
STATUTORY RULES OF NORTHERN IRELAND

2012 No. 59

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 and shall come into operation on 13th March 2012.

Interpretation

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

(2) In these Regulations—

“the 1991 Order” means the Planning (Northern Ireland) Order 1991(2) and references to Articles are references to Articles of that Order;

“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;

“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 [85/337/EEC](#)(3);

“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

(1) [1954 c. 33 \(N.I.\)](#)

(2) [S.I. 1991/1220 \(N.I. 11\)](#) as amended by [S.I. 2003/430 \(N.I.8\)](#) and [S.I. 2006/1252 \(N.I.7\)](#)

(3) O.J. No. L 175, 5.7.1985, p. 40. Council Directive [85/337/EEC](#) was amended by Council Directive [97/11/EC](#), O.J. No. L. 73, 14.3.1997, p.5; Directive [2003/35/EC](#) of the European Parliament and of the Council, O.J. No. L. 156, 25.6.2003, p.17; and Directive [2009/31/EC](#) of the European Parliament and of the Council, O.J. No. L. 140, 5.6.2009, p.114

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

“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;

“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 19(1);

“the General Development Order” means the Planning (General Development) Order (Northern Ireland) 1993(4);

“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 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;

“sensitive area” means any of the following—

(4) S.R. 1993 No. 278 relevant amendments are S.R.1995 No. 356; S.R. 1999 No. 73; S.R. 2004 No. 459; S.R. 2006 No. 218 and S.R. 2006 No. 276

- (a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002⁽⁵⁾;
- (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⁽⁶⁾;
- (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⁽⁷⁾;
- (e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995⁽⁸⁾;
- (f) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995⁽⁹⁾.

“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 1991 Order have the same meaning for the purposes of these Regulations as they have for the purposes of that Order.

(4) Expressions used in these Regulations and in the Directive (whether or not used in the 1991 Order) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) In these Regulations any references 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 26) 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

(5) [S.I. 2002/ 3153 \(N.I. 7\)](#)
(6) [S.I. 1985/170 \(N.I. 1\)](#)
(7) [See Command Paper 9424](#)
(8) [S.I. 1995/1625 \(N.I.9\)](#)
(9) [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 2.3 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) make available to the public the information considered in making the direction and the reasons for making the direction;
- (b) consider whether another form of assessment would be appropriate; and
- (c) 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 the Department on or after the commencement of these Regulations; and
- (b) to every subsequent application in respect of EIA development received by the Department on or after the commencement of these Regulations

and for the purposes of this paragraph, the date of receipt of an application by the Department shall be determined in accordance with Article 11 (time periods for decisions) of the General Development Order as applied by regulation 14.

(2) 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 referred to 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 Department, or following a hearing by the Commission, confirmation by the Department, that the development is EIA development.

Appeals under Article 32 or Article 33 of the 1991 Order

6.—(1) Where an appeal is made to the Commission under Article 32 (appeals) or 33 (appeal in default of planning decision), the functions conferred on the Department by Part 3 to Part 6 of these Regulations shall be exercisable by the Commission in respect of that appeal.

(2) For the purposes of paragraph (1), regulation 13(3) shall have effect as if substituted by the following provision—

“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), regulation 13(5) does 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 Article 32 (appeals) or Article 33 (appeal in default of planning decision)” contained in regulation 13(4), 13(6) and 19(3) shall not have effect.

PART 2

Pre-Application Procedures

Pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement

7.—(1) Subject to paragraphs (2) to (4), before applying for planning permission or subsequent consent a developer may apply in writing to the Department asking it to give—

- (a) a determination as to whether a proposed development would or would not be an EIA development;
- (b) an opinion as to the information to be provided in the environmental statement to be submitted with an EIA application.

(2) A request under paragraph (1)(b) may be made at the same time as a request under paragraph (1)(a).

(3) A request under paragraph (1)(a) or (1)(b) in respect of planning permission shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(4) A request under paragraph (1)(a) or (1)(b) in respect of subsequent consent shall be accompanied by—

- (a) a plan sufficient to identify the land;

- (b) sufficient information to enable the Department to identify any planning permission granted for the development in respect of which a subsequent application has been made;
- (c) an explanation of the likely effects on the environment which were not identified at the time that the planning permission was granted; and
- (d) such other information or representations as the applicant may wish to provide or make.

