

Statutory Rule 2001 No. 435

Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2001

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STATUTORY RULES OF NORTHERN IRELAND

2001 No. 435

AGRICULTURE

Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2001

Made 19th December 2001

Coming into operation 11th February 2002

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The Department of Agriculture and Rural Development, 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 the said section 2(2), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) Regulations (Northern Ireland) 2001 and shall come into operation on 11th February 2002.

Interpretation

2. - (1) The Interpretation Act (Northern Ireland) 1954^[3] shall apply to these Regulations as it applies to an Act of the Northern Ireland 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;

"additional environmental information" means any additional information required as part of the environmental statement in accordance with regulation 10(1);

"consent" means consent granted under regulation 12(1) of these Regulations;

"consultation bodies" in relation to any project means any public authority, statutory body or other organisation which, in the opinion of the Department, has any interest

in or holds any information which might be relevant to the project;
"the Department" means the Department of Agriculture and Rural Development;
"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;
"the EIA Directive" means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment[4];
"environmental statement" in relation to any project means a statement that -
(a) includes such of the information referred to in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project and which the applicant for consent for that project can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, and
(b) includes at least the information referred to in Part II of Schedule 2.

"European site" means those sites described in paragraphs (a), (b), (c) and (d) of regulation 9(1) of the Habitats Regulations;
"the Habitats Directive" means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora[5];
"the Habitats Regulations" means the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995[6]
"interested parties" means those persons who notify the Department in accordance with regulation 14(5) that they wish to make representations in respect of an appeal;
"project" means -
(a) the execution of construction works or other installations or schemes; or
(b) other interventions in the natural surroundings and landscape,

involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

"relevant land" means the land on which a project is to be carried out or, in relation to a project which has already been carried out, has been carried out;
"relevant project" means a project which the Department has decided (or is deemed to have decided) is likely to have significant effects on the environment;
"screening decision" means a decision taken by the Department under regulation 5(4) or which is has been deemed to have taken under regulation 5(7);

(2) Unless it is otherwise provided, expressions used both in these Regulations and the EIA Directive or in the Habitats Directive shall have the same meaning in these Regulations as they have in that Directive.

(3) All applications, notifications, representations, requests, approvals and agreements to which these Regulations apply shall be made in writing.

(4) "Writing" for the purpose of paragraph (4) shall include an electronic communication within the meaning of the Electronic Communications Act (Northern Ireland) 2001[7] provided that notifications required to be made by the Department to any person shall only be made by an electronic communication if the intended recipient has himself used the same form of electronic communication in communicating with the Department pursuant to any provision of these Regulations or has otherwise represented that the same form of electronic communication is a means by which persons can communicate with him.

Application of the Regulations

3. - (1) These Regulations apply to any project which is not exempt under paragraph (2) or (3).

(2) A project is exempt if it:

(a) is a project described in regulation 3(2) of the Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2000[8];

(b) constitutes development to which the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999[9] apply; or

(c) constitutes the carrying out of drainage works by the Department within the meaning of the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2001[10].

(3) A project is exempt under this paragraph to the extent that the Department directs that it shall be exempt from these Regulations.

(4) In the case of a project which the Department decides is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt from these Regulations under paragraph (3) above shall be exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.

Requirement for screening decision

4. A person shall not begin or carry out a project without first obtaining a screening decision.

Screening procedure

5. - (1) An application for a screening decision shall be accompanied by -

(a) a plan sufficient to identify the relevant land;

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

(c) such other information or representations as the applicant may wish to provide or make.

(2) The Department shall notify the applicant of the date on which the application was received by it.

(3) If the Department considers that it does not have sufficient information to make the screening decision it may request that the applicant supply any additional information that it requires.

(4) The Department shall decide in accordance with the selection criteria set out in Schedule 1 and paragraph (5) whether a project is likely to have a significant effect on the environment within thirty-five days of the date notified to the applicant in accordance with paragraph (2) or such longer period as may be agreed with the applicant and before reaching such a decision may consult with such of the consultation bodies as it thinks fit.

(5) A project which the Department decides is likely to have a significant effect on a European site (either alone or in combination with other projects), and which is not directly connected with or necessary to the management of the site, shall be treated for the purposes of these Regulations as likely to have a significant effect on the environment.

(6) The Department shall -

(a) notify the screening decision together with a statement giving the full reasons for the decision to the applicant;

(b) enter the screening decision in a register to which the public shall have access at all reasonable times; and

(c) notify the screening decision to such of the consultation bodies as would, in its opinion, wish to be informed of it.

(7) If an applicant who has not been notified of a screening decision within the period specified in paragraph (4) notifies the Department that he intends to treat such failure to notify him as a decision that the project is a relevant project, the Department shall be deemed to have decided that the project is a relevant project on the date that it is so notified by the applicant.

(8) If at any time after the Department has decided that a project is a relevant project under this regulation, it shall receive further information or representations which cause it to decide that the project is not a relevant project, it shall notify that decision and provide a statement giving the full reasons for the decision to the applicant and to the consultation bodies notified in accordance with paragraph 6(c) and shall enter the decision in the register referred to in paragraph (6)(b).

