

**Procedures for Hearings under the
Environmental Impact Assessment
Regulations**

Contents

	Paragraphs
Introduction	1 - 2
The Planning Appeals Commission	3 - 6
The Legislation	7
Organisation of the Hearing	8 - 9
Notification of Arrangements	10 - 11
Statements of Case	12 - 13
The Hearing - What happens	14 - 16
Observing the Hearing	17
Close of the Hearing	18 - 20
Role of the Department of the Environment after the Hearing	21
Complaints	22 - 24
Complaints to the Parliamentary Ombudsman for Northern Ireland	25
Appendix 1 - The Hearing Procedure - The Main Events	
Appendix 2 - Data Protection and Freedom of Information in the Planning and Water Appeals Commissions	

Introduction

- [1] Although this booklet is not an exact statement of the law, the information it contains will assist those taking part in Hearings under The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (the EIA Regulations).

The procedures set out below have been drawn up under Article 111(5) of the Planning (NI) Order 1991. There are based on the principles of openness, fairness and impartiality which the Commission practices. As there are no statutory rules for the conduct of Inquiries, this document sets out Commission procedures. All are required to follow these procedures and have a duty to act in a fair and reasonable way and to respect rulings by the Commission and/or Commissioner.

- [2] If you need help with a Hearing under the EIA Regulations you may wish to contact a professional adviser. Planning Aid Northern Ireland has been set up by the Royal Town Planning Institute for those who cannot afford professional advice and can be contacted at PO Box 69, Carrickfergus, Co Antrim BT38 8WX.

All information presented to the Commission will be processed in accordance with the Data Protection Act (see Appendix 2).

The Planning Appeals Commission

- [3] The Planning Appeals Commission (PAC) exists under the Planning (Northern Ireland) Order 1991. It is an independent body which, at the request of the Department of the Environment (DoE) conducts Hearings under the EIA Regulations. The PAC is not part of any Government Department.

The PAC report on a Hearing can be made by:

- (a) a single Commissioner reporting directly to the DoE, or
- (b) a panel of Commissioners, all appointed to conduct the Hearing reporting directly to the DoE; or
- (c) a panel of Commissioners, including the appointed Commissioner(s) and other Commissioners, considering the appointed Commissioner's report and then reporting to the DoE.

- [4] Members of the PAC are called Commissioners and they are public appointees. They have varied backgrounds and qualifications including town planning, architecture, environmental science and law. They make recommendations to the PAC or the DoE after studying written submissions from the parties involved and after conducting the Hearing.

- [5] The PAC aims to make recommendations in an efficient manner through the most effective procedures appropriate to each application. This requires the co-operation of all involved. The PAC is committed to ensuring that the Hearing

process is as user friendly as possible and involves the best possible use of resources.

- [6] Administrative staff are responsible for the day-to-day operation of the PAC's work. They are available to deal with enquiries about procedures but are unable to comment or advise on the merits of any case.

The Legislation

- [7] The EIA Regulations define "EIA development", an "Environmental Statement" and "Environmental Information".

How DoE processes planning applications and considers unauthorised development involving EIA development is set out in Development Control Advice Note 10: Environmental Impact Assessment (published by DoE). Developers or applicants for planning permission may request the DoE for Hearings before the Commission under the EIA Regulations if

- they disagree with a pre-application determination by DoE that a proposed development is EIA development [Regulation 6(10)(b)];
- they disagree with a determination by DoE that a planning application is for EIA development and that an Environmental Statement is required [Regulation 9(6)(b)].

Developers or applicants must serve written notice of their Hearing request on DoE within 4 weeks of the date of the DoE determination and should also inform the PAC in writing.

DoE may serve an Enforcement Notice about unauthorised development and a Notice (called a Regulation 22 Notice) that the unauthorised development is EIA development. If the recipient of the Notices appeals against the Enforcement Notice, he may also request DoE for a Hearing before the Commission about the Regulation 22 Notice.

The recipient of the Notices must serve written notice of the Hearing request on DoE within 4 weeks of the service of the Enforcement Notice and should also inform the PAC in writing.

