STATUTORY RULES OF NORTHERN IRELAND

2008 No. 55

ELECTRICITY

The Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008

Made - - - -	*7th February 2008*
Coming into operation	*5th March 2008*

The Department of Enterprise, Trade and Investment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972 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 upon it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations.

PART I

General

Citation and commencement

1. These Regulations may be cited as the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 and shall come into operation on 5 March 2008.

Interpretation

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

(2) In these Regulations —

"the 1992 Order" means the Electricity (Northern Ireland) Order 1992(**3**);

"another EEA State" means an EEA State other than the United Kingdom;

"any other relevant information" means any information relating to an environmental statement which is not contained in it;

(**1**) S.I. 1988/785
(**2**) 1954 c.33 (N.I.)
(**3**) S.I. 1992/231 (N.I.1)

"Article 39 consent" means a consent under Article 39 of the 1992 Order;

"Article 40 consent" means a consent under Article 40 of the 1992 Order;

"by general and local advertisement", means—

(a) publication of the notice in at least one newspaper circulating in the locality in which is situated the development to which the notice relates; and

(b) where the Department maintains a website by publication of the notice on the website;

"consultation bodies" shall be construed in accordance with regulation 5(6);

"the Department" means the Department of Enterprise, Trade and Investment;

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

"development" means,

(a) in relation to an Article 39 consent, works carried out on the construction or extension of a generating station; and

(b) in relation to an Article 40 consent, works carried out on installing or keeping installed an electric line,

and for this purpose "works" means any works which are a development within the meaning of the Planning Order;

"the Directive" means Council Directive 85/337/EEC as amended by Council Directives 97/11/EC and 03/35/EC;

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

"EEA State" means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

"EIA application" means an application for a relevant consent in relation to any EIA development;

"EIA development" means a development or proposed development which is either—

(a) a development described in Schedule 1 or;

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

"environmental information" means the environmental statement, including any further information and any relevant other information, any representations made by any consultation body and any representations duly made by any other person about the likely environmental effects of a proposed development;

"environmental statement" means a statement that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of a development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably to be required to compile, but which includes at least the information referred to in Part II of Schedule 4;

"further information" shall be construed in accordance with regulation 12(1);

"Planning Order" means the Planning (Northern Ireland) Order 1991(**4**);

"proposed development" means the works intended by the applicant for any relevant consent to be carried out for the purposes thereof;

"relevant consent" shall be construed in accordance with regulation 4; and

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

(**4**) S.I. 1991/1220 (N.I. 11)

(3) For the purposes of these Regulations any development or proposed development is offshore if it is or is to be carried out outside the boundaries of any district council but within the Northern Ireland zone.

(4) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in another EEA State.

(5) In these Regulations expressions which are also used in the Directive have the same meaning as they have in the Directive.

Applications

3.—(1) These Regulations shall not apply in relation to any Article 39 or Article 40 consent for which an application has been received by the Department before these Regulations come into operation.

(2) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999(**5**) shall not apply in relation to any offshore development or proposed offshore development to which these Regulations apply.

PART II

Consents for Offshore Developments

Restriction on proposed development

4. The Department shall not grant a relevant consent, that is to say an Article 39 or an Article 40 consent insofar as it relates to an offshore development, unless the requirements of these Regulations have been complied with.

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

5.—(1) Subject to paragraphs (3), (5) and (8), before applying for a relevant consent a developer ("the applicant") may make a request to the Department in writing for—

(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,

and when so requested, the Department shall make the determination or give the opinion, as the case may be, within 6 weeks of receipt of the request or such longer period as may be agreed in writing with the applicant.

(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) shall be accompanied by—

(a) a plan sufficient to identify the site of the proposed development;

(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.

(**5**) S.R. 1999 No. 73

(4) The Department shall inform the applicant, in writing, of its determination or opinion under paragraph (1) within 4 weeks of the date it made the determination or gave the opinion.

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

(6) Subject to paragraph (8) the Department shall not give an opinion in response to a request under paragraph (1)(b) until it has consulted the applicant, and the consultation bodies, that is to say the District Council for the area adjacent to the offshore area to which the proposal relates is situated, and such other authorities as appear to it likely to be concerned by the proposed development by reason of their specific environmental responsibilities.

(7) If, in response to a request under paragraph (1)(a), the Department, having taken into account the selection criteria, determines 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.

(8) Notwithstanding paragraph (4), where the Department gives a determination under paragraph (1) that a proposed development would be an EIA development 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 or such longer period as may be agreed in writing with the applicant.

(9) 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; and

(b) the environmental features likely to be affected by the development.

(10) Where following receipt of an opinion under paragraph (1) an applicant wishes to proceed with the submission of the environmental statement to which the opinion relates, he shall by notice in writing inform the Department to such effect within 4 weeks of the date of the opinion.

(11) Where the applicant wishes to proceed with any proposed development to which paragraph (7) applies he shall by notice in writing inform the Department whether or not he accepts the Department's determination that the development would be an EIA development and proposes to provide an environmental statement.

(12) The notice referred to in paragraph (11) shall be served on the Department within 4 weeks of the date of the determination.

(13) Where the Department has given an opinion under paragraph (1) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

(14) The Department shall by general and local advertisement—

(a) publish a copy of any determination or opinion given under paragraph (1) and any accompanying statement of reasons;

(b) publish copies of the relevant request and the documents which accompanied it;

(c) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed development at an address specified in the notice within 28 days of the date the notice was first published; and

(d) describe what other information relating to the environmental effects of the proposed development is available and give details of where it can be obtained.

PART III

Preparation of Environmental Statements

Procedure to facilitate preparation of environmental statements

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

(2) A notice under paragraph (1) shall include or be accompanied by the information necessary to identify the site of the development 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 his environmental statement.

(3) Where the Department receives a notice under paragraph (1) or a notice under regulation 5(11) that a developer intends to provide an environmental statement, it shall—

(a) notify the consultation bodies of the name and address of the developer and of the duty imposed on them by Regulation 7(1) to make information available to the developer; and

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

Provision of information

7.—(1) Subject to paragraph (2), any body notified by the Department pursuant to regulation 6(3) shall, if requested by the developer, or may without such request, enter into consultation with him with a view to ascertaining whether the body has information in its possession which the developer or the body consider relevant to the preparation of the environmental statement, and the body shall make any such information available to the developer.

(2) Paragraph (1) shall not require the disclosure by a body of information which is capable of being treated as confidential or must be so treated under the Environmental Information Regulations 2004(**6**).

PART IV

Procedures on Receipt of Application

Application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement

8.—(1) Where it appears to the Department that an application for a relevant consent—

(a) has not been the subject of a determination as to whether the application is or is not an EIA application; and

(b) 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 an 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.

(**6**) S.I. 2004/3391