

2007 No. 346

EUROPEAN COMMUNITIES

ROADS

**The Roads (Environmental Impact Assessment) Regulations
(Northern Ireland) 2007**

Made - - - - - *25th July 2007*

Coming into operation *10th September 2007*

The Department for Regional Development makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 56(1) and (5) of the Finance Act 1973(b).

The Department for Regional Development is a department designated(c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.

These Regulations are made with the consent of the Department of Finance and Personnel(d) in accordance with section 56(1) and (5) of the Finance Act 1973:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as The Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 2007 and shall come into operation on 10th September 2007.

(2) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these regulations as it applies to an Act of the Northern Ireland Assembly.

Amendment of the Roads (Northern Ireland) Order 1993

2.—(1) The Roads (Northern Ireland) Order 1993(f) shall be amended in accordance with this regulation.

(2) In Article 67(g) (environmental impact assessment)—

(a) in paragraph (1)—

(i) omit the definition of “the Directive”; and

(a) 1972 c. 68

(b) 1973 c. 51

(c) S.I. 1988/785

(d) Formerly the Department of Finance; see S.I. 1982/338 (N.I. 6), Art. 3

(e) 1954 c. 33 (N.I.)

(f) S.I. 1993/3160 (N.I. 15) as amended by S.R. 1999 No. 89

(g) Article 67 was substituted by regulation 2 of the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 89)

(ii) after the definition of “Annex” insert the following —

““the Directive” means Council Directive No. 85/337/EEC(a) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive No. 97/11/EC(b) and Directive No. 2003/35/EC(c) of the European Parliament and Council;

“EEA State” means a Member State, Norway, Iceland or Liechtenstein;

“member of the public” includes any body of persons;”;

(b) in paragraph (4), in sub-paragraph (b), for “publish an environmental statement” substitute “prepare an environmental statement and publish notice of it in accordance with paragraphs (3), (3A) and (9) of Article 67A”.

(3) Article 67A(d) (procedure) is amended as follows—

(a) omit paragraph (2);

(b) in paragraph (3), for “An” substitute “Notice of the”;

(c) after paragraph (3), insert—

“(3A) The notice must state—

(a) that the Department is considering implementing the project;

(b) the proposed location and nature of the project;

(c) that the project is subject to the environmental impact assessment procedure required by this Part and, where relevant, that Article 67B applies;

(d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under sub-paragraph (i);

(e) the times at which the copy of the environmental statement may be so inspected;

(f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under sub-paragraph (i);

(g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;

(h) if the Department uses a website for the publication of information about projects that are subject to the procedure required by this Part, that a copy of the environmental statement or non-technical summary may be inspected on the website during the period specified under sub-paragraph (i);

(i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Department at a specified address within a specified period, being not less than 6 weeks from the date of publication of the notice; and

(j) that the Department will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(3B) The Department shall ensure that during the period specified under sub-paragraph (3A)(i)—

(a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified in sub-paragraph (3A)(d);

(b) copies of the environmental statement are available to be obtained by any person from the address specified in sub-paragraph (3A)(f); and

(c) where under sub-paragraph (3A)(h), the notice states the address of a website, that a copy of the environmental statement or non-technical summary is available for inspection, by any person, on that website.

(a) O.J. No. L175, 5.7.85, p. 40

(b) O.J. No. L73, 14.3.97, p. 5

(c) O.J. No. L156, 25.6.03, p. 17

(d) Article 67A was inserted by regulation 2 of the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 89)

- (3C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Department for the supply of a copy of the environmental statement—
- (a) to a person, other than a consultation body; or
 - (b) to a consultation body to which one copy has already been supplied free of charge.”;
- (d) in paragraph (4), omit “published details of the”;
- (e) in paragraph (7)—
- (i) for sub-paragraph (b) substitute—
 - “(b) any opinion on that statement or the project which is expressed in writing by—
 - (i) any of the consultation bodies; or
 - (ii) any other person; - and is received by the Department within any period specified for the purpose;”;
 - (ii) after sub-paragraph (b) insert—
 - “(bb) where Article 67B applies, and the EEA State has indicated in accordance with paragraph (4) of that Article that it wishes to participate in the procedure required by this Part, any opinion on that statement or the project which is expressed in writing by—
 - (i) the EEA State;
 - (ii) a member of the public in the EEA State; or
 - (iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6(1) of the Directive; - and is received by the Department within the period specified under sub-paragraph (3A)(i);”;
- (f) in paragraph (8)—
- (i) after the words “paragraph 7”, insert “, and describing the right under Article 67BA(1) to challenge the validity of the decision,”;
 - (ii) at the end of sub-paragraph (b), omit the word “and” and after sub-paragraph (c) add the following—
 - “; and
 - (d) information about the consultation carried out in compliance with this Article and Article 67B, the representations received on consultation, and any changes made as a result of those representations”;
- (g) in paragraph (9), for the words from “shall be” to the end, substitute—
- “shall be—
- (a) in the Belfast Gazette;
 - (b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the road is proposed to be situated; and
 - (c) if the Department uses a website for the publication of information about projects that are subject to the procedure required by this Part, on that website.”.
- (4) In Article 67B(a) (other Member States)—
- (a) for each reference to “Member State” or “a Member State”, substitute “EEA State” or “an EEA State”, as appropriate;
 - (b) in paragraph (2), for sub-paragraph (c), substitute—
 - “(c) such information about the procedure required by this Part as the Department considers appropriate; and”;
 - (c) in paragraph (4)—
 - (i) for the first occurrence of the words “environmental impact assessment procedure”, substitute “procedure required by this Part”;
 - (ii) omit “and” at the end of sub-paragraph (a); and
 - (iii) for sub-paragraph (b), substitute—

