



# Review of Old Mineral Permissions - Environmental Impact Assessment

## Consultation Paper

April 2008



INVESTORS IN PEOPLE



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## **1.0 INTRODUCTION**

- 1.1 The purpose of this document is to obtain the comments and views of the public and all interested parties on the application of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (1999/73) ("the EIA Regulations 1999") to the determination of applications under paragraph 9(1) of Schedule 1A and paragraph 7(1) of Schedule 1B to the Planning (Northern Ireland) Order 1991 ("the 1991 Order"). Article 63A and Schedules 1A and 1B of the 1991 Order are concerned with the review of mineral planning permissions (often referred to as the review of old mineral permissions or "ROMPs").
- 1.2 The purpose of applying the EIA Regulations 1999 is to ensure that through the review of old mineral permissions all mines and quarries in Northern Ireland are subject to planning conditions that meet modern environmental standards and that these are determined in accordance with the requirements of Council Directive 85/337/EEC (OJ L 175, 5.7.1985, p40) as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p5) and 96/61/EC (OJ L 257, 10.10 1996), ("the EIA Directive").

## **2.0 BACKGROUND**

- 2.1 The majority of quarries operating in Northern Ireland when the Planning Service was formed in 1973 did not have specific planning permission and operated under permitted development rights granted under the Planning (Interim General Development) Order (NI) 1944. The Planning (General Development) Order (NI) 1973 sought to rectify this situation by providing in Class 13 of Schedule 1 to that Order that the permitted development rights for mining undertakers only applied for one year from 1st October 1973. In effect, any quarry which wished to continue to operate beyond that date was to apply for planning permission. A number of planning permissions were then given during the 1970s and 1980s.
- 2.2 In 1989, the Planning (Assessment of Environmental Effects) Regulations 1989 implemented Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. This shifted consideration of the environmental effects of quarry development and application of conditions when giving planning permission to a more stringent level. However, the result is that, while it is generally accepted that planning permissions granted since 1990 have effective environmental conditions attached, there are a number of the permissions dating from the 1970s and 1980s that are deficient in this respect. Indeed, a number of dormant quarries have been able to return to active status, by virtue of their old permissions, without any review of their operating conditions.
- 2.3 The Department has taken the first step to address this situation in the Planning Reform (NI) Order 2006 which inserted a new Article 63A (Review of mineral planning permissions) and Schedules 1A and 1B to the Planning (NI) Order 1991. These schedules follow closely Schedules 13 and 14 of the Environment Act 1995 which applies in Great Britain. The new provisions, when commenced, will initiate the review of all mineral permissions in Northern Ireland to ensure that they have planning conditions that comply with modern environmental standards and that dormant quarries cannot be returned to use before their planning conditions have been reviewed and environmentally acceptable operating standards secured.

### **EC Directive**

- 2.4 The EIA Directive requires an Environmental Impact Assessment ("EIA") where certain types of projects have significant environmental effects, before development consent can be granted. While in the case of existing mineral permissions development consent has already been given, in February 1999 the House of Lords ruled (in *R v North Yorkshire County Council ex parte Brown and Cartwright*) that the imposition of conditions by a mineral planning authority in relation to development authorised by Interim Development Orders under section 22 of and Schedule 2 to the Planning and Compensation Act 1991 ("PCA 1991") was a development consent under the EIA Directive. The need for an EIA therefore had to be considered in accordance with the EIA Directive prior to the imposition of new operating conditions. A subsequent judgment in the High Court (*R v Peak District National Park ex parte Bleaklow Industries Ltd*) extended this to the review of old mineral permissions under Schedule 13 to the Environment Act 1995 ("EA 1995") and

also when determining applications for the periodic review of conditions under Schedule 14.

- 2.5 In response to these judgments, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 (SI 2000/2867) (the "EIA Regulations 2000") were introduced to apply the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999/293), with modifications, to the review of conditions attached to existing permissions for mineral development. The Regulations, as amended, mean that conditions cannot be determined without environmental information first being taken into consideration. They empower mineral planning authorities when determining applications for new operating conditions for mineral sites, or the Secretary of State in relation to appeals against these determinations or called-in applications, to require an EIA to be carried out and an environmental statement to be produced to inform the determination of the application or appeal where the remaining development has a significant effect on the environment (as defined in the regulations). They also apply the mineral planning provisions in the PCA 1991 and the EA 1995 with certain amendments. The amended Regulations provide for the suspension of mineral development where certain procedural requirements or deadlines are not met, until such time as those requirements are met.

### **Implications for Northern Ireland**

- 2.6 In light of the foregoing it is necessary for the Department of the Environment to similarly apply the EIA Regulations 1999, with appropriate modifications to the determination of applications under Schedules 1A and 1B to the 1991 Order ("ROMP applications").
- 2.7 The EIA Regulations 1999 (which replace the 1989 Regulations referred to in paragraph 2.2) implement the EIA Directive in relation to applications for planning permission. The draft Planning (Environmental Impact Assessment) (Amendment No. X) Regulations (Northern Ireland) 2008 (the "ROMPs Regulations") at Annex 3 will apply the Regulations to ROMP applications . When operative, they will confirm the need to consider and, if appropriate, require an environmental impact assessment before ROMP applications are determined. The draft Regulations may be amended in light of this consultation.

### **3.0 APPROACH**

3.1 Key features of the application of the EIA Regulations 1999 to ROMP applications are –

- where a ROMP application is determined to relate to development with significant environmental effects falling within the scope of the Regulations, then any conditions to which the planning permission will be subject to, cannot be determined by either the Department or the Planning Appeals Commission (“the Commission”) without taking into account environmental information;
- where an environmental statement or further information relating to a statement is required by the Department or the Commission from an applicant or appellant, and is not provided within the specified or agreed period, the existing planning permission ceases to authorise minerals development. In other words, minerals development is suspended until the applicant or appellant complies with the requirements of the Department or the Commission as the case may be.

## **4.0 The Regulations**

### **Draft Regulation 1**

- 4.1 This will confirm the date on which the Regulations will come into operation. The intention is for the Regulations to come into operation at the same time as the provisions of the Planning Reform (NI) Order 2006 relating to ROMPs are commenced.

### **Draft Regulation 2**

- 4.2 This provides for the EIA Regulations 1999 to be amended in accordance with the amendments as set out in regulations 3 and 4.

