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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 55**

**ELECTRICITY**

**The Offshore Electricity Development (Environmental  
Impact Assessment) Regulations (Northern Ireland) 2008**

*Made* - - - - *7th February 2008*

*Coming into operation* *5th March 2008*

The Department of Enterprise, Trade and Investment, being a Department designated<sup>(1)</sup> 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, in exercise of the powers conferred upon it by that section and of all other powers enabling it in that behalf, hereby makes the following Regulations.

**PART I**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Offshore Electricity Development (Environmental Impact Assessment) Regulations (Northern Ireland) 2008 and shall come into operation on 5 March 2008.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(2)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations —

“the 1992 Order” means the Electricity (Northern Ireland) Order 1992<sup>(3)</sup>;

“another EEA State” means an EEA State other than the United Kingdom;

“any other relevant information” means any information relating to an environmental statement which is not contained in it;

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

(2) [1954 c.33 \(N.I.\)](#)

(3) [S.I. 1992/231 \(N.I.1\)](#)

“Article 39 consent” means a consent under Article 39 of the 1992 Order;

“Article 40 consent” means a consent under Article 40 of the 1992 Order;

“by general and local advertisement”, means—

(a) publication of the notice in at least one newspaper circulating in the locality in which is situated the development to which the notice relates; and

(b) where the Department maintains a website by publication of the notice on the website;

“consultation bodies” shall be construed in accordance with regulation 5(6);

“the Department” means the Department of Enterprise, Trade and Investment;

“developer” means a person carrying out or proposing to carry out a development;

“development” means,

(a) in relation to an Article 39 consent, works carried out on the construction or extension of a generating station; and

(b) in relation to an Article 40 consent, works carried out on installing or keeping installed an electric line,

and for this purpose “works” means any works which are a development within the meaning of the Planning Order;

“the Directive” means Council Directive [85/337/EEC](#) as amended by Council Directives [97/11/EC](#) and [03/35/EC](#);

“documents” includes photographs, drawings, maps and plans;

“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;

“EIA application” means an application for a relevant consent in relation to any EIA development;

“EIA development” means a development or proposed development which is either—

(a) a development described in Schedule 1 or;

(b) a development described in Schedule 2 which is likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental information” means the environmental statement, including any further information and any relevant other information, any representations made by any consultation body and any representations duly made by any other person about the likely environmental effects of a proposed development;

“environmental statement” means a statement that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of a development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably to be required to compile, but which includes at least the information referred to in Part II of Schedule 4;

“further information” shall be construed in accordance with regulation 12(1);

“Planning Order” means the Planning (Northern Ireland) Order 1991(4);

“proposed development” means the works intended by the applicant for any relevant consent to be carried out for the purposes thereof;

“relevant consent” shall be construed in accordance with regulation 4; and

“selection criteria” means the criteria set out in Schedule 3.

(3) For the purposes of these Regulations any development or proposed development is offshore if it is or is to be carried out outside the boundaries of any district council but within the Northern Ireland zone.

(4) In these Regulations, any reference to significant effects on the environment includes a reference to such effects on the environment in another EEA State.

(5) In these Regulations expressions which are also used in the Directive have the same meaning as they have in the Directive.

### **Applications**

**3.**—(1) These Regulations shall not apply in relation to any Article 39 or Article 40 consent for which an application has been received by the Department before these Regulations come into operation.

(2) The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999<sup>(5)</sup> shall not apply in relation to any offshore development or proposed offshore development to which these Regulations apply.

## **PART II**

### **Consents for Offshore Developments**

#### **Restriction on proposed development**

**4.** The Department shall not grant a relevant consent, that is to say an Article 39 or an Article 40 consent insofar as it relates to an offshore development, unless the requirements of these Regulations have been complied with.

#### **Pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement**

**5.**—(1) Subject to paragraphs (3), (5) and (8), before applying for a relevant consent a developer (“the applicant”) may make a request to the Department in writing for—

- (a) a determination as to whether a proposed development would or would not be an EIA development;
- (b) an opinion as to the information to be provided in the environmental statement to be submitted with an EIA application,

and when so requested, the Department shall make the determination or give the opinion, as the case may be, within 6 weeks of receipt of the request or such longer period as may be agreed in writing with the applicant.

(2) A request under paragraph (1)(b) may be made at the same time as a request under paragraph (1)(a).

(3) A request under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the site of the proposed development;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(4) The Department shall inform the applicant, in writing, of its determination or opinion under paragraph (1) within 4 weeks of the date it made the determination or gave the opinion.