(9) If a project to which a screening decision relates has not been commenced before the expiry of three years from the date on which that decision was notified to the applicant or of the date it was deemed to have been decided in accordance with paragraph (7), or of such longer period as may have been agreed by the Department, that screening decision shall cease to have effect.

Requirement for consent

6. A person shall not begin or carry out a relevant project without first obtaining consent from the Department.

Scoping opinion

7. - (1) After obtaining a screening decision and before applying for consent the applicant may request the Department to give its opinion as to the information to be provided in the environmental statement ("a scoping opinion").

(2) If a scoping opinion is requested the Department shall consult the applicant and such of the consultation bodies as it thinks fit before giving its opinion.

(3) If the Department considers it has not been supplied with sufficient information to give a scoping opinion it shall notify the applicant of the matters upon which it requires additional information within twenty-eight days from the date of receipt of the request for the opinion.

(4) The Department shall provide the applicant with a scoping opinion within five weeks from the date of receipt of the request for the opinion or from the date of receipt by it of any additional information requested in accordance with paragraph (3).

Provision of information

8. - (1) Any consultation body which receives a request for information from a person who is intending to apply for consent for a project shall determine whether they have in their possession any information which they consider relevant to the preparation of an environmental statement for that project and, if they have, they shall, subject to paragraphs (3) and (4), make that information available to the applicant within twenty-eight days from the date of receipt of the request.

(2) A reasonable charge may be made by any body providing information under paragraph (1) that reflects the cost of making the relevant information available.

(3) Paragraph (1) shall not require disclosure of information which is either capable of being treated as confidential or required to be so treated under regulation 5 of the Environmental Information Regulations (Northern Ireland) 1993^[11].

The consent application

9. - (1) An application for consent for a project (which shall include the environmental statement) shall be made to the Department.

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

(3) After the Department has received an application for consent for a project in accordance with paragraph (1) and (2) it shall -

(a) send a copy of the application to such of the consultation bodies as it thinks fit and inform them that they may make representations within six weeks from the date of receipt of that copy; and

(b) for the purpose of ensuring that members of the public concerned are given an opportunity to make representations before the application is determined, publish in a newspaper circulating in the locality of the project a notice: -

(i) announcing that the application has been made;

(ii) specifying an address at which copies of the application may be inspected free of charge and where anyone who wishes to obtain copies of the application may do so (for which a reasonable charge may be made) at all reasonable hours within six weeks beginning from the date of publication of the notice; and

(iii) stating that any person wishing to make any representations in relation to the likely environmental effects of the project shall make them in writing to the Department at the address specified at paragraph (b) within six weeks from the publication of the notice.

Additional information

10. - (1) If, after having complied with regulation 9(3), the Department reaches the opinion that any purported environmental statement should contain additional information in order to be a valid environmental statement, it shall notify the applicant of the information (and the number of copies) required and the applicant shall provide the Department with the additional information.

(2) The Department shall send a copy of the additional information sent to it under paragraph (1) to such of the consultation bodies as it shall think fit and to any Member State which has indicated that it wishes to make representations in accordance with regulation 11(1) and inform them that they may make representations within twenty-eight days beginning from the date the information was sent.

(3) The Department shall publish in a newspaper circulating in the locality of any project to which any additional information sent to it under paragraph (1) relates a notice: -

(a) referring to the application for consent for that project and the date on which that application was made;

(b) announcing that the additional environmental information is available;

(c) specifying an address at which copies of the additional environmental information may be inspected free of charge and where anyone who wishes to obtain

copies of the additional environmental information may do so (for a reasonable charge) at all reasonable hours within twenty-eight days beginning with the publication of the notice; and

(d) stating that any person wishing to make any representations in relation to the additional environmental information shall make them to the Department in writing at the address specified at sub-paragraph (c) within twenty-eight days from the publication of the notice.

Other EEA States

11. - (1) As soon as possible following receipt of the application for consent the Department shall consider whether the relevant project is also likely to have significant effects on the environment of another EEA State and, if it is of the opinion that such effects are likely, or where an EEA State likely to be significantly affected so requests, the Department shall send to that EEA State:

(a) details of the nature and location of the relevant project and any information it has on the impact it is likely to have on that EEA State; and

(b) an indication as to whether consent is likely to be given and the nature of any such consent,

and shall request that the EEA State indicate within a reasonable time whether it wishes to make any representations.

(2) If an EEA State indicates that it does wish to make representations in relation to a project, the Department shall send it a copy of the application for consent for the project (including the environmental statement) together with any additional environmental information and shall provide it with relevant information regarding the procedures under these Regulations.

(3) The Department shall also -

(a) arrange for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State likely to be significantly affected;

(b) ensure that those authorities and the public concerned are given an opportunity before consent to the project is granted to forward to the Department, within a reasonable time, their opinion on the information supplied.

(4) The Department shall, in accordance with Article 7(4) of the EIA Directive -

(a) enter into consultation with the EEA State concerned, regarding, among other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate such effects;

(b) seek to agree with the other EEA State a reasonable period of time for the duration of the consultation period (to include consideration of any opinions received pursuant to paragraph (3)(b)).