### **Interpretation**

#### **Draft Regulation 3**

- 4.3 Draft regulation 3 provides a definition of "ROMP application", meaning an application to the Department to determine the conditions to which a planning permission is to be subject under paragraph 9(1) of Schedule 1A or paragraph 7(1) of Schedule 1B to the 1991 Order. A definition is also provided of "ROMP development", meaning development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made. Draft regulation 3 also updates the definition of "EEA agreement" to mean the agreement at the date of making of the regulations.

#### **New Regulations 28A and 28B of the 1999 Regulations**

##### **Draft Regulation 4**

- 4.4 Draft regulation 4 inserts new regulations 28A and 28B in the EIA Regulations 1999.
- 4.5 Regulation 28A(1) applies the EIA Regulations 1999 to ROMP applications, ROMP development, a person making a ROMP application and to the determination of ROMP applications subject to modification of the Regulations.
- 4.6 Regulation 28A(2) provides that the Regulations referred to in regulation 4(1) are these Regulations, amending the relevant date. In effect, taken with regulation 28A(1), from the date these Regulations become operative, the Department or the Commission shall not approve a ROMP application relating to EIA development without first taking into consideration environmental information.
- 4.7 Regulation 28A(3) modifies regulation 5A –
- Articles 32 and 33 of the 1991 Order apply to planning applications – the references to appeal provisions relating to ROMPs in Schedule 1A and 1B to the 1991 Order are substituted;

- The functions under Part III to Part VI are exercisable by the Commission but as amended by regulation 28A in relation to ROMP applications;
  - In line with regulation 28A(5) the 4 weeks is changed to 6 weeks and provision is made enabling an extended period to be agreed in writing with the Commission;
  - Regulation 5A(4) is disapplied in light of the disapplication of regulation 9(7) and (8) and modification of regulation 15(2A).
- 4.8 Regulation 28A(4) substitutes specific words in regulation 6(12) to enable the Department to seek additional information in connection with a ROMP application even though there is an existing planning permission for the development in relation to which it may have previously sought information.
- 4.9 Regulation 28A(5) modifies regulation 9(6) by extending the period from 4 weeks to 6 weeks and providing that a different period can be agreed in writing within which the applicant will inform the Department that he either agrees or disagrees with the Department's determination that an Environmental Statement is required to accompany a ROMP application.
- 4.10 Regulation 28A(6) disapplies regulation 9(7) and (8). These provisions relate to circumstances where an application is deemed to be refused and remove the right to lodge an appeal under Article 32 and 33 of the 1991 Order. In the case of a ROMP application it is inappropriate to have a process leading to a deemed refusal when there is already an existing planning permission. However, it is equally essential in such circumstances that the process of reviewing the conditions to which the existing planning permission should be subject does not stall and that development cannot proceed without application of appropriate/ agreed conditions. This is addressed by the suspension provisions at regulation 28B(3) and (4).
- 4.11 Regulation 28A(7) disapplies regulation 10 and 11 – Separate provision, similar to regulation 10 is made in regulation 28B(9) in relation to ROMPs applications taking account of the time frames in paragraph 9(8) of Schedule 1A and paragraph 7(8) of Schedule 1B to the 1991 Order. As regards regulation 11, Article 31 of the 1991 Order cannot apply in the case of a ROMP application where planning permission has already been given.
- 4.12 Regulation 28A(8) omits words in regulation 15(2A) – a process leading to deemed refusal is inappropriate where planning permission already exists.
- 4.13 Regulation 28B(1) makes supplemental provisions for the purpose of the application of the regulations by regulation 28(A).
- 4.14 Regulation 28B(2) stipulates that where the Department or the Commission notifies an applicant or appellant that an environmental statement or further information is required, it shall specify a period within which it is to be provided and compliance with the requirements under regulation 12 (Publicity where an environmental statement is submitted) is required.

It is necessary to ensure that environmental information is considered as required by the EC Directive. Therefore, a priority in the application of the EIA Regulations 1999 and particularly, in light of disapplication of the usual

EIA processes that could lead to deemed refusal, is to ensure that development cannot continue indefinitely, or commence under an existing planning permission without new conditions being applied. For example, this could occur, where an environmental statement or further information relating to an environmental statement were required and delay in submitting these had no consequences. This is addressed by regulation 28B(3)

4.15 Regulation 28B(3), in effect, suspends minerals development under an existing planning permission, unless the Department or the Commission has determined that the development is not EIA development, where the applicant or appellant –

- does not notify the Department or Commission as required under regulations 5A or 9(6) [both as modified];
- does not submit an environmental statement and comply with regulation 12 as required by notification under regulation 28B(2)(a); or
- does not provide further information as required by notification under regulation 28B(2)(b).

There is also provision allowing the parties to agree in writing an extended period for the submission of the environmental statement or further information.

4.16 Regulation 28B(4) specifies when suspension of minerals development will take effect from, where regulation 28B(3) applies. Suspension of minerals development continues until the applicant or appellant, as the case may be, has complied with all the provisions in regulation 28B(3) that are relevant.

4.17 Regulation 28B(5) requires the Department to enter particulars of the suspension of minerals development in the register the Department is required to make available under regulation 34.

4.18 Regulation 28B(6) provides that suspension of minerals development under regulation 28B(3) does not affect minerals development that has already taken place before date of suspension.

4.19 Regulation 28B(7) defines “minerals development” for purposes of regulation 28B(3) – (6).

4.20 Where the Department has determined that ROMP development is EIA development, Regulation 28B(8), in effect, disapplies specific provisions in paragraph 9(8) of Schedule 1A and paragraph 7(8) of Schedule 1B to the 1991 Order. The disapplication of those provisions prevents conditions to which ROMP development will be subject, being approved by default before completion of the EIA process.

4.21 Regulation 28B(9) clarifies when the 6 month appeal period in paragraph 9(8) of Schedule 1A and paragraph 7(8) of Schedule 1B to the 1991 Order will begin where an environmental statement, further information or evidence verifying information in an environmental statement is required.

4.22 Regulation 28B(10) provides a right of appeal where regulation 28B(8) and

(9) apply. Since regulation 28B(8), in the case of a ROMP application relating to EIA development, disapplies provisions in the 1991 Order approving conditions where the Department has not given notice of its decision within the specified or agreed period, an alternative means of recourse is needed for the person who made the ROMP application. This is provided in regulation 28B(10)(a) by engaging provisions in Schedule 1A and 1B to the 1991 Order to provide a right of appeal where the Department has not given notice of its determination of a ROMP application within the timeframes provided for by paragraph 9(8) of Schedule 1A, paragraph 7(8) of Schedule 1B and regulation 28B(9). Regulation 28B(10)(b) sets the period within which an appeal must be made.

