

2015 No. 187

PLANNING

**The Planning (Modification and Discharge of Planning
Agreements) Regulations (Northern Ireland) 2015**

Made - - - -

26th March 2015

Coming into operation -

22nd April 2015

The Department of the Environment makes the following Regulations in exercise of the powers conferred on it by sections 77(8) and (10), 78(3) and 247(1) and (6) of the Planning Act (Northern Ireland) 2011(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2015 and shall come into operation on 22nd April 2015.

(2) In these Regulations:

“the 2011 Act” means the Planning Act (Northern Ireland) 2011 and any references to sections are references to sections of that Act unless otherwise stated; and

“relevant authority” has the same meaning as in section 76(15) of the 2011 Act.

Applications for the modification and discharge of planning agreements

2.—(1) An application for the modification or discharge of a planning agreement shall be made on a form issued by the relevant authority, which shall require the following information—

- (a) the name and address of the applicant;
- (b) the address or location of the land to which the application relates and the nature of the applicant’s estate in that land;
- (c) sufficient information to enable the relevant authority to identify the planning agreement which the applicant wishes to have modified or discharged;
- (d) the applicant’s reasons for applying for the modification or discharge of that agreement; and
- (e) such other information as the relevant authority considers necessary to enable it to determine the application.

(2) An application for the modification or discharge of a planning agreement shall include—

- (a) the information required by the application form;
- (b) a map identifying the land to which the agreement relates; and

- (c) such other information as the applicant considers relevant to the determination of the application.

Notification of applications by applicant

3.—(1) An applicant for the modification or discharge of a planning agreement shall give notice of the application to any person (other than the applicant) against whom, on the day 21 days before the date of the application, the planning agreement is enforceable and whose name and address is known to the applicant.

(2) In order to comply with paragraph (1), the applicant shall take reasonable steps to ascertain the name and address of every such person.

(3) Where the names and addresses of all such persons are not known to the applicant after the applicant has taken reasonable steps to ascertain that information, that person shall, during the 21 day period immediately preceding the application, publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated.

(4) The notice required to be served or published by this regulation shall be in the form set out in Part 1 of Schedule 1 and shall invite representations on the application to be made to the relevant authority within 21 days of the date on which the notice is served or published, as the case may be.

(5) An application for the modification or discharge of a planning agreement shall be accompanied by a certificate, in the form set out in Part 2 of Schedule 1, certifying that the requirements in the preceding provisions of this regulation have been satisfied.

Publicity for applications

4.—(1) Where an application for the modification or discharge of a planning agreement is made to the relevant authority, the relevant authority shall publicise the application by—

- (a) publishing notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and
- (b) where it maintains a website for the purpose of advertisement of applications, by publication of the notice on the website.

(2) The notice published in accordance with paragraph (1) shall invite representations on the application to be made to the relevant authority within 4 weeks of the date on which the notice is first published in a newspaper in pursuance of sub-paragraph (a) or is first published on the website, whichever is the later.

(3) The relevant authority shall make a copy of the application and the relevant part of the instrument by which the planning agreement was entered into available for inspection during the period allowed for making representations under paragraph (2).

Determination of applications by relevant authority

5.—(1) The relevant authority shall not determine an application for the modification or discharge of a planning agreement before the expiry of the period provided for making representations in accordance with regulation 4(2).

(2) Subject to paragraph (1) the relevant authority shall give the applicant written notice of its determination within—

- (a) 16 weeks from the date on which the application is received; or
- (b) except where the applicant has already given notice of appeal to the planning appeals commission, such extended period as may be agreed upon in writing between the applicant and the relevant authority.

(3) Where the relevant authority determines that a planning agreement shall continue to have effect without modification, notice of that determination shall state the full reasons for the determination and include a statement to the effect that the applicant may appeal to the planning appeals commission against the determination within 4 months of the date of the notice.

Appeals to the planning appeals commission

- 6.—(1) An appeal under section 78 of the 2011 Act shall be made within 4 months of—
- (a) the date of the notice of the determination giving rise to the appeal; or
 - (b) in the case of an appeal under section 78(1)(a) (non-determination), the expiry of the period specified in regulation 5(2).

Transitional provisions

7. The transitional provisions set out in Schedule 2 shall have effect.

Revocation

8. The Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005^(a) are revoked.

Sealed with the Official Seal of the Department of the Environment on 26th March 2015.



Angus Kerr
A senior officer of the
Department of the Environment

^(a) S.R. 2005 No.353

SCHEDULE 1
PRESCRIBED NOTICES AND CERTIFICATES

PART 1

Regulation 3(4)

NOTICE OF AN APPLICATION TO MODIFY OR DISCHARGE A PLANNING
AGREEMENT UNDER SECTION 77 OF THE PLANNING ACT (NORTHERN
IRELAND) 2011

(Notice to be given by applicant)

Take notice that *(insert name of applicant)*

is applying to the *(insert name of relevant authority)* to modify/discharge the planning agreement described below

Planning Agreement

Agreement: *(insert brief description of the planning agreement which the applicant wishes to have modified or discharged)*

Land to which the planning agreement relates: *(insert address or location of the land)*

Date on which the planning agreement was entered into: *(insert relevant date)*

Any person against whom the planning agreement is enforceable who wishes to make representations about this application should write to the *(insert name of relevant authority)* at *(insert address)* by *(insert date giving period of 21 days beginning with the date of service or publication of the notice, as the case may be.)*

Signature of Applicant or Agent.....
Date.....

