

2008 No. 372

PLANNING

**The Planning (Environmental Impact Assessment) (Amendment
No.2) Regulations (Northern Ireland) 2008**

Made - - - - - *9th September 2008*

Coming into operation - - - - - *1st October 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 environment.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Planning (Environmental Impact Assessment) (Amendment No.2) Regulations (Northern Ireland) 2008 and shall come into operation on 1st October 2008.

(2) The Interpretation Act (Northern Ireland) 1954(c) 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(d) shall be amended in accordance with regulations 3 to 11.

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

(a) for the definition of “EEA agreement” substitute—

““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 9th September 2008;”;

(b) for the definition of “EIA application” substitute—

““EIA application” means—

(a) an application for planning permission for EIA development; or

(b) a subsequent application in respect of EIA development;”;

(a) S.I. 2008/301

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

(d) S.R. 1999 No. 73 as amended by S.R. 2008 No. 17

- (c) for the definition of “Schedule 1 application” and “Schedule 2 application” substitute—
 - ““Schedule 1 application” means—
 - (a) an application for planning permission for Schedule 1 development; or
 - (b) a subsequent application in respect of Schedule 1 development; and
 - “Schedule 2 application” means—
 - (a) an application for planning permission for Schedule 2 development; or
 - (b) a subsequent application in respect of Schedule 2 development;”;
- (d) in the definition of “sensitive area” in sub-paragraph (a) for “Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(a)”, substitute “Article 28 of the Environment (Northern Ireland) Order 2002(b)”;
- (e) after the definition of “sensitive area” insert—
 - ““subsequent application” means an application for approval of a matter where the approval—
 - (a) is required by or under a condition to which a planning permission is subject; and
 - (b) must be obtained before all or part of the development permitted by the planning permission may be begun;”;
 - ““subsequent consent” means consent granted pursuant to a subsequent application.”.

4. For regulation 4 (prohibition on the grant of planning permission without consideration of environmental information) substitute—

“Prohibition on the grant of planning permission or subsequent consent without consideration of environmental information

4.—(1) This regulation applies—

- (a) to every application for planning permission for EIA development received by the Department on or after the commencement of these Regulations; and
- (b) to every subsequent application in respect of EIA development received by the Department on or after the commencement of these Regulations but which was not determined by 1st October 2008;

and for the purposes of this paragraph, the date of receipt of an application by the Department shall be determined in accordance with Article 11 (time periods for decisions) of the General Development Order as applied by regulation 10.

(2) The Department or the Commission, as the case may require, shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.”.

5. In regulation 6 (pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement)—

- (a) in paragraph (1) after “planning permission” insert “or subsequent consent”;
- (b) after paragraph (3)(a) insert—
 - “(aa) sufficient information to enable the Department to identify any planning permission granted for the development in respect of which a subsequent application has been made;”.

6. In regulation 9 (application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement)—

(a) S.I. 1985/170 (N.I. 1) as amended by S.I. 1989/492 (N.I. 3)
 (b) S.I. 2002/3153 (N.I. 7)

- (a) in paragraph (1) after “for planning permission” insert “or a subsequent application”;
- (b) for paragraph (1)(b) substitute—
 - “(b) has not been the subject of a determination as to whether the application is or is not an EIA application; or in the case of a subsequent application, has been the subject of a determination before planning permission was granted to the effect that it is not EIA development; and”;
- (c) in paragraph (7) after “permission” insert “or subsequent consent”;
- (d) in paragraph (8) after “application” insert “for planning permission or subsequent application”;
- (e) in paragraph (9) after “the application for planning permission” insert “or subsequent application”.

7. For regulation 10 (extension of the period for Department’s decision on a planning application), substitute—

“Extension of the period for Department’s decision on an application for planning permission or subsequent application

10. Where an application for planning permission or subsequent application is an EIA application, Articles 11 and 12 of the General Development Order shall have effect as if—

- (a) for the reference in paragraph (2)(a) of Article 11 and in Article 12 to a period of 2 months from the date the application was received there were substituted a reference to a period of 16 weeks; and
- (b) after paragraph (3)(b) of Article 11 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”;
- (c) the date when an application is received for the purposes of Article 12 were the date when each of the events referred to in Article 11 (3) (ba) to (bc) has occurred in relation to that application.”.

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

- (a) in paragraph (a) for “planning application” substitute “application for planning permission or subsequent application”;
- (b) for paragraph (b) substitute—
 - “(b) state in the notice that—
 - (i) the application for planning permission or subsequent application is accompanied by an environmental statement; and,
 - (ii) in the case of a subsequent application, that a copy of the planning permission and supporting documents for the development in respect of which the application has been made may be inspected by members of the public at all reasonable hours at the relevant office of the Department;”;
- (c) in paragraph (d) after “application” insert “for planning permission or subsequent application”.

9. In regulation 14 (consultation where environmental statement submitted), in paragraph (2) after “application for planning permission” insert “or subsequent application”.

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

(a) after paragraph (3)(a) insert—

“(aa) a copy of any planning permission relating to the development;”;

(b) in paragraph (3)(b) for “a copy of the” substitute “a copy of any”;

(c) in paragraph (4)(b) after “planning permission” insert “or subsequent consent”.

11. In regulation 34 (availability of information in relation to determinations, opinions, decisions etc), in paragraph (1) (c) after “application” insert “for planning permission or subsequent application”.

Sealed with the Official Seal of the Department of the Environment on 9th September 2008



Marianne Fleming
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”) implemented, for Northern Ireland, Council Directive 85/337/EEC (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1985, p.40) as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.1997, p.5). The EIA Directive was also amended by Council Directive 2003/35/EC (O.J. No. L156, 25.6.2003, p.17).

These Regulations amend the 1999 Regulations to implement the Directives in respect of applications for approval of reserved matters and applications for any consent, agreement or approval required by a condition imposed on the grant of planning permission (collectively referred to as a “subsequent application”).

Regulations 3 to 11 amend the 1999 Regulations so that their provisions apply to a subsequent application.

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/>.

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