## 5.0 Other Secondary Legislation

- 5.1 The Department also proposes to introduce other secondary legislation which is required for the commencement of Part V of The Planning Reform (Northern Ireland) Order 2006.

### **Draft Planning (Review of Old Mineral Planning Permissions) (Non-Determination Appeals) Regulations (Northern Ireland) 2008**

- 5.2 Any person who is the owner of any land or entitled to an interest in a mineral may, if that land or interest has not been listed by the Department as a mineral site to which a review of the conditions to the existing planning permission is required, apply to the Department under paragraph 6 of Schedule 1A to the 1991 Order to be included in that list. Under paragraph 6(12) a person who has made such an application may appeal to the Planning Appeals Commission if the Department has not given notice of its decision with the prescribed period or within an extended period agreed in writing with the Department. The purpose of these Regulations is to prescribe the period after which an appeal can be made as 2 months beginning with the date on which the application was received by the Department.
- 5.3 A copy of the draft Regulations is at Annex 4.

### **The Draft Planning (Review of Old Mineral Planning Permissions and Periodic Review of Mineral Planning Permissions) (Special Development) (Order (Northern Ireland) 2008**

- 5.4 This Order prescribes the form of notice to be issued by the Department –
- a. under Article 13(1) of Schedule 1A to the Planning (Northern Ireland) Order 1991 notifying a person who has made an application to the Department under paragraph 9(1) of Schedule 1A (review of old mineral planning permissions) that the application will be processed in accordance with paragraph 13, that is, the special procedure for major applications; and,
  - b. under Article 10(1) of Schedule 1B to the Planning (Northern Ireland) Order 1991 notifying a person who has made an application to the Department under paragraph 7(1) of Schedule 1B (periodic review of mineral planning permissions) that the application will be processed in accordance with paragraph 10, that is, the special procedure for major applications.
- 5.5 A copy of the draft Order is at Annex 5.

## **6. Regulatory Impact Assessment**

A preliminary regulatory impact assessment has been completed in accordance with the 'Better Policy Making and Regulatory Impact Assessment : A Guide for Northern Ireland'. The Department invites views on the assessment which is attached at Annex 8.

## **Responding to this Consultation Document**

Please note that responses to this consultation should be received by the Department no later than **4 July 2008**.

There are a number of ways in which you can respond:

1. You can send your response to:

Margaret Garrett  
Planning Service Headquarters  
EIA/ROMPs  
3<sup>rd</sup> Floor  
Millennium House  
17-25 Great Victoria Street  
Belfast  
BT2 7BN

2. The consultation paper is also available in Microsoft Word format for downloading from the Planning Service website at [www.planningni.gov.uk](http://www.planningni.gov.uk)

You can e-mail your response to [romps.planning@doeni.gov.uk](mailto:romps.planning@doeni.gov.uk)

3. Responses may also be sent by fax to (028) 9041 6960.

We look forward to receiving responses to the proposals contained within this consultation document. If you decide to respond it would be helpful if you could let us know whether it is in an individual capacity or the name of the organisation or group you are representing.

Additional copies of the consultation document and copies in alternative formats, if desired, are available from the address above and may be requested by Telephone 028 9041 6966, Fax 028 9041 6960 or **Textphone 028 9054 0642**.

If you have any comments or complaints about the consultation process itself (rather than the content of this document), these should be directed to the postal or email address above.

**Freedom of Information Act 2000 – Confidentiality of Consultations**

1. The Department may publish responses to this Consultation Paper or a summary of responses. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.
2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.
3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:
  - the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
  - the Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
  - acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.
4. For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>).

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 STATUTORY RULES OF NORTHERN IRELAND
 

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**2008 No. XXX****PLANNING**
**The Planning (Environmental Impact Assessment) (Amendment  
No. x) Regulations (Northern Ireland) 2008**

*Made* - - - - - xx xxx 2008

*Coming into operation* - - - - - xx xxx 2008

The Department of the Environment is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment.

The Department of the Environment makes these Regulations in exercise of the powers conferred on it by that section:

**Citation commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Planning (Environmental Impact Assessment) (Amendment No. x) Regulations (Northern Ireland) 200[8] and shall come into operation on xxx 2008.

(2) The Interpretation Act (Northern Ireland) 1954<sup>(c)</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

**Amendment of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999**

**2.** The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999<sup>(d)</sup> shall be amended in accordance with regulations 3 and 4.

**3.** In regulation 2(2) (interpretation)—

(a) insert, in the appropriate place —

““ROMP application” means an application to the Department to determine the conditions to which a planning permission is to be subject under—

(a) paragraph 9(1) of Schedule 1A to the 1991 Order (review of old mineral planning permissions);

(b) paragraph 7(1) of Schedule 1B to the 1991 Order (periodic review of mineral planning permissions);

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(a) S.I.2008/301

(b) 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51). Council Directive 85/337/EEC applies to the EEA by virtue of Article 74 of, and paragraph 1 of part 1 of Annex XX to, the Agreement on the European Economic Area. Council Directive 97/11/EC was extended to the European Economic Area by Decision No. 20/1999 of the European Economic Area Joint Committee of 26th February 1999, O.J. No. L 148, 22.6.2000, p.45. Section 2(2) was also amended by S.I. 2006 (c.51).

(c) 1954 c.33 (N.I.)

(d) S.R. 1999 No. 73 as amended by S.R. 2006 No.276 and S.R. 2008 No. 17

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;”

(b) For the definition of “EEA agreement” substitute—

““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented at [insert the date of the making of these Regulations]”.

4. After regulation 28 (Involvement of other EEA States) insert—

## “ROMP Applications

### General application of the Regulations to ROMP applications

**28A.**—(1) These Regulations shall apply to—

- (a) a ROMP application as they apply to an application for planning permission;
- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a person making a ROMP application as they apply to an applicant for planning permission; and
- (d) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications in paragraphs (2) to (8).

(2) In regulation 4 (prohibition on the grant of planning permission without consideration of environmental information) in paragraph (1) as if for the words “these regulations” there were substituted “the Planning (Environmental Impact Assessment) (Amendment No. x) Regulations (Northern Ireland) 2008”.