(5) Where the Department considers that it has not been provided with sufficient information to enable it to respond to a request under paragraph (1) it shall notify the applicant of the particular points on which further information is required, and the period for making the determination or for giving an opinion shall not commence until receipt of that additional information.

(6) Subject to paragraph (8) the Department shall not give an opinion in response to a request under paragraph (1)(b) until it has consulted the applicant, and the consultation bodies, that is to say the District Council for the area adjacent to the offshore area to which the proposal relates is situated, and such other authorities as appear to it likely to be concerned by the proposed development by reason of their specific environmental responsibilities.

(7) If, in response to a request under paragraph (1)(a), the Department, having taken into account the selection criteria, determines that an application would be an EIA application, it shall provide with the determination a written statement giving clearly and precisely the full reasons for its conclusion.

(8) Notwithstanding paragraph (4), where the Department gives a determination under paragraph (1) that a proposed development would be an EIA development and the applicant has also requested an opinion under paragraph (1)(b), the Department shall respond to the request for the opinion within 6 weeks of the date of issue of its determination or such longer period as may be agreed in writing with the applicant.

(9) In giving an opinion in response to a request under paragraph (1)(b), the Department shall take into account—

- (a) the specific characteristics of the particular development; and
- (b) the environmental features likely to be affected by the development.

(10) Where following receipt of an opinion under paragraph (1) an applicant wishes to proceed with the submission of the environmental statement to which the opinion relates, he shall by notice in writing inform the Department to such effect within 4 weeks of the date of the opinion.

(11) Where the applicant wishes to proceed with any proposed development to which paragraph (7) applies he shall by notice in writing inform the Department whether or not he accepts the Department's determination that the development would be an EIA development and proposes to provide an environmental statement.

(12) The notice referred to in paragraph (11) shall be served on the Department within 4 weeks of the date of the determination.

(13) Where the Department has given an opinion under paragraph (1) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

(14) The Department shall by general and local advertisement—

- (a) publish a copy of any determination or opinion given under paragraph (1) and any accompanying statement of reasons;
- (b) publish copies of the relevant request and the documents which accompanied it;
- (c) state that any person may make representations to the Department in writing in relation to the likely environmental effects of the proposed development at an address specified in the notice within 28 days of the date the notice was first published; and
- (d) describe what other information relating to the environmental effects of the proposed development is available and give details of where it can be obtained.

## PART III

### Preparation of Environmental Statements

#### **Procedure to facilitate preparation of environmental statements**

6.—(1) A developer may give the Department notice in writing under this paragraph that he intends to provide to the Department an environmental statement.

(2) A notice under paragraph (1) shall include or be accompanied by the information necessary to identify the site of the development and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving notice proposes to refer in his environmental statement.

(3) Where the Department receives a notice under paragraph (1) or a notice under regulation 5(11) that a developer intends to provide an environmental statement, it shall—

- (a) notify the consultation bodies of the name and address of the developer and of the duty imposed on them by Regulation 7(1) to make information available to the developer; and
- (b) inform the developer in writing of the names and addresses of the bodies so notified.

#### **Provision of information**

7.—(1) Subject to paragraph (2), any body notified by the Department pursuant to regulation 6(3) shall, if requested by the developer, or may without such request, enter into consultation with him with a view to ascertaining whether the body has information in its possession which the developer or the body consider relevant to the preparation of the environmental statement, and the body shall make any such information available to the developer.

(2) Paragraph (1) shall not require the disclosure by a body of information which is capable of being treated as confidential or must be so treated under the Environmental Information Regulations 2004(6).

## PART IV

### Procedures on Receipt of Application

#### **Application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement**

8.—(1) Where it appears to the Department that an application for a relevant consent—

- (a) has not been the subject of a determination as to whether the application is or is not an EIA application; and
- (b) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations;

it shall make a determination as to whether the application is for an EIA development, taking into account the selection criteria.

(2) If the Department considers that it has not been provided with sufficient information to make a determination under paragraph (1), it shall notify the applicant of the particular points on which it requires further information.

(3) Where an EIA application, including an application determined as such under paragraph (1), is not accompanied by an environmental statement or a statement referred to by the applicant as an environmental statement, the Department shall notify the applicant in writing that the submission of such a statement is required, giving clearly and precisely the full reasons for its view.

