

**Statutory Instrument 1999 No. 293**

**The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999**

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STATUTORY INSTRUMENTS  
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1999 No. 293

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

Made	10th February 1999
Laid before Parliament	19th February 1999
Coming into force	14th March 1999

The Secretary of State for the Environment, Transport and the Regions, as respects England, and the Secretary of State for Wales, as respects Wales, being designated<sup>[1]</sup> Ministers for the purposes of section 2(2) of the European Communities Act 1972<sup>[2]</sup> in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred by that section and section 71A of the Town and Country Planning Act 1990<sup>[3]</sup> and of all other powers enabling them in that behalf, and having taken into account the selection criteria in Annex III to Council Directive 85/337/EEC<sup>[4]</sup> as amended by Council Directive 97/11/EC<sup>[5]</sup> hereby make the following Regulations: -

## **PART I**

### GENERAL

#### Citation, commencement and application

1. - (1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and shall come into force on 14th March 1999.

(2) Subject to paragraph (3), these Regulations shall apply throughout England and Wales.

(3) Paragraphs (2) and (5)(a) of regulation 14 shall not apply to the Isles of Scilly and, in relation to the Isles of Scilly, the reference in paragraph (6) of that regulation to paragraph (5) of that regulation shall be construed as a reference to paragraph (5)(b).

#### Interpretation

2. - (1) In these Regulations -

"the Act" means the Town and Country Planning Act 1990[6] and references to sections are references to sections of that Act;

"the consultation bodies" means -

(a) any body which the relevant planning authority is required to consult, or would, if an application for planning permission for the development in question were before them, be required to consult by virtue of article 10 (consultations before the grant of permission) of the Order or of any direction under that article; and

(b) the following bodies if not referred to in sub-paragraph (a) -

(i) any principal council for the area where the land is situated, if not the relevant planning authority;

(ii) where the land is situated in England, the Countryside Commission[7] and the Nature Conservancy Council for England[8];

(iii) where the land is situated in Wales, the Countryside Council for Wales[9]; and

(iv) the Environment Agency[10];

"the Directive" means Council Directive 85/337/EEC[11];

"EIA application" means an application for planning permission for EIA development;

"EIA development" means development which is either -

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

"environmental information" means the environmental statement, including any further information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development;

"environmental statement" means a statement -

(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

(b) that includes at least the information referred to in Part II of Schedule 4;

"exempt development" means development which comprises or forms part of a project serving national defence purposes or in respect of which the Secretary of State has made a direction under regulation 4(4);

"further information" has the meaning given in regulation 19(1);

"General Regulations" means the Town and Country Planning General Regulations 1992[12];

"inspector" means a person appointed by the Secretary of State pursuant to Schedule 6 to the Act[13] to determine an appeal;

"the land" means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

"the Order" means the Town and Country Planning (General Development Procedure) Order 1995[14];

"principal council" has the meaning given by sub-section (1) of section 270 (general provisions as to interpretation) of the Local Government Act 1972[15];

"register" means a register kept pursuant to section 69 (registers of applications etc.) and "appropriate register" means the register on which particulars of an application for planning permission for the relevant development have been placed or would fall to be placed if such an application were made;

"relevant planning authority" means the body to whom it falls, fell, or would, but for a direction under section 77[16] (reference of applications to Secretary of State), fall to determine an application for planning permission for the development in question;

"Schedule 1 application" and "Schedule 2 application" mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

"Schedule 1 development" means development, other than exempt development, of a description mentioned in Schedule 1;

"Schedule 2 development" means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 where -

(a) any part of that development is to be carried out in a sensitive area; or

(b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

"scoping direction" and "scoping opinion" have the meanings given in regulation 10;

"screening direction" means a direction made by the Secretary of State as to whether development is EIA development;

"screening opinion" means a written statement of the opinion of the relevant planning authority as to whether development is EIA development;

"sensitive area" means any of the following -

(a) land notified under sub-section (1) of section 28 (areas of special scientific interest) of the Wildlife and Countryside Act 1981[17];

(b) land to which sub-section (3) of section 29 (nature conservation orders) of the Wildlife and Countryside Act 1981 applies;

(c) an area to which paragraph (u)(ii) in the table in article 10 of the Order applies;

(d) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949[18];

(e) the Broads[19];

(f) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage[20];

(g) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979[21];

(h) an area of outstanding natural beauty designated as such by an order made by the Countryside Commission, as respects England, or the Countryside Council for Wales, as respects Wales, under section 87 (designation of areas of outstanding natural beauty) of the National Parks and Access to the Countryside Act 1949[22] as confirmed by the Secretary of State;

(i) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc.) Regulations 1994[23].

