
STATUTORY RULES OF NORTHERN IRELAND

2017 No. 83

**The Planning (Environmental Impact
Assessment) Regulations (Northern Ireland) 2017**

PART 9

Unauthorised EIA Development

Interpretation of Part 9

31. In this Part—

“deemed application” shall be construed in accordance with section 145(5);

“enforcement functions” means—

- (a) the issue of an enforcement notice under section 138 or section 139;
- (b) the issue of a planning contravention notice under section 133;
- (c) the issue of a temporary stop notice under section 135;
- (d) the issue of a stop notice under section 150 or section 151;
- (e) the service of a breach of conditions notice under section 152; and
- (f) an application to the court for an injunction under section 156.

“enforcement notice” means a notice issued under section 138 or section 139;

“ground (a) appeal” means an appeal under section 143, so far as brought on the ground mentioned in subsection (3)(a) of that section;

“regulation 34 notice” means a notice issued under regulation 34(2);

“unauthorised EIA development” means EIA development for which planning permission or subsequent consent has not been granted.

Duty to ensure objectives of the Directive are met

32. The council or, as the case may be, the Department shall consider the exercise of their enforcement functions in such a way as to secure compliance with the objectives and requirements of the Directive.

Prohibition on the grant of planning permission or subsequent consent for unauthorised EIA development

33. The Commission shall not grant planning permission or subsequent consent under section 145(1) in respect of unauthorised EIA development unless an environmental impact assessment has been carried out in respect of that development.

Determination as to need for environmental statement, etc.

34.—(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 development or Schedule 2 development, the council or, as the case may be, the Department shall, before an enforcement notice is issued—

- (a) take steps to obtain information about the development, having regard to the requirements of regulation 8(3) and the obligations under regulation 32, in order to inform a screening determination; and
- (b) make a screening determination and paragraphs (7), (14) and (15) of regulation 8 shall apply.

(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 34 notice”) which shall—

- (a) include a copy of the screening determination required by paragraph (1)(b); and
- (b) require a person who gives notice of an appeal under section 143 to submit to the Commission with the notice sufficient copies of an environmental statement relating to that development to enable the Commission to comply with regulation 37.

(3) Where the council issues a regulation 34 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 EIA development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised EIA development by reason of their specific environmental responsibilities or local or regional competences; and
- (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(4) Where the Department issues a regulation 34 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 EIA development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised EIA development by reason of their specific environmental responsibilities or local or regional competences; and
- (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(5) Where the council or, as the case may be, the Department serves the Commission with a copy of a regulation 34 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 34 notice with which they do not agree, that person may by notice in writing, within 4 weeks of the date of 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

35. 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 appellant and the Commission and if not so submitted the deemed application and the ground (a) appeal (if any) shall elapse at the end of that period.

Provision of information

36.—(1) Subject to paragraph (2), any person on whom a copy of regulation 34 notice is served pursuant to regulation 34(3)(b) to (d) or regulation 34(4)(b) to (d) (“the consultee”) shall, if requested by the person on whom the regulation 34 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 that person.

(2) Regulations 10(2) and 22(2) shall apply to information under paragraph (1) as they apply to information under regulation 10(1).

Procedure where the Commission receives an environmental statement

37.—(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 send a copy of the statement to the council or, as the case may be, the Department and to the bodies on whom a copy of the regulation 34 notice was served.

(2) The Commission shall give not less than 30 days 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 within this period.

Further information and evidence respecting environmental statements

38.—(1) Regulation 21(1) and (2) shall apply to statements provided in accordance with this Part with the following modifications—

- (a) where the Commission notifies the appellant under regulation 21(1), the appellant shall provide the further information within such period as the Commission may specify in the notice or such longer period as the Commission may allow;
- (b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allows (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(2) Regulations 37 and 39 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.

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

(4) Where the Department receives a notice under paragraph (3), it shall copy the notice to the council.

Publicity for environmental statements and decision making

39.—(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 date not less than 30 days from the date on which the notice is first published);
- (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 and the latest date by which representations should be made (being a date not less than 30 days from the date on which the notice is first published); and
- (g) the address to which such representations are to be sent.

(2) Where an appeal is made to the Commission under section 143 in relation to an unauthorised EIA development, the functions conferred to on the council or on the Department by Part 6 shall be exercisable by the Commission in respect of that appeal.

Significant transboundary effects

40. Regulation 29 shall apply to unauthorised EIA development as if—

- (a) for regulation 29(1) there were substituted—

“(1) Where, on the consideration of an appeal under section 143, 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 Department.”;
- (b) in regulation 29(2)(a) and (b)(i) the word “proposed” was omitted;
- (c) in regulation 29(4)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”; and
- (d) in regulation 29(4)(c) the words “that application” were replaced by the words “the deemed application under section 145(5)”.