

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

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Overview

EIA

- The EIA regime
- The amendment directive
- The EIA process
- Screening & Scoping
- The Environmental Statement
- Competency & Objectivity
- Monitoring & Compliance
- Co-ordinated procedures

Recent local judgments



Overview of EIA regime

- Original Directive – 85/337/EEC
- Codified Directive – 2011/92/EU
- Amendment Directive (2014) – 2014/52/EU
- Latest domestic regulations – The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017
- General prohibition on consent for EIA Development without environmental impact assessment
- The concept of “EIA Development”



The Amendment Directive

- Directive 2014/52/EU
- Made 16th April 2014.
- Preamble

“...to strengthen the quality of the [EIA] procedure, [and] align that procedure with the principles of smart regulation...”

...[The EIA Directive] should also be revised in a way that ensures that environmental protection is improved, resource efficiency increased and sustainable growth supported...To this end, the procedures it lays down should be simplified and harmonised...”



The new regulations

- Domestic implementation required by 16th May 2017.
- The new regulations were made on 11th May 2017 and came into operation on 16th May 2017.
- Regulation 4 – the legislative prohibition:

“A council, the Department or the Commission shall not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of that development.”
- Transitional provisions – Regulation 48.



The EIA process

- This is now defined in legislation.
- Regulation 5(1)

“An environmental impact assessment is a process consisting of—

- (a) the preparation of an environmental statement by the applicant;*
- (b) any consultation, publication and notification required by, or by virtue of, these Regulations or any other enactment in respect of EIA development; and*
- (c) the steps required under regulations 24 and 25...”*



The EIA process

- Regulation 5(2)

“The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under the [Habitats & Wild Bird Directives];

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape ; and

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).”



Screening and Scoping

Screening

- The process by which the Competent Authority considers whether a proposal is, or is not, “EIA Development”.
- New information requirements. (Regulation 8(3) and (4))
- Reasons required for negative decisions too.



Screening and Scoping

Scoping

- Prescribes the level of detail of information to be provided in the environmental statement.
- New information requirements for scoping requests. (Regulation 8(5))
- If scoping opinion obtained, environmental statement has to be based upon it. (Regulation 11(3)(c))



The Environmental Statement

- Legislative definition of what the Environmental Statement is, and what it should contain. (Regulation 11)
- Relationship between Regulation 11 and Schedule 4.
- Schedule 4 has been revised.
- Information required has been expanded.



Competency

- New express legislative requirement.
- Applies on both sides!
- Requirement for environmental statement to be prepared by 'competent experts'.
- The statement must also contain an explanation of how this requirement has been met. (Regulation 11(3)(b))
- Requirement for the planning authority to ensure it has, or has access to, sufficient expertise. (Regulation 5(4))



Objectivity

- Regulation 43 – objectivity and bias.
- Planning Authority to exercise duties in an objective manner and which avoids conflict of interest.
- Requires appropriate arrangements to be put in place to ensure functional separation where the planning authority would be the planning applicant and the competent authority, for EIA purposes.



Monitoring and Compliance

- Regulation 24(1)(d)

“When determining an EIA application the council or, as the case may be, the Department shall—...

(d) if planning permission or subsequent consent is to be granted, consider whether it is appropriate to attach conditions or impose monitoring measures.”

- Duty to ensure measures are undertaken.



Co-ordinated procedures

Regulation 23(1):

“Where, in relation to EIA development, there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulations Assessment, the council or, as the case may be, the Department shall, where appropriate, ensure that the Habitats Regulations Assessment and the environmental impact assessment are coordinated.”



Recent judgments

Belfast City Council v. Minister of Enterprise, Trade & Investment [2017] NICA 28

- First instance case concerned the lawfulness of the adoption of BMAP in 2014.
- At first instance, the High Court found that the plan's adoption had been unlawful, but....
- The appeal concerned the remedies at first instance.
- Weir LJ: *“The purported adoption was accordingly of no force or effect; the draft BMAP remains in its entirety unadopted....”*



Recent judgments

Friends of the Earth Limited's application [2017] NICA 41

- Challenge to the Department's enforcement approach regarding dredging of sand in Lough Neagh.
- Enforcement Notice served but no Stop Notice.
- Challenge dismissed at first instance.
- Issues at appeal – (a) Ardagh Glass Ltd
(b) precautionary principle



Recent judgments

Weatherup LJ:

“Given the repeated finding that the operations are likely to have significant impact on the environment the decision maker cannot simply put in the balance the absence of evidence of harm....What must be put in the balance is the absence of evidence that there is no harm. To approach the matter with a requirement for evidence of harm is the negation of the precautionary principle. The decision will be quashed....”



Thank you

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