(5) Where the Department receives from another EEA State information which has been made available in accordance with Article 7(1) and (2) of the EIA Directive (which relates to projects in one EEA State which are likely to have significant effects on the environment in another EEA State), the Department shall -

(a) arrange for that information to be made available within a reasonable time, to

such of the consultation bodies and such members of the public as, in its opinion, would be likely to be concerned by the project;

(b) ensure that the consultation bodies and members of the public provided with the information in accordance with paragraph (a) are given an opportunity during the period agreed between the Department and the relevant EEA State in accordance with paragraph (6)(b) to forward to the competent authority in the relevant EEA State within reasonable time, their opinion of the information provided.

(6) The Department shall also, in accordance with Article 7(4) of the EIA Directive -

(a) enter into consultations with an EEA State from which information has been received as mentioned in paragraph (5) regarding, amongst other things, the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects; and

(b) seek to agree with that EEA State a reasonable period, before consent for the project is granted, during which the consultation bodies and members of the public referred to in paragraph (5)(b) may forward their opinion to the competent authority of that EEA State in accordance with that paragraph.

The consent decision

12. - (1) The Department shall consider, in the light of the environmental statement, any additional environmental information and any representations received in accordance with regulations 9(3), 10(2) or (3) or 11(2), whether or not to grant consent for a project.

(2) The Department shall not reach a decision under paragraph (1) until the latest of -

(a) the expiry of the period specified in the notice published under regulation 9(3) (b);

(b) the expiry of twenty-eight days from the date on which the additional environmental information was sent to any consultation bodies or EEA States or from the date that notice of it was published in accordance with regulation 10(3), whichever is the later; and

(c) the expiry of any period agreed between the Department and the relevant EEA State pursuant to regulation 11(4)(b).

(3) The Department shall not grant consent for a project that would involve doing anything which would be unlawful under regulations 34, 36 or 38 of the Habitats Regulations (which shall not include anything for which a licence has been granted under regulation 39 of those Regulations).

(4) Paragraphs (5) to (9) shall apply to a decision by the Department whether or not to grant consent for a project which is likely to have a significant effect upon a European site (either alone or in combination with other projects) and in those paragraphs "project" shall be construed accordingly.

(5) Subject to paragraphs (7) and (8), the Department shall only grant consent for a project if, in light of the information referred to in paragraph (1) and (2), it has considered the implications of the project for the European site and is satisfied that the project will not adversely affect the integrity of that site.

(6) The consideration to be undertaken under paragraph (5) shall involve an appropriate assessment of the implications of the project for the European site in view of that site's conservation objectives.

(7) If the Department is satisfied that, there being no alternative solutions, a project must be carried out for imperative reasons of overriding public interest (which subject to paragraph (8) may be of a social or economic nature), the Department may grant consent for the project notwithstanding a negative assessment of the implications for a European site.

(8) Where the European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (7) must be either -

(a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or

(b) other reasons which in the opinion of the European Commission are in the case of the site concerned imperative reasons of overriding public interest.

(9) Where in accordance with paragraph (7) consent is granted for a project notwithstanding a negative assessment of the implications for a European site, the Department shall ensure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (as defined in the Habitats Regulations) is protected.

(10) Any consent granted in accordance with paragraph (1) shall be subject to the conditions required by paragraph (11) and to such additional conditions as the Department may think fit.

(11) Every consent shall be granted subject to conditions to the effect that -

(a) the consent shall lapse if the project has not commenced (by the carrying out of a material act) within one year of the date on which it was granted;

(b) if the project has not been completed (which, in this regulation shall mean that works permitted by the consent have been completed and all changes in the use or level of use of the relevant land permitted by the consent have been implemented) within three years of the date on which the consent was granted, the consent shall expire and the Department may require operations or uses implemented pursuant to the consent to cease until it has granted further consent in accordance with sub-paragraph (d);

(c) the consent authorises the project only as described in the consent application, subject to any amendments approved by the Department pursuant to a request by the applicant, and any material change in the operations or uses so authorised shall require further consent in accordance with sub-paragraph (d);

(d) applications for further consent under conditions in sub-paragraphs (b) or (c) shall be subject to such of the requirements of these Regulations as the Department shall think fit.

(12) When the Department has decided whether to grant consent it shall -

(a) notify the applicant, those consultation bodies to whom copies of the consent application were sent in accordance with regulation 9(3)(a) and any EEA State to whom a copy of the consent application was sent in accordance with regulation 11(2) of the decision together with the full reasons and considerations on which the decision is based;

(b) inform the public of the decision by publishing a notice in a newspaper circulating in the locality in which the relevant land is situated or by such other means as it may consider reasonable in the circumstances; and

(c) make available for public inspection a statement containing:

- (i) the content of the decision;
- (ii) the full reasons and considerations on which the decision is based; and
- (iii) a description, where relevant, of the principal measures required to be taken to avoid, reduce or offset the major adverse effects of the project.

(13) Where the Department has decided to grant consent for a project which involves the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which an area of special scientific interest (as defined by the Wildlife (Northern Ireland) Order 1985[12]) is of special interest it shall impose a condition on the consent to prevent the project from being commenced before the end of the period of twenty-one days beginning with the date of that notice.