(2) Subject to paragraph (3), expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations any reference to a Council Directive is a reference to that Directive as amended at the date these Regulations were made.

(5) In these Regulations references to the Secretary of State shall not be construed as references to an inspector.

Prohibition on granting planning permission without consideration of environmental information

3. - (1) This regulation applies -

(a) to every EIA application received by the authority with whom it is lodged on or after the commencement of these Regulations; and

(b) to every EIA application lodged by an authority pursuant to regulation 3 or 4 (applications for planning permission) of the General Regulations on or after that date;

and for the purposes of this paragraph, the date of receipt of an application by an authority shall be determined in accordance with paragraph (3) of article 20 (time periods for decision) of the Order.

(2) The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

## **PART II**

### **SCREENING**

General provisions relating to screening

4. - (1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that development is EIA development.

(2) The events referred to in paragraph (1) are -

(a) the submission by the applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or

(b) the adoption by the relevant planning authority of a screening opinion to the effect that the development is EIA development.

(3) A direction of the Secretary of State shall determine for the purpose of these Regulations whether development is or is not EIA development.

(4) The Secretary of State may direct that particular proposed development is exempted from the application of these Regulations in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive) and shall send a copy of any such direction to the relevant planning authority.

(5) Where a local planning authority or the Secretary of State has to decide under these Regulations whether Schedule 2 development is EIA development the authority or Secretary of State shall take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.

(6) Where -

(a) a local planning authority adopt a screening opinion; or

(b) the Secretary of State makes a screening direction under these Regulations;

to the effect that development is EIA development -

(i) that opinion or direction shall be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and

(ii) the authority or the Secretary of State, as the case may be, shall send a copy of the opinion or direction and a copy of the written statement required by sub-paragraph (i) to the person who proposes to carry out, or who has carried out, the development in question.

(7) The Secretary of State may make a screening direction irrespective of whether he has received a request to do so.

(8) The Secretary of State may direct that particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of "Schedule 2 development" is satisfied in relation to that development.

(9) The Secretary of State shall send a copy of any screening direction to the relevant planning authority.

Requests for screening opinions of the local planning authority

5. - (1) A person who is minded to carry out development may request the relevant planning authority to adopt a screening opinion.

(2) A request for a screening opinion shall be accompanied by -

(a) a plan sufficient to identify the land;

(b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and

(c) such other information or representations as the person making the request may wish to provide or make.

(3) An authority receiving a request for a screening opinion shall, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.

(4) An authority shall adopt a screening opinion within three weeks beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request.

(5) An authority which adopts a screening opinion pursuant to paragraph (4) shall forthwith send a copy to the person who made the request.

(6) Where an authority -

(a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (4); or

(b) adopt an opinion to the effect that the development is EIA development;

the person who requested the opinion may request the Secretary of State to make a screening direction.

(7) The person may make a request pursuant to paragraph (6) even if the authority has not received additional information which is has sought under paragraph (3).

Requests for screening directions of the Secretary of State

6. - (1) A person who pursuant to regulation 5(6) requests the Secretary of State to make a screening direction shall submit with his request -

(a) a copy of his request to the relevant planning authority under regulation 5(1) and the documents which accompanied it;

(b) a copy of any notification under regulation 5(3) which he has received and of any response;

(c) a copy of any screening opinion he has received from the authority and of any accompanying statement of reasons; and

(d) any representations that he wishes to make.

(2) When a person makes a request pursuant to regulation 5(6) he shall send to the relevant planning authority a copy of that request and of any representations he makes to the Secretary of State.