(a) Article 67B was inserted by regulation 2 of the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 89)

- “(b) the information required by Article 67A(3A) to be included in the notice under Article 67A(3); and
- (c) any information about the procedure required by this Part which it considers appropriate to give and which has not already been given to the EEA State.”;
- (d) for paragraph (7) substitute—

“(7) Where an EEA State has been consulted in accordance with paragraph (6) the Department must, after deciding whether to proceed with the project to which the environmental statement relates, inform the EEA State of the decision and give it documents containing the matters referred to in section 67A(8).”.

- (5) After Article 67B, insert—

“Validity of decisions

67BA.—(1) If a person aggrieved by a decision of the Department to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

- (a) it is not within the powers of this Order; or
- (b) any requirement of this Part has not been complied with in relation to the decision;

he may, within 6 weeks from the date on which the decision is first published under Article 67A(8), make an application for the purpose to the High Court.

- (2) On any such application, the Court—

- (a) may, by interim order, suspend the operation of the decision, or any aspect of it, either generally or insofar as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the decision is not within the powers of this Order, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part, may quash the decision, or any aspect of it, either generally or insofar as it affects any property of the applicant.

(3) Subject to paragraph (2), a decision to which paragraph (1) applies shall not be questioned in any legal proceedings whatever.”.

3. These Regulations shall not apply to projects where an environmental statement or the details of the project were published before the coming into operation of these regulations.

Sealed with the Official Seal of the Department for Regional Development on 25th July 2007.

(L.S.)

J. Carlisle

A senior officer of the Department for Regional Development

The Department of Finance and Personnel hereby consents to the making of these regulations.

Sealed with the Official Seal of the Department of Finance and Personnel on 25th July 2007.

(L.S.)

W. A. N. Arbuthnot

A senior officer of the Department of Finance and Personnel

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the procedures contained in Part V of the Roads (Northern Ireland) Order 1993 (“the 1993 Order”), for the environmental impact assessment of projects for the construction or improvement of roads.

Part V was substituted by the Roads (Environmental Impact Assessment) Regulations (Northern Ireland) 1999, (S.R. 1999 No. 89), in order to implement, in relation to such projects, the amendments made to Council Directive 85/337/EEC (“the Directive”) (O.J. No L175, 5.7.85, p. 40), on the assessment of the effects of certain public and private projects on the environment, by Council Directive 97/11/EC (O.J. No L73, 14.3.97, p. 5).

The regulations transpose article 3 of Directive 2003/35/EC (“the Public Participation Directive”) of the European Parliament and Council, (O.J. No L156, 25.6.03, p. 17), which amends the Directive with regard to public participation and access to justice. In particular the Regulations provide that the words “the Directive” as used in Part V means the Directive as amended by the Public Participation Directive (regulation 2(2)(a)(i) and (ii)). They specify requirements for public notice of environmental statements and the procedure for members of the public, and certain consultation bodies, to make representations in relation to such environmental statements and the projects to which they relate (regulations 2(2)(b), 2(3)(b)-(e) and (g)). When decisions on projects are published additional information is to be included with the publication (regulation 2(3)(f)). Express provision is inserted into Part V for challenge, by way of application to the High Court, of decisions to proceed with projects for which environmental statements have been made (regulation 2(5)). Equivalent amendments are also made to the provisions in Part V which relate to EEA States, (see below), (regulations 2(3)(e)(ii) and 2(4)(b) to (d)).

In addition to transposing article 3 of the Public Participation Directive, together with some minor and associated amendments, the Regulations make other amendments to Part V. They substitute references to Member States of the European Economic Area, (“EEA States”), for references to Member States of the European Community (regulations 2(2)(a)(ii), 2(3)(e), and 2(4)(a), (c), and (d)). The effect is to extend the application of Part V to enable EEA States which are not also EC Member States, (i.e. Iceland, Liechtenstein and Norway), to participate in addition to EC Member States in the procedures in Part V for notification and consultation on such projects if they are likely to have a significant environmental effect on those States.

The effect of regulation 2(3)(a) is to apply the procedures in Article 67(4)(b) of the 1993 Order (which set out the considerations for determining if projects within Annex II of the Directive should be made subject to an environmental impact assessment), to any project for the construction or improvement of a special road which is within Annex II in the same way as these procedures apply to other road projects within Annex II. This is in pursuance of Article 4 of the Directive.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

Copies of the relevant EC Directives may be obtained from the European Commission Office, Windsor House, 9-15 Bedford Street, Belfast BT2 7EG, telephone number 028 9024 0708.

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Published and printed in the UK by The
Stationery Office Limited
under the authority and
superintendence of Carol
Tullo, Controller of
Her Majesty's Stationery
Office being the Government
Printer for Northern Ireland and
the Officer appointed to print the
Acts of the Northern Ireland Assembly

Dd. N3141. C3. 7/07. Gp. 130. 14567.

£3.00