(5) Subject to paragraph (6), the Department shall inform the applicant, in writing, of its determination under paragraph (1)(a) 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.

(6) Where the Department considers that it has not been provided with sufficient information to enable it to respond to a request under paragraph (1)(a) or (b) it shall notify the developer of the particular points on which further information is required, and the period for making the determination or for giving opinion on the content of the environmental statement shall not commence until receipt of that additional information.

(7) Subject to paragraph (10), the Department shall not give an opinion in response to a request under paragraph (1)(b) until it has consulted the developer, and such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities, but shall respond to such a request within 6 weeks of receipt of that request or such longer period as may be agreed in writing with the applicant.

(8) If, in response to a request under paragraph (1)(a), the Department, having taken into account the selection criteria, is of an opinion that an application would be an EIA application, it shall provide with the determination a written statement giving clearly and precisely the full reasons for its conclusion.

(9) If, in response to a request under paragraph (1)(a), the Department, having taken into account the selection criteria, is of the opinion that an application would not be an EIA application, it shall, if requested to do so, make available the reasons for that conclusion.

(10) Where the Department gives a determination under paragraph (8) and the applicant has also requested an opinion under paragraph (1)(b), the Department shall respond to the request for the opinion within 6 weeks of the date of issue of its determination under paragraph (8) or such longer period as may be agreed in writing with the applicant.

(11) In giving an opinion in response to a request under paragraph (1)(b), the Department shall take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned; and
- (c) the environmental features likely to be affected by the development.

(12) Where, following receipt of an opinion under paragraph (10), an applicant wishes to proceed with the submission of an environmental statement, the applicant shall by notice in writing inform the Department to such effect within 4 weeks of the date of the opinion.

(13) Where the applicant wishes to proceed with the proposed development the applicant shall by notice in writing inform the Department that the applicant either—

- (a) accepts the Department's determination under paragraph (8) and proposes to provide an environmental statement; or
- (b) does not accept the Department's determination and proposes to seek a hearing before the Commission.

(14) The notice referred to in paragraph (13) shall be served on the Department within 4 weeks of the date of the determination.

(15) Where the Department has given an opinion under paragraph (1)(b) or where it has received a statement under regulation 5(2)(a) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

PART 3

Preparation of Environmental Statements

Procedure to facilitate preparation of environmental statements

8.—(1) A developer may give the Department notice in writing under this paragraph that the developer intends to submit an environmental statement.

(2) A notice under paragraph (1) shall include or be accompanied by the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving notice proposes to refer in the environmental statement.

(3) Where the Department receives—

- (a) such a notice as is mentioned in paragraph (1); or
- (b) such a statement as is mentioned in regulation 7(13)(a);

it shall notify—

- (i) the district council in the area in which the land to which the proposal relates is situated of the details of the proposed development; and
- (ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities,

of the name and address of the developer and of the duty imposed on them by regulation 9(1) to make information available to the developer; and

- (iii) inform the developer in writing of the names and addresses of the bodies so notified.

Provision of information

9.—(1) Subject to paragraph (2), any body notified by the Department pursuant to regulation 8(3) shall, if requested by the person who intends to submit the environmental statement, or may without such request, enter into consultation with that person with a view to ascertaining whether the body has information in its possession which that person or they consider relevant to the preparation of the environmental statement, and shall make that information available to that person.

(2) Any body which receives a request for information under paragraph (1) shall treat it as a request for information under regulation 5(1) of the Environmental Information Regulations 2004(10).

PART 4

Procedures on Receipt of Application

Applications which appear to require determination as to need for environmental impact assessment

- 10.**—(1) Where it appears to the Department that an application for planning permission—
- (a) is a Schedule 1 application or a Schedule 2 application; and
 - (b) the development in question has not been the subject of a determination as to whether the application is or is not an EIA application; and
 - (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

it shall make a determination as to whether the application is for EIA development, taking into account the selection criteria.

(2) If the Department considers that it has not been provided with sufficient information to make a determination under paragraph (1) it shall notify the applicant of the particular points on which it requires further information.

(3) Subject to paragraph (4), the Department shall make a determination under paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(4) Where additional information is requested under paragraph (2), the Department shall notify the applicant of its determination within a period of 4 weeks from the date of receipt of the additional information.