PART 2

Regulation 3(5)

CERTIFICATE OF COMPLIANCE WITH THE NOTIFICATION REQUIREMENTS IN REGULATION 3

Certificate A

I certify that on the day 21 days before the date of the accompanying application the planning agreement to which the application relates was enforceable against no person other than the applicant.

Signature of Applicant or Agent.....
Date.....

Certificate B

I certify that the applicant has given notice to each person against whom, on the day 21 days before the date of the accompanying application, the planning agreement to which the application relates was enforceable as listed below.

<i>Person on whom notice was served</i>	<i>Address at which notice was served</i>	<i>Date on which notice was served</i>
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Signature of Applicant or Agent.....
Date.....

Certificate C

I certify that:

- *the applicant cannot issue a Certificate A or B in respect of the accompanying application;
- *the applicant has given notice to the persons listed below, being persons against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable.

<i>Person on whom notice was served</i>	<i>Address at which notice was served</i>	<i>Date on which notice was served</i>
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—The applicant has taken reasonable steps to ascertain the name and address of every person against whom, on the day 21 days before the date of the application, the planning agreement to which the application relates was enforceable and who has not been given notice of the application but has been unable to do so. The steps taken were as follows — *(insert description of the steps taken)*.

—Notice of the application, as attached to this certificate, has been published in the *(insert name of the local newspaper/s in which the notice was published)* on *(date of publication)*.

Signature of Applicant or Agent.....
Date.....

* delete as appropriate

SCHEDULE 2

Regulation 7

TRANSITIONAL PROVISIONS

1. In this Schedule –

“1972 Act” means the Local Government Act (Northern Ireland) 1972^(a);

“Article 40 Agreement” means a planning agreement under Article 40 of the Planning (Northern Ireland) Order 1991^(b);

“appropriate council” means the council in whose district the land to which the planning agreement relates is situated;

“predecessor council” means a district council constituted under section 1 of the 1972 Act as in force on the day before the coming into operation of these Regulations;

“successor council” means a district council constituted under section 1 of the 1972 Act on the day on which these Regulations come into operation, and a council is a successor council if the whole or major part of the land to which the Article 40 Agreement relates is incorporated within its district.

General

2. Subject to paragraphs 3 and 4 an Article 40 Agreement shall be treated as a planning agreement made and enforceable by the appropriate council under section 76; and the appropriate council may modify or discharge that agreement under section 77.

3. The Article 40 Agreement relating to George Best Belfast City Airport between Belfast City Airport Limited and the Department of the Environment dated 14 October 2008 shall be treated as a planning agreement made and enforceable by the Department under section 76; and the Department may modify or discharge that agreement under section 77.

4. Where a predecessor council was a party to an Article 40 Agreement that agreement shall be treated as a planning agreement between the Department and the successor council made and enforceable by the Department under section 76; and the Department may modify or discharge that agreement under section 77.

5. Anything done by, to or in relation to the Department (including legal proceedings) in connection with an Article 40 Agreement shall be treated as if it had been done by, to or in relation to the appropriate council, or as the case may be, the Department in connection with a planning agreement.

^(a) 1972 c.9 (N.I.) as amended by 2014 c.8 (N.I.)

^(b) S.I. 1991/1220 (N.I. 11) as amended by S.I. 2003/430 (N.I. 8), S.I. 2006/1252 (N.I.7) and S.I. 2011 c.25 (N.I.)

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 77 of the Planning Act (Northern Ireland) 2011 enables a person against whom a planning agreement is enforceable to apply to the relevant authority (the Department or appropriate council) to have the agreement modified or discharged. Section 78 of that Act provides for an appeal to the planning appeals commission if such an application is refused or not determined.

These Regulations make provision with respect to—

- (a) the form and content of such applications (regulation 2);
- (b) the notification of and publicity for such applications (regulations 3 and 4);
- (c) the determination of such applications (regulation 5);
- (d) appeals to the planning appeals commission against the relevant authority's determination on such applications including a revised appeal period of 4 months (regulation 6);
- (e) transitional arrangements in relation to planning agreement and appeal functions exercised prior to the date on which these Regulations come into operation, by the Department, which will be exercised after that date by the appropriate council (regulation 7 and Schedule 2). Schedule 2 sets out the planning agreement for which responsibility remains with the Department.
- (f) revocation of the Planning (Modification and Discharge of Planning Agreements) Regulations (Northern Ireland) 2005 (regulation 8);

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from the Department of the Environment, Causeway Exchange, 1-7 Bedford Street, Belfast, BT2 7EG. Telephone (028 90 823536) or accessed at www.doeni.gov.uk

The Explanatory Memorandum is available alongside the regulations on the government's website www.legislation.gov.uk

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