STATUTORY RULES OF NORTHERN IRELAND

2008 No. 17

PLANNING

The Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008

Made - - - -	*16th January 2008*
Coming into operation	*12th February 2008*

The Department of the Environment is a designated(**1**) Department for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.

The Department of the Environment makes the following Regulations in exercise of the powers conferred on it by that section.

Citation and commencement

1.—(1) These Regulations may be cited as the Planning (Environmental Impact Assessment) (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 12th February 2008.

(2) These Regulations shall apply in relation to applications lodged or received by the Department, and any enforcement notice issued under Article 68 of the Planning (Northern Ireland) Order 1991(**3**) on or after the date these Regulations come into operation.

(3) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

2. The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999(**5**) shall be amended in accordance with regulations 3 to 20.

3. On every occasion where "Member State" occurs substitute "EEA state".

(**1**) S.I.1988/785
(**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**) 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)
(**4**) 1954 c.33 (N.I.)
(**5**) S.R. 1999 No. 73

4. In regulation 2(2) (interpretation)—

(a) in the definition of "the Directive", after "97/11/EC" insert, "and further amended by Council Directive 2003/35/EC(**6**) in relation to public participation";

(b) after the definition of "documents" insert—

""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 at 16th January 2008;";

""EEA state" means—

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

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

(c) after the definition of "further information" insert—

""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;";

(d) in the definition of "environmental information" after "further information" insert "and any other information";

(e) in the definition of "exempt development" omit "which comprises or forms part of a project serving national defence purposes or";

(f) after the definition of "the land" insert—

""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;".

5. In regulation 3 (directions) for paragraph (3) (b) substitute—

"(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.

3A. Where a direction is given under regulation 3 (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.".

6. After regulation 5 (confirmation that development is EIA development) insert—

(**6**) O.J. No. L 156 25.6.03, p.17

"**Appeals under Article 32 or Article 33**

5A.—(1) Where an appeal is made to the Commission under Article 32 or 33 of the 1991 Order, the functions conferred on the Department by Part III to Part VI of these Regulations shall be exercisable by the Commission in respect of that appeal.

(2) For the purposes of paragraph (1), regulation 9(6) shall be amended as follows—

"An appellant receiving a notification pursuant to paragraph (3) shall, within 4 weeks from the date of the determination, inform the Commission, in writing, that he—

(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 9 (7A) 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 9(7), 9(8) and 15(2A) shall not have effect.".

7. In regulation 6 (pre–application determination as to need for environmental impact assessment and opinion as to content of environmental statement), insert after paragraph (9)—

"(9A) Where, following receipt of an opinion under paragraph (8), an applicant wishes to proceed with the submission of an environmental statement, he shall by notice in writing inform the Department to such effect within 4 weeks of the date of the opinion.".

8. In regulation 9 (application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement), insert after paragraph (7) —

"(7A) Where, following receipt of a notification pursuant to paragraph (3), an applicant proposes to seek a hearing before the Commission, he shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.".

9. In regulation 10 (extension of the period for Department's decision on a planning application), for paragraph (b) substitute—

"(b) after paragraph (3) (b) of that article 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 9 (1) where the Department has requested further information in order to make a determination under regulation 9 (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"."

10. In regulation 12 (publicity where an environmental statement is submitted)—

(a) in paragraph (a) after "planning application" for "in at least one newspaper circulating in the locality in which the land to which the application relates is situated" substitute "by local advertisement";

(b) after paragraph (b) omit "and";

(c) at the end of paragraph (c) omit "." and insert—

"; 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, 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.".

11. In regulation 15 (further information relating to environmental statement)—

(a) in the heading, after "further information" insert "and evidence";

(b) in paragraphs (1) and (2) delete the phrase "or the Commission";

(c) after paragraph (2) insert—

"(2A) 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).";

(d) for paragraph (3) substitute—

"(3) Regulations 12 to 14 shall apply where such further information and any other information is received by the Department in relation to an environmental statement, as if references to "environmental statement" were references to "further information and any other information".".

12. In regulation 17 (duty to inform the public of decisions)—

(a) in paragraph (1) for "publishing notice in at least one newspaper circulating in the locality in which the land is situated", substitute "local advertisement";

(b) in paragraph (2) (b) (ii)—

(i) after "on which the decision was based" insert "including, if relevant, information about the participation of the public"; and

(ii) after ";" omit "and"; and

(c) at the end of paragraph (2) (b) (iii) omit "." and insert—

"; and

(iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.".

13. In regulation 18 (development likely to have significant effects on the environment in another EEA state)—

(a) in paragraph (4) (a) after "in paragraphs (2) and (3)" insert "and any further information and any other information";

(b) in paragraph (6) (b) after "on which the decision is based" insert "including, if relevant, information about the participation of the public".

14. In regulation 19 (projects in another EEA state likely to have significant transboundary effects)—

(a) in paragraph (1) after "pursuant to Article" insert "7.1 or";

(b) after paragraph (2) (a) omit "and"; and

(c) at the end of paragraph (2) (b) omit "." and insert—

"; and