For more information on appeals against Enforcement Notices, see Procedures for Enforcement Notice, Listed Building Enforcement Notice and Submission Notice appeals available on the Commission's website.

Organisation of the Hearing

- [8] The Hearing is organised by the PAC. The Chief Commissioner appoints a Commissioner or Commissioners to conduct the Hearing and decides the type of report. The Chief Commissioner will decide whether the PAC report shall be made by the Commissioner who conducts it or by a Panel of Commissioners, some or all of whom may be conducting the Hearing. If a Panel is appointed, the

Chief Commissioner will nominate a chairman who will have a casting vote. There are two types of report:-

- (a) a **full report** summarises the cases for the parties followed by the Commissioner's or the Panel's reasoning and recommendations; and
 - (b) a **short report** does not summarise the cases for the parties but sets out the Commissioner's or the Panel's reasoning and recommendations.
- [9] To ensure that large Hearings run efficiently, the PAC may organise a pre-Hearing meeting. Appendix 1 sets out the main events in organising the Hearing.

Notification of Arrangements

- [10] The PAC writes to the DoE, applicant and all who have made representations (objectors and supporters) informing them of:
- the time and place of the Hearing and any pre-Hearing meeting;
 - the arrangements for submission of Statements of Case;
 - procedures to be followed at the Hearing; and
 - as appropriate, the structure, topics and length of Statements of Case.
- [11] If PAC is aware of any third parties who may be interested in the EIA issue, they will be invited to participate in the Hearing.

Statements of Case

- [12] If you are taking part in the Hearing you must submit a Statement of Case by the date specified by PAC. The PAC will inform all participants in writing of the number of copies they must provide. All Statements of Case will be exchanged by PAC.

Your Statement of Case **must be confined to the EIA issue**, but must be a fully comprehensive document structured on a topic basis, consisting of **all** the points you wish to rely on, **all** the evidence to support your case (Including the evidence of all your witnesses), a list of documents referred to, and any relevant maps (A3 or A4 size only) and photographs. Appendices may be used for supporting information but argument must be confined to the main body of the statement. **The Statement of Case must be submitted on time.**

Parties, mainly the appellant and the DoE, should seek to agree facts and methodologies and identify areas of agreement and areas of dispute. These should be set out in the Statement of Case and evidence should concentrate on the matters in dispute.

Parties seeking to introduce new issues at the Hearing will have to persuade the Commissioners that they are relevant issues and that they could not have

been dealt with in the Statement of Case. The introduction of such late evidence is to be avoided as it could result in delays.

- [13] You should note, that unless the parties agree otherwise, Statements of Case will only be exchanged on a reciprocal basis. Therefore, if your Statement of Case is not available for exchange you may not receive copies of other parties' Statements of Case.

Ten working days before the Hearing all written submissions, Statements of Case and other documents submitted by the parties will be public documents and will be available for inspection at the PAC office.

The Hearing - What Happens

The Hearing is controlled by the presiding Commissioner who will apply the principles of openness, fairness and impartiality. The Commissioner follows accepted PAC practice and procedures though he/she may depart from these if he/she judges it appropriate. The Hearing will run smoothly if all co-operate with the Commissioner. All participants have a duty to act in a fair and reasonable way and to respect rulings by the Commissioner.

- [14] The Commissioner will direct when parties should speak or ask questions and any problems should be raised with him/her **in public** at an appropriate time during the Hearing. The Commissioner will ensure that all are given an opportunity to express their views and to ask and answer questions as appropriate.
- [15] Hearings will normally be conducted on a topic basis. The Commissioner may set out the order for topics in an agenda. The topics at the Hearing will follow either formal or informal procedures. This will be indicated by the presiding Commissioner. If **formal procedures** are being used for a topic, the order for presenting evidence is DOE, objectors, applicant/developer and finally supporters. If the **informal procedure** is being used for a topic the Commissioner will lead a round table discussion on each issue relating to the topic and will also give all parties an opportunity for formal questioning or submissions to address any matters not covered in the round table discussion.
- [16] Questioning of evidence assists the Commissioner in deciding what weight to give to that evidence. Witnesses should expect to have their evidence tested by opposing parties. It is most useful to the Commissioner when it tests the validity of facts, assumptions, opinions and conclusions and exposes any defects in the witnesses' statements. Don't raise issues through questioning which can be more clearly and concisely covered in direct evidence. Questions to a witness should be clear and brief and witnesses should not be interrupted when replying. If anyone wishes a witness to comment on a document they should give reasonable advance notice of the document and if a comment is requested on an extract from a document, the entire document should be produced at the Hearing. Persistent and repetitive questions seeking to change the mind of a witness should be avoided. All witnesses must answer the question and can be pressed about their evidence and expert witnesses should expect to face robust questioning. However bullying tactics are out of place and questioning should not be aggressive. Non-expert witnesses should be questioned sensitively.

