

**2008 No. 17**

**PLANNING**

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

*Made* - - - - - *16th January 2008*

*Coming into operation* - *12th February 2008*

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

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

**Citation and commencement**

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

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

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

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

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

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

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

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

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(a) S.I.1988/785

(b) 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)

(c) S.I.1991/1220 (N.I.11) as amended by S.I.2003/430 (N.I.8) and S.I. 2006/1252 (N.I.7)

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

(e) S.R. 1999 No. 73

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

- (b) after the definition of “documents” insert—
  - ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented at 16th January 2008;”;
  - ““EEA state” means—
    - (a) a state which is a member state; or
    - (b) any other state which is a party to the EEA agreement;”;
- (c) after the definition of “further information” insert—
  - ““any other information” means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;
  - “any particular person” includes any non-governmental organisation promoting environmental protection;”;
- (d) in the definition of “environmental information” after “further information” insert “and any other information”;
- (e) in the definition of “exempt development” omit “which comprises or forms part of a project serving national defence purposes or”;
- (f) after the definition of “the land” insert—
  - ““local advertisement”, in relation to a notice, means—
    - (a) by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
    - (b) where the Department or the Commission maintain a website for the purpose of advertisement of applications, by publication of the notice on the website;”.

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

“(b) in accordance with Article 2.3 of the Directive (but without prejudice to Article 7 of the Directive), that a specific development is exempted in whole or in part from these Regulations.

**3A. Where a direction is given under regulation 3 (b) the Department shall—**

- (a) make available to the public the information considered in making the direction and the reasons for making the direction;
- (b) consider whether another form of assessment would be appropriate; and
- (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.”.

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

**“Appeals under Article 32 or Article 33**

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

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

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

- (a) accepts the Commission’s determination and proposes to provide an environmental statement; or
- (b) does not accept the Commission’s determination.”

(3) For the purposes of paragraph (1), regulation 9 (7A) does not apply.

(4) For the purposes of paragraph (1), the phrase “and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision)” contained in regulation 9(7), 9(8) and 15(2A) shall not have effect.”.

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

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

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

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

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

“(b) after paragraph (3) (b) of that article there were inserted—

“(ba) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and

(bb) in the case of an application falling within regulation 9 (1) where the Department has requested further information in order to make a determination under regulation 9 (2), when that information was received; and

(bc) where evidence verifying information in the environmental statement has been requested, when that evidence was received; and””.

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

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

(b) after paragraph (b) omit “and”;

(c) at the end of paragraph (c) omit “.” and insert—  
“; and

(d) where it is aware of any particular person who is or is likely to be affected by, or has an interest in, the application, and who is unlikely to become aware of it by means of a local advertisement, send a notice to such person containing the details set out in paragraphs (a)–(c) and the address of the relevant office of the Department.”.

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

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

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

(c) after paragraph (2) insert—

“(2A) On receipt of a request under paragraphs (1) and (2) the applicant shall submit the further information or evidence within three months from the date of the request or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).”;

(d) for paragraph (3) substitute—

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

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

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

(b) in paragraph (2) (b) (ii)—

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

(ii) after “;” omit “and”; and

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

“; and

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

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

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

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

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

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

(b) after paragraph (2) (a) omit “and”; and

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

“; and

(c) so far as it has received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA state; and in particular—

(i) any conditions attached to it;

(ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and

(iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.”.

**15.** In regulation 22 (determination as to need for environmental statement, etc)—

(a) after paragraph (3) (b) omit “and”;

(b) at the end of paragraph (3) (c) omit “.” and insert—

“; and

(d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 22 notice.”;

(c) after paragraph (5) insert—

“(6) Where, in relation to paragraph (5), a person proposes to seek a hearing before the Commission, that person shall by notice in writing, inform the Commission to such effect within 4 weeks of the service of the enforcement notice.”.

- 16.** In regulation 27 (publicity for environmental statements and decisions), in paragraph (1)—
- (a) after “or a statement submitted by the appellant referred to as an environmental statement” insert “either of which is accompanied by further information and any other information”;
  - (b) for “in at least one newspaper circulating in the locality in which the land to which the enforcement notice relates is situated (“the locality”)” substitute “by local advertisement”; and
  - (c) in sub-paragraphs (c), (d) and (e) after “statement” insert “and further information and any other information”.

**17.** In regulation 34 (availability of information in relation to determinations, opinions, decisions, etc)—

- (a) in paragraph (1) (b)—
  - (i) after “statement” delete “,”;
  - (ii) for the word “or” substitute “and”; and
  - (iii) after “further information” insert “and any other information”;
- (b) in paragraph (1) (c) (ii)—
  - (i) after “on which the decision is based” insert—  
“including, if relevant, information about the participation of the public”; and
  - (ii) after “,” delete the word “and”;
- (c) at the end of paragraph (1) (c) (iii) omit “.” and insert—  
“; and  
(iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”;
- (d) in paragraph (3), after “regulation 3” insert “(a) and (b), and any information obtained under regulation 3A.”.