(4) Subject to paragraph (5), the Department shall make a determination under paragraph (1), and, where necessary, notify the applicant in accordance with paragraph (3) within 4 weeks from the date of receipt of the application in question or such longer period as may be agreed in writing with the applicant.

(5) Where additional information is requested under paragraph (2), the Department shall notify the applicant of its determination within a period of 4 weeks from the date of receipt of the additional information.

(6) An applicant receiving a notification pursuant to paragraph (3) shall, within 4 weeks from the date of the determination, inform the Department, in writing, whether or not he accepts the Department's determination and proposes to provide an environmental statement.

(7) If the applicant does not inform the Department in writing in accordance with paragraph (6), the consent sought shall be deemed to be refused at the end of the relevant 4 week period.

(8) Where the Department determines that an environmental statement is required in any case, the statement shall be submitted within 6 months from the date of the determination or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted, the application in question shall be deemed to be refused.

(9) Where the Department makes a determination under paragraph (1) that an environmental statement is required regulations 6(3) and 7 shall apply accordingly.

## PART V

### Publicity

#### **Publicity where an environmental statement is submitted**

**9.—**(1) Where an environmental statement has been provided to the Department the developer shall make it available to the public and the Department shall, when it receives the environmental statement, by general and local advertisement —

- (a) describe the nature, size and location of the proposed development;
- (b) state where the application for consent and the statement may be inspected;
- (c) state that the proposed development is likely to have significant effects on the environment and that an environmental statement has been submitted in respect of them;
- (d) state that any person may obtain information from, or make representations in writing to, the Department in relation to the likely environmental effects of the proposed development at an address specified in the notice within 28 days of the date the notice was first published;
- (e) indicate the nature of the information in question and the times where and means by which it will be made available;
- (f) state the nature of the possible decisions that may be made in the case or, if there is one, the draft decision; and
- (g) indicate whether the proposed development is likely to have significant effects on the environment in another EEA State.

(2) Where the Department publishes an advertisement in accordance with paragraph (1) it shall, on or before the date of its first publication send a copy of that notice to each of the consultation bodies and to any person whom it considers is or is likely to be affected by, or has an interest in, the application.

#### **Availability of copies of environmental statement**

- 10.** A developer who submits an environmental statement shall—
- (a) ensure that a reasonable number of copies are made available at the address given in the notice pursuant to regulation 9; and
  - (b) provide the Department with sufficient copies of it, or parts thereof, to enable the Department to comply with regulation 11 and 3 additional copies.

#### **Consultation where environmental statement submitted**

**11.—(1)** Where the Department receives an environmental statement in relation to a proposed development, it shall consult the consultation bodies and inform them that they may make representations.

(2) The Department shall give not less than 4 weeks notice to the bodies consulted under paragraph (1) that environmental information is to be taken into account in determining the application for consent.

#### **Further information relating to environmental statement**

- 12.—(1)** Where the Department is of the opinion that —
- (a) the applicant could have provided further information about any of the matters mentioned in Schedule 3; and
  - (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

it may request the applicant, by notice in writing, to submit such further information.

(2) The Department may, by notice in writing, require an applicant to produce such evidence as it may reasonably call for to verify any information in his environmental statement.

(3) On receipt of a request under paragraph (1) or (2) the applicant shall submit the further information or evidence within three months of receipt 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 consent to which the information or evidence relates shall be deemed to be refused.

(4) Regulations 9 to 11 shall apply where such further information and any other relevant information provided by the applicant 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 relevant information”.

#### **Charges**

**13.—(1)** A reasonable charge reflecting the cost of printing and distribution of an environmental statement, any part thereof, any further information or any other relevant information, may be made by the developer in respect of copies made available under regulation 10(a).

(2) A body entering into consultation pursuant to Regulation 7 may make a reasonable charge for the costs of making available to the developer information in its possession.

## PART VI

### Development Likely to Affect Other EEA States

#### **Development likely to have significant effects on the environment in another EEA State**

**14.—(1) Where —**

- (a) it comes to the attention of the Department that a proposed development is the subject of an EIA application and is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by such a development so requests,

the Department shall —

- (i) publish by general and local advertisement a notice giving the site of the proposed development, stating that it is the subject of an environmental statement and that it is likely to have significant effects on the environment of another EEA State and giving an address at which further information may be obtained;
- (ii) send to the EEA State as soon as possible and not later than the date of publication of the notice referred to in head (i), the particulars mentioned in paragraph (2); and
- (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

**(2) The particulars referred to in paragraph (1)(b)(ii) are —**

- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

**(3) Where an EEA State indicates in accordance with paragraph (1)(b)(iii) that it wishes to participate in the procedure for which these Regulations provide, the Department shall send to that EEA State —**

- (a) a copy of the application concerned;
- (b) a copy of the environmental statement in respect of the development to which that application relates; and
- (c) relevant information regarding the procedures under these Regulations, unless that information has already been provided to the EEA State earlier in accordance with paragraph (1)(b)(ii).

