

**EXPLANATORY MEMORANDUM TO
THE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)
REGULATIONS (NORTHERN IRELAND) 2015**

S.R 2015 No. 74

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule 2015 No. 74 which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 1st April 2015.

2. Purpose

2.1 These Regulations revoke and replace the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (“the 2012 Regulations”). They are being made to implement Directive 2011/92/EU¹ in respect of the new two-tier planning system under the Planning (Northern Ireland) Act 2011.

3. Background

3.1 The EIA Directive aims to ensure that a planning authority giving consent for a project makes its decision with the full knowledge of any likely significant effects on the environment by setting out a procedure known as environmental impact assessment to assess such effects.

3.2 Whilst the 2012 Regulations allowed the Department to meet the requirements of the EIA Directive as the unitary planning authority in Northern Ireland, after 1st April 2015, these Regulations will provide a statutory framework for the Department and councils to meet their obligations as competent authorities following the transfer of planning powers.

3.3 Part 1 defines terms used in the Regulations, sets out the Department’s power of direction, ensures that EIA development cannot be permitted without the consideration of environmental information, sets out the matters that confirm that development is EIA development and provides that the Planning Appeals Commission (the Commission) can carry out council or Departmental functions in respect of appeals under section 58 or 60 of the 2011 Act.

¹ “the EIA Directive” on the assessment of the effects of certain public and private projects on the environment

3.4 Part 2 sets out pre-application procedures under which a developer can ask the council or Department to give a determination as to whether proposed development is EIA development or an opinion as to the information to be provided in an environmental statement.

3.5 Part 3 contains procedures to facilitate the preparation of environmental statements, and for the provision of information relevant to their preparation.

3.6 Part 4 sets out procedures for dealing with applications on receipt by a council or the Department. These include those for determining whether or not the application is an EIA application, consideration of any environmental information previously provided, requiring an environmental statement to be provided and new provisions for the Department to process EIA applications made to it under section 26 or referred to it under section 29 of the 2011 Act without an environmental statement. The period for making a decision on planning applications or subsequent applications is extended for EIA applications.

3.6 Part 5 contains the publicity arrangements for environmental statements including the availability of copies, consultation requirements, the need for further information and evidence, charges and informing the public of decisions.

3.7 Part 6 is new and deals with development by a council, modifying the Regulations as appropriate.

3.8 Part 7 sets out transboundary procedures where development in Northern Ireland is likely either to affect other EEA states, or the reverse.

3.9 Part 8 contains the procedures for unauthorised development which is or appears to be EIA development.

3.10 Part 9 restricts the grant of planning permission under simplified planning zone and enterprise zone schemes and any development order made after the commencement of these Regulations.

3.11 Part 10 sets out the requirements to make information available for inspection, specifies the circumstances in which the Commission will allow people to appear before it and be heard, and the effect of the Commission's report on determinations. It also details how electronic communications will apply to applications, applies the Regulations to the Crown and revokes the 2012 Regulations with saving and transitional provisions.

3.12 Schedule 1 lists developments for which environmental assessment is mandatory. Schedule 2 lists, with thresholds/criteria, development for which environmental assessment is required if it has significant environmental effects. Schedule 3 lists selection criteria referred to in Article 4.3 of the Directive. Schedule 4 lists matters for inclusion in an environmental statement.

Schedule 5 Part 1 lists modifications of statutory rules and Part 2 sets out those provisions as modified.

4. Consultation

4.1 This is a purely technical amendment concerned with the transfer of existing powers to councils. No changes are made to existing policy. Thus the Department did not consult on the Statutory Rule.

5. Equality Impact

5.1 An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any Section 75 categories.

6 Regulatory Impact

6.1 A Regulatory Impact Assessment accompanies this memorandum. at Annex 1.

7. Financial Implications

7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Statutory Rule does not discriminate on grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or any statutory provisions listed in section 7 of the 1998 Act.

9. EU Implications

9.1 The Regulations ensure the continued application of the EIA Directive in respect of planning in Northern Ireland under the new two-tier planning model. A Transposition Note is not required in these circumstances.

10. Parity or Replicatory Measure

10.1 There are no parity or replicatory issues. The other UK jurisdictions already have similar planning legislation.

11. Additional Information

Not applicable.