Review of decisions and consents

13. Schedule 3 shall apply to -

- (a) any decision that a project is not a relevant project made in accordance with regulation 5(4); and
- (b) any consent granted in accordance with regulation 12(1)

where, after the date of the decision or grant of consent, a site becomes a European site and in the opinion of the Department the completion (within the meaning of regulation 12(11) (b)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

Appeals (general provisions)

14. - (1) The following persons that is to say -

- (a) a person who has applied for a screening decision in respect of a project which the Department has decided is a relevant project, or is deemed to have so decided under regulation 5(8);
- (b) a person who has applied for consent for a relevant project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 12(11)); and
- (c) a person upon whom a notice of a decision has been served in accordance with paragraph 3 of Schedule 3,

may by notice to the Department appeal against the consent, decision or conditions as the case may be (in this regulation referred to as "the relevant decision") in accordance with this regulation.

(2) A person to whom paragraph (1) applies must serve notice of an appeal on the Department within three months from the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal shall include -

- (a) a description of the relevant decision;
- (b) a statement of the grounds of appeal; and
- (c) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(4) As soon as is reasonably practicable after receipt of notice of an appeal the Department shall serve copies of the notice on such of the consultation bodies as it thinks fit, on any person who made representations in respect of the relevant decision, on any EEA State consulted pursuant to regulation 11(4) or any authority or person who forwarded their opinion under regulation 11(3)(b) and on any other person who appears to it to have a particular interest in the subject matter of the appeal.

(5) A person upon whom a copy of a notice of an appeal has been served in accordance with paragraph (4) may not make representations in respect of the appeal unless he notifies the Department that he wishes to do so within twenty-eight days of the date on which a copy of the notice was served upon him.

(6) The Department shall appoint any person ("the appointed person") to exercise, with or without payment, the functions in relation to an appeal set out in these Regulations and Schedule 4 shall have effect with respect to such appointment.

(7) Before determining an appeal, if the appellant has indicated that he wishes to be heard, the appointed person shall arrange a hearing or, if the appellant has not indicated that he wishes to be heard, the appointed person shall decide whether the appeal shall proceed by way of written representations or a hearing and in either case shall notify its decision to the appellant, to the Department and to any persons who notified the Department in accordance with paragraph (5) that they wished to make representations accordingly.

(8) For the purpose of determining any matter involved in an appeal the appointed person may, subject to paragraph (9), by summons require any person to attend at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the appeal hearing, and may take evidence on oath and for that purpose administer oaths or may instead of administering an oath require the person examined to make a solemn affirmation.

(9) A person shall not be required to attend to give evidence or to produce any documents in obedience to a summons issued in accordance with paragraph (8) unless the necessary expenses of his attendance are paid or tendered to him.

(10) Any person who refuses or deliberately fails to attend in obedience to a summons issued in accordance with paragraph (8) or refuses to give evidence or to produce any book or other document which he is required or is liable to be required to produce for the purposes of these Regulations shall be guilty of an offence.

(11) Where the appointed person holds or causes to be held a hearing to determine any matter under this regulation it may direct that the costs incurred by him in relation to the hearing (including such reasonable sum as he may determine for the services of any officer engaged in conducting the hearing) may be paid by such party to the hearing as the appointed person may direct and may cause the amount of costs so incurred and directed to be paid by any person shall be recoverable from that person summarily as a civil debt.

(12) The appointed person may, when holding or causing to be held a hearing to determine any matter under this regulation, make orders with respect to the costs of the parties at the hearing and with respect to the parties by whom the costs are to be paid and every such order may be made a rule of the High Court on the application of any party named in such an order.

(13) The appointed person may make orders with respect to the costs of the parties providing evidence for the hearing and with respect to the costs of the parties by whom the costs are to be paid in relation to an appeal to which this regulation applies which does not give rise to a hearing in the same way as if a hearing had in fact taken place.

(14) Except as otherwise provided by this regulation or by regulation 15 or 16 the appointed person shall determine the procedure (which may include provision for site visits) for deciding any matter arising in the appeal.

(15) Any representations, statements or other documents to be submitted to the appointed person in accordance with regulation 15 or 16 shall be accompanied by such number of copies as he may specify.

Determination of appeals by written representations

15. - (1) This regulation shall apply to an appeal which is to proceed by written representations.

(2) Within six weeks of receiving notice that the appeal is to be determined by written representations, the appellant shall either serve on the appointed person any further representations that he wishes to be considered by him or shall notify the appointed person that he wishes to rely on the information already supplied by him, and the appointed person shall either send to the Department and other interested parties copies of any further representations made by the appellant or shall notify them that the appellant does not intend to make further representations as the case may be.

(3) The Department and any interested parties who wishes to make representations in respect of the appeal shall, within twenty-eight days of receipt of further representations made by the appellant or of notification that the appellant does not wish to make further representations, as the case may be, serve such representations on the appointed person and the appointed person shall send copies of the representations served upon it to the appellant and to the other interested parties.