(3) The Secretary of State shall, if he considers that he has not been provided with sufficient information to make a screening direction, notify in writing the person making the request pursuant to regulation 5(6) of the points on which he requires additional information, and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Secretary of State shall make a screening direction within three weeks beginning with the date of receipt of a request pursuant to regulation 5(6) or such longer period as he may reasonably require.

(5) The Secretary of State shall send a copy of any screening direction made pursuant to paragraph (4) forthwith to the person who made the request.

### **PART III**

#### **PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION**

Application made to a local planning authority without an environmental statement

7. - (1) Where it appears to the relevant planning authority that -

(a) an application for planning permission which is before them for determination is a Schedule 1 application or Schedule 2 application; and

(b) the development in question has not been the subject of a screening opinion or screening direction; and

(c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1).

(2) Where an EIA application which is before a local planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the authority shall notify the applicant in writing that the submission of an environmental statement is required.

(3) An authority shall notify the applicant in accordance with paragraph (2) within three weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing

with the applicant; but where the Secretary of State, after the expiry of that period of three weeks or of any longer period so agreed, makes a screening direction to the effect that the development is EIA development, the authority shall so notify the applicant within seven days beginning with the date the authority received a copy of that screening direction.

(4) An applicant receiving a notification pursuant to paragraph (2) may, within three weeks beginning with the date of the notification, write to the authority stating -

(a) that he accepts their view and is providing an environmental statement; or

(b) unless the Secretary of State has made a screening direction in respect of the development, that he is writing to the Secretary of State to request a screening direction.

(5) If the applicant does not write to the authority in accordance with paragraph (4), the permission sought shall, unless the Secretary of State has made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the relevant three week period, and the deemed refusal -

(a) shall be treated as a decision of the authority for the purposes of paragraph (4)(c) of article 25 (register of applications) of the Order; but

(b) shall not give rise to an appeal to the Secretary of State by virtue of section 78 (right to appeal against planning decisions and failure to take such decisions).

(6) An authority which has given a notification in accordance with paragraph (2) shall, unless the Secretary of State makes a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with regulation 14(5).

(7) A person who requests a screening direction pursuant to sub-paragraph (4)(b) shall send to the Secretary of State with his request copies of -

(a) his application for planning permission;

(b) all documents sent to the authority as part of the application; and

(c) all correspondence between the applicant and the authority relating to the proposed development, and paragraphs (2) to (5) of regulation 6 shall apply to a request under this regulation as they apply to a request made pursuant to regulation 5(6).

Application referred to the Secretary of State without an environmental statement

8. - (1) Where it appears to the Secretary of State that an application for planning permission which has been referred to him for determination -

(a) is a Schedule 1 application or Schedule 2 application; and

(b) the development in question has not been the subject of a screening opinion or screening direction; and

(c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the referral of the application were a request made by the applicant pursuant to regulation 5(6).



(2) Where it appears to the Secretary of State that an application which has been referred to him for determination is an EIA application and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, he shall notify the applicant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(3) The Secretary of State shall notify the applicant in accordance with paragraph (2) within three weeks beginning with the date he received the application or such longer period as he may reasonably require.

(4) An applicant who receives a notification under paragraph (2) may within three weeks beginning with the date of the notification write to the Secretary of State stating that he proposes to provide an environmental statement.

(5) If the applicant does not write in accordance with paragraph (4), the Secretary of State shall be under no duty to deal with the application; and at the end of the three week period he shall inform the applicant in writing that no further action is being taken on the application.

(6) Where the Secretary of State has given a notification under paragraph (2), he shall determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with regulation 14(5).

Appeal to the Secretary of State without an environmental statement

9. - (1) Where on consideration of an appeal under section 78 (right to appeal against planning decisions and failure to take such decisions) it appears to the Secretary of State that -

(a) the relevant application is a Schedule 1 application or Schedule 2 application; and

(b) the development in question has not been the subject of a screening opinion or screening direction; and

(c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the appeal were a request made by the appellant pursuant to regulation 5(6).

