
STATUTORY RULES OF NORTHERN IRELAND

1998 No. 437

FORESTRY

**Environmental Assessment (Forestry)
Regulations (Northern Ireland) 1998**

Made - - - - *8th December 1998*

Coming into operation *1st February 1999*

The Department of Agriculture, being a department designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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 the said section 2(2) and of all other powers enabling it in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Environmental Assessment (Forestry) Regulations (Northern Ireland) 1998 and shall come into operation on 1st February 1999.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“afforestation” has the same meaning as in Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment⁽³⁾;

“the Department” means the Department of Agriculture for Northern Ireland;

“environmental information” means information in the environmental statement and any other information provided in accordance with these Regulations in relation to

- (a) an application for consent;
- (b) any reconsideration under regulation 13; or
- (c) any request for a review under regulation 16,

relating to the likely environmental effects of the subject matter of the application or, as the case may be, reconsideration or review;

(1) S.I. 1988/785

(2) 1972 c. 68. Section 2 is subject to Schedule 2 to that Act and is to be read with S.I. 1984/703 (N.I. 3) and S.R. 1994/2795 (N.I. 15)

(3) O.J. No. L174, 5.7.85, p. 40

“environmental statement” means a statement such as is described in the Schedule;

“project” means the execution of construction works or of other installations or schemes or other intervention in the natural surroundings or landscape including those involving the extraction of mineral resources;

“proposer” in relation to any project means the person who proposes to carry out the project;

“relevant project” means a project which is likely to have a significant effect on the environment and is—

- (a) initial afforestation where this may lead to adverse ecological changes, or
- (b) the construction of a forest road where such construction is permitted development by virtue of sub-paragraph (b) of Class A of Part 7 of Schedule 1 to the Planning (General Development) Order (Northern Ireland) 1993⁽⁴⁾, or,
- (c) operations to obtain the materials required for the formation, alteration or maintenance of private ways where such operations are permitted development by virtue of sub-paragraph (c) of Class A of Part 7 of Schedule 1 to the Planning (General Development) Order (Northern Ireland) 1993.

(2) In these Regulations, any reference to an enforcement notice shall be construed as an enforcement notice served by the Department under regulation 15(1) and as including, as the context requires, a reference to a notice of variation under regulation 15(6)(a) or to an enforcement notice as so varied.

(3) Any reference in these Regulations to a consent shall be construed as a reference to the consent of the Department required under regulation 3.

(4) The Interpretation Act (Northern Ireland) 1954⁽⁵⁾ shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Restriction on relevant project

3. A person shall not carry out work in relation to a relevant project unless the Department has given consent for that project and the project is carried out in accordance with consent, (including the conditions to which the consent is subject).

Application for an opinion whether a project is a relevant project

4.—(1) The proposer may apply in writing to the Department for its opinion whether a project is a relevant project.

(2) An application under paragraph (1) shall include or be accompanied by—

- (a) a map or plan sufficient to identify the land that is the subject of the proposed project and the extent of the proposed project,
- (b) a brief description of the nature of the proposed project and of its possible effects on the environment, and
- (c) such further information or representations as the proposer may wish to provide or make.

(3) The Department shall, if it considers that it has not been provided with sufficient information to enable it to give an opinion under paragraph (1), notify the proposer in writing of the matters on which it requires further information and the proposer shall supply that further information to the Department within such period as the Department reasonably may require or such other period as may be agreed in writing between the Department and the proposer.

(4) S.R. 1993/278

(5) 1954 c. 33 (N.I.)

Opinion of the Department

5.—(1) Where the proposer applies to the Department under regulation 4, the Department shall give to the proposer written notice of its opinion within—

- (a) 28 days beginning with the date of its receipt of the application or, where it notifies the proposer under regulation 4(3) that it requires further information, the date of its receipt of that information; or
- (b) such longer period as may be agreed in writing between the Department and the proposer.

(2) In forming its opinion the Department shall have regard in particular to the nature, size and location of the proposed project.

(3) Where the opinion of the Department is that the project is a relevant project, the Department shall include in or provide with its opinion a written statement of its reasons for being of that opinion.

(4) The Department may of its own motion give its opinion whether or not a project is or would be a relevant project and where it gives an opinion under this paragraph—

- (a) it shall give written notice of its opinion to any person who reasonably appears to it to be the proposer, and
- (b) paragraphs (2) and (3) of this regulation shall apply as they do to an opinion given in relation to an application under regulation 4(1).