REGULATORY IMPACT ASSESSMENT

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland)
2015 (S.R. 2015 No. 74)

1. Title of Proposal

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland)
2015 (S.R. 2015 No. 74).

2. Purpose and intended effect of measure**i) The objective:**

Under the Planning Act (NI) 2011 (the 2011 Act) planning powers will transfer to the new district councils. The main objective of the Statutory Rule is to support this transfer by ensuring that the requirements of EC Directive 2011/92/EU (the EIA Directive) continue to be met in respect of the planning process in Northern Ireland after April 2015.

ii) The background:

The EIA Directive requires an assessment of the effects of certain public and private projects on the environment before development consent is granted. Since the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (the 2012 Regulations) already apply the EIA Directive to the current unitary planning authority system, they require technical amendment only to accommodate the new two-tier planning model. In some instances this consists of a change of wording from 'the Department' to 'the council or, as the case may be, the Department'. In others, the specific duties of the council and the Department are set out separately for clarity and ease of understanding. The 2015 Regulations will replace the 2012 Regulations.

The Regulations will affect Northern Ireland only.

Key changes are:

- new provision for applications referred to the Department under section 29 of the 2011 Act
- new provision for modification of the Regulations in respect of councils' own applications

iii) Risk Assessment and Rationale for Government Intervention:

The Department must ensure that the requirements of the EIA Directive are met following transfer of planning powers to councils in April 2015. This necessitates a revision of the 2012 Regulations to provide a statutory framework for the Department and councils to meet their obligations as competent authorities under the new two-tier planning model.

3. Options Appraisal

Option 1 – Do Nothing

This is not a realistic option as this would mean that the Department would continue to be the sole competent authority which would negate the purposes of the transfer of powers to councils under the 2011 Act.

Option 2 – Amend the 2012 Regulations

This is not a viable option as although the necessary amendments are technical in nature, it would be unsatisfactory under the new two-tier planning model to have the original and amended provisions in separate instruments.

Option 3 – Replace the 2012 Regulations

This is the preferred option as the requirements of the EIA Directive would be met in a single instrument under the new two-tier planning model.

4. Costs and Benefits

Option 1: Do Nothing

While there are no costs associated with this option it is not considered viable as the requirements of the EIA Directive must be met under the new two-tier planning model.

Option 2: Amend the 2012 Regulations

Amendment would allow the requirements of the EIA Directive to be met. However the legislation would be less accessible to competent authorities, developers, applicants and members of the public because it would then be split across two instruments; the 2012 Regulations and the 2015 Amendment Regulations.

Option 3 – Replace the 2012 Regulations

This is the preferred option, with optimum benefit. It will ensure that the requirements of the EIA Directive are met in a single instrument under the new two-tier planning model. The legislation will be fully accessible. This option would not result in additional costs to those who engage with the planning system and there is no anticipated additional cost to councils as the financial transfer arrangements will include provisions for the new structures.

5. Sectors and Groups Affected

The main sectors and groups affected are the Department, councils and users of the planning system.

6. Enforcement and Sanctions

The Department, councils and the Planning Appeals Commission will enforce the Regulations by applying the statutory requirements to planning applications for projects with significant environmental effects. There are no new enforcement provisions or sanctions.

7. Consideration of Impacts

Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the Section 75 categories.

Health Impact

No impact on health has been identified.

Small Firms Impact Test

There will be no adverse impact on small firms as the Regulations do not impose any new requirements on users of the planning system.

Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

There will be no significant differential impact of the proposals between urban and rural areas because of the specific scope and technical nature of the changes.

8. Monitoring and Review

Under the provisions of section 228 of the 2011 Act the Department must carry out a review and report back to the Assembly on the implementation of the Act three years after planning functions transfer to councils and every five years thereafter. Although these Regulations are not being made under the powers set out in the 2011 Act, their effectiveness will be monitored post-transfer to ensure that they achieve the policy objective.

9. Consultation

As these regulations constitute technical amendments they have not been subject to public consultation.

10. Summary and Recommendations

Option 3 is the recommended option as it will ensure that the requirements of the EIA Directive are met in a single instrument under the new two-tier planning model. The legislation will be fully accessible.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



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Date: 25th February 2015

Angus Kerr

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