing, for the purpose of assessing the likely impact upon the environment of the development proposed to be carried out, the information specified in paragraph 2 (referred to in this Schedule as “the specified information”) and such further information as may be included pursuant to paragraph 3.

2. The specified information is—

- (a) a description of the development proposed, comprising information on the site and the design and size or scale of the development;
- (b) the data necessary to identify and assess the main effects which the development is likely to have on the environment;
- (c) a description of the likely significant effects, direct and indirect, on the environment of the development, explained by reference to its possible impact on—
 - human beings;
 - flora;
 - fauna;
 - soil;
 - water;
 - air;
 - climate;
 - the landscape;
 - the inter-action between any of the foregoing material assets;
 - the cultural heritage;
- (d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and
- (e) a summary in non-technical language of the information specified in sub-paragraphs (a) to (d).

3. An environmental statement may include, by way of explanation or amplification of the specified information, further information on any of the following matters—

- (a) the physical characteristics of the proposed development, and the land-use requirements during the construction and operational phases;
- (b) the main characteristics of the production processes proposed, including the nature and quality of the materials to be used;
- (c) the estimated type and quantity of expected residues and emissions (including pollutants of water, air or soil, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;
- (d) (in outline) the main alternatives (if any) studied by the applicant and an indication of the main reasons for choosing the development proposed, taking into account environmental effects;
- (e) the likely significant direct and indirect effects on the environment of the development proposed which may result from—
 - (i) the use of natural resources;

- (ii) the emission of pollutants, the creation of nuisances, and the elimination of waste;
- (f) the forecasting methods used to assess any effects on the environment about which information is given under sub-paragraph (e); and
- (g) any difficulties, such as technical deficiencies or lack of know-how, encountered in compiling any item of specified information.

In paragraph (e), "effects" includes secondary, cumulative, short, medium and long term, permanent, temporary, positive and negative effects.

4. Where further information is included in an environmental statement pursuant to paragraph 3 a non-technical summary of that information shall also be provided.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement the provisions of Council Directive 85/337/EEC (O.J. No. L175, 5.7.85, p. 40) on the assessment of the effects of certain public and private projects on the environment. The Regulations deal with applications for planning permission under the Planning (Northern Ireland) Order 1972 as amended by Article 8 of the Planning (Amendment) (Northern Ireland) Order 1982.

The principal provisions are as follows:

The descriptions of development which are affected by the Regulations are set out in Schedules 1 and 2. Development described in Schedule 1 requires an environmental statement whereas development described in Schedule 2 only requires such a statement if it would be likely to have a significant effect on the environment by virtue of factors such as its nature, size or location. Schedule 3 describes "environmental statement" which is a document prepared by a person who is seeking or proposing to seek planning permission ("the developer").

Regulation 3 prohibits the grant of planning permission without consideration of environmental information (as defined in regulation 2) where an environmental statement is required.

Regulation 4 sets out the procedure where a developer before making an application for planning permission seeks the determination of the Department on whether his proposal requires the provision of an environmental statement.

Regulation 5 enables the Department, on receipt of an application for planning permission, to determine that the application cannot be granted without consideration of an environmental statement and provides that unless such statement is received the application shall be deemed to be withdrawn.

Regulation 6 provides that an applicant who is dissatisfied with the Department's determination under regulation 4 or 5, may have a hearing before the Planning Appeals Commission who will report to the Department which will then confirm, amend or withdraw its determination.

Regulation 7 requires the Department to place information as to determinations or decisions made under regulations 4 to 6 on the planning register which is open to public inspection.

Regulations 8 and 9 require the Department, where a developer informs the Department of his intention to provide an environmental statement, to notify the district council and such other statutory bodies as appear to it to have an interest in the proposed application. Such bodies have an obligation to make available information to the developer although they are not obliged to supply information held in confidence.

Regulation 10 requires the Department to place a copy of an environmental statement on the planning register and to consult with the district council and other interested bodies before deciding the application for planning permission to which the environmental statement relates.

Regulation 11 requires the Department to refer to an environmental statement in its publication of notice of an application for planning permission and state in the notice where a copy of the environmental statement may be obtained and where a charge is made for the copy, the amount of the charge.

Regulation 12 requires a developer who has prepared an environmental statement to ensure that a reasonable number of copies of it are available to the public at the address stated in the notice.

Regulation 13 allows a developer to make a reasonable charge for supplying to the public a copy of the environmental statement and also for consultees to charge for information supplied to a developer.

Regulation 14 provides that where an environmental statement is required, the period for determining an application for planning permission is to be 16 weeks (for normal applications the period is 2 months).

Regulation 15 similarly extends from 2 months to 16 weeks the period within which the Department must decide whether or not a public local inquiry should be held into an application for planning permission for which an environmental statement is required.

Regulation 16 requires that a copy of the environmental statement be given to the Planning Appeals Commission where there is an appeal on an application for which a statement was required. The Commission may request further information.

Regulation 17 empowers the Department to direct that specific developments are exempt from the need to provide an environmental statement.

Copies of Council Directive 85/337/EEC are available from the Commission of the European Communities, Windsor House, 9/15 Bedford Street, Belfast BT2 7EG.