(3) Regulation 5A (appeals under Article 32 or Article 33) shall have effect as if—

- (a) for the reference in paragraph (1) to “Article 32 or 33 of the 1991 Order” there were substituted “paragraph 11(1) of Schedule 1A to the 1991 Order or paragraph 9(1) of Schedule 1B to the 1991 Order”;
- (b) after “Regulations” there were inserted “, as applied and modified by regulation 28A,”;
- (c) for the words “4 weeks” there were substituted “6 weeks”;
- (d) after “the determination” there were inserted “or such extended period as may be agreed in writing between the applicant and the Commission”;
- (e) paragraph (4) does not apply.

(4) Regulation 6(12) shall have effect as if for the words “further information in connection with any environmental statement that may be submitted” there were substituted “additional information in connection with a ROMP application which relates to a development for which planning permission has been given and where further information was previously requested in connection with an environmental statement”.

(5) Regulation 9(6) (application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement) shall have effect as if —

- (a) for the words “4 weeks” there were substituted “6 weeks”; and
- (b) after “the determination” there were inserted “or such extended period as may be agreed in writing between the applicant and the Department”.

(6) As if regulation 9(7) and (8) do not apply.

(7) As if regulations 10 and 11 do not apply.

(8) Regulation 15 (further information and evidence relating to environmental statement) shall have effect as if in paragraph (2A) the words “, and if not so submitted the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision)” were omitted.

### **Supplemental Provision**

**28B.**—(1) Where these Regulations apply under regulation 28A, the following provisions shall have effect.

(2) Where the Department or the Commission notifies the applicant or appellant, as the case may be, that—

- (a) the submission of an environmental statement is required under regulation 9(3) then such notification shall specify the period within which the environmental statement and compliance with regulation 12 is required; or
- (b) a statement should contain further information under regulation 15 (1) then such notification shall specify the period within which that information is to be provided.

(3) Subject to paragraph (4), the planning permission to which the ROMP application relates shall not authorise any minerals development (unless the Department or the Commission has determined that the ROMP development is not EIA development) if the applicant or the appellant, as the case may be, does not—

- (a) write to the Department or the Commission within the 6 weeks or other period agreed pursuant to regulations 5A or 9(6) (as modified by regulation 28A);
- (b) submit an environmental statement and comply with regulation 12 within the period specified by the Department or the Commission in accordance with paragraph (2)(a) or such extended period as may be agreed in writing between the applicant and the Department or the appellant and the Commission ; or
- (c) provide further information within the period specified by the Department or the Commission in accordance with paragraph (2)(b) or such extended period as may be agreed in writing between the applicant and the Department or the appellant and the Commission.

(4) Where paragraph (3) applies, the planning permission shall not authorise any minerals development from the end of—

- (a) the relevant six week or other period agreed in writing as referred to in paragraph (3)(a); or
- (b) the period specified or agreed in writing as referred to in paragraphs (3)(b) and (c), (suspension of minerals development) until the applicant has complied with all of the provisions referred to in paragraph (3) which are relevant to the application in question.

(5) Particulars of the suspension of minerals development and the date when that suspension ends must be entered in the appropriate part of the register made available by the Department under regulation 34.

(6) Paragraph (3) shall not affect any minerals development carried out under the planning permission before the date of suspension of minerals development.

(7) For the purposes of paragraphs (3) to (6) “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

(8) Where it falls to the Department to determine a Schedule 1 or a Schedule 2 application, paragraph 9(8) of Schedule 1A to the 1991 Order or paragraph 7(8) of Schedule 1B to the 1991 Order shall not have effect to treat the Department as having determined the conditions to which any relevant planning permission is to be subject unless

the Department has determined that the ROMP development in question is not EIA development.

(9) Where an environmental statement is required in relation to a ROMP application the period of six months or such extended period as may at any time be agreed upon in writing between the applicant and the Department, referred to in paragraph 9(8) of Schedule 1A to the 1991 Order and paragraph 7(8) of Schedule 1B to the 1991 Order, shall run not from the Department having received the ROMP application but from the time when—

- (a) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and
- (b) in the case of an application falling within regulation 9(1) where the Department has requested further information in order to make a determination under regulation 9(2), when that information is received; and
- (c) where evidence verifying information in the environmental statement has been requested, when that evidence is received.

(10) Subject to paragraphs (8) and (9) —

- (a) paragraph 11(1) of Schedule 1A to the 1991 Order (right to appeal against Department's determination of conditions etc.) and paragraph 9(1) of Schedule 1B to the 1991 Order (appeals) shall have effect as if there were also a right of appeal to the Commission where the Department has not given notice of its determination of the ROMP application within the period of 6 months from the Department having received the application or within such extended period as may at any time be agreed upon in writing between the applicant and the Department; and
- (b) paragraph 11(2) of Schedule 1A to the 1991 Order (right to appeal against Department's determination of conditions etc.) and paragraph 9(2) of Schedule 1B to the 1991 Order (appeals) shall have effect as if they also provided for notice of appeal to be made within six months of expiry of the period of six months or such extended period as may at any time be agreed upon in writing between the applicant and the Department under paragraph 9(8) of Schedule 1A to the 1991 Order or paragraph 7(8) of Schedule 1B to the 1991 Order .”

Sealed with the Official Seal of the Department of the Environment on xx xxx 2008



XXX XXXXX

A senior officer of the Department of the Environment

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement, in Northern Ireland, Council Directives 85/337/EEC (OJ L 175, 5.7.1985, p40) as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p5) and 96/61/EC (OJ L 257, 10.10 1996), (“the Directives”), in relation to applications (“ROMP applications”) to the Department to determine the conditions to which a planning permission is subject under Schedules 1A and 1B to the Planning (Northern Ireland) Order 1991 (“the 1991 Order”).

These Regulations amend the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (“the 1999 Regulations”) which implemented the Directives in relation to planning in Northern Ireland. The 1999 Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the 1991 Order.

Regulation 3 inserts definitions of “ROMP application” and “ROMP development” into the 1999 Regulations and substitutes a definition of “EEA agreement” for the existing definition.

Regulation 4 inserts new regulations 28A and 28B (ROMP Applications) into the 1999 Regulations.

