STATUTORY RULES OF NORTHERN IRELAND

# 1999 No. 73

# PLANNING

## The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

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| *Made - - - -* | *23rd February 1999* |
| *Coming into operation* | *14th March 1999* |

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 the powers conferred upon it by that section and of all other powers enabling it in that behalf, and having taken into account the selection criteria in Annex III to Council Directive 85/337/EEC(**3**) as amended by Council Directive 97/11/EC(**4**) hereby makes the following regulations:

## Part I

## General

### Citation and commencement

**1.** These regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 and shall come into operation on 14th March 1999.

### Interpretation

**2.**—(1) The Interpretation Act (Northern Ireland) 1954(**5**) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these regulations—

(**1**) S.I. 1988/785
(**2**) 1972 c. 68
(**3**) O.J. No. L175, 5.7.85, p. 40
(**4**) O.J. No. L73, 14.3.97, p. 5
(**5**) 1954 c. 33 (N.I.)

"the 1991 Order" means the Planning (Northern Ireland) Order 1991(**6**) and references to Articles are references to Articles of that Order;

"the Commission" means the Planning Appeals Commission;

"the Department" means the Department of the Environment;

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

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

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

"EIA application" means an application for planning permission for EIA development;

"EIA development" means development which is either—

(a) Schedule 1 development; or

(b) Schedule 2 development 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, 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" 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 the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but which includes at least the information referred to in Part II of Schedule 4;

"exempt development" means development which comprises or forms part of a project serving national defence purposes or in respect of which the Department has made a direction under regulation 3(b);

"further information" has the meaning given to it in regulation 15(1);

"the General Development Order" means the Planning (General Development) Order (Northern Ireland) 1993(**7**);

"the land" means the land on which the development is to be carried out or, in the case of development already carried out, the land on which it has been carried out;

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

"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;

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

"sensitive area" means any of the following—

(**6**) S.I. 1991/1220 (N.I. 11)
(**7**) S.R. 1993 No. 278 as amended by S.R. 1995 No. 356; S.R. 1998 No. 222

(a) an area of special scientific interest, that is to say, land so declared under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(**8**);

(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;

(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 World Cultural and Natural Heritage(**9**);

(e) a scheduled monument within the meaning of the Historic Monuments and Archeological Objects (Northern Ireland) Order 1995(**10**);

(f) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(**11**).

(3) Subject to paragraph (4), expressions used both in these regulations and in the 1991 Order have the same meaning for the purposes of these regulations as they have for the purposes of the said Order.

(4) Expressions used in these regulations and in the Directive (whether or not used in the 1991 Order) have the same meaning for the purposes of these regulations as they have for the purposes of the Directive.

**Directions**

**3.** 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; or

(b) in accordance with Article 2.3 of the Directive (but subject to Article 7 of the Directive) that a specific development is not development in respect of which the consideration of environmental information is required before planning permission can be granted.

**Prohibition on the grant of planning permission without consideration of environmental information**

**4.**—(1) Planning permission shall not be granted for EIA development, where the application is received on or after the date these regulations come into operation, unless the Department or the Commission, as the case may require, has first taken into consideration environmental information.

(2) The Department or the Commission, as the case may require, shall when granting planning permission in respect of an application to which paragraph (1) applies, state in the notice to the applicant of its decision, that it has taken environmental information into consideration.

**Confirmation that development is EIA development**

**5.**—(1) Subject to any direction of the Department under regulation 3, the occurrence of an event mentioned in paragraph (2) shall determine, for the purposes of these regulations, that development is EIA development.

(2) The events referred to in paragraph (1) are—

(**8**) S.I. 1985/170 (N.I. 1) as amended by S.I. 1989/492 (N.I. 3)
(**9**) *See* Command Paper 9424
(**10**) S.I. 1995/1625 (N.I. 9)
(**11**) S.R. 1995 No. 380

(a) the submission by the applicant or appellant, in relation to that development, of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these regulations; or

(b) the determination by the Department, or following a hearing by the Commission, confirmation by the Department, that the development is EIA development.

# Part II

## Pre-application Procedures

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

**6.**—(1) Subject to paragraphs (2) and (3), before applying for planning permission a developer may apply in writing to the Department asking it to give—

(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.

(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 land;

(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.

(4) Subject to paragraph (5), the Department shall inform the applicant, in writing, of its determination under paragraph (1)(a) within 4 weeks from the date of receipt of the application, or within such extended period as may be agreed in writing between the Department and the applicant.

(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)(a) or (b) it shall notify the developer of the particular points on which further information is required, and the period for making the determination or for giving opinion on the content of the environmental statement 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 developer, and such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities, but shall respond to such a request within 6 weeks of receipt of that request or such longer period as may be agreed in writing with the applicant.

(7) If, in response to a request under paragraph (1)(a), the Department, having taken into account the selection criteria, is of an opinion 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) Where the Department gives a determination under paragraph (7) 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 under paragraph (7) 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;

(b) the specific characteristics of development of the type concerned; and

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

(10) Where the applicant wishes to proceed with the proposed development he shall by notice in writing inform the Department that he either—

(a) accepts the Department's determination under paragraph (7) and proposes to provide an environmental statement; or

(b) does not accept the Department's determination and proposes to seek a hearing before the Commission.

(11) The notice referred to in paragraph (10) shall be served on the Department within 4 weeks of the date of the determination.

(12) Where the Department has given an opinion under paragraph (1)(b) or where it has received a statement under regulation 5(2)(a) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

# Part III

## Preparation of Environmental Statements

**Procedure to facilitate preparation of environmental statements**

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

(2) A notice under paragraph (1) shall include or be accompanied by the information necessary to identify the land 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) such a notice as is mentioned in paragraph (1); or

(b) such a statement as is mentioned in regulation 6(10)(a);

it shall notify—

(i) the district council in the area in which the land to which the proposal relates is situated of the details of the proposed development; and

(ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities,

of the name and address of the developer and of the duty imposed on them by regulation 8(1) to make information available to the developer; and

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

**Provision of information**

**8.**—(1) Subject to paragraph (2), any body notified by the Department pursuant to regulation 7(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 he or they