(2) Where an inspector is dealing with an appeal and a question arises as to whether the relevant application is an EIA application and it appears to the inspector that it may be such an application, the inspector shall refer that question to the Secretary of State and shall not determine the appeal, except by refusing planning permission, before he receives a screening direction.

(3) Paragraphs (3) and (4) of regulation 6 shall apply to a question referred under paragraph (2) as if the referral of that question were a request made by the appellant pursuant to regulation 5(6).

(4) Where it appears to the Secretary of State that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, he shall notify the appellant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(5) An appellant who receives a notification under paragraph (4) may within three weeks beginning with the date of the notification write to the Secretary of State stating that he proposes to provide an environmental statement.

(6) If the appellant does not write in accordance with paragraph (5), the Secretary of State or, where relevant, the inspector shall be under no duty to deal with the appeal; and at the end of the three week period he shall inform the appellant that no further action is being taken on the appeal.

(7) Where the Secretary of State has given a notification under paragraph (4), the Secretary of State or, where relevant, the inspector shall determine the appeal only by refusing planning permission if the appellant does not submit an environmental statement and comply with regulation 14(5).

## **PART IV**

### **PREPARATION OF ENVIRONMENTAL STATEMENTS**

Scoping opinions of the local planning authority

10. - (1) A person who is minded to make an EIA application may ask the relevant planning authority to state in writing their opinion as to the information to be provided in the environmental statement (a "scoping opinion").

(2) A request under paragraph (1) shall include -

(a) a plan sufficient to identify the land;

(b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and

(c) such other information or representations as the person making the request may wish to provide or make.

(3) An authority receiving a request under paragraph (1) shall, if they consider that they have not been provided with sufficient information to adopt a scoping opinion, notify the person making the request of the points on which they require additional information.

(4) An authority shall not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the person who made the request and the consultation bodies, but shall, subject to paragraph (5), within five weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(5) Where a person has, at the same time as making a request for a screening opinion under regulation 5(1), asked the authority for an opinion under paragraph (1) above, and the authority have adopted a screening opinion to the effect that the development is EIA development, the authority shall, within five weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(6) Before adopting a scoping opinion the authority shall take into account -

(a) the specific characteristics of the particular development;

(b) the specific characteristics of development of the type concerned; and

(c) the environmental features likely to be affected by the development.

(7) Where an authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (4) or (5), the person who requested the opinion may under regulation 11(1) ask the Secretary of State to make a direction as to the information to be provided in the environmental statement (a "scoping direction").

(8) Paragraph (7) applies notwithstanding that the authority may not have received additional information which they have sought under paragraph (3).

(9) An authority which has adopted a scoping opinion in response to a request under paragraph (1) shall not be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission for the same development as was referred to in the request.

Scoping directions of the Secretary of State

11. - (1) A request made under this paragraph pursuant to regulation 10(7) shall include -

- (a) a copy of the relevant request to the relevant planning authority under regulation 10(1);
- (b) a copy of any relevant notification under regulation 10(3) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(2) When a person makes a request under paragraph (1) he shall send to the relevant planning authority a copy of that request, but that copy need not include the matters mentioned in subparagraphs (a) to (c) of that paragraph.

(3) The Secretary of State shall notify in writing the person making the request of any points on which he considers the information provided pursuant to paragraph (1) is insufficient to enable him to make a scoping direction; and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Secretary of State shall not make a scoping direction in response to a request under paragraph (1) until he has consulted the person making the request and the consultation bodies, but shall, within five weeks beginning with the date of receipt of that request or such longer period as he may reasonably require, make a direction and send a copy to the person who made the request and to the relevant planning authority.

(5) Before making a scoping direction the Secretary of State shall take into account the matters specified in regulation 10(6).

(6) Where the Secretary of State has made a scoping direction in response to a request under paragraph (1) neither he nor the relevant planning authority shall be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission for the same development as was referred to in the request.

Procedure to facilitate preparation of environmental statements

12. - (1) Any person who intends to submit an environmental statement to the relevant planning authority or the Secretary of State under these Regulations may give notice in writing to that authority or the Secretary of State under this paragraph.