Subsequent applications where environmental information previously provided

- 11.**—(1) This regulation applies where it appears to the Department that—
- (a) an application which is before it for determination—
 - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
 - (ii) has not itself been the subject of a determination as to whether the application is or is not an EIA application; and
 - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
 - (b) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(2) Where it appears to the Department that the environmental information already before it is adequate to assess the environmental effects of the development, it shall take that information into consideration in its decision for subsequent consent.

(3) Where it appears to the Department that the environmental information already before it is not adequate to assess the environmental effects of the development, it shall serve a notice seeking further information in accordance with regulation 19(1).

Subsequent applications where environmental information not previously provided

- 12.**—(1) Where it appears to the Department that—
- (a) an application—
 - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;

- (ii) has not itself been the subject of a determination as to whether the application is or is not an EIA application; and
 - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

it shall make a determination as to whether the application is for EIA development, taking into account the selection criteria.

(2) If the Department considers that it has not been provided with sufficient information to make a determination under paragraph (1) it shall notify the applicant of the particular points on which it requires further information.

(3) Subject to paragraph (4), the Department shall make a determination under paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(4) Where additional information is requested under paragraph (2), the Department shall notify the applicant of its determination within a period of 4 weeks from the date of receipt of the additional information.

Application made to the Department without an environmental statement

13.—(1) Where an EIA application, including an application determined as such under regulation 10 or 12, is not accompanied by an environmental statement or a statement referred to by the applicant as an environmental statement, the Department shall notify the applicant in writing that the submission of such a statement is required, giving clearly and precisely the full reasons for its view.

(2) The Department shall notify the applicant in accordance with paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

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

- (a) accepts the Department's determination and proposes to provide an environmental statement; or
- (b) does not accept the Department's determination and proposes to seek a hearing before the Commission.

(4) If the applicant does not inform the Department in writing in accordance with paragraph (3), the permission or subsequent consent sought shall be deemed to be refused at the end of the relevant 4 week period; and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).

(5) Where, following receipt of a notification pursuant to paragraph (1), an applicant proposes to seek a hearing before the Commission, the applicant shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.

(6) Where the Department determines, or following a hearing by the Commission confirms, that an environmental statement is required, the statement shall be submitted within 6 months from the date of 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 or subsequent application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).

(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 or subsequent application is to be determined shall be calculated from the date of notice to the applicant of the Department's withdrawal.

(8) Where the Department makes a determination under regulation 10(1) or 12(1) that an environmental statement is required or confirms a determination under paragraph (6), regulations 8(3) and 9 shall apply.

Extension of the period for Department's decision on an application for planning permission or subsequent application

14. Where an application for planning permission or subsequent application is an EIA application, Articles 11 and 12 of the General Development Order shall have effect as if—

- (a) for the reference in paragraph (2)(a) of Article 11 and in Article 12 to a period of 2 months from the date the application was received there were substituted a reference to a period of 16 weeks; and
- (b) after paragraph (3)(b) of Article 11 there were inserted—
 - “(ba) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and
 - (bb) in the case of an application falling within regulation 10(1) or 12(1) where the Department has requested further information in order to make a determination under regulation 10(2) or 12(2), when that information was received; and
 - (bc) where evidence verifying information in the environmental statement has been requested, when that evidence was received; and”;
- (c) the date when an application is received for the purposes of Article 12 were the date when each of the events referred to in Article 11(3) (ba) to (bc) has occurred in relation to that application.

Application of Article 31 of the 1991 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 31 (special procedure for major planning applications) 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; and
- (b) the date of application were calculated from the date when each of the events described in Article 11(3) (time periods for decisions) of the General Development Order, as modified by regulation 14 has taken place.

PART 5

Publicity

Publicity where an environmental statement is submitted

16. 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 application for planning permission or subsequent application by local advertisement, allowing the public a period of 4 weeks from the date on which the notice is first published, in which to make representations;
- (b) state in the notice that—
 - (i) the application for planning permission or subsequent application is accompanied by an environmental statement; and
 - (ii) in the case of a subsequent application, that a copy of the planning permission and supporting documents for the development in respect of which the application has been made may be inspected by members of the public at all reasonable hours at the relevant office of the Department;
- (c) give in the notice, a postal 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, so long as stocks last, and if a charge is to be made for a copy, state the amount of the charge; and
- (d) where it is aware of any particular person who is or is likely to be affected by, or has an interest in, the application for planning permission or subsequent application, and who is unlikely to become aware of it by means of a local advertisement, send a notice to such person containing the details set out in paragraphs (a) – (c) and the address of the relevant office of the Department.

