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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 74**

**The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015**

**PART 8**

**Unauthorised Development**

**Interpretation of Part 8**

**29.** In this Part—

“deemed application” shall be construed in accordance with section 145(5) (appeal against enforcement notice — supplementary provisions relating to planning permission);

“enforcement notice” means a notice issued under section 138 (issue of enforcement notice by councils) or section 139 (issue of enforcement notice by department);

“ground (a) appeal” means an appeal under section 143 (appeal against enforcement notice), so far as brought on the ground mentioned in paragraph (3)(a) of that section.

**Prohibition on the grant of planning permission for unauthorised development**

**30.** The Commission shall not grant planning permission or subsequent consent under paragraph (1) of section 145 (appeal against enforcement notice — supplementary provisions relating to planning permission) in respect of unauthorised EIA development unless it has first taken environmental information into consideration, and states in its decision that it has done so.

**Determination as to need for environmental statement, etc.**

**31.—(1)** Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise Schedule 1 or Schedule 2 development, the council or, as the case may be, the Department shall, before the enforcement notice is issued, make a determination, taking into account the selection criteria, as to whether the development is or is not EIA development.

(2) Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise or include EIA development the council or, as the case may be, the Department shall serve with a copy of the enforcement notice a notice (“regulation 31 notice”) which shall—

- (a) include a copy of the determination required by paragraph (1) and a written statement giving clearly and precisely full reasons for its conclusions; and
- (b) require a person who gives notice of an appeal under section 143 (appeal against enforcement notice) to submit to the Commission with the notice sufficient copies of the environmental statement relating to the unauthorised development to enable the Commission to comply with regulation 34.

- (3) Where the council issues a regulation 31 notice it shall send a copy of the notice to—
  - (a) the Commission;
  - (b) any other council for the area in which the land to which the unauthorised development relates is situated;
  - (c) any other authorities likely to be concerned by the unauthorised development by reason of their specific environmental responsibilities; and
  - (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 31 notice.
- (4) Where the Department issues a regulation 31 notice it shall send a copy of the notice to—
  - (a) the Commission;
  - (b) the council or councils in the area in which the land to which the unauthorised development relates is situated;
  - (c) any other authorities likely to be concerned by the unauthorised development by reason of their specific environmental responsibilities; and
  - (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 31 notice.
- (5) Where the council or, as the case may be, the Department serves the Commission with a copy of a regulation 31 notice it shall also provide it with a list of the other persons to whom, in accordance with paragraph (3) or (4), a copy of the notice has been or is to be sent.
- (6) Where a person gives notice of appeal under section 143 and the council or, as the case may be, the Department has served on that person a regulation 31 notice with which they do not agree, that person may by notice in writing, within 4 weeks of the service of the enforcement notice, inform the council or, as the case may be, the Department that they propose to seek a hearing before the Commission.
- (7) Where, in relation to paragraph (6), 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.

### **Time period for submission of environmental statement**

**32.** Where the council or, as the case may be, the Department determines, or following a hearing by the Commission confirms that an environmental statement is required, it shall be submitted to the Commission within 6 months from the date of the determination or such extended period as may be agreed in writing between the applicant and the Commission and if not so submitted the deemed application for planning permission and the ground (a) appeal (if any) shall lapse at the end of that period.

### **Provision of information**

**33.—(1)** Subject to paragraph (2), any person on whom a copy of a regulation 31 notice is served pursuant to regulation 31(3)(b) to (d) or regulation 31(4)(b) to (d) (“the consultee”) shall, if requested by the person on whom the regulation 31 notice was served, or may without such request, enter into consultation with that person to determine whether the consultee has in their possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to the prospective applicant.

(2) Regulation 9(2) and 24(2) shall apply to information under paragraph (1) as they apply to information under regulation 9(1).

### **Procedure where the Commission receives an environmental statement**

**34.**—(1) Where the Commission receives an environmental statement, or a statement referred to by the appellant as an environmental statement, in connection with an enforcement appeal it shall serve a copy on the council or, as the case may be, the Department and those bodies on whom a copy of the regulation 31 notice was served.

(2) The Commission shall give not less than 4 weeks' notice to the council or, as the case may be, the Department and the bodies referred to in paragraph (1) that environmental information will be taken into consideration in determining the ground (a) appeal (if any) and inform them that they may make representations.

### **Further information and evidence respecting environmental statements**

**35.**—(1) Regulation 23(1) and (2) shall apply in relation to further information as if “the Commission” was substituted for the reference to “the council or, as the case may be, the Department” and the word “appellant” was substituted for the word “applicant”.

(2) If an appellant on whom notice has been given under paragraph (1) fails to provide the further information within the period specified in the notice, the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(3) Regulations 34 (procedure where the Commission receives an environmental statement) and 36 (publicity for environmental statements and decisions) shall apply in relation to further information received by the Commission in accordance with paragraph (1) as if references in those regulations to an environmental statement were references to the further information.

(4) The Commission shall send the council or, as the case may be, the Department a copy of any notice sent to the applicant under paragraph (1).

(5) Where the Department receives a notice under paragraph (4), it shall copy the notice to the council.

### **Publicity for environmental statements and decisions**

**36.**—(1) Where the Commission receives a copy of an environmental statement, or a statement submitted by the appellant referred to as an environmental statement either of which is accompanied by further information and any other information, in connection with an enforcement appeal it shall publish by local advertisement a notice stating—

- (a) the name of the appellant and that the appellant has appealed to the Commission against the enforcement notice;
- (b) the address or location of the land to which the notice related and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the environmental statement and further information and any other information may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality at which the statement and further information and any other information may be inspected and the latest date it will be made available for inspection, being a period of 4 weeks from the date of the first publication of the notice;
- (f) that any person wishing to make representations about any matter dealt with in the statement and further information and any other information should make them in writing, no later than 4 weeks after the date of the first publication of the notice; and
- (g) the address to which such representations are to be sent.

(2) Where the Commission determines the ground (a) appeal it shall inform the council or, as the case may be, the Department of its decision and the provisions of regulation 25 (duty to inform the public of decisions) shall apply to any grant of planning permission under section 145 as they apply to a grant of planning permission under Part 3 of the 2011 Act.

### **Involvement of other EEA states**

**37.** Regulation 27 (development in Northern Ireland likely to have significant effects on the environment in another EEA state) shall have effect as if—

- (a) for regulation 27 (1)(a) there were substituted—
  - “(a) on the consideration of an appeal under section 143 (appeal against enforcement notice), the Commission is of the opinion that matters which are alleged to constitute the breach of planning control comprise or include EIA development and the development has or is likely to have significant effects on another EEA state, it shall notify the council or, as the case may be, the Department; or”;
- (b) in regulation 27(1)(i) the word “proposed” was omitted;
- (c) in regulation 27(3)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”; and
- (d) in regulation 27(3)(c) the words “that application” were replaced by the words “the deemed application under section 145(5)”.