**(4) The Department shall also —**

- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any further information and any other relevant information submitted by the applicant to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and to the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before consent for the development is granted, to forward to the Department, within a reasonable time, their opinion on the information supplied.

**(5) The Department shall in accordance with Article 7(4) of the Directive —**

- (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and



- (b) determine, in agreement with the other EEA State, a reasonable period of time for the duration of the consultation period.
- (6) Where an EEA State has been consulted in accordance with paragraph (3), on the determination of the application concerned, the Department shall inform the EEA State and shall forward to it a statement of —
  - (a) the content of the decision and any conditions attached thereto;
  - (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

## PART VII

### Final

#### **Determination of whether proposed development should proceed**

**15.**—(1) On expiry of the period referred to in regulation 9(1)(d) and after any consultation period determined under regulation 14(5) the Department shall assess, in the light of the environmental statement, any further information and any other relevant information and any representations made in accordance with Regulations 5, 9, 11, or 14 the direct and indirect effects of the proposed development on the environmental factors specified in Schedule 3.

(2) Where the Department, having undertaken the assessment required by paragraph (1) considers that the development should proceed, it shall grant a consent to the development in question or it may do so subject to conditions.

(3) Where the Department, having undertaken the assessment required by paragraph (1) considers that the development should not proceed, it shall refuse the consent for the development in question.

(4) Where the Department makes a determination under this regulation it shall—

- (a) notify the applicant and each of the consultation bodies in accordance with paragraph (5); and
- (b) publish a general and local advertisement in accordance with paragraph (6).

(5) Each notification under paragraph (4)(a) shall inform the person concerned of the determination and shall give a statement of

- (a) the content of the determination and any conditions to which it is subject;
- (b) the main reasons and considerations upon which its determination was based; and
- (c) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed development.

(6) Each of the advertisements referred to in paragraph (4)(b) shall inform the public of the determination and give details of the places where and the times at which the public may inspect a statement of—

- (a) the content of the determination and any conditions to which it is subject;
- (b) the main reasons and considerations upon which its determination was based; and
- (c) where necessary, a description of the main measures to avoid, reduce and, if possible, offset the adverse effects of the proposed development.

(7) The Department shall maintain a record of any determination made under this regulation or regulation 5 and make available to the public on request the following information —

- (a) the content of the determination and any conditions to which it is subject;
- (b) the main reasons and considerations on which the determination is based, including information about the public participation process; and
- (c) where necessary, a description of the main measures proposed to avoid or mitigate any major adverse effects on the environment of the development to which the determination relates.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment  
on 7th February 2008.



*Jenny Pyper*  
A senior officer of the  
Department of Enterprise, Trade and Investment

## SCHEDULE 1

### Descriptions of Development

The carrying out of development to provide either of the following—

- (a) a generating station, the construction of which (or the operation of which) will require an Article 39 consent and which is either a nuclear generating station or a non-nuclear generating station with a heat output of 300 megawatts or more; or
- (b) an electric line installed above ground, the installation of which (or the keeping installed of which) will require an Article 40 consent, and which has a voltage of 220 kilovolts or more and a length of more than 15 kilometres.

## SCHEDULE 2

### Descriptions of Development

1. The carrying out of development to provide any of the following—
  - (a) a generating station, the construction of which (or the operation of which) will require an Article 39 consent but which is not a development falling within Schedule 1;
  - (b) the extension of any generating station, where such extension will require an Article 39 consent;
  - (c) an electric line installed above ground with a voltage of 33 kilovolts or more, the installation of which (or the keeping installed of which) will require an Article 40 consent but which is not a development falling within Schedule 1; or
  - (d) an electric line installed above ground in a sensitive area, the installation of which (or the keeping installed of which) will require an Article 40 consent but which is not a development falling within either Schedule 1 or sub-paragraph (c).
2. For the purposes of this Schedule “sensitive areas” mean any of the following—
  - (a) a National Park, that is to say, an area so designated under Article 12(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(7);
  - (b) an area of outstanding natural beauty, that is to say, an area so designated under Article 14(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
  - (c) an area of land declared to be a national nature reserve under Article 18 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
  - (d) an area designated by order as a marine nature reserve under Article 20 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
  - (e) an area of specific scientific interest, that is to say, land so declared under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
  - (f) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of World Cultural and Natural Heritage(8);
  - (g) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(9);

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

(8) SEE Command Paper 9424

(9) S.I. 1995/1625 (N.I. 9)

- (h) a European site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(10).

