Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2017 No. 83

PLANNING

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

Made - - - -	*11th May 2017*
Coming into operation	*16th May 2017*

The Department for Infrastructure is a Northern Ireland department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the environment.

The Department for Infrastructure makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 51 of the Planning Act (Northern Ireland) 2011(**3**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and come into operation on the 16th May 2017.

Commencement Information

I1 Reg. 1 in operation at 16.5.2017, see **reg. 1**

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**4**) applies to these Regulations as it applies to an Act of the Assembly.

(**1**) S.I. 2008/301
(**2**) 1972 c.68 The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)
(**3**) 2011 c.25 (N.I.)
(**4**) 1954 c.33 (N.I.)

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(2) In these Regulations—

"the 2011 Act" means the Planning Act (Northern Ireland) 2011 and references to sections are references to sections in the Act;

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

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

"applicant" means an applicant (or prospective applicant) for the grant of a planning permission or subsequent consent;

"the Commission" means the Planning Appeals Commission;

"council" means a district council;

"the Department" means the Department for Infrastructure;

"the Directive" means Directive 2011/92/EU(**5**) of the European Parliament and of the Council of the 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU(**6**) of the European Parliament and of the Council of 16 April 2014;

"documents" includes photographs, drawings, maps and plans;

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

"EEA State" means—

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

(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—

(a) Schedule 1 development;

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

(c) directed as such under regulation 3(1)(a);

"electronic communication" has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001(**7**);

"environmental impact assessment" means the process described in regulation 5;

"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" has the meaning given to it by regulation 11;

"exempt development" means development in respect of which the Department has made a direction under regulation 3(1)(b) or 3(1)(c) or the Secretary of State has made a direction

(**5**) O.J. No. L26, 28.1.2012, p.1-21
(**6**) O.J. No. L124, 25.4.2014, p.1-18
(**7**) 2001 c.9 (N.I.) (as amended by 2003 c.21)

under regulation 62 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(**8**);

"further information" has the meaning given to it in regulation 21(1);

"the General Development Procedure Order" means the Planning (General Development Procedure) Order (Northern Ireland) 2015(**9**);

"the General Regulations" means the Planning General Regulations (Northern Ireland) 2015(**10**);

"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) by publication of the notice on a website maintained by or on behalf of the Department, council or the Commission;

"monitoring measure" means a condition requiring the monitoring of any significant adverse effects on the environment of the proposed development;

"Schedule 1 application" and "Schedule 2 application" mean an application for planning permission for Schedule 1 development 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;

"scoping opinion" has the meaning given to it by regulation 8(1)(b);

"screening determination" has the meaning given to it by regulation 8(1)(a);

"selection criteria" means the criteria set out in Schedule 3;

"sensitive area" means any of the following—

(a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002(**11**);

(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(**12**);

(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(**13**)

(e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(**14**);

(**8**) S.I. 2017 No. 571
(**9**) S.R. 2015 No. 72
(**10**) S.R. 2015 No. 39
(**11**) S.I. 2002/3153 (N.I. 7)
(**12**) S.I. 1985/170 (N.I. 1)
(**13**) *See* Command Paper 9424
(**14**) S.I. 1995/1625 (N.I. 9)

(f) a European Site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(**15**).

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

(g) is required by or under a condition to which a planning permission is subject; and

(h) 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;

"Union legislation" means any enactment in the domestic legislation of Northern Ireland giving effect to an EU obligation.

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

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

(5) In these Regulations, 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.

(6) Paragraphs (7) to (10) 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 ("recipient").

(7) The requirement shall (except on the case of service of a notice under regulation 34(2)) 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

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

(8) In paragraph (7), "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.

(9) 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.

(10) 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 (7).

Commencement Information

I2 Reg. 2 in operation at 16.5.2017, see **reg. 1**

(**15**) S.R. 1995 No. 380

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;

(b) in accordance with Article 2.4 of the Directive (but without prejudice to Article 7 of the Directive), a particular proposed development specified in the direction is exempted from these Regulations where the application of the Regulations would result in adversely affecting the purpose of the development, provided the objectives of these Regulations are met; or

(c) these Regulations do not apply in relation to a particular proposed development specified in the direction if the development comprises or forms part of a project having the response to civil emergencies as its sole purpose and the application of the Regulations would have an adverse effect on that purpose.

[[F1](1A) The Department must not make a direction under paragraph (1)(b) that a project is exempt unless, where the Department considers that the development is likely to have significant effects on the environment in an EEA State, or where an EEA State likely to be significantly affected so requests, the Department has carried out a form of consultation with that EEA State broadly equivalent to the form described in regulation 29 or 30, as appropriate, or is satisfied that such an equivalent consultation has been carried out, before planning permission or subsequent consent is granted in respect of the development.**]**

(2) Where a direction is made under paragraph (1), the Department shall send a copy of the direction to the council or councils in whose district the proposed development is to be situated.

(3) Where a direction is made 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.

F1 Reg. 3(1A) inserted (30.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(3), **9(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I3 Reg. 3 in operation at 16.5.2017, see **reg. 1**

Prohibition on granting planning permission or subsequent consent without an environmental impact assessment

4. A council, the Department or the Commission shall not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of that development.

Commencement Information

I4 Reg. 4 in operation at 16.5.2017, see **reg. 1**