STATUTORY RULES OF NORTHERN IRELAND

2017 No. 85

ENVIRONMENTAL PROTECTION

The Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

Made - - - -	*15th May 2017*
Coming into operation	*5th June 2017*

The Department of Agriculture, Environment and Rural Affairs being a department designated [F1] in relation to the environment for the purposes of section 2(2) of the European Communities Act 1972 [F2], makes the following Regulations in exercise of the powers conferred upon it by that section.

F1 S.I. 2008/301
F2 1972 c.68

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and shall come into operation on 5th June 2017.

Interpretation

2.—(1) In these Regulations—

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding or keeping, the use of land as grazing land, meadowland, osier land, reed beds, market gardens and nursery grounds;

"applicant" means a person who applies for a licence, or for the modification of a licence, in relation to a relevant project;

"consultation bodies" means any body designated by the Department for the purposes of Parts 2 and 3 of these Regulations on a case by case basis or designated by statutory provision as having specific environmental responsibilities which the Department considers likely to have an interest in a relevant project;

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

"EEA state" means—

(a) a state which is a member state; or

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

"environmental impact assessment" means—

(c) the preparation of an environmental impact assessment report in accordance with regulations 7 and 8;

(d) any consultation, publication and notification required in accordance with regulation 9 and, where relevant, regulations 11 and 12 in respect of an application for a relevant project;

(e) the examination of the environmental impact assessment report and other information in accordance with regulation 10;

(f) the reasoned conclusion about the likely significant environmental effects of a relevant project in accordance with regulation 10; and

(g) the integration of that conclusion in the determination of whether or not to grant or modify a licence for a relevant project;

"environmental impact assessment report" means a report prepared in accordance with regulations 7 and 8;

"environmental information" means the environmental impact assessment report, including any supplementary information and any other information, any representations made by any consultation bodies, and any representations duly made by any other person about the environmental effects of a relevant project;

"licence" means a licence granted in accordance with regulation 10 of the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 [F3];

[[F4]"Natura 2000" has the meaning given in regulation 2(2) of the Habitats Regulations;**]**

"relevant project" has the meaning given by regulation 3;

[[F4]"Union legislation" means any enactment in the domestic legislation of Northern Ireland giving effect to retained EU law.**]**

"the 2005 Regulations" means the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005 [F5];

"the Commission" means the Water Appeals Commission for Northern Ireland;

"the Department" means the Department of Agriculture, Environment and Rural Affairs;

"the Directive" means Directive 2011/92/EU [F6] of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU [F7] of the European Parliament and of the Council.

[[F4]"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, as last amended Council Directive 2013/17/EU;**]**

[[F4]"the Habitats Regulations" means the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995;**]**

(2) Expressions used in both these Regulations and the Directive and not otherwise defined in these Regulations have the same meaning for the purposes of these Regulations as they do for the purposes of the Directive.

(3) The Interpretation Act (Northern Ireland) 1954 [F8] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F3 S.R. 2006 No.284
F4 Words in reg. 2(1) inserted (31.1.2020) by The Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/279), regs. 1(1), **5(2)**; 2020 c. 1, Sch. 5 para. 1(1)
F5 S.R. 2005 No.32 as amended by S.R. 2006 No.483
F6 O.J. L26, 28.1.2012, p.1-21
F7 O.J. L124, 25.4.2014, p.1-18
F8 1954 c.33 (N.I.)

Application

3.—(1) An environmental impact assessment must be carried out in accordance with these Regulations in relation to a relevant project.

(2) A project is a relevant project if—

(a) it is a water management project for agriculture, including an irrigation project; and

(b) it would be likely to have significant effects on the environment by virtue, inter alia, of its nature, size or location.

(3) A project is not a relevant project if it—

(a) constitutes development to which the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 [F9] apply;

(b) constitutes the carrying out of drainage works within the meaning of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001 [F10];

(c) involves the abstraction, diversion or impoundment of less than 200 cubic metres of water in any period of 24 hours; or

(d) is exempt as a consequence of a determination made in accordance with paragraphs (4) or (5).

(4) The Department may determine that a relevant project, or a project which may be a relevant project, is exempt where the circumstances are exceptional and it considers that—

(a) an environmental impact assessment would have an adverse effect on the purpose of the project; and

(b) the objectives of the Directive will still be met even though such an assessment is not carried out.

