STATUTORY RULES OF NORTHERN IRELAND

2005 No. 32

EUROPEAN COMMUNITIES
WATER AND SEWERAGE

The Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005

Made - - - -	*9th February 2005*
Coming into operation	*9th March 2005*

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

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005 and shall come into operation on 9th March 2005.

Interpretation

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

(2) 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;

(**1**) S.I.1988/785
(**2**) 1972 c. 68
(**3**) 1954 c. 33 (N.I.)

"application" means –

(a) except in regulation 4, an application for, or variation of, a consent pursuant to regulation 7; and

(b) in regulation 4, an application to the Department for a determination pursuant to that regulation;

"Commission" means the Water Appeals Commission established under Article 7 of the Water and Sewerage Services (Northern Ireland) Order 1973;

"consent" means a consent granted under Part III;

"consultation body" means a person likely to have an interest in a project by reason of his specific environmental responsibilities or hold any information relevant to a project;

"the Department" means the Department of the Environment;

"the Directive" means Council Directive 85/337/EEC, concerning the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC;

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

(3) Other expressions used both in these Regulations and in the Directive have the same meaning in these Regulations as they have in the Directive.

Application

3.—(1) An environmental impact assessment shall 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) 1999(**4**) apply;

(b) constitutes the carrying out of drainage works within the meaning of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001(**5**); or

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

PART 2

PRE-APPLICATION PROCEDURES & ASSESSMENT OF RELEVANT PROJECTS

Determination whether a project is a relevant project

4.—(1) Before applying for a consent for a project, a person proposing to carry out that project may in writing request the Department to make a determination whether the project is a relevant project.

(**4**) S.R. 1999 No. 73
(**5**) S.R. 2001 No. 394

(2) The request shall be accompanied by –

(a) a plan sufficient to identify the place where the project is to be carried out;

(b) a brief description of the nature, extent and purpose of the project and its possible effects on the environment; and

(c) any other information or representations which the applicant wishes the Department to take into account.

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

(4) In determining whether a project is a relevant project the Department shall take into account such of the selection criteria set out in Schedule 1 as are relevant.

(5) The Department shall give the applicant 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 is received; or

(ii) where the Department has served a notice under paragraph (3), the date on which the further information specified is given to the Department; or

(b) such longer period as may be agreed in writing with the applicant.

(6) Where –

(a) the Department fails to make a determination before the expiry of the period specified in paragraph (5); or

(b) the applicant is dissatisfied with the Department's determination that the proposed project would amount to or form part of a relevant project,

the applicant may apply to the Commission for a determination on the matter by notice in writing not later than twenty-eight days after the expiry of that period or, as the case may be, after the date of the determination of the Department.

(7) Where an application is made to the Commission under paragraph (6), the Commission shall send a copy of the application to the Department.

(8) The Commission shall by notice in writing given to the Applicant and the Department –

(a) uphold or reverse the determination of the Department; or

(b) in default of a determination by the Department, determine whether the project is a relevant project.

(9) A determination under this regulation shall be accompanied by a written statement of the reasons for that determination.

(10) The Department or, as the case may be, the Commission shall take such steps as are considered appropriate to make a determination under this regulation available to the public.

(11) Where an applicant makes an application for consent in relation to the project in question he shall furnish a copy of any determination made under this regulation with his application.

Environmental statement to be provided in relation to an application

5. An environmental statement which complies with regulation 6 shall be provided in relation to an application made after 9th March 2005.

Environmental statement, and opinions of the Department on the contents of an environmental statement

6. An environmental statement shall include such of the information set out in Schedule 2 as is relevant to the relevant project and at least the following –

(a) a description of the project comprising information on the site, design and size of the project;

(b) a description of the aspects of the environment likely to be significantly affected by the project;

(c) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

(d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects; and

(e) a non-technical summary of the information provided under sub-paragraphs (a) to (d).

(2) If a person so requests before making an application, the Department shall, having consulted the person making the request and the consultation bodies, give an opinion on the information which should be contained in an environmental statement accompanying such an application.

(3) The fact that the Department has given an opinion under paragraph (2) shall not preclude it from subsequently requiring the person making the request to provide further information.

(4) The Department and the consultation bodies shall, if requested by a person proposing to make an application for which an environmental statement is required, enter into consultation with him to determine whether they have in their possession any information which may be relevant to the preparation of an environmental statement and, if they have, they shall make it available to him.

(5) Paragraph (4) shall not require the disclosure of information where disclosure of that information may be refused under the Environmental Information Regulations 2004(**6**).

(6) Any body which provides information to a person under paragraph (4) may require him to pay a charge which reflects the cost of making that information available.

(7) If the Department considers that an environmental statement does not contain all the information required by paragraph (1), it shall by notice in writing –

(a) inform the applicant; and

(b) specify what further information the Department requires,

and the applicant shall provide that information to the Department.

PART 3

CONSENT

The application

7.—(1) An application for consent for a relevant project shall be made to the Department on a form supplied by the Department.

(2) An application shall include the environmental statement and any other information provided in accordance with regulation 6.

(3) The applicant shall provide to the Department such number of copies of the application as it may reasonably require.

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

(4) After the Department has received an application and copies thereof in accordance with paragraphs (1) to (3), it shall send a copy of the application to the consultation bodies and inform them that they may make representations within twenty-eight days from the date of receipt of that copy.

Publicity for an application

8.—(1) At the same time an applicant makes an application he shall publish in the Belfast Gazette and one or more newspapers circulating in –

(a) the locality in which the proposed project, which is the subject of the application, is proposed to be carried out; and

(b) the locality in which the waterway or underground stratum which may be affected by the project is situated,

a notice –

(i) stating the applicant's name and that he has made an application and that he has provided the Department with an environmental statement or further information in accordance with regulation 6;

(ii) naming a place in the relevant locality at which copies of the application, the environmental statement and any further information may be inspected free of charge at all reasonable hours within a period of twenty-eight days beginning on the date the notice was published;

(iii) specifying an address at which copies of the application, the environmental statement and any further information may be obtained from the applicant and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and

(iv) stating that any person wishing to make representations in relation to the application should make them to the Department in writing within a period of twenty-eight days beginning on the date the notice was first published in the newspaper, at a specified address nominated by the Department.

(2) By not later than such date as may be specified by the Department, the applicant shall send a copy of the notice published in the newspaper and the application (including the environmental statement and the further information) to such persons as the Department may specify, under cover of a letter stating that any representations in relation to the application should be made in writing to the Department within a period of twenty-eight days beginning on the date of the letter.

(3) The applicant shall send to the Department a copy of any notice published under paragraph (1).

(4) The Department shall not determine an application made by a person where that person has not complied with a requirement of this regulation.

Determination of application and notice of determination

9.—(1) The Department shall not determine an application before the latest date allowed under these Regulations for making representations or concluding any consultation.

(2) In determining the application the Department shall take into consideration the environmental statement, any further information provided, and any representations relating to the environmental effects of the project made to the Department in accordance with these Regulations.

(3) Within twenty-eight days of the decision on the application, the Department shall publish in those newspapers in which a notice was published under regulation 8 a notice stating that the Department has granted or refused the application and stating a place and times where any person may inspect –

(a) any relevant consent or variation thereof;