Regulation 28A applies the provisions of the 1999 Regulations to ROMP applications as they apply to applications for planning permission subject to certain modifications. The main differences in the application of the 1999 Regulations to ROMP applications as opposed to planning applications are:

- (a) the time period for writing to the Department or the Planning Appeals Commission on receipt of a notice that an environmental statement is required is six weeks or such other period as may be agreed instead of four weeks (inserted regulation 28A(3) and (5));
- (b) additional information may be required in connection with a ROMP application relating to development where further information was previously requested in connection with an environmental statement (inserted regulation 28A(4));
- (c) certain provisions inappropriate to a ROMP application are disapplied (inserted regulation 28A(3)(e), (6), (7) and (8));

Regulation 28B makes supplemental provision where the regulations apply under regulation 28A. The effect of these provisions is that:

- (a) where a notice is issued under regulations 9(3) or 15(1) it must specify the period within which the environmental statement and compliance with regulation 12 is required or further information is to be provided – the period may be extended by agreement in writing (see inserted regulation 28B(2));
- (b) where the applicant or appellant does not respond within the period specified in a notice or other period agreed with the Department or the Commission, the planning permission to which the ROMP application relates ceases to authorise minerals development – minerals development is suspended – until the requirements of any notice have been complied with (see inserted regulation 28B(3) and (4)).
- (c) where a ROMP application is in respect of a mineral planning permission which authorises development which falls within Schedule 1 or Schedule 2 to the 1999 Regulations then the provisions in paragraph 9(8) of Schedule 1A and paragraph 7(8) of Schedule 1B to the 1991 Order treating the Department as having determined the ROMP application do not apply unless a determination has been made that the development is not EIA development (see inserted regulation 28B(8));
- (d) where an environmental statement is required in relation to a ROMP application the period of six months or extended period agreed between the applicant and the Department referred to in paragraph 9(8) of Schedule 1A and paragraph 7(8) of Schedule 1B to the 1991 Order runs not from the receipt of the ROMP application but from the submission of the environmental statement and accompanying documents, the

receipt of further information or the receipt of evidence verifying information in the environmental statement (see inserted regulation 28B(9));

- (e) where a ROMP application relates to EIA development and regulation 28B(8) applies, appeal provisions in paragraph 11 of Schedule 1A and paragraph 9 of Schedule 1B to the 1991 Order apply as if there were a right of appeal to the Planning Appeals Commission on the Department failing to give its decision on the applicant within 6 months or such extended period as is agreed (see inserted regulation 28B(10)).

A Regulatory Impact Assessment has been prepared in connection with these Regulations. A copy may be obtained from the Department of the Environment, Planning Service Headquarters, Millennium House, 17–25 Great Victoria Street, Belfast BT2 7BN (Tel: 028 9041 6967) or accessed at <http://www.planningni.gov.uk/>

## STATUTORY RULES OF NORTHERN IRELAND

2008 No. xx

## PLANNING

## Planning (Review of Old Mineral Planning Permissions) (Non-Determination Appeals) Regulations (Northern Ireland) 2008

*Made* - - - - - xxx 2008

*Coming into operation* - - - - - xxx 2008

The Department of the Environment makes the following Regulations, in exercise of the powers conferred by Articles 63A and 129(1) of and paragraph 6(12) of Schedule 1A to the Planning (Northern Ireland) Order 1991(a).

**Citation and commencement**

1. These Regulations may be cited as the Planning (Review of Old Mineral Planning Permissions) (Non-Determination Appeals) Regulations (Northern Ireland) 2008 and shall come into operation on xx xxxx 2008.

2. The prescribed period for the purposes of paragraph 6(12) of Schedule 1A to the Planning (Northern Ireland) Order 1991 is a period of 2 months beginning with the date when the application was received by the Department.

Sealed with the Official Seal of the Department of the Environment on xx xxxx 2008



XXXXX XXXXX

A senior officer of the Department of the Environment

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

Any person who is the owner of any land or entitled to an interest in a mineral may, if that land or interest has not been listed by the Department as a mineral site for which a review of the conditions which are to apply to the existing planning permission is required, apply to the Department under paragraph 6 of Schedule 1A to the Planning (Northern Ireland) Order 1991 for inclusion in that list. These regulations prescribe the period following which, a person who has made such an application and has not either received a decision from the Department or agreed an extended period with the Department for that decision, may appeal to the Planning Appeals Commission.

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 STATUTORY RULES OF NORTHERN IRELAND
 

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**2008 No. xxx**

**PLANNING**

**The Planning (Review of Old Mineral Planning Permissions and Periodic Review of Mineral Planning Permissions) (Special Development) Order (Northern Ireland) 2008**

*Made* - - - - *xx xxx 2008*

*Coming into operation* - *xx xxx 2008*

The Department of the Environment, in exercise of the powers conferred by Articles 13 and 63A of and paragraph 13(1) of Schedule 1A and 10 (1) of Schedule 1B to the Planning (Northern Ireland) Order 1991(a) makes the following Order:

**Citation, commencement and application**

**1.**—(1) This Order may be cited as the Planning (Review of Old Mineral Planning Permissions and Periodic Review of Mineral Planning Permissions) (Special Development) Order (Northern Ireland) 2008 and shall come into operation on xx xxxx 2008.

(2) This Order applies in relation to land which is the subject of a ROMP application.

**Interpretation**

**2.**—(1) In this Order “ROMP application” means —

- (a) an application to the Department under paragraph 9(1) of Schedule 1A (review of old mineral planning permissions) to the 1991 Order to determine the conditions to which planning permissions relating to a site are to be subject; or
- (b) an application to the Department under paragraph 7(1) of Schedule 1B (periodic review of mineral planning permissions) to the 1991 Order to determine the conditions to which the mineral permissions relating to a site are to be subject.

(2) In this Order “the 1991 Order” means the Planning (Northern Ireland) Order 1991.

**Review of old mineral planning permissions**

**3.** The notice to be served on a person submitting a ROMP application applying paragraph 13 of Schedule 1A to the 1991 Order to the application shall be in the form set out in Schedule 1.

**Periodic review of mineral planning permissions**

**4.** The notice to be served on a person submitting a ROMP application applying paragraph 10 of Schedule 1B to the 1991 Order to the application shall be in the form set out in Schedule 2.

Sealed with the Official Seal of the Department of the Environment on xx xxx 2008

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(a) S.I. 1991/1220(N.I.11); the relevant amendment is S.I. 2006/1252 (N.I.7)



XXX XXXXXX  
A senior officer of the  
Department of the Environment

## SCHEDULE 1

Article 3

Application No.

**Department of the Environment**  
**Review of Old Mineral Planning Permissions – Special Procedure for**  
**Major Applications**  
**Notice Under paragraph 13(1) of Schedule 1A to the Planning (Northern**  
**Ireland) Order 1991**

To: (Name and address of applicant)

Mineral Site to which the application relates:

TAKE NOTICE THAT the Department of the Environment, in exercise of its powers under paragraph 13(1) of Schedule 1A to the Planning (Northern Ireland) Order 1991, considers that the conditions which you propose the permission to which the application relates should be subject, would, if determined by the Department as being the conditions to which the planning permission is to be subject:

- \*(a) involve a substantial departure from the development plan for the area to which it relates;
- \*(b) be of significance to the whole or a substantial part of Northern Ireland; or
- \*(c) affect the whole of a neighbourhood.