(5) The Department may determine that a relevant project, or a project which may be a relevant project, is exempt if—

(a) the project has response to a civil emergency as its sole purpose; and

(b) the Department considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(6) Where the Department makes a determination that a relevant project, or a project which may be a relevant project, is exempt in accordance with paragraph (4), it must—

(a) consider whether another form of assessment of the likely significant effects on the environment of the project is appropriate; and

(b) make available to the public concerned—

(i) the determination including an explanation of the reasons for it; and

(ii) the information obtained in accordance with any other assessments referred to in sub-paragraph (a).

F9 S.R. 2017 No.83
F10 S.R. 2001 No.394

Environmental impact assessment

4.—(1) An environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of a relevant project on the following factors—

(a) population and human health;

(b) biodiversity, with **[**F11—

(i) species of naturally occurring birds in the wild state as specified in Directive 2009/147/EC on the conservation of wild birds;

(ii) natural habitat types in Annex 1 to the Habitats Directive;

(iii) animal and plant species in Annex 2 or 4 to the Habitats Directive.**]**

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape; and

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(2) The effects referred to in paragraph (1) on the factors set out in that paragraph must include the expected effects deriving from the vulnerability of the relevant project to risks of any major accidents or disasters that are relevant to that project.

F11 Words in reg. 4(1)(b) substituted (31.1.2020) by The Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/279), regs. 1(1), **5(3)**; 2020 c. 1, Sch. 5 para. 1(1)

Coordination

5.—(1) Where the likely significant environmental effects of a relevant project are being or are to be assessed in accordance with—

(a) these Regulations; and

(b) regulation 43 of **[**F12the Habitats Regulations**]**,

the Department as the designated authority in accordance with Article 2 of the Directive must, where appropriate, coordinate those assessments.

(2) In paragraph (1), "coordinate those assessments" means coordinate any—

(a) requests for information, consultations, examinations and conclusions in respect of the likely significant environmental effects of the project on the environment; and

(b) integration of the conclusion about the likely significant environmental effects of the project on the environment in any determination about whether or not to grant consent to the project.

F12 Words in reg. 5(1)(b) substituted (31.1.2020) by virtue of The Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/279), regs. 1(1), **5(4)**; 2020 c. 1, Sch. 5 para. 1(1)

PART 2

PRE-APPLICATION PROCEDURES & ASSESSMENT OF RELEVANT PROJECTS

Determination whether a project is a relevant project

6.—(1) Any person who proposes to apply for a licence, or the modification of a licence, in relation to a project which may be a relevant project may, in writing, request the Department to determine whether the project is a relevant project.

(2) A request in accordance with paragraph (1) must be accompanied by—

(a) the information mentioned in Schedule 1; and

(b) if the person elects to provide it, a description of any features of the project and/or measures proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(3) When compiling the information mentioned in paragraph (2), the person must take into account, where relevant, the available results of any other relevant assessment of the effects of the project on the environment carried out in accordance with an enactment or pursuant to **[**F13retained EU law**]** other than one proposed in accordance with the Directive that is relevant to the assessment of the likely significant environmental effects of the project on the environment.

(4) Where the Department considers that it has insufficient information to determine the request, it must by notice in writing inform the person and specify what further information it requires.

(5) (a) Where the Department must determine whether the project is a relevant project the following matters must be taken into account—

(i) any information provided by the person;

(ii) where relevant, the results of preliminary verifications or assessments carried out pursuant to **[**F14retained EU law**]** n other than one implementing the requirements of the Directive; and

(iii) such of the selection criteria set out in Schedule 2 as are relevant to the project.

(b) Where the Department makes a determination in accordance with sub-paragraph (a)—

(i) the determination must state the main reasons for the conclusion of the Department with reference to the relevant criteria listed in Schedule 2; and

(ii) if it is determined that the project is not a relevant project, that determination must state any features of the project and/or measures proposed to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(6) The Department must give the person written notice of its determination before the expiry of—

(a) a period of twenty-eight days beginning with—

(i) the date on which the request in accordance with paragraph (1) is received; or