

2008 No. 160

ENVIRONMENTAL PROTECTION

The Waste Management Licences (Consultation and Compensation) Regulations (Northern Ireland) 2008

Made - - - - *4th April 2008*

Coming into operation - *19th May 2008*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by Articles 7(3) and (4), 9(5)(b) and 11(6)(b) of the Waste and Contaminated Land (Northern Ireland) Order 1997(a).

Citation and commencement

1. These Regulations may be cited as the Waste Management Licences (Consultation and Compensation) Regulations (Northern Ireland) 2008, and shall come into operation on 19th May 2008.

Interpretation

2. In these Regulations, —

“the 1982 Order” means the Land Compensation (Northern Ireland) Order 1982(b);

“grantor” means a person who has granted, or joined in the granting of, rights pursuant to the requirements of Article 6(4) or 12(9);

“relevant interest” means an interest in land in respect of which rights have been granted pursuant to the requirements of Article 6(4) or 12(9),

and any reference to a numbered Article is a reference to the Article bearing that number in the Waste and Contaminated Land (Northern Ireland) Order 1997.

Consultations - prescribed periods

3. For the purposes of—

(a) Paragraph 5 of Article 9 (consultation before the grant of certain licences) (including that paragraph as applied by Article 12(10) (revocation and suspension of licences)) the period shall be 3 months; and

(b) Paragraph 6 of Article 11 (consultation before certain variations), the period shall be 6 weeks.

(a) S.I. 1997/2778 (N.I. 19)
(b) S.I. 1982/712(N.I. 9)

Compensation following grant of rights

4. Subject to the provisions of these Regulations, compensation is payable under Article 7 (compensation where rights granted pursuant to Article 6(4) or 12(9)) for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Land Acquisition and Compensation (Northern Ireland) Order 1973(a) in pursuance of a notice to treat served on the date on which the rights were granted;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them; and
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

Time at which entitlement to compensation arises

5.—(1) Subject to paragraph (2), an entitlement to compensation under Article 7 arises on the date of the grant of the rights.

(2) Where, after a grant of rights pursuant to Article 6(4) or 12(9), the conditions of the licence which rendered the grant of rights necessary are upheld on the final determination of an appeal against those conditions, the entitlement to compensation arises on the date of the final determination of the appeal.

Application for compensation

6.—(1) An application for compensation under Article 7 shall be made by the grantor within the period beginning with the date on which the entitlement to compensation arises in his case and ending on whichever is the later of the following dates—

- (a) 12 months after the date on which the entitlement to compensation arises in his case; or
- (b) 6 months after the date on which the rights were first exercised.

(2) An application shall be made in writing and served on the holder of the licence to whom the rights were granted.

(3) The application shall contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor's entitlement arises, and any relevant plans;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for;
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of paragraphs (a) to (e) of regulation 4, and showing how the amount applied for under each paragraph has been calculated; and

(a) S.I. 1973/1896 (N.I. 21)

- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with regulation 5(2), a copy of the notice of the final determination of the appeal.

Basis on which compensation assessed

7.—(1) The amount to be paid by way of compensation under Article 7 shall be assessed in accordance with the following paragraphs of this regulation.

(2) The rules set out in Article 6 of the 1982 Order (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of this regulation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) Without prejudice to the provisions of Article 6(2)(b) of the 1982 Order, no account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under regulation 4(e) expenditure incurred in the preparation of plans or on other similar preparatory matters, shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage; and
- (b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation under Article 7 shall include an amount equal to the grantor's reasonable valuation and legal expenses.

Payment of compensation and determination of disputes

8.—(1) Compensation payable under Article 7 in respect of an interest which is subject to a mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under these Regulations shall be payable—

- (a) where the holder of the licence and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the holder of the licence and the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Lands Tribunal, or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(4) In relation to the determination of any such question, Articles 4 (procedure on references under Article 3) and 5 (costs) of the 1982 Order shall apply as if—

- (a) the reference in Article 4(1) of the 1982 Order to Article 3 of that Order were a reference to paragraph (3) of this regulation;
- (b) paragraph (3) of Article 5 of the 1982 Order were omitted; and
- (c) references in Article 5 of the 1982 Order to the acquiring authority were references to the holder of the licence.

Sealed with the Official Seal of the Department of the Environment on 4th April 2008



Wesley Shannon
A senior officer of the Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

Article 6(4) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”) allows the Department to impose on a waste management licence conditions which require the licence holder to carry out works or do other things notwithstanding that he is not entitled to do so. Articles 10(1) and (2)(a), 12(8) and 16(7) of the 1997 Order, allows the Department to impose similar conditions when modifying the conditions of, or suspending, a waste management licence. Where such a condition is imposed, any person whose consent would be required before the works, etc. could be carried out must grant to the licence holder, or join in granting, such rights as will enable him to comply with the condition.

Regulation 3 of these Regulations provides that the period for the making of representations, in response to the prior consultation with owners, tenants and occupiers of land in respect of which rights are likely to be required (which is required by Articles 9, 11 and 12(10) of the 1997 Order), is 3 months from the date on which the consultation notice was served or, where the consultation relates to the proposed modification of a waste management licence, 6 weeks.

Regulation 4 defines the descriptions of loss and damage in respect of which compensation is payable following the grant of rights under Articles 6(4) or 12(9) of the 1997 Order.

Regulation 5 specifies the time at which the entitlement to compensation arises.

Regulation 6 prescribes the procedure for making applications for compensation. In particular, paragraph (1) requires a claim for compensation to be made by the grantor within the period beginning with the date on which the entitlement to compensation arises and ending on whichever is the later of the following dates:-

12 months after the date on which the entitlement to compensation arises in his case or 6 months after the date on which the rights were first exercised.

Regulation 7 sets out the basis on which compensation is to be assessed.

Regulation 8 makes provision for payment and for the determination of disputes by the Lands Tribunal.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the library of the Northern Ireland Assembly and copies can be obtained from Planning and Environmental Policy Group, 20-24 Donegall Street, Belfast BT1 2GP.