The Department, therefore, by virtue of this notice, applies paragraph 13 of Schedule 1A to the Planning (Northern Ireland) Order 1991 to the said application.

Date: \_\_\_\_\_ Signed \_\_\_\_\_  
Authorised Officer

\*Delete as appropriate

Notes:

Paragraph 13 of Schedule 1A to the Planning (Northern Ireland) Order 1991 empowers the Department of the Environment to cause a public local inquiry to be held by the Planning Appeals Commission for the purpose of considering representations made in respect of applications for the review of old mineral permissions to which paragraph 13 of Schedule 1A has been applied. The Department is required to take (where a public local inquiry is held) the report of the Planning Appeals Commission into account in determining an application. The Department's decision on the application is final.

Where a public local inquiry is not held, the applicant is notified of the determination which the Department proposes to make on his application and the applicant may within a period specified in the notice (not being less than 28 days from the date of service of the notice) request an opportunity of appearing before and being heard by the Planning Appeals Commission. The Department is required to take into account the report of the Planning Appeals Commission in determining the application. The Department's decision on the application is final.

## SCHEDULE 2

Article 4

Application No.

**Department of the Environment  
Periodic Review of Mineral Planning Permissions  
Notice under Paragraph 10 (1) of Schedule 1B to the Planning (Northern  
Ireland) Order 1991**

To: (Name and address of applicant)

Mining Site in respect of which the application is made:

TAKE NOTICE THAT the Department of the Environment, in exercise of its powers under paragraph 10(1) of Schedule 1B to the Planning (Northern Ireland) Order 1991, considers that the conditions which you propose the mineral permission to which the application relates should be subject, would, if determined by the Department as being the conditions to which the permission is to be subject:

- \*(a) involve a substantial departure from the development plan for the area to which it relates;
- \*(b) be of significance to the whole or a substantial part of Northern Ireland; or
- \*(c) affect the whole of a neighbourhood.

The Department, therefore, by virtue of this notice, applies paragraph 10 of Schedule 1A to the Planning (Northern Ireland) Order 1991 to the said application.

Date: \_\_\_\_\_ Signed \_\_\_\_\_  
Authorised Officer

\*Delete as appropriate

Notes:

Paragraph 10 of Schedule 1B to the Planning (Northern Ireland) Order 1991 empowers the Department of the Environment to cause a public local inquiry to be held by the Planning Appeals Commission for the purpose of considering representations made in respect of applications for the periodic review of mineral planning permissions to which paragraph 10 of Schedule 1B has been applied. The Department is required to take (where a public local inquiry is held) the report of the Planning Appeals Commission into account in determining an application. The Department's decision on the application is final.

Where a public local inquiry is not held, the applicant is notified of the determination which the Department proposes to make on his application and the applicant may within a period specified in the notice (not being less than 28 days from the date of service of the notice) request an opportunity of appearing before and being heard by the Planning Appeals Commission. The Department is required to take into account the report of the Planning Appeals Commission in determining the application. The Department's decision on the application is final.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order prescribes the form of notice to be served by the Department under paragraph 13(1) of Schedule 1A to the Planning (Northern Ireland) Order 1991 on a person who has made an application to the Department under paragraph 9(1) of Schedule 1A (review of old mineral planning permissions) applying paragraph 13 (special procedure for major applications under paragraph 9) to that application. It also prescribes the form of notice to be served by the Department under paragraph 10(1) of Schedule 1B to the Planning (Northern Ireland) Order 1991 on a person who has made an application to the Department under paragraph 7(1) of Schedule 1B (periodic review of mineral planning permissions) applying paragraph 10 (special procedure for major applications under paragraph 7) to that application.

**DOE Section 75 Equality of Opportunity Screening Analysis Form**

**1. Brief description of policy/ legislation, including the title and all main aims and objectives**

Title: The application of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to the review of mineral permissions.

Aims: To ensure that EC Directive 85/337/EEC (as amended by 97/11/EC and 96/61/EC) on the assessment of the effects of certain public and private projects on the environment is applied to the review of mineral permissions so that their planning conditions can be considered afresh to take account of modern environmental standards.

**2. On whom the policies/legislation will impact? Please specify**

The application of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (1999/73) to the determination of applications under paragraph 9(1) of Schedule 1A and paragraph 7(1) of Schedule 1B of the Planning (Northern Ireland) Order 1991 (the 1991 Order) of operating conditions attached to old mineral permissions will apply equally to all quarry operators who have relevant planning permissions.

**3. Who is responsible for (a) devising and (b) delivering the policy, eg is it a DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?**

- (a) The Department of the Environment's Planning Service
- (b) The Department of the Environment's Planning Service

**4. What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?**

None

**5. What data is available to facilitate the screening of this policy/ legislation?**

No data is available to indicate what impact, if any, the policy/legislation would have on Section 75 groups. As the policy applies equally throughout Northern Ireland and seeks to ensure that all quarries operate to planning conditions that meet modern environmental standards, the Department considers that this could be beneficial to all Section 75 groups

**6. Is additional data required to facilitate screening?**

No

## Screening Analysis

7. **Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

**Please give details**

N/A

8. **Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X
Disability		X
Dependants		X

**Please give details**

N/A

9. **Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?**

	Yes	No
Religious belief		X
Political opinion		X
Racial group		X
Age		X
Marital status		X
Sexual orientation		X
Gender		X

Disability		X
Dependants		X

**Please give details of any consultations carried out, and any problems identified**

There have been no consultations with specific Section 75 groups. This proposed amendment to the legislation is being subjected to a general public consultation which will provide an opportunity for Section 75 groups to identify differential impacts (if any). In the absence of any quantitative evidence the Department's pragmatic view, informed by its understanding of the policy issues and subject matter, is that there is and will be no differential impact on any of the Section 75 groups.

- 10. Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?**

Yes                      No X

**Please give details**

N/A

- 11. It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below.**

N/A

- 12. Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.**

**Please give details**

The Department believes that the proposal to apply the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to the determination of applications for the review of operating conditions attached to old mineral permissions will apply equally to all Section 75 groups and that there is therefore no scope for changes that would promote better equality of opportunity or good relations.

