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STATUTORY RULES OF NORTHERN IRELAND

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**2007 No. 421**

The Environmental Impact Assessment  
(Agriculture) Regulations (Northern Ireland) 2007

PART 5

Appeals

**Appeals against notices**

**30.**—(1) A person may appeal in accordance with this regulation against any of the following notices served on him—

- (a) a screening notice;
- (b) a stop notice;
- (c) a reinstatement notice, or
- (d) a notice under paragraph 5 of Schedule 4,

and any such notice is referred to in this regulation as the “relevant notice”.

(2) An appeal may be brought on any of the following grounds—

- (a) that the Department did not have power to serve the relevant notice, or to include a particular requirement in it;
- (b) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
- (c) that any of the requirements of the relevant notice are unreasonable.

(3) An appeal against a relevant notice must be brought by notice, which must—

- (a) include a copy of the relevant notice;
- (b) state the grounds of appeal; and
- (c) be served on the Department within 28 days of the date of service of the relevant notice.

(4) Upon receipt of a notice under paragraph (3), the Department shall appoint such person as it thinks appropriate (“the appointed person”) to exercise, with or without payment, on its behalf the functions in relation to an appeal set out in these Regulations.

(5) The appointed person shall determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(6) Appeals under this regulation may be conducted by written representations or by hearing.

(7) On determining the appeal, the appointed person—

- (a) may affirm, vary or revoke the relevant notice, and
- (b) must notify the applicant and the Department of its decision, together with the reasons for it.

(8) Where an appeal is brought against a screening notice or a stop notice (unless the notice is withdrawn by the Department) all the requirements contained in it have effect until such time as the Department revokes the notice or varies the requirements.

(9) If the appointed person varies the requirements of a screening notice or a stop notice the variations have effect from the date of notification under paragraph (7)(b).

(10) Where an appeal is brought against a reinstatement notice or a notice served under paragraph 5 of Schedule 4, the notice will be of no effect until it is affirmed or varied on appeal or until the appeal is withdrawn.

### **Appeals against screening and consent decisions**

**31.**—(1) The person specified in paragraph (2) may appeal under this regulation.

(2) The persons referred to in paragraph (1) are—

- (a) a person who has applied for a screening decision in respect of a project which the Department has decided is a significant project, or is deemed to have so decided, under regulation 8;
- (b) a person who has applied for consent for a significant project in respect of which consent has been refused or has been granted subject to conditions, other than those specified in regulation 18(2); and
- (c) a person who has been notified of a further decision under paragraph 3 of Schedule 4.

(3) An appeal against a relevant decision must be brought within 90 days of the date the person concerned was notified of the relevant decision.

(4) A notice of appeal must—

- (a) describe the relevant decision;
- (b) state the grounds of appeal; and
- (c) state whether the appellant would like the appeal to be in the form of a hearing or local inquiry or to be disposed of on the basis of written representations; and
- (d) be served on the Department.

(5) As soon as is reasonably practicable after receiving a notice of appeal against a relevant decision, the Department must appoint such person as it thinks appropriate (“the appointed person”) to exercise, with or without payment, the functions set out in these regulations in relation to an appeal.

(6) The Department must, within 14 days of the date it receives the copy of the notice of appeal, provide the appointed person with sufficient information to identify the interested parties.

(7) The appointed person must serve copies of the notice on the interested parties as soon as is reasonably practicable after receiving that information.

(8) A person who is served with a copy of the notice under paragraph (7) may only make representations in respect of the appeal if he notifies the appointed person of his wish to do so within 21 days of the date he receives the copy of the notice.

(9) The appointed person must decide whether the appeal should be—

- (a) by hearing or local inquiry; or
- (b) conducted by written representations,

and the appointed person must also notify his decision to the participants in the appeal.

(10) On determining the appeal, the appointed person may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as if he were making a decision on the matter in question for the first time.

(11) Except as otherwise provided by this regulation or regulations 32 or 33, the appointed person must determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(12) Any representations, statement or other documents to be submitted to the appointed person under regulation 32 or 33 must be accompanied by as many copies as the appointed person shall specify.

(13) In this regulation, “relevant decision” means—

- (a) a decision referred to in paragraph (2)(a);
- (b) a refusal of consent or a grant of consent subject to conditions referred to in paragraph (2)(b); or
- (c) a notification referred to in paragraph (2)(c).

### **Determination of appeals by written representations**

**32.**—(1) This regulation applies where an appeal is to be determined by written representations.

(2) Within 35 days of receiving notice that the appeal is to be so determined the appellant and the Department must—

- (a) serve on the appointed person any (or any further) representations he or it wishes to rely on in the appeal; or
- (b) notify the appointed person that he or it wishes to rely only on the information already provided.