While genuine wit and humour are not out of place, irrelevant asides and sarcasm are unhelpful and must be avoided.

The Commissioner takes an active role in investigating evidence relating to the issues raised and will generally ask questions throughout the proceedings.

Observing the Hearing

- [17] If you are not participating in the Hearing but just wish to observe you may do so. The Hearing is a public forum, all statements are made in public and all documents presented become public. The press attends occasionally and members of the public may attend as they wish. There is no 'live' coverage of sessions of the Hearing by radio or TV. Proceedings may be recorded only with the prior permission of the presiding Commissioner and copies of the recording must be provided for the PAC and all who request them.

If anyone wishes to attend the Hearing to observe or take part and has special needs such as a requirement for disabled access, they should contact the PAC at an early stage so that appropriate arrangements can be made.

Close of the Hearing

- [18] When all the evidence has been heard the Commissioner(s) will close the Hearing and will indicate when the report is expected to be delivered to the DoE.
- [19] The appointed Commissioner(s) will consider all the evidence presented by all of the parties on each issue, may visit the site and will prepare the Hearing report. A **full report** will concisely but comprehensively summarise the evidence presented and indicate the Commissioner's reasoned consideration of the issues and recommendation. A full report is always necessary when Commissioners other than presiding Commissioners are involved in deciding PAC recommendations to the DoE. A **short report** will not summarise the evidence presented but will indicate the Commissioner's reasoned consideration of the issues and recommendation.
- [20] If the recommendations and advice to the DoE are to be made by a Panel of Commissioners, the Panel may visit the site and surrounding area and decide collectively its recommendation to the DoE. The Panel may decide not to accept the advice of the reporting Commissioner(s). When this occurs the Panel's reasons for doing so will be set out in its report to the DoE, a separate document which is attached to the front of the appointed Commissioner's report. The reports of the PAC (Panel) and the Commissioner(s) are presented to the DoE. The PAC is required by the EIA Regulations to report to the DoE, and it is normal practice that neither the PAC report nor the Commissioner's report is released to the public at this stage. The PAC will, however, indicate on its website that it has presented its report to the DoE.

Role of the Department of the Environment after the Hearing

- [21] The DoE must take into account the PAC's report of the Hearing before it decides the issue but may not accept the PAC's recommendation. The Department will issue a decision and publish the PAC's report.

Complaints

- [22] A complaint is any expression of dissatisfaction, by anyone involved in the process, about the way the PAC handled the case. Complaints must be made within six months of the DoE's decision. A complaint should be made in writing to the Chief Administrative Officer of the PAC and will normally be acknowledged within 7 working days of receipt. Complaints raising issues with a bearing on the merits while a case is still being processed by the Commission will not be responded to until consideration has been completed. In the event of legal proceedings being initiated while a complaint is under consideration, the matter will be addressed through the legal process and not the complaints system.