**EQIA Recommendation**

- 13. Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation**

	<b>Significant</b>	<b>Moderate</b>	<b>Low Impact</b>
--	--------------------	-----------------	-------------------

<b>Prioritisation Factors</b>	<b>Impact</b>	<b>Impact</b>	
Social Need.			X
Effect on people's daily lives			X
Effect on economic, social and human rights			X
Strategic significance			X
Financial significance			X

**Please give details**

- 14. In view of the considerations in the Screening Analysis and EQIA Recommendation do you consider that this policy/legislation should be subject to a full EQIA?**

No. The Department does not anticipate that application of the Planning (Environmental Impact Assessment) Regulations (NI) 1999 to the review of old mineral permissions will have any differential impact upon Section 75 groups.

- 15. If an EQIA is considered necessary please comment on the priority and timing in light of the prioritisation factors in table 13.**

N/A

- 16. If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?**

N/A

### **Endorsement**

I can confirm that the proposed policy has been screened for equality of opportunity and good relations implications and has been screened out for equality impact assessment.

Signed:  |

**Agency/Division:** DOE Planning Service

**Date:** 06 March 2008

**Application of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to the review of operating conditions attached to old mineral permissions - Human Rights Act 1998**

1. The purpose of this Annex is to review the proposal to apply the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (1999/73), which implement Council Directive 85/337/EEC (as amended), to the determination of applications under paragraph 9(1) of Schedule 1A and paragraph 7(1) of Schedule 1B of the Planning (Northern Ireland) Order 1991 (the 1991 Order).

2. **Human Rights Assessment**

The Department considers that the proposals laid out in this consultation document are fully compliant with the Human Rights Act 1998.

## Preliminary Regulatory Impact Assessment

### The Planning (Environmental Impact Assessment) (Amendment No. X) Regulations (Northern Ireland) 2008

#### Proposal and Objective

1. The EIA Directive requires an Environmental Impact Assessment (EIA) where certain types of projects have significant environmental effects, before development consent can be granted. In the case of existing mineral permissions, development consent has already been given. However, in February 1999, the House of Lords ruled (in R v North Yorkshire County Council ex parte Brown and Cartwright) that the imposition of conditions by a mineral planning authority (MPA) in relation to development authorised by Interim Development Orders under section 22 of and Schedule 2 to the Planning and Compensation Act 1991 ("PCA 1991") was a development consent under the EIA Directive. The need for environmental impact assessment therefore had to be considered in accordance with the EIA Directive prior to the imposition of new operating conditions. A subsequent judgment in the High Court (R v Peak District National Park ex parte Bleaklow Industries Ltd) extended this to the review of old mineral permissions under Schedule 13 to the Environment Act 1995 ("EA 1995"). The need for EIA is similarly required to be addressed when determining applications for the periodic review of mineral permissions under Schedule 14 to the EA 1995.
2. The objective is therefore to apply EIA to the review of old mineral permissions in Northern Ireland. It is proposed to achieve this by applying the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (1999/73) (the EIA Regulations 1999) to the determination of applications under paragraph 9(1) of Schedule 1A and paragraph 7(1) of Schedule 1B of the Planning (Northern Ireland) Order 1991 ("the 1991 Order"). The determination of these applications entails a review of operating conditions attached to old mineral planning permissions.
3. This impact assessment should be read in conjunction with the regulatory impact assessment at [http://www.planningni.gov.uk/Corporate\\_Services/Consultation\\_Documents/DraftPlanningReform/ROMP.pdf](http://www.planningni.gov.uk/Corporate_Services/Consultation_Documents/DraftPlanningReform/ROMP.pdf) relating to the provisions in the 1991 Order.

#### Risk Assessment

4. Failure to apply EIA to the review of old mineral permissions (ROMPs) would, according to case law, be a breach of the EIA Directive likely to lead to infraction proceedings and, if not addressed, a referral to the European Court of Justice (ECJ). Potentially, fines could be imposed on the UK for which the NI Executive would be liable. The costs would be potentially significant if the ECJ were to impose punitive fines until such time as we could demonstrate compliance. There might also be legal challenges to individual decisions on ROMP applications which were not subject to EIA.

## Options

5. The options are:

- Option 1:** Do not commence the provisions in the Planning Reform (NI) Order 2006 providing for the review of old mineral permissions.
- Option 2:** Do not apply environmental impact assessment to the review of old mineral permissions.
- Option 3:** Apply the EIA Regulations 1999 in the determination of ROMP applications.

## 6. Benefits

Option 1: The provision for the review of old mineral permissions in the Planning Reform (NI) Order 2006 represents the will of the UK Parliament that mineral planning permissions are to be subject to initial and periodic review. That decision has already been made. Furthermore failure to commence those provisions would entail forgoing the benefits to the community and the environment flowing from the review of mineral planning permissions, including where appropriate the application of environmental assessment, to ensure that the conditions applying to such permission meet up to date environmental standards.

Option 2: Failure to apply EIA to the review of old mineral permissions when the relevant provisions in the Planning Reform (NI) Order 2006 are commenced will result in infraction proceedings (see paragraph 4), cause concern among communities where active quarries and mines are operating below current environmental requirements and cause possible and avoidable damage to the environment. It could also lead to inequality as people living in the vicinity of old quarries may be exposed to lower standards of amenity and environmental protection than those living close to sites subject to more recent planning permission.

Option 3: This option will provide benefits to mineral operators, the Department, the general public and the environment by:

- providing a framework for decision makers to consider the environmental aspects of the proposal in their entirety rather than through ad hoc arrangements over a number of years. This likely to be more effective and more economical.
- ensuring proper and equal assessment of all sites.
- Providing, through the Environmental Statement, information to interested parties and groups on the development, its environmental impacts, the alternatives

- and the mitigating measures that can be taken.
- contributing to sustainable development.
- providing equality of protection to people living in the vicinity of old mineral developments.

While the EIA process may take longer compared to a review process not informed by a full EIA, it is considered that this is outweighed by the long term environmental benefits from the systematic application of EIA where the Department is of the opinion that there are significant environmental impacts.