(4) The appointed person shall allow the appellant, the Department and the other interested parties a period of not less than fourteen days in which to respond to the representations made in accordance with paragraph (3).

(5) No earlier than the expiry of the period specified in paragraph (4), the appointed person shall determine the appeal and shall notify the decision and the reasons for it to the appellant, the Department and to the interested parties.

Determination of appeals by hearing

16. - (1) This regulation shall apply to an appeal which is to proceed by way of a hearing.

(2) Within six weeks of receiving notice that the appeal is to proceed by way of a hearing the appellant shall serve on the appointed person a statement which contains full particulars of his case and copies of any documents to which he wishes to refer at the hearing and the appointed person shall send copies of the statement and documents to the Department and other interested parties.

(3) The appointed person shall give the appellant, the Department and other interested parties at least six weeks' notice of the date, time and place fixed for the hearing and shall give, not less than twenty-one days before the date fixed for the hearing, such notice to the public as he may think fit.

(4) The appointed person may vary the time or place for the holding of the hearing and shall give such notice of such variation as he may think fit.

(5) Any of the interested parties (other than the appellant and the Department) who wish to be heard at the hearing shall, within twenty-eight days of receipt of the appellant's statement pursuant to paragraph (2), notify the appointed person that they wish to appear and the appointed person may require any such parties to serve upon him a statement

containing the particulars of their case together with copies of any documents to which they wish to refer at the hearing within five weeks of being so required and the appointed person shall send copies of such statements to the appellant, the Department and to the other interested parties.

(6) The appointed person may by notice require the appellant, the Department or any other person who has provided a statement in accordance with paragraph (5) to provide such further information about the matters contained in the statement as he may specify and shall send a copy of such information to the interested parties or to the appellant, the Department and the other interested parties as the case may be.

(7) Before a hearing takes place the appointed person shall make all of the documents submitted by the appellant, the Department or any interested parties in respect of the hearing available for inspection by any person who so requests.

(8) The persons entitled to be heard at a hearing are -

(a) the appellant;

(b) the Department;

(c) any interested parties; and

(d) any other person whom the appointed person shall permit to be heard.

(9) A person entitled to appear at a hearing who proposes to give evidence at the hearing by reading a proof of evidence shall send a copy of the proof of evidence to the appointed person together with a written summary not less than three weeks before the date fixed for the hearing and the appointed person shall send copies of the proof and summary to the appellant, the Department and the other interested parties as the case may be.

Determination of appeals

17. - (1) After the conclusion of the hearing or after receiving all written representations the appointed person shall -

(a) if he was so appointed determine the appeal; or

(b) make a report to the Department that shall include his conclusions and his recommendations or his reasons for not making any recommendations.

(2) If having received a report under paragraph (1)(b) the Department differs from the appointed person on any matter of fact mentioned in, or appearing to it to be material to, a conclusion reached by that person, or takes into consideration any new evidence or new matter of fact and is for that reason disposed to disagree with a recommendation made in the report, it shall not come to a decision under paragraph (3) without first affording to any other persons who made representations to the appointed person the opportunity of making further representations to it within such reasonable time as it shall specify.

(3) The appointed person who determines an appeal or the Department, on receipt of the report of an appointed person under paragraph (1)(b) may affirm the decision to which the appeal refers, reverse it or any part of it and may deal with the appeal in the same way as if it were an application for a decision of first instance.

(4) The Department shall notify its decision under this regulation and the reasons for it, and shall send a copy of any report made in accordance with paragraph (1), to the appellant, to the interested parties and to any other persons who appeared at the hearing (if any) and asked to be notified of the decision.

(5) The appointed person who determines an appeal shall notify his decision under this regulation and the reasons for it to the appellant, to the Department, to other interested parties and to any other persons who appeared at the hearing (if any) and asked to be notified of the decision.

Application to the court by person aggrieved

18. - (1) On the application of any person aggrieved by a decision of the Department that a project is not a relevant project or by a decision to grant consent for a relevant project, the High Court may make an order quashing the decision where it is satisfied that the decision is not within the powers of regulation 5(4) or 12 (3), as the case may be, or that the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(2) An application to the High Court under this regulation shall be made within six weeks from the date of publication of the decision in accordance with regulation 5(6)(b) or 12(12) (b).

(3) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it may think fit.

Offence of carrying out a project without a decision under these Regulations

19. Any person who begins or carries out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of carrying out work in contravention of a condition

20. Any person who carries out any activity in contravention of any condition of a consent granted in accordance with these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of procuring a decision by supplying false information etc.

21. - (1) Any person who, for the purpose of procuring a particular decision on an application made under these Regulations -

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) or under regulation 14(10) shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

Stop notices

22. - (1) Where it appears to the Department that an offence has been committed under regulation 19, 20 or 21 and it considers that the potential harm to the environment of any activity to which the offence relates is such that the work should cease with immediate effect, it may serve a notice (in this regulation referred to as a "stop notice") prohibiting all or any part of such work.

(2) The Department may serve a stop notice on any person who appears to it to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) The Department may at any time withdraw a stop notice (without prejudice to its power to serve another) by serving notice to that effect on those persons served with the stop notice.