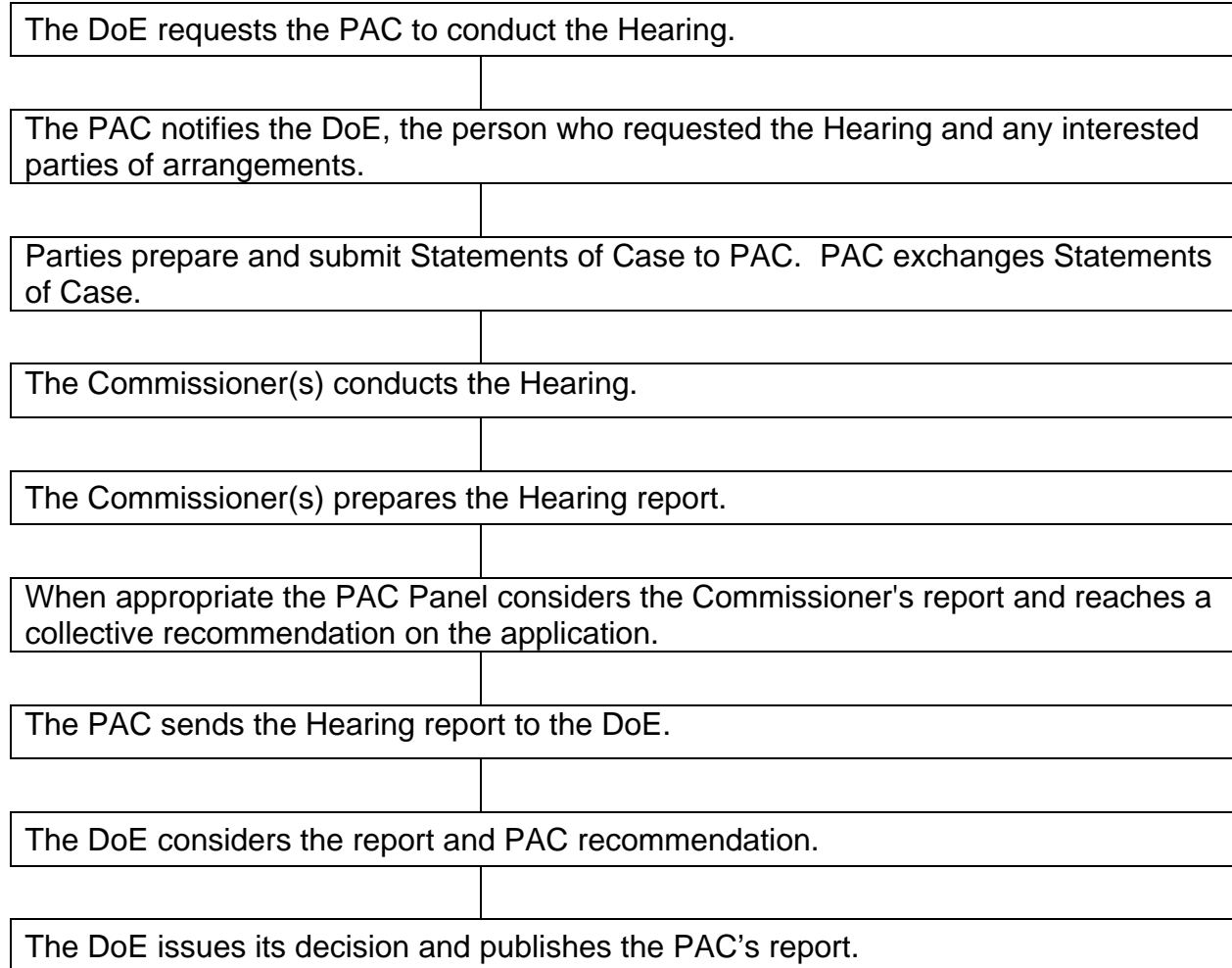
Apart from the circumstances set out above, complaints will be investigated and a full reply will normally be issued within four weeks. Where this is not possible a holding reply will be issued within the four weeks indicating when a full response will be made.

- [23] All complaints are investigated at management level by persons not directly involved in the matter giving rise to the complaint. Anyone dissatisfied with the written response to their complaint may request a meeting to discuss the matter. Complaint files are open for public inspection.
- [24] An independent Complaints Audit Panel, consisting of two members appointed respectively by the Royal Town Planning Institute and the Bar Council, reviews the operation of the Complaints System and presents a report to the Chief Commissioner which is available to the public.