## 7. Costs

- Option 1: Not commencing the provisions in the Planning Reform (NI) Order 2006 relating to the review of old mineral permissions would remove the costs to the industry and the public sector of the ROMPs process and, indirectly EIA compliance. However, the UK Parliament has already decided by passing the legislation that such costs should be borne in the 'public interest'. Furthermore, the costs to the environment and the public interest that would be incurred under this option, while intangible, are likely to be significant. They are related to the continued operation of existing mineral sites and the potential restarting of development at dormant sites where the conditions attached to the planning permission do not meet modern environmental standards and there would be a continuing and potential detriment to the environment and the 'public interest'.
- Option 2: This option might, in part, in the absence of EIA, remove the detrimental costs associated with the continued operation of existing mineral sites and the potential restarting of development at dormant sites where the conditions attached to the planning permission do not meet modern environmental standards and there would be a continuing and potential detriment to the environment and the 'public interest'. Not applying environmental impact assessment to the review of old mineral permissions would also remove the costs of compliance with the EIA process from the industry – estimated in most cases to be in the order of £30K-£40K. However, the NI Region would eventually be subject to punitive fines imposed by the ECJ until such time as we could demonstrate compliance with the requirements of the EIA Directive. Decisions on ROMP applications would also be open to legal challenge thereby creating uncertainty for operators. Court action would generate considerable costs for all involved.
- Option 3: This option removes the costs that would be associated with punitive fines imposed by the ECJ and the detrimental costs associated with the continued operation of existing mineral sites and the potential restarting of development at dormant sites where the conditions attached to the planning permission

do not meet modern environmental standards and there would be a continuing and potential detriment to the environment and the 'public interest'. The costs to the industry and the public sector are those associated with compliance with the ROMPs and EIA process including the preparation of an Environmental Statement. The latter would not necessarily be a fully recurring cost as each time the conditions were up for review (every 15 years) the ES may be reviewed and updated.

8. **Equality**

A separate equality screening is attached at Annex 6. The Department does not consider that the proposal will have a differential impact on any Section 75 group.

9. **Health**

The Department does not consider that there are any health impacts from these proposals.

10. **Rural Considerations**

Data collated for a Regulatory Impact Assessment on the removal of industrial de-rating from the quarry industry in Northern Ireland illustrated the rural nature of the industry (Rating Policy Division, Department of Finance and Personnel 2003). The vast majority of the properties were identified as being located in rural areas. The application of environmental impact assessment applies equally to all quarries regardless of location, but the preponderance of properties in rural areas means that the benefits and costs discussed earlier impact more heavily in these areas.

11. **Small Firms' Impact Test (SFIT)**

Unless expressly provided for in the text of the legislation, there are no provisions in environmental regulations that enable small firms to operate to lower environmental standards than other businesses. The EIA Directive makes no such provision. Whether or not there is a requirement to carry out an environmental impact assessment before conditions can be determined to apply to an existing planning permission is determined solely by considering the likely significant effects that the development has/ will have on the environment, regardless of the size of the business that is proposing it. The derating RIA referred to above also analysed the structure of the firms that made up the industry. RIA guidelines issued by the Cabinet Office define small businesses as those with 50 employees or less and a turnover of £4.4 million or less. The Department of Finance and Personnel analysis concluded that, according to these criteria, the mining and quarrying sector would qualify as a small business sector as the employee average per rateable property is 13 and the average turnover per property is £1.5 million. While the Regulations will impact equally across the industry in Northern Ireland to the extent that an EIA is required, the cost of preparing an EIA could be proportionally greater for small and micro businesses and could be felt more acutely by quarries where profit margins are less. In the case of a ROMP

application being suspended there would be implications for jobs, customers, markets and investment and on the small/local business that may be dependent on the continued operation of the quarry. However, compliance by the operator with the requirements of the ROMPs and EIA process will remove this risk.

12. **Competition Assessment**

As no one firm or a number of smaller firms holds a dominant position the proposal would be unlikely to change the market structure.

13. **Enforcement, Sanctions and Monitoring**

Under Option 3 the main sanction will be the suspension of minerals development, excluding those provisions dealing with restoration and aftercare, where an applicant or appellant does not comply with the time periods for the provision of an environmental statement or additional information, until such time as the relevant EIA Regulations have been complied with.

14. **Consultation**

This preliminary RIA forms part of the public consultation process and comments are invited on it from all consultees.

15. **Recommendation**

Based on the forgoing, Option 3 is recommended as fully complying with the decision of the UK Parliament to review old mineral planning permissions and with the requirements of European and domestic law relating to EIA.

March 2008

**List of consultees**

Belfast Hills Partnership  
Belfast Solicitors Association  
Catholic Bishops of NI  
Civic Forum  
Civil Law Reform Division  
Community Relations Council  
Confederation of British Industry  
Council for Nature Conservation and the Countryside  
Development Planning Partnerships  
Derryhale Residents' Association  
Eastern Group Public Health Committee  
Environment and Planning Law Association of NI  
Equality Commission for NI  
Federation of Small Businesses  
Fisheries Conservancy Board for Northern Ireland  
Food Standards Agency NI  
Friends of the Earth  
Geological Survey of Northern Ireland  
Historic Buildings Council  
Historic Monuments Council  
HM Council of County Court Judges  
Human Rights Commission  
Inland Revenue  
Institute of Professional Legal Studies  
Laganside Courts  
Law Centre (NI)  
Ministry of Defence  
Mourne Heritage Trust  
Mournes Advisory Council  
NIC/ICTU  
North/South Ministerial Council  
Northern Group Systems (Environmental Health)  
Northern Ireland Assembly Environment Committee  
Northern Ireland Association of Citizens Advice Bureau  
Northern Ireland Chamber of Commerce and Industry  
Northern Ireland Chamber of Trade  
Northern Ireland Court Service  
Northern Ireland District Council Environmental Health Officers  
Northern Ireland District Councils  
Northern Ireland Judicial Appointments Commission  
Northern Ireland Law Commission  
Northern Ireland Local Government Association  
Northern Ireland MPs, MEPs, Political Parties and MLAs  
Northern Ireland Office  
Northern Ireland Quarry Owners Association  
Northern Ireland Quarry Products Association  
Northern Ireland Resident Magistrates' Association  
Participation & the Practice of Rights Project  
Planning Appeals Commission

POBAL

Queen's University, Belfast - School of Law

Royal Society for Protection of Birds

RTPI Irish Branch (Northern Section)

Rural Community Network

Rural Development Council for Northern Ireland

Society of Local Authority Chief Executives

Southern Group Public Health Committee

The Executive Council of the Inn of Court of NI

The General Consumer Council for NI

The Law Society of Northern Ireland

The NI Council for Voluntary Action

The Northern Ireland Ombudsman

Ulster Society for the Preservation of the Countryside

Ulster Wildlife Trust

University of Ulster

Western Group Environmental Health Committee

Wildfowl and Wetland Trust

Woodland Trust

World Wildlife Fund (NI)