Availability of copies of environmental statement

17. A developer who submits an environmental statement shall—

- (a) ensure that a reasonable number of copies are made available at the address given in the notice pursuant to regulation 16(c); and
- (b) provide the Department with sufficient copies of it, or parts of it, to enable the Department to comply with regulation 18 and 3 additional copies.

Consultation where environmental statement submitted

18.—(1) Where the Department receives an environmental statement in relation to a proposed development, it shall consult the district council and bodies mentioned in regulation 8(3) and inform them that they may make representations.

(2) The Department shall give not less than 4 weeks notice to bodies consulted under paragraph (1) that environmental information is to be taken into account in determining the application for planning permission or subsequent application.

Further information and evidence relating to environmental statement

19.—(1) Where the applicant has submitted a statement which he refers to as an environmental statement and the Department is of the opinion that the statement should contain further information

in order to be an environmental statement, it shall require the applicant, by notice in writing, to submit such further information.

(2) The Department may, by notice in writing, require an applicant to produce such evidence as it may reasonably call for to verify any information in the environmental statement.

(3) On receipt of a request under paragraphs (1) and (2) the applicant shall submit the further information or evidence within three months from the date of the request or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).

(4) Subject to paragraph (6), regulations 16 to 18 shall apply where such further information and any other information is received by the Department, as if references to “environmental statement” were references to “further information and any other information”.

(5) Subject to paragraph (6), where information is requested under paragraph (1) or any other information is received by the Department, it shall suspend determination of the application and shall not determine it before the expiry of the period of four weeks after the date on which notice of that information was published under regulation 16, or the expiry of the period of notice given to bodies consulted about that information under regulation 18, whichever is the latest.

(6) Paragraphs (4) and (5) shall not apply to further information and any other information provided for the purposes of a public local inquiry or hearing held under Article 31 (special procedure for major planning applications).

(7) Where a public local inquiry or hearing is to be held under Article 31 in relation to an EIA application, the Department shall, not less than four weeks before the inquiry or hearing is to be held, publish notice of it by local advertisement.

(8) Every notice published pursuant to paragraph (7) shall contain:

- (a) a clear statement of the date, time and place of the inquiry or hearing;
- (b) details of where and when copies of any information provided for the purposes of the inquiry or hearing may be inspected and, where practicable, copied by the public.

(9) Where a public local inquiry or hearing is to be held under Article 31 in relation to an EIA application the Commission shall, not less than four weeks before the inquiry or hearing is to be held, afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any information provided for the purposes of the inquiry or hearing.

(10) For the purposes of paragraph (9), an opportunity is to be taken as having been afforded to a person where the person is notified of—

- (a) publication on the Commission’s website of any information provided for the purposes of the inquiry or hearing;
- (b) the address of that website; and
- (c) the place on the website where that information may be accessed, and how it may be accessed.

Charges

20.—(1) A reasonable charge reflecting the cost of printing and distribution of an environmental statement, part of it, or further information or any other information, may be made by the developer in respect of copies made available under regulation 17(a).

(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 its possession.

Duty to inform the public of decisions

21.—(1) Where an EIA application is determined, the Department shall inform the public of the decision by local advertisement or by such other means as are reasonable in the circumstances.

(2) Where, after environmental information has been taken into consideration, an EIA application is determined by the Commission, the Commission shall—

- (a) notify the Department of its decision; and
- (b) provide the Department with a copy of a statement containing—
 - (i) the contents of the decision and the conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(3) The Department shall, as soon as reasonably practicable after receipt of the notification under paragraph (2), comply with paragraph (1) as if the decision so notified was a decision of the Department.

PART 6

Development likely to Affect Other EEA states

Development in Northern Ireland likely to have significant effects on the environment in another EEA state

22.—(1) Where—

- (a) it comes to the attention of the Department that proposed development in Northern Ireland is the subject of an EIA application and is likely to have significant effects on the environment in another EEA state; or
- (b) another EEA state likely to be significantly affected by such development so requests,

the Department shall—

- (i) publish a notice in the Belfast Gazette giving the address of the proposed development, stating that it is accompanied by an environmental statement and that it is likely to have significant effects on the environment of another EEA state and giving an address at which further information may be obtained;
- (ii) send to the EEA state as soon as possible and no later than the date of publication of the notice referred to in paragraph (i), the particulars mentioned in paragraph (2) and, if the Department thinks fit, the information referred to in paragraph (3); and
- (iii) give the EEA state a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in paragraph (1)(ii) are—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA state; and
- (b) information on the nature of the decision which may be taken.