(4) A stop notice shall take effect no earlier than the time and date specified in the notice which, except in an emergency, shall not be less than twenty-four hours after it has been served.

(5) A stop notice shall cease to have effect if -

(a) a notice of withdrawal is served in accordance with paragraph (3);

(b) the Department (or a person appointed by it to determine an appeal) grants consent for the prohibited work; or

(c) if the Department (or a person appointed by it to determine an appeal) decides that the prohibited work is not a relevant project.

Penalties for contravention of a stop notice

23. - (1) Any person who contravenes a stop notice that has been served on him in accordance with regulation 22 shall be guilty of an offence.

(2) An offence under this regulation may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice shall include causing or permitting its contravention.

(4) A person guilty of an offence under this regulation shall be liable -

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment to a fine.

(5) In proceedings for an offence under this regulation it shall be a defence for the accused to prove that -

(a) the stop notice was not served on him; and

(b) he did not know, and could not reasonably have been expected to know, of its existence.

Reinstatement

24. - (1) Where it appears to the Department that an offence has been committed under regulation 19, 20 or 21 it may serve a notice ("a reinstatement notice") upon the person who appears to it to be responsible for committing the offence requiring that person to reinstate, to the Department's satisfaction, the relevant land to the condition it was in before the work to which the offence relates was commenced and specifying the period within which the reinstatement is required to be carried out.

(2) Where the Department cannot determine with reasonable accuracy the condition of the relevant land before any work carried out in relation to it was commenced or where it is

not possible to return the relevant land to the same condition it was in before the work commenced, the reinstatement notice shall impose such requirements for the purposes of reinstatement as shall, in the opinion of the Department (after consultation with such of the consultation bodies as it thinks fit), be reasonable in the circumstances.

(3) A person (in this regulation referred to as an appellant) served with a notice under paragraph (1) may, within twenty-one days from the date on which the notice is served on him, appeal to the Magistrates Court by way of complaint for an order on any of the following grounds: -

(a) that the notice or any requirement in the notice is not within the power conferred by this regulation;

(b) that there has been some material informality, defect or error in, or in connection with, the notice; or

(c) that any of the requirements of the notice are unreasonable.

(4) An appellant shall, at the same time as he makes a complaint under paragraph (3), deposit with the Magistrates Court a notice stating his name and address and the grounds on which the appeal is made and shall serve a copy of the notice on the Department.

(5) On receipt of a notice under paragraph (4), the Magistrates Court may give, vary or revoke directions for the conduct of proceedings, including -

(a) the timetable for the proceedings;

(b) the submission of evidence; and

(c) the order of speeches.

(6) For the purposes of the time limit for the bringing of an appeal under this regulation, the making of the complaint shall be treated as the bringing of the appeal.

(7) The Magistrates Courts (Northern Ireland) Order 1981[13] shall apply to any appeal under this regulation.

(8) Where an appeal is made in accordance with this regulation, the reinstatement notice to which it relates shall be of no effect pending the final determination or abandonment of the appeal.

(9) Any party to the proceedings of a Magistrates Court in which a decision is made in accordance with this regulation may appeal against that decision to the High Court.

(10) If any person, without reasonable excuse, fails to comply with any requirement of a reinstatement notice served under paragraph (1) he shall be guilty of an offence and liable on summary conviction -

(a) to a fine not exceeding level 5 on the standard scale; and

(b) if the failure is continued after conviction, to a further fine not exceeding one twentieth of the maximum available for the substantive offence for every day on which the failure is so continued.

Powers of entry and default powers

25. - (1) Any person duly authorised in writing by the Department may, at any reasonable time, enter and inspect any land for the purpose of -

- (a) ascertaining whether an offence under regulation 19, 20, 21, 23 or 24 has been committed on or in connection with that land;
- (b) serving a stop notice under regulation 22 or a reinstatement notice under regulation 24 in respect of that land; or
- (c) exercising any functions under Schedule 3,

if there are reasonable grounds for entering for the purpose in question.

(2) Any person duly authorised in writing by the Department who has reasonable grounds for suspecting that a person has committed an offence under regulation 21, may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, the person believed to be responsible for committing the offence, and may inspect and take copies of any records which he has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a reinstatement notice or by notice served in accordance with paragraph 5 of Schedule 3 have not been taken within the period specified in the notice any person duly authorised in writing by the Department may, at any reasonable time, -

- (a) enter the land to which the notice relates and take those measures; and
- (b) recover from the person in default the expenses reasonably incurred by him in doing so.

(4) A person authorised under paragraph (1), (2) or (3) to enter any land or premises shall, if so requested, produce evidence of his authority before so entering.

(5) A person authorised under paragraph (1), (2) or (3) to enter any land or premises may take with him such other persons and such equipment as he considers necessary.

(6) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1), (2) or (3) shall give to that person such assistance as the authorised person may reasonably request so as to enable him to exercise any power conferred upon him by this regulation.

(7) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation or who fails without reasonable excuse to comply with a request made under paragraph (6) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on

19th December 2001.

L.S.