Request to the Department to reconsider its opinion

6.—(1) Where the Department gives notice of its opinion in relation to any application under regulation 4(1) or in accordance with regulation 5(4) and the opinion is that a project is or would be a relevant project, the proposer may request the Department in writing to reconsider its opinion.

- (2) An application under paragraph (1) shall be accompanied by, or by copies of—
 - (a) any application by the proposer to the Department under regulation 4(1) and any document supplied to the Department by the proposer in connection with that application; and
 - (b) the opinion of the Department and any written statement of the reasons which it provided with it,

and may include such further information or representations in writing as the proposer may wish to provide or make.

(3) Where the Department considers that the documents supplied to it under paragraph (2) do not provide it with sufficient information to enable it to reconsider its opinion, it shall notify the proposer in writing of the matters on which it requires further information and the proposer shall forthwith supply that information if it is available to him.

(4) Upon receipt of an application under paragraph (1), the Department shall reconsider the opinion to which it relates and within 28 days of—

- (a) the date of receipt of the application; or
- (b) where it notifies the applicant under paragraph (3) that it requires further information, the date of receipt by the Department of that information,

it shall notify the applicant of its decision in relation thereto.

(5) In reconsidering its opinion in pursuance of paragraph (4), the Department shall in particular have regard to the nature, size and location of the project to which the opinion relates.

- (6) After reconsidering its opinion in pursuance of paragraph (4) the Department may—
 - (a) affirm that opinion; or
 - (b) substitute therefor such other opinion as seems to it to be appropriate in the circumstances.

(7) The Department shall provide an applicant under paragraph (1) with a written statement of the decision it has reached in relation to his application under paragraph (6) including, where it substitutes for an earlier opinion a new opinion that the project to which the application relates is or would be a relevant project, its reasons for so deciding.

Applications for consent

7.—(1) An application for consent for a relevant project shall be made in writing to the Department and shall be accompanied by—

- (a) a map or plan sufficient to identify the land on which the relevant project would be carried out and the extent of any planting, regeneration, construction, works or operations;
- (b) a description of the nature of the relevant project;
- (c) an environmental statement in respect of the relevant project; and
- (d) a copy of the notice to be published in accordance with regulation 9(1).

(2) An applicant for consent shall supply to the Department such number of copies of the application and the documents accompanying it as the Department reasonably may require.

Provision of further information

8. Where in the opinion of the Department—

- (a) further information is reasonably required for its proper consideration of the likely environmental effects of the relevant project to which an application for consent relates; and
- (b) the applicant could (having regard in particular to current knowledge and methods of assessment) provide such information,

the Department shall notify the applicant in writing of the matter on which it requires further information and the applicant shall provide that further information within such period as the Department may require.

Publicity

9.—(1) A person who makes an application for consent in relation to a relevant project or who provides further information in relation to that project under regulation 8 shall publish a notice in accordance with paragraph (2) in such newspapers (not being less than 2) as the Department reasonably may require for the purposes of ensuring—

- (a) the application for consent or, as the case may be, the information provided under regulation 8, is made available to the public; and
- (b) the public concerned is given an opportunity to express an opinion in relation to the application before the application for consent is determined.

(2) A notice required by paragraph (1) shall—

- (a) state that the application for consent has been made or, as the case may be, that the further information has been furnished to the Department under regulation 8;
- (b) specify an office of the Department or other place nominated by it at which copies of the application or the further information may be inspected free of charge at all reasonable hours within 28 days beginning with the date of publication of the notice;
- (c) specify an address at which copies of the application or the further information may be obtained from the applicant and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and

(d) state that any person wishing to make representations regarding the application or the further information should make them in writing to the Department at a specified address nominated by it, within 28 days beginning with the date of publication of the notice.

(3) On receipt of an application for consent, or of further information under regulation 8, the Department shall provide copies of the application or, as the case may be, the further information, together with a notice stating that any representations regarding the application or the further information should be made in writing to the Department within 28 days beginning with the date of the notice, to any local authority or other public authority which appears to the Department to have an interest in the application.

(4) In this regulation, reference to an application shall include a reference to the documents accompanying that application.

Information from another Member State

10. Where it appears to the Department that a relevant project in relation to which it has received an application for consent would be likely to have a significant effect on the environment of another Member State or where another Member State likely to be significantly affected requests, the Department shall forward a copy of the environmental statement relating to the project to the relevant Member State.

Determination of applications

11.—(1) Where an application is made to the Department for consent in relation to a relevant project, it may, subject to the following provisions of this regulation—

- (a) grant consent for that project, either subject only to the conditions required by regulation 14 or also subject to such further conditions as it sees fit, or
- (b) refuse consent.