### SCHEDULE 3

#### Selection Criteria

##### **Characteristics of Development**

1. The characteristics of developments must be considered having regard, in particular, to —
  - (a) the size of the development;
  - (b) the cumulation with other developments;
  - (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 Developments**

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, 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 sensitive areas.

##### **Characteristics of the Potential Impact**

3. The potential significant effects of developments must be considered in relation to criteria set out under paragraphs 1 and 2, and having regard, in particular, to —
  - (a) the extent of the impact (geographical area and size of the affected population);
  - (b) the transfrontier nature of the impact;
  - (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 4

### Matters for Inclusion in Environmental Statement

#### PART I

1. Description of the development, including in particular —
  - (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
  - (b) a description of the main characteristics of the production processes, for instance, 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 development.
2. An outline of the main alternatives studied by the applicant or appellant 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 development, 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 factors.
4. A description of the likely significant effects of the development 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 development, resulting from:
  - (a) the existence of the development;
  - (b) the use of natural resources;
  - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and the description by the applicant 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.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

#### PART II

1. A description of the development comprising information on the site, design and size of the development.
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 which the development is likely to have on the environment.
4. An outline of the main alternatives studied by the applicant or appellant 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.
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## EXPLANATORY NOTE

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

These Regulations are concerned with the implementation in Northern Ireland of Council Directive [85/337/EEC](#) as amended by Council Directive [97/11/EC](#) on the assessment of the effects of certain public and private developments on the environment (“the Directive”).

The Regulations impose procedural requirements in connection with the consideration of applications for consents under Article 39 or 40 of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”) (together referred to as relevant consents) insofar as they relate to offshore developments to ensure that those developments have environmental statements either where they are described in Schedule 1, or are described in Schedule 2 and are likely to have a significant effects on the environment by virtue of factors such as their nature, size and location.

The Regulations do not apply in relation to any consent under Article 39 or 40 of the 1992 Order for which an application has been received by the Department before the Regulations come into operation.

Regulation 5 deals with the procedures for developers proposing to apply for a relevant consent. Under this Regulation they may request a determination from the Department as to whether a proposed application requires an environmental statement or an opinion as to the information to be included in the environmental statement. In considering either request the Department, if it considers that it has not been provided with sufficient information, may seek further information and is required to consult with the applicant and certain consultation bodies. Any determination or opinion given must be publicised by the Department.

Regulation 6 provides for a developer to notify the Department in writing that he intends to provide an environmental statement and also provides for the Department to notify the appropriate district council and consultation bodies of the fact.

Regulation 7 provides for such bodies to enter into consultation with the developer with a view to ascertaining whether they have any information in their possession which is relevant to the preparation of the statement.

Regulation 8 requires the Department to make an appropriate determination where an application for a relevant consent has been made without a prior determination as to whether or not the development proposed requires an environmental statement. It also specifies the procedure to be followed where the application is not accompanied by an environmental statement.

Regulation 9 provides for publicity by the Department where an environmental statement is submitted in connection with an application for a relevant consent. Regulation 10 concerns the provision of copies of an environmental statement by the developer. Regulation 11 provides for consultation on the statement and Regulation 12 deals with the provision of additional information where this is required by the Department to determine the application. Regulation 13 provides that a person preparing a statement may charge the public for copies. It also allows a body which enters into consultation under Regulation 7 to make a reasonable charge for its costs.

Regulation 14 implements Article 7 of the Directive by providing for consultation between Member States in cases where developments in Northern Ireland are likely to have significant effects on the environment in another Member State.

Regulation 15 imposes duties on the Department in determining whether or not to grant a consent so that a proposed development should proceed. The Department must undertake an assessment, in the light of the environmental statement and any further information, of the direct and indirect effects of the proposed development on the environmental factors specified in Schedule 3. Where the Department, having undertaken this assessment, considers the development should proceed, it shall grant the consent and may do so subject to conditions. Otherwise it shall refuse the consent. The Department is required to notify the applicant, the consultation bodies and the public of its decision and is required to maintain a record of any decision made under the Regulation.