(3) Where an EEA state indicates in accordance with paragraph (1)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Department shall send to that EEA state—

- (a) a copy of the application concerned;
- (b) a copy of any planning permission relating to the development;
- (c) a copy of any environmental statement in respect of the development to which that application relates; and
- (d) relevant information regarding the procedure under these Regulations,

unless that information has already been provided to the EEA state earlier in accordance with paragraph (1)(ii).

(4) The Department shall also—

- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any further information and any other information to be made available, within a reasonable time, to the authorities referred to in Article 6.1 of the Directive and to the public concerned in the territory of the EEA state likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission or subsequent consent for the development is granted, to forward to the Department, within a reasonable time, their opinion on the information supplied.

(5) The Department shall in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with the EEA state concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the other EEA state, a reasonable period of time for the duration of the consultation period.

(6) Where a EEA state has been consulted in accordance with paragraph (3), on the determination of the application concerned, the Department shall inform the EEA state and shall forward to it a statement of—

- (a) the content of the decision and any conditions attached to it;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Projects in another EEA state likely to have significant transboundary effects

23.—(1) Where the Department receives from another EEA state pursuant to Article 7.1 or 7.2 of the Directive information which the EEA state has gathered from the developer of a proposed project in that EEA state which is likely to have significant effects on the environment in Northern Ireland, the Department shall, in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with that EEA state regarding amongst other things the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that EEA state a reasonable period, before development consent for the project is granted, during which members of the public in Northern Ireland may submit to the competent authority in that EEA state representations pursuant to Article 7.3(b) of the Directive.

(2) The Department, in so far as it is concerned, shall also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Northern Ireland which it considers are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Northern Ireland;
- (b) ensure that those authorities and the public concerned in Northern Ireland are given an opportunity before development consent for the project is granted, to forward to the competent authority in the relevant EEA state, within a reasonable time, their opinion on the information supplied; and
- (c) so far as it has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA state; and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
 - (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.

PART 7

Unauthorised Development

Interpretation of Part 7

24. In this Part—

“deemed application” shall be construed in accordance with Article 71(5) (appeals against enforcement notice — supplementary provisions relating to planning permission);

“enforcement notice” means a notice issued under Article 68 (enforcement notices);

“ground (a) appeal” means an appeal under Article 69 (appeal against enforcement notice), so far as brought on the ground mentioned in paragraph (3)(a) of that Article.

Prohibition on the grant of planning permission for unauthorised development

25. The Commission shall not grant planning permission or subsequent consent under paragraph (1) of Article 71 (appeal against enforcement notice — supplementary provisions relating to planning permission) in respect of unauthorised EIA development unless it has first taken environmental information into consideration, and states in its decision that it has done so.

Determination as to need for environmental statement, etc.

26.—(1) Where it appears to the Department that the matters constituting the breach of planning control comprise Schedule 1 or Schedule 2 development, the Department shall, before the enforcement notice is issued, make a determination, taking into account the selection criteria, as to whether the development is or is not EIA development.

(2) Where it appears to the Department that the matters constituting the breach of planning control comprise or include EIA development it shall serve with a copy of the enforcement notice a notice (“regulation 26 notice”) which shall—

- (a) include a copy of the determination required by paragraph (1) and a written statement giving clearly and precisely full reasons for its conclusions; and

- (b) require a person who gives notice of an appeal under Article 69 (appeal against enforcement notice) to submit to the Commission with the notice sufficient copies of the environmental statement relating to the unauthorised development to enable the Commission to comply with regulation 29.
- (3) The Department shall send a copy of the regulation 26 notice to—
 - (a) the Commission;
 - (b) the district council for the area in which the land to which the unauthorised development relates is situated;
 - (c) any other authorities likely to be concerned by the unauthorised development by reason of their specific environmental responsibilities; and
 - (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 26 notice.
- (4) Where the Department serves the Commission with a copy of a regulation 26 notice it shall also provide it with a list of the other persons to whom, in accordance with paragraph (3), a copy of the notice has been or is to be sent.
- (5) Where a person gives notice of appeal under Article 69 and the Department has served on that person a regulation 26 notice with which they do not agree, that person may by notice in writing, within 4 weeks of the service of the enforcement notice, inform the Department that they propose to seek a hearing before the Commission.
- (6) Where, in relation to paragraph (5), a person proposes to seek a hearing before the Commission, that person shall by notice in writing, inform the Commission to such effect within 4 weeks of the service of the enforcement notice.