Complaints to the Parliamentary Ombudsman for Northern Ireland

- [25] If you have a complaint about maladministration by any member of the PAC's administrative staff you can ask the Ombudsman to investigate the matter. The Ombudsman should be approached through an MLA or MP. The Ombudsman has no power to question the merits of the PAC's or the Commissioner's recommendation.

The Hearing Procedure - The Main Events



DATA PROTECTION AND FREEDOM OF INFORMATION IN THE PLANNING AND WATER APPEALS COMMISSIONS

The Data Protection Act regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. The Commissions are fully committed to complying with the Act.

When processing an appeal, representations about a major development under Article 31 of the Planning (NI) Order 1991 or objections to a draft development plan, the Commissions receive a range of personal information from a number of sources, which falls within the remit of the Data Protection Act. This includes:-

- the original application, together with any documents of support or objection;
- the appeal form, together with any other documents of support or objection.

The information received by the Commission varies but may include

- details of an individual's name, address and occupation;
- information about the health, personal or family circumstances of an individual; and
- an individual's opinions about an application or appeal.

This information is held and considered by the Commissions in accordance with the principles set out in the Data Protection Act.

It is only used by the Commissions for considering the appeal or objection. It is only retained as long as reasonably necessary, usually no longer than a year from the completion of the Commission's work. However, all appeal decisions must have clear reasons for the conclusions reached and it may be necessary to refer to an individual's personal or family circumstances in a decision. All decisions are published on the Commissions' website at www.pacni.gov.uk and retained indefinitely. In addition, the Department of the Environment must register all appeal decisions by the Planning Appeals Commission in the Planning Register.

The Commission is a tribunal and must operate openly, fairly and impartially. All documents on casework files can be viewed by any member of the public, under the Commissions' supervision.

An individual should therefore only provide personal information that he/she accepts will be available to the public. No-one should present personal information about other people (including family members) unless he/she has informed the person concerned and it has been agreed that the information could be provided to the Commission.

Under the Data Protection Act, an individual can request access to his/her personal information held by the Commission. Such requests should be in writing and sent to the address below. There is a charge of £10 for requests and the person making the request will also need to send proof of identity.

A request made under the Data Protection Act should include:-

- the specific information which is being sought;
- who you are and how you can be contacted;
- how you would like to receive the information.

Please also identify any accessibility requirements you may have and if you need to receive the information in a particular format, for example, large print, Braille etc.

You are entitled to a response to your request within 40 calendar days. It is in the Commissions' and your interests to hold accurate data. If the data is inaccurate, you can ask us to erase, amend or add to the information though you should note that personal or family circumstances referred to in an appeal decision cannot be changed. There will be no charge for this.

Any complaints about how the Commission dealt with requests about information, will be processed in accordance with the Commissions Complaints System which is published under Publications on Commissions website. These complaints will not be reviewed by the Complaints Audit Panel, see below.

If you remain dissatisfied with the Commission's response to your information request you may contact the Information Commissioner at

51 Adelaide Street
BELFAST BT2 8FE
Telephone number: (028) 9026-9380
Fax number: (028) 9026-9388
email address: ni@ico.gsi.gov.uk; or
website address: www.ico.gov.uk.

Requests for access to personal information should be sent to

The Chief Administrative Officer
Park House
87-91 Great Victoria Street
BELFAST BT2 7AG
Telephone number: (028) 9024-4710
Fax number: (028) 9031-1338
e-mail address: info@pacni.gov.uk
website address: www.pacni.gov.uk

The Commissions will review procedures regularly to ensure continued compliance with the Data Protection Act.

Freedom of Information Act - The Commissions are not identified as Public Authorities under the Act. The Environmental Information Regulations 2004 apply to any body that has public responsibilities relating to the environment, exercises functions of a public nature relating to the environment or provides public services relating to the environment. This could include the Commissions but the Regulations do not apply to the extent that the Commissions are acting in a judicial capacity. Nonetheless, as tribunals, which operate openly fairly and impartially, the Commissions seek to comply with the spirit of the Act and Regulations.

**Published by the Planning Appeals Commission
Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG**

**Tel: (028) 9024-4710
Fax: (028) 9031-2536**

**E-mail: info@pacni.gov.uk
Website: www.pacni.gov.uk**

June 2011