(2) The Department shall not determine an application for consent until after the expiry of the periods referred to in regulation 9.

(3) In determining an application for consent in relation to a relevant project, the Department shall take into consideration the environmental information relating to that project, any representations received by it in relation to the application and any other material consideration.

Notification of decisions

12. Where an application for consent has been determined by the Department it shall—

- (a) give notice in writing of its decision to the applicant and any person from whom it received representations in relation to the application, stating that it has taken into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based; and
- (b) publish a notice of its decision in the newspapers in which notice of the application was published in accordance with regulation 9(1).

Requests to the Department to reconsider its decision

13.—(1) Where the Department has—

- (a) refused an application for consent;
- (b) granted consent subject to conditions in addition to those required by regulation 14; or

- (c) granted consent subject only to the conditions required by regulation 14 but specified a period for the purposes of one or both of those conditions less than the maximum period permitted by that regulation

the applicant may request the Department in writing to reconsider its decision.

(2) A request to reconsider a decision under paragraph (1) shall be made within 28 days, or such longer period as the Department may allow, beginning with the date on which the applicant receives notification of the Department's decision under regulation 12.

(3) Any request made to the Department shall be made by notice in writing and may be accompanied or followed by, or by copies of

- (a) the application to which it relates and any documents provided by the applicant to the Department in relation to it;
- (b) the decision of the Department; and
- (c) any other information or representations which the applicant wishes to provide or make.

(4) Upon receipt of a request under paragraph (1) to reconsider any decision, the Department shall within 28 days (or such longer period as it may reasonably require) beginning with the date of that request or of the receipt of any representations or information supplied in accordance with paragraph (3) reconsider its decision.

(5) In reconsidering its decision, the Department shall take into consideration any relevant environmental information, any representations received by it in relation to the reconsideration and any other material consideration.

(6) After reconsidering its decision in pursuance of paragraph (4), the Department may—

- (a) affirm that decision; or
- (b) substitute therefor such other decision as it was empowered to make under regulation 11(1).

(7) When the Department has completed its reconsideration under paragraph (4) it shall—

- (a) give notice of its decision stating that it has taken into consideration the environmental information relating to the application to which the reconsideration relates and giving the reasons and considerations on which the decision was based to—
 - (i) the applicant,
 - (ii) any person from whom the Department received representations in relation to the application; and
- (b) publish a notice of its decision in the newspapers in which the decision of the Department to which the reconsideration relates was published in accordance with regulation 12(b).

Conditions to be included in every consent

14. Every consent for a relevant project shall include conditions to the effect that—

- (a) work in relation to the relevant project shall be commenced within such period (not being more than 5 years beginning with the date consent is granted) as is specified in the consent; and
- (b) no work shall be carried out in relation to the project after the expiration of such period (not being more than 10 years beginning with the date consent is granted) as is specified in the consent.

Enforcement notices

15.—(1) Where it appears to the Department that a person is carrying out or has carried out work in relation to a relevant project—

- (a) without consent, where consent is required by regulation 3, or
- (b) in breach of a condition subject to which consent has been granted in relation to that relevant project,

the Department may serve an enforcement notice on that person.

(2) An enforcement notice may require that the person on whom it is served shall take such one or more of the following measures as appear to the Department to be suitable in the circumstances, namely—

- (a) apply to the Department for consent;
- (b) discontinue work in relation to the relevant project;
- (c) restore the land to its condition before any work in relation to the relevant project was carried out;
- (d) carry out on the land any works or operations, specified in the enforcement notice, which in the opinion of the Department are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project.

(3) An enforcement notice shall specify the period during which any of the measures mentioned in paragraph (2)(a), (c) or (d) is to be taken and may specify different periods for different measures.

(4) Either—

- (a) an enforcement notice served by virtue of paragraph (1)(a) shall include or be accompanied by a written statement of the Department's reasons for being of the opinion that the project is a relevant project; or
- (b) the Department shall serve such written statement on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.

(5) Either—

- (a) an enforcement notice shall include or be accompanied by a notice explaining the procedure to be followed in asking the Department to review the enforcement notice and whether the requirements of the enforcement notice will be stayed during any review; or
- (b) the Department shall serve such a notice on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.

(6) The Department may, at any time—

- (a) by a further notice served on the person on whom the enforcement notice was served, vary an enforcement notice; and
- (b) withdraw an enforcement notice.

(7) An enforcement notice may be served on any person—

- (a) by delivering it to him personally;
- (b) by leaving it for him at his last known place of abode or business; or
- (c) by sending it through the post addressed to him at his last known place of abode or business.