Time period for submission of environmental statement

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

Provision of information

28.—(1) Subject to paragraph (2), any person on whom a copy of a regulation 26 notice is served pursuant to regulation 26(3)(b) to (d) (“the consultee”) shall, if requested by the person on whom the regulation 26 notice was served, or may without such request, enter into consultation with that person to determine whether the consultee has in their possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to the prospective applicant.

(2) Regulation 9(2) and 20(2) shall apply to information under paragraph (1) as they apply to information under regulation 9(1).

Procedure where the Commission receives an environmental statement

29.—(1) Where the Commission receives an environmental statement, or a statement referred to by the appellant as an environmental statement, in connection with an enforcement appeal it shall serve a copy on the Department and those bodies on whom a copy of the regulation 26 notice was served.

(2) The Commission shall give not less than 4 weeks notice to the Department and the bodies referred to in paragraph (1) that environmental information will be taken into consideration in determining the ground (a) appeal (if any) and inform them that they may make representations.

Further information and evidence respecting environmental statements

30.—(1) Regulation 19(1) and (2) shall apply in relation to further information as if the reference to “the Department” was omitted and the word “appellant” was substituted for the word “applicant”.

(2) If an appellant on whom notice has been given under paragraph (1) fails to provide the further information within the period specified in the notice, the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(3) Regulations 29 (procedure where the Commission receives an environmental statement) and 31 (publicity for environmental statements and decisions) shall apply in relation to further information received by the Commission in accordance with paragraph (1) as if references in those regulations to an environmental statement were references to the further information.

(4) The Commission shall send the Department a copy of any notice sent to the applicant under paragraph (1).

Publicity for environmental statements and decisions

31.—(1) Where the Commission receives a copy of an environmental statement, or a statement submitted by the appellant referred to as an environmental statement either of which is accompanied by further information and any other information, in connection with an enforcement appeal it shall publish by local advertisement a notice stating—

- (a) the name of the appellant and that the appellant has appealed to the Commission against the enforcement notice;
- (b) the address or location of the land to which the notice related and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the environmental statement and further information and any other information may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality at which the statement and further information and any other information may be inspected and the latest date it will be made available for inspection, being a period of 4 weeks from the date of the first publication of the notice;
- (f) that any person wishing to make representations about any matter dealt with in the statement and further information and any other information should make them in writing, no later than 4 weeks after the date of the first publication of the notice; and
- (g) the address to which such representations are to be sent.

(2) Where the Commission determines the ground (a) appeal it shall inform the Department of its decision and the provisions of regulation 21 (duty to inform the public of decisions) shall apply to any grant of planning permission under Article 71 as they apply to a grant of planning permission under Part 4 of the 1991 Order.

Involvement of other EEA states

32. Regulation 22 (development in Northern Ireland likely to have significant effects on the environment in another EEA state) shall have effect as if—

- (a) for regulation 22 (1)(a) there were substituted—

- “(a) on the consideration of an appeal under Article 69 (appeal against enforcement notice), the Commission is of the opinion that matters which are alleged to constitute the breach of planning control comprise or include EIA development and the development has or is likely to have significant effects on another EEA state, it shall notify the Department; and”;
- (b) in regulation 22(1)(i) the word “proposed” was omitted;
- (c) in regulation 22(3)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”; and
- (d) in regulation 22(3)(c) the words “that application” were replaced by the words “the deemed application under Article 71(5)”.

PART 8

Permission in Enterprise and Simplified Planning Zones and Permission Granted by Development Orders

Restrictions on grant of permission by old enterprise zone schemes

33.—(1) Any Order designating an enterprise zone or adoption of a modified scheme⁽¹¹⁾ under the Enterprise Zones (Northern Ireland) Order 1981⁽¹²⁾ which has effect immediately before the commencement of these Regulations to grant planning permission shall, on and after that date cease to have effect to grant such permission for—

- (a) Schedule 1 development; or
- (b) Schedule 2 development unless the Department has made a determination that the proposed development is not EIA development.

(2) Paragraph (1) shall not affect the completion of any development begun before the commencement of these Regulations.