**18.** Regulation 36 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 shall be deleted.

**19.** In Schedule 1 (descriptions of Development for the purposes of the definition of “Schedule 1 development”), after paragraph 21, add—

“**22.** Any change to or extension of development listed in this Schedule where such a change or extension itself meets the thresholds, if any, or description of development set out in this Schedule.”.

**20.** In Schedule 2 (descriptions of Development and Criteria for the purposes of the definition of “Schedule 2 development”), in paragraph 13(a) in column 1 (description of development), after “in Schedule 1” insert “(other than a change or extension falling within paragraph 22 of that Schedule)”.

Sealed with the Official Seal of the Department of the Environment on 16th January 2008



*Pat McBride*  
A senior officer of the Department of the Environment

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”). The Regulations give effect to Article 3 of Directive 2003/35/EC of the European Parliament of the Council of 26 May 2003 (O.J. L 156, 25.6.2003, p17) (“the Directive”) in so far as it affects public participation in the decision making process for applications and appeals relating to development for which environmental impact assessment is required. The Directive provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends with regard to public participation and access to justice Council Directive 85/337/EEC (O.J. L 175, 5.7.1985, p40) as amended by Directive 97/11/EC (O.J. L 73, 14.3.1997, p5) and 96/61/EC (O.J. L 257, 10.10.1996).

Regulation 3 substitutes “EEA state” for “Member State” on every occasion where it occurs in the 1999 Regulations.

Regulation 4 inserts definitions of “EEA agreement” and “EEA state” and makes amendments to the definitions of “environmental information” and “exempt development”. It also inserts new definitions of “local advertisement” which provides another means of publicity using electronic means; “any other information”, to apply to information other than that contained in the environmental statement and further information; and “any particular person”, which includes non-governmental organisations that promote environmental protection.

Regulation 5 sets out the circumstances in which the Department may direct that a particular proposed development is exempted from the application of these regulations.

Regulation 10 inserts a provision requiring the Department to notify persons and environmental organisations likely to be affected by, or having an interest in, the application.

Regulation 11 (d) extends the requirements in relation to further information to any other information provided by the applicant relating to the environmental statement.

Regulation 12 amends regulation 17 and requires more extensive notification of decisions and information to be provided on the right to challenge the decision.

Regulations 13 and 14 extend the public information requirements in respect of projects located within Northern Ireland that are likely to have significant effects on the environment of another EEA state, and for projects in another EEA state that are likely to have significant effects on the environment in Northern Ireland.

Regulation 15 (b) inserts a provision for persons and environmental organisations likely to be affected by, or having an interest in, unauthorised development to be notified.

Regulation 16 inserts provisions in relation to publicity arrangements for environmental statements and decisions.

Regulation 17 extends the public information requirements in respect of the documents made available for inspection.

Regulations 19 and 20 amend Schedules 1 and 2 in line with the new category introduced into Annex 1 of the Directive. This new category of project is a change to or extension of a Schedule 1 project where the change or extension itself meets the Schedule 1 thresholds for that type of project.

The Regulations also contain a number of procedural amendments to the 1999 Regulations not related to Directive 2003/35/EC.

Regulation 6 provides the Commission with powers to exercise the functions conferred on the Department by Part III to Part VI of the 1999 Regulations, where an appeal has been submitted under Article 32 or 33 of the 1991 Order, and inserts consequential amendments.

Regulation 7 provides that following receipt of an opinion as to the content of an environmental statement, an applicant who wishes to proceed with the submission of such a statement must inform the Department accordingly, in writing, within 4 weeks of the date of the opinion.

Regulation 8 inserts a timescale for an applicant who proposes to seek a hearing before the Commission, following receipt of a notification under regulation 9 (3), to inform the Commission to such effect.

Regulation 9 inserts further provisions in respect of the date when an application was received to include, (i) in relation to applications falling within regulation 9 (1) where the Department has requested further information in order to make a determination under regulation 9 (2), the submission of that further information; and (ii) where evidence relating to the environmental statement has been requested, when that evidence was received.

Regulation 11(a) amends the heading of Regulation 15 to include evidence verifying information in the environmental statement.

Regulation 11 (b) removes “or the Commission” from paragraphs (1) and (2) of Regulation 15. This phrase is no longer necessary in light of the new regulation 5A (1).

Regulation 11 (c) provides that any further information and evidence requested by the Department under regulation 15 (1) and (2) must be submitted within a specified timescale.

Regulation 15 (c) inserts a timescale for a person who proposes to seek a hearing before the Commission under the provisions of regulation 22 (5), to inform the Commission to such effect.

Regulation 18 deletes Regulation 36 of the 1999 Regulations which is no longer necessary in light of regulation 5A(1).

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Department of the Environment, Planning Service Headquarters, Millennium House, 17–25 Great Victoria Street, Belfast BT2 7BN (Tel: 028 9041 6967) or accessed at <http://www.planningni.gov.uk/>.