(8) An enforcement notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body;

- (b) in the case of a partnership, be served on a partner or person having the control or management of the partnership business.

Requests to review enforcement notices

16.—(1) Any person on whom an enforcement notice has been served may request the Department to review the enforcement notice.

(2) Any request to the Department to review an enforcement notice under this regulation shall be made within 28 days, or such longer period as the Department may allow, beginning with the date on which the applicant receives the enforcement notice.

(3) Any request to the Department to review an enforcement notice shall be made by notice in writing to the Department accompanied or followed by, or by copies of—

- (a) the enforcement notice;
- (b) any relevant consent; and
- (c) any other information or representations which the applicant wishes to provide or make.

(4) On receipt of a request to review an enforcement notice under this regulation, the Department shall review the notice within 28 days (or such longer period as it reasonably may require) beginning with—

- (a) the date of receipt by it of the request or any representations or information supplied in accordance with paragraph (3); or
- (b) where there is no consent or application for consent relevant to the enforcement notice, the date of receipt by it of the notice in writing of the request from the applicant.

(5) After the Department has reviewed the enforcement notice under this regulation, it may, subject to paragraph (8), cancel the notice or vary it in any respect.

(6) In reviewing the enforcement notice, the Department shall take into consideration any relevant environmental information, any representations received by it in relation to the request to reconsider its decision and any other material consideration.

(7) When it has reviewed the enforcement notice, the Department shall give notice of its decision to the person who requested the review under paragraph (1), giving the reasons and considerations on which the decision was based.

(8) The Department shall not review its decision on an enforcement notice served by virtue of regulation 15(1)(a) where it appears to the Department that consent is required by regulation 3.

(9) The request to the Department to review the enforcement notice under this regulation shall have the effect of suspending the operation of any requirement in the enforcement notice to which it relates to take measures described in sub-paragraphs (a), (c) or (d) of regulation 15(2) until the Department has reviewed the enforcement notice or, where the request to review the enforcement notice is withdrawn, until it has been withdrawn.

Penalties for non-compliance with enforcement notices

17.—(1) Any person who carries out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served on him in accordance with regulation 15 shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale, or
- (b) on conviction on indictment to a fine.

(2) Any person on whom an enforcement notice has been served in accordance with regulation 15 who fails, within the period specified in the enforcement notice, to carry out any measure, other

than discontinuance of the relevant project, required by the enforcement notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an offence under paragraph (1) or (2) which has been committed by a body corporate is proved to have been committed with the agreement or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Power of entry and default powers

18.—(1) Subject to paragraph (2), any person duly authorised in writing by the Department may at any reasonable time enter any land on which he or the Department reasonably suspects that work in relation to a relevant project is being or has been carried out—

- (a) without consent, where such consent is required under regulation 3, or
- (b) in breach of a condition subject to which consent has been granted.

(2) Where any measures required by an enforcement notice by virtue of regulation 15(2) (other than discontinuance of the relevant project) have not been taken within the period specified in the enforcement notice—

- (a) any person duly authorised by the Department may at any reasonable time enter the land to which the enforcement notice relates and take those measures; and
- (b) the Department may recover from the person on whom the enforcement notice was served any expenses reasonably incurred by it in doing so.

(3) A person authorised under paragraphs (1) or (2) to enter any land shall, if so requested, produce evidence of his authority before so entering.

Revocation and transitional provisions

19.—(1) The Environmental Assessment (Afforestation) Regulations (Northern Ireland) 1989(6) (in this regulation called “the 1989 Regulations”) are revoked.

(2) Where, before the date of coming into operation of these Regulations, a request for an opinion under regulation 4 of the 1989 Regulations has been received by the Department but the Department has not given its opinion in relation to that application—

- (a) the application shall be treated as an application under regulation 4(1) of these Regulations;
- (b) any notification by the Department under regulation 4(3) of the 1989 Regulations shall be treated as a notification under regulation 4(3) of these Regulations; and
- (c) so much of the period specified in regulation 5(1) of these Regulations as has expired before the date of coming into operation of these Regulations shall be taken into account as if that regulation had been in operation when the period began to run.

(3) Where, before the date of coming into operation of these Regulations, the Department has received a request under regulation 4(6) or 5(2)(b) of the 1989 Regulations but has not made any decision in relation to that request—

- (a) the application shall be treated as an application under regulation 6(1) of these Regulations;
- (b) any notification by the Department under regulation 6(3) of the 1989 Regulations shall be treated as a notification under regulation 6(3) of these Regulations;

(c) so much of the period specified in regulation 6(4) of these Regulations as has expired before the date of coming into force of these Regulations shall be taken into account as if that regulation had been in force when the period began to run.