Restrictions on the grant of permission by simplified planning zone schemes and enterprise zone schemes

34. After the commencement of these Regulations—

- (a) an order adopting a simplified planning zone scheme under Article 14 or alteration of such a scheme under Article 17;
- (b) an order designating an enterprise zone under the Enterprise Zones (Northern Ireland) Order 1981 and the modification in relation to an approved enterprise zone under that Order,

shall not grant planning permission for—

- (i) Schedule 1 development; or
- (ii) Schedule 2 development unless the Department has made a determination that the development is not EIA development.

⁽¹¹⁾ See Article 19 of S.I. 1991/1220 (N.I. 11)

⁽¹²⁾ S.I. 1981/607 (N.I. 15)

Development Orders

35. A development order under Article 13 made after the commencement of these Regulations shall not grant planning permission for—

- (a) Schedule 1 development; or
- (b) Schedule 2 development unless the Department has made a determination that the development is not EIA development.

PART 9

Miscellaneous

Availability of information in relation to determinations, opinions, decisions, etc.

36. The Department shall make available for public inspection at all reasonable hours at the place where—

- (1) a register pursuant to Article 18 of the General Development Order is kept, a copy of—
 - (a) any determination or opinion given pursuant to regulation 7(1), 10(1) or 12(1), notification under regulation 13(1), or determination confirmed or amended under regulation 37(2) together with the accompanying statement of reasons, the relevant request and the documents which accompanied it;
 - (b) any environmental statement and further information and any other information received under these Regulations; and
 - (c) where environmental information has been taken into consideration in determining an application for planning permission or subsequent application or appeal, a statement containing —
 - (i) the content of the decision and any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.
- (2) a register pursuant to Article 20 of the General Development Order is kept, a copy of—
 - (a) every regulation 26 notice served by the Department;
 - (b) every determination made by the Department in accordance with regulation 26(2) or notice confirmed or amended under regulation 37(2) in respect of a deemed application under Part 7;
 - (c) every environmental statement or additional information received by the Department by virtue of regulation 29(1); and
 - (d) every notice received by the Department under regulation 30(4).
- (3) a register kept pursuant to Article 22 of the General Development Order is kept, a copy of any direction given by the Department pursuant to regulation 3(1)(a) and (b), and any information obtained under regulation 3(2).
- (4) Where the registers kept under this regulation are kept using electronic storage, the Department may make the registers available for inspection by the public on a website maintained by the Department for that purpose.

Hearing by the Commission in relation to the Department's determination

37.—(1) Where a person seeks a hearing before the Commission under regulations 7(13), 13(3) or 26(5) it shall afford that person 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.

Use of electronic communications

38.—(1) Paragraph (2) applies where a person uses electronic communications to make an application under regulation 7 (pre-application determination as to the need for environmental impact assessment and opinion as to content of environmental statement), and except where a contrary intention appears, the applicant shall be taken to have agreed—

- (a) to the use of electronic communications for all purposes relating to the application which is capable of being effected using such communications;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application;
- (c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in writing that the person wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.

(2) In paragraphs (3)(a) and 4(a) of regulation 7 the requirement for the application to be accompanied by a plan sufficient to identify the land to which the application relates is satisfied where the applicant identifies the land on an electronic map provided by the Department and for this purpose a map is taken to be provided where the Department has published it on its website.

Application to the Crown

39. These Regulations shall apply to the Crown.

Revocation, transitional and savings provisions

40.—(1) The regulations listed in Schedule 5 are revoked to the extent shown in that Schedule.

(2) Subject to paragraph (3), nothing in paragraph (1) shall affect the continued application of the Regulations revoked by paragraph (1) in relation to—

- (a) any application received by the Department before the commencement of these Regulations;
- (b) any appeal in relation to an application under paragraph (a);
- (c) any matter in relation to which the Department has before that date issued an enforcement notice under Article 68

(3) Regulation 19 shall apply to further and any other information provided to the Commission on or after the commencement of the Regulations for the purposes of a public local inquiry or hearing held under Article 31 in respect of an EIA application received by the Department prior to the commencement of the Regulations as regulation 19 applies to further and any other information provided to the Department for those purposes in respect of an EIA application received by the Department on or after the commencement of the Regulations.

Consequential amendments

41. The regulations in Schedule 6 are amended to the extent shown in that Schedule.

Sealed with the Official Seal of the Department of the Environment on 21st February 2012



Angus Kerr
A senior officer of the
Department of the Environment