(3) As soon as is practicable after receiving the representations or notification in paragraph (2), the appointed person must—

- (a) send copies of any (or any further) representations to the other participants in the appeal; and
- (b) notify the other participants in the appeal of any notification by the appellant or the Department that he or it does not wish to rely on any further representations.

(4) Any of the participants in the appeal who wish to make representations must do so within 28 days of the date he or it is notified of the representations or notification under paragraph (3).

(5) If the appointed person receives any representations under paragraph (4), he must send copies of them to the other participants in the appeal.

(6) The appointed person must allow the participants in the appeal a period of at least 28 days to respond to any representations made under paragraphs (2) or (4).

(7) Following the expiry of the period allowed in paragraph (6) the appointed person must determine the appeal and notify the decision to the participants in the appeal.

### **Determination of appeals by hearing or local inquiry**

**33.**—(1) This regulation applies where an appeal is to be determined by hearing or by local inquiry.

(2) Within 35 days of receiving notice that the appeal is to be so determined, the appellant and the Department must serve on the appointed person a statement containing full particulars of his or its case and copies of any documents he or it wishes to rely on at the hearing or local inquiry.

(3) After receiving the statements and documents in paragraph (2), the appointed person shall send copies of them to the other participants in the appeal.

(4) The appointed person shall—

- (a) give the participants in the appeal 35 days notice of the date, time and place fixed for the hearing or local inquiry and the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal); and
  - (b) give such notice as he thinks fit to inform the public not less than 21 days before the date fixed for the hearing or local inquiry.
- (5) The appointed person may vary the time or place for the hearing or local inquiry and must give such notice of the variation as he thinks fit.
- (6) If an interested party wishes to be heard at the hearing or local inquiry he must notify the appointed person within 28 days of being sent the appellant's and the Department's statements under paragraph (3).
- (7) Where an interested party has so notified the appointed person, the appointed person may require him to submit a statement containing the particulars of his case and copies of any documents he wishes to refer to (except documents which the appellant or the Department served under paragraph (2)).
- (8) The appointed person must send copies of any statements and documents received under paragraph (7) to the appellant and to the Department.
- (9) The appointed person may require any person who has provided him with a statement under paragraph (2) or (7) to provide him with any further information he specifies in relation to the statement, and must send a copy of the further information to each of the other participants in the appeal.
- (10) Before a hearing or local inquiry takes place, the appointed person shall make all of the documents submitted available for inspection by any person who so requests.
- (11) The participants in the appeal are entitled to be heard at a hearing or local inquiry.
- (12) Any participant in the appeal who proposes to give evidence at an inquiry by reading a witness statement must send a copy of the witness statement, and a written summary of it, to the appointed person not less than 21 days before the date fixed for the inquiry, and the appointed person must send copies of the witness statement and summary to the other participants in the appeal.
- (13) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry must, unless he has been appointed to determine the appeal, make a report to the appointed person which must include—
- (a) his conclusions; and
  - (b) his recommendations or his reasons for not making any recommendations.
- (14) If the appointed person is minded to disagree with the recommendation made in the report because he—
- (a) differs from the person making the report on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by that person; or
  - (b) takes into consideration new evidence or a new matter of fact,
- he must not come to a decision without first giving every person who appeared at the hearing or local inquiry an opportunity to make representations within a reasonable time specified by him.
- (15) The appointed person shall notify the participants in the appeal of his decision, the reasons for it and, where a report has been made in accordance with paragraph (13), a copy of that report.

**Application to the court by person aggrieved**

**34.—**(1) A person aggrieved by a decision of the Department that a project is not a significant project or a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision.

- (2) The High Court may quash the decision if it is satisfied that—
- (a) the decision was not lawfully made; or
  - (b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(3) Any application to the High Court under this regulation must be made within 6 weeks of the date the decision is entered in the register in accordance with regulation 8(4)(b) or published in accordance with regulation 19(b).

(4) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it thinks fit.

### **Interpretation of this Part**

**35.**—(1) In this Part—

“appeal” means an appeal under regulation 30 or 31;

“interested parties” means—

- (a) such of the consultation bodies as the Department considers appropriate;
- (b) any person who made representations in respect of a relevant decision (within the meaning of “relevant decision” in regulation 31(13));
- (c) any EEA State consulted under regulation 14(6);
- (d) any authority or person who forwarded their opinion under regulation 14(6);
- (e) any other person who appears to the Department to have a particular interest in the subject matter of the appeal.

“participants in the appeal” means—

- (f) the appellant;
- (g) the Department;
- (h) the interested parties;
- (i) in the case of a hearing or local enquiry, any other person permitted to take part by the person appointed to conduct the hearing or local inquiry.