(4) Where an application for a grant under section 2(1) of the Forestry Act (Northern Ireland) 1953(7) has been received by the Department before the coming into operation of these Regulations, any environmental information provided, consultations undertaken or other things done under the 1989 Regulations for the purpose of the Department's taking into consideration environmental information in respect of the project that is the subject of the application, shall be treated as having been provided, undertaken or done under the corresponding provision of these Regulations as if the application were an application for consent.

(5) Where an application for a grant under section 2(1) of the Forestry Act (Northern Ireland) 1953 in respect of any relevant project has been approved by the Department before the date of coming into operation of these Regulations—

- (a) the relevant project shall be deemed to have consent subject to conditions as required by regulation 14 (and on the basis that the Department had specified the maximum times permitted by that regulation) in addition to the conditions (if any) to which the grant is subject; and
- (b) consent shall be deemed to have been given when the Department made its decision to make the grant for the project.

Sealed with the Official Seal of the Department of Agriculture on

L.S.

8th December 1998.

M. H. Beatty
Assistant Secretary

SCHEDULE

Regulations 2(1) and 7(1)

Environmental Statement

1. An environmental statement comprises a document or documents providing, for the purpose of assessing the likely impact of the relevant project on the environment, the information specified in paragraph 2 below (in this Schedule referred to as “the specified information”).

2. The specified information is—

- (a) a description of the project comprising information about the site, the design and the extent thereof;
- (b) the data necessary to identify and assess the main effects which the project is likely to have on the environment;
- (c) a description of the likely significant effects of the project, direct and indirect, on the environment, explained by reference to its possible impact on—
 - human beings;
 - flora;
 - fauna;
 - soil;
 - water;
 - air;
 - climate;
 - the landscape;
 - the interaction between any of the foregoing;
 - material assets (including the architectural and archaeological heritage);
 - 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, or remedy those effects; and
- (e) a summary in non-technical language of the information specified above.

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 project, and the land-use requirements during the planting and subsequent stages;
- (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 project when planting is completed;
- (d) (in outline) the main alternatives (if any) studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects;
- (e) the likely significant direct and indirect effects on the environment of the project which may result from—
 - (i) the use of natural resources;
 - (ii) the emission of pollutants, the creation of nuisances and the elimination of waste;

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- (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 knowledge, encountered in compiling any specified information.

In sub-paragraph (e) “effects” includes secondary, cumulative, short, medium and long-term, permanent and 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 be provided.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations supersede the Environmental Assessment (Afforestation) Regulations (Northern Ireland) 1989 which are revoked (regulation 19(1)). The Regulations provide for further implementation of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.85, p. 40) in relation to specified projects relating to forestry. These are defined as “relevant projects” in regulation 2(1). The definition includes a limitation to projects which are likely to have significant effects on the environment.

2. The Regulations require that consent shall be obtained from the Department of Agriculture for Northern Ireland (“the Department”) for relevant projects (regulation 3). A person who proposes to carry out a project may apply to the Department in accordance with regulation 4 for its opinion whether the consent is required. Regulation 5 provides for the Department to give notice of its opinion to the person who proposed the project and makes provision for it to give an opinion of its own motion. If the Department’s opinion is that consent is required, the person who proposed the project may request the Department to reconsider its opinion (regulation 6).

3. Applications for consent are to be made to the Department under, and must be accompanied by the documents specified, in regulation 7. These documents include an environmental statement conforming to the requirements in the Schedule. The Regulations provide for the Department to seek further information from the applicant (regulation 8) and for publicity for applications and for representations to be made to the Department by interested persons (regulation 9). Regulation 10 provides for information to be provided to other Member States of the European Community.

4. Regulation 11 deals with the determination of applications by the Department, including matters they are to take into consideration. The Department must give notice of its decision to the applicant and publicise it in accordance with regulation 12. The applicant can ask the Department to reconsider its decision (regulation 13). Regulation 14 specifies conditions as to time which must be included in every consent.

5. Where work in relation to a relevant project is or has been carried out without consent or in breach of a condition of consent, the Department may issue an enforcement notice (regulation 15). The Department may be requested to reconsider its decision to issue an enforcement notice under regulation 16. Failure to comply with an enforcement notice constitutes an offence (regulation 17). The Regulations provide for powers of entry and for a person authorised by the Department to carry

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out works where an enforcement notice is not complied with (regulation 18). There are transitional provisions in regulation 19.