Liam McKibben

A senior officer of the Department of Agriculture and Rural Development

SCHEDULE 1

Regulation 5(4)

Selection criteria for the screening decision

Characteristics of projects

1. The characteristics of projects, having regard in particular to -

- (a) the size of the project;
- (b) the cumulative effect of the project considered in conjunction with other projects;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances; and
- (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of project

2. The environmental sensitivity of geographical areas likely to be affected by projects, having regard in particular to -

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas -
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under other legislation; special protection areas designated by EEA States pursuant to Council Directive 79/409/EEC[14] and 92/43/EEC[15];
 - (vi) areas in which environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas; and
 - (viii) landscapes of historical, cultural or archaeological significance.

The potential impact

3. The potential significant effects of projects, in relation to criteria set out under 1 and 2 above, having regard in particular to -

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the impact on other EEA States;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 2

Regulation 2(1)

Information for inclusion in the environmental statements

Part I

1. Description of the project, including in particular -

- (a) a description of the physical characteristics of the whole project and the land use requirements during the construction, implementation and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, the nature and quantity of the materials used;
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed project.

2. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the project on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from:

- (a) the existence of the project;
- (b) the use of natural resources; and
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant for consent of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and, where possible, offset

any significant adverse effects on the environment.

6. A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant for consent in compiling the required information.

Part II

1. A description of the project comprising information on the site, design and size of the project.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

3. The data required to identify and assess the main effects that the project is likely to have on the environment.

4. An outline of the main alternatives studied by the applicant for consent and an indication of the main reasons for his choice, taking into account the environmental effects.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

SCHEDULE 3

Regulation 13

Review of decisions and consents

1. The Department shall as soon as reasonably practicable make an appropriate assessment of the implications for the European site of the project permitted by the decision or consent in view of that site's conservation objectives for the purpose of determining whether the project will adversely affect the integrity of the site.

2. For the purposes of the assessment the Department: -

(a) may require any person interested in the relevant land to supply such information as it may reasonably think necessary;

(b) shall consult the consultation bodies and have regard to any representations made by them within such reasonable time as it may specify; and

(c) may, if it considers this to be appropriate, consult members of the public.

3. Unless, following the assessment, the Department is satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site, and regulation 12(7) does not apply, it shall, in the case of a decision, revoke that decision and, in the case of a consent, either revoke that consent or make such modifications to the consent as shall appear to it to be necessary to ensure that the project will not adversely affect the integrity of the European site and it shall notify the decision to all persons who appear to it to have an interest in the relevant land.

4. Subject to paragraph 5, a revocation or modification of a decision or a consent in pursuance of which works have been commenced or completed shall not affect so much of those works as have already been carried out.

5. If, where a project which is subject to a decision made under paragraph 3 has commenced, it appears to the Department to be necessary to safeguard the integrity of the European site, it may by notice require the person responsible for carrying out such works or any person interested in the relevant land to carry out such works of reinstatement as may be reasonable in the circumstances and any person who carries out works in compliance with such a requirement shall be entitled, on making a claim in accordance with paragraph 8, to recover from the Department compensation in respect of any expenses reasonably incurred by him in that behalf.

6. Regulation 14 shall apply to a decision made in accordance with paragraphs 3 or 5.

7. If, following a decision under paragraph 3, a person has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, he shall be entitled to be paid compensation on submitting a claim in accordance with paragraph 8.

8. A claim for compensation payable under paragraph 5 or 7 shall be submitted to the Department within six weeks of notification of the decision in respect of which compensation is payable and shall be accompanied by such evidence as the Department may reasonably require.

9. Any dispute as to the amount of compensation payable under paragraphs 5 or 7 may be referred to the Lands Tribunal within six years of the date of notification of the decision in respect of which compensation is payable.

10. Nothing in this regulation shall affect anything done in pursuance of a decision or consent before the date the site became a European site.

SCHEDULE 4

Regulation 14(6)

Delegation of appellate functions

1. In this Schedule "appointed person" means a person appointed under regulation 14(6) and "appointment" means an appointment under that regulation.

2. An appointment must be in writing and -

(a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;

(b) may provide for the appointed person to determine the appeal or report on it to the Department;

(c) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and

(d) may, by notice in writing given to the appointed person, be revoked at any time by the Department in respect of any appeal or matter which has not been determined by the appointed person before that time.

3. Where an appointed person holds a hearing, whether public or otherwise, an assessor may be appointed by the Department to sit with the appointed person at the inquiry or hearing and advise him on any matters arising.

4. Subject to regulation 14, the costs of a hearing by an appointed person shall be defrayed by the Department.

5. - (1) Where under paragraph 2(d) the appointment of the appointed person is revoked in respect of any appeal or matter, the Department shall, unless it proposes to determine the appeal or matter itself, appoint another person under regulation 14 (6) to determine the appeal or matter instead.

(2) Where such a new appointment is made, the consideration of the appeal or matter, or any hearing in connection with it, shall be begun afresh.

(3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

6. - (1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the Department.

(2) Sub-paragraph (1) shall not apply -

(a) for the purposes of so much of any contract made between the Department and the appointed person as relates to the exercise of the function; or

(b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement, in relation to projects for the use of uncultivated land and semi-natural areas in Northern Ireland for intensive agricultural purposes, Council Directive 85/337/EEC (as amended by Council Directive 97/11/EEC) on the assessment of the effects of certain public and private projects on the environment and Council Directive 1992/43/EEC on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive") insofar as it applies to such projects.

The definition of "project" identifies those activities that are subject to the requirements of the Regulations. Regulation 4 prevents any projects from being undertaken unless a screening decision is first obtained. The screening decision determines whether the project is one that is likely to have significant effects on the environment (which will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats etc.) Regulations (Northern Ireland) 1995 ("the Habitats Regulations")). A project which has been so determined is defined as a "relevant project" in the Regulations. The screening decision must be reached in accordance with the selection

criteria set out in Schedule 1 of the Regulations. The procedural requirements in respect of screening decisions are set out in regulation 5.

Regulation 6 prohibits a relevant project from being carried out without consent first having been obtained from the Department.

Regulation 7 entitles the prospective applicant for consent to obtain an opinion from the Department as to the information which will be required as part of the environmental statement to accompany the application for consent.

Regulation 8 requires the statutory consultees to provide any relevant information in their possession to the applicant for consent.

Regulations 9 and 10 contain the procedural requirements for the application for consent. The application is required to include the environmental statement. This is defined as a statement which includes the information in Part II of Schedule 2 of the Regulations and such of the information in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project.

Regulation 11 contains provisions for notifying and consulting with other EEA States in relation to projects likely to have environmental effects on those States and for giving them the opportunity to make representations in respect of such projects.

Regulation 12 prescribes how the Department should decide whether to grant consent for a project. It requires the taking into account all of the information and representations provided in accordance with the Regulations.

Under regulation 12(3) the Department may not grant consent for a project which would involve activities prohibited under those provisions of the Habitats Regulations which implement Articles 12, 13, 15 and 16 (requirements for protection of species) of the Habitats Directive.

Paragraphs (4) to (9) of this regulation implement the requirements to be met before consent can be granted for a project which is likely to have a significant effect on a European site. Although the same information and representations need to be taken into account, insofar as they may be relevant, as with any other project, there are specific tests to be met. These specific tests implement Article 6(3) of the Habitats Directive. The provisions in these Regulations are consistent with those in the Habitats Regulations as applied to other consent regimes.

Regulation 12(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

Regulation 12(12) contains procedural requirements to be complied with in granting or refusing consent.

Regulation 12(13) takes account of the provisions in the Wildlife (Northern Ireland) Order 1985 which apply where a competent authority intends to grant consent for any project which consists of an operation likely to damage an area of special scientific interest.

Regulation 13 and Schedule 3 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

An applicant for a screening decision or for consent for a relevant project (or a person

interested in a project subject to a revocation or modification under the review provisions contained in Schedule 3) may appeal against an adverse decision to the Department. An appellant is entitled to be heard by a person appointed by the Department for the purpose which hearing may be in public if the Department so decides. The general appeal provisions are contained in regulations 14-17. They include provision for determination by written representations or by hearing.

Persons aggrieved by decisions allowing projects to take place may apply to the High Court for a review of those decisions within six weeks of the decision being published (regulation 18).

Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under the Regulations. It is also an offence under the Regulations to make false or misleading statements in order to obtain a particular decision (regulations 19-21).

If the Department wishes to ensure that unauthorised activities are stopped with immediate effect, it can serve a stop notice on the person carrying out the activities or on any person with an interest in the land upon which the activities are taking place (regulation 22). Non-compliance with the stop notice is an offence (regulation 23).

Regulation 24 contains a power for the Department to serve a notice requiring a person it believes to be responsible for committing an offence to reinstate the land to its former condition. An appeal against a reinstatement notice may be made to the Magistrates Court. Failure to comply with the requirements of a reinstatement notice is an offence.

Regulation 25 contains powers of entry in connection with carrying out the functions of the Department under the Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

Notes:

[1] S.I. 1988/785[back](#)

[2] 1972 c. 68[back](#)

[3] 1954 c. 33 (N.I.)[back](#)

[4] O.J. No. L175, 5.7.85, p. 40, as last amended by Council Directive 97/11/EC, O.J. No. L73, 14.3.97, p. 5[back](#)

[5] O.J. No. L206, 22/07/1992 p. 7, as last amended by Council Directive 97/62/EC, O.J. No. L305, 8.11.97, p. 42[back](#)

[6] S.R. 1995 No. 380[back](#)

[7] 2001 c. 9 (N.I.)[back](#)

[8] S.R. 2000 No. 84[back](#)

[9] S.R. 1999 No. 73[back](#)

[10] S.R. 2001 No. 394[back](#)

[11] S.R. 1993 No. 45 as amended by S.R. 1998 No. 238[back](#)

[12] S.I. 1985/171 (N.I. 2) as amended by S.I. 1989/492 (N.I. 3)[back](#)

[13] 1981 No. 1675 (N.I. 26)[back](#)

[14] O.J. No. L103, 25.4.1979, p. 1[back](#)

[15] O.J. No. L206, 22.7.1992, p. 7[back](#)

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