(2) A notice under paragraph (1) shall include the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving the notice proposes to refer in his environmental statement.

(3) The recipient of -

(a) such notice as is mentioned in paragraph (1); or

(b) a written statement made pursuant to regulation 7(4)(a), or 8(4) or 9(5)

shall -

(i) notify the consultation bodies in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies by paragraph (4) to make information available to that person; and

(ii) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), the relevant planning authority and any body notified in accordance with paragraph (3) shall, if requested by the person who intends to submit an environmental statement enter into consultation with that person to determine whether the body has in its possession any information which he or they consider relevant to the preparation of the environmental statement and, if they have, the body shall make that information available to that person.

(5) Paragraph (4) shall not require the disclosure of information which is capable of being treated as confidential, or must be so treated, under regulation 4 of the Environmental Information Regulations 1992[24].

(6) A reasonable charge reflecting the cost of making the relevant information available may be made by a body, including the relevant planning authority, which makes information available in accordance with paragraph (4).

## **PART V**

### **PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL STATEMENTS**

Procedure where an environmental statement is submitted to a local planning authority

13. - (1) When an applicant making an EIA application submits to the relevant planning authority a statement which he refers to as an environmental statement for the purposes of these Regulations he shall provide the authority with three additional copies of the statement for transmission to the Secretary of State and, if at the same time he serves a copy of the statement on any other body, he shall -

(a) serve with it a copy of the application and any plan submitted with the application (unless he has already served these documents on the body in question);

(b) inform the body that representations may be made to the relevant planning authority; and

(c) inform the authority of the name of every body whom he has so served and of the date of service.

(2) When a relevant planning authority receive in connection with an EIA application such a statement as is first mentioned in paragraph (1) the authority shall -

(a) send to the Secretary of State, within 14 days of receipt of the statement, three copies of the statement and a copy of the relevant application and of any documents submitted with the application;

(b) inform the applicant of the number of copies required to enable the authority to comply with sub-paragraph (c) below; and

(c) forward to any consultation body which has not received a copy direct from the applicant a copy of the statement and inform any such consultation body that they may make representations.

(3) The applicant shall send the copies required for the purposes of paragraph (2)(c) to the relevant planning authority.

(4) The relevant planning authority shall not determine the application until the expiry of 14 days from the last date on which a copy of the statement was served in accordance with this regulation.

Publicity where an environmental statement is submitted after the planning application

14. - (1) Where an application for planning permission has been made without a statement which the applicant refers to as an environmental statement for the purposes of these Regulations and the applicant proposes to submit such a statement, he shall, before submitting it, comply with paragraphs (2) to (4).

(2) The applicant shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating -

(a) his name and that he is the applicant for planning permission and the name and address of the relevant planning authority;

(b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State for determination or is the subject of an appeal to him;

(c) the address or location and the nature of the proposed development;

(d) that a copy of the application and of any plan and other documents submitted with it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;

(e) an address in the locality in which the land is situated at which those documents may be inspected, and the latest date on which they will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);

(f) an address (whether or not the same as that given under sub-paragraph (e)) in the locality in which the land is situated at which copies of the statement may be obtained;

(g) that copies may be obtained there so long as stocks last;

(h) if a charge is to be made for a copy, the amount of the charge;

(i) that any person wishing to make representations about the application should make them in writing, before the date named in accordance with sub-paragraph (e), to the relevant planning authority or (in the case of an application referred to the Secretary of State or an appeal) to the Secretary of State; and

(j) in the case of an application referred to the Secretary of State or an appeal, the address to which representations should be sent.

(3) The applicant shall, unless he has not, and was not reasonably able to acquire, such rights as would enable him to do so, post on the land a notice containing the information specified in paragraph (2), except that the date named as the latest date on which the documents will be available for inspection shall be not less than 21 days later than the date on which the notice is first posted.

(4) The notice mentioned in paragraph (3) must -

(a) be left in position for not less than seven days in the 28 days immediately preceding the date of the submission of the statement; and

(b) be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land.

(5) The statement, when submitted, shall be accompanied by -

(a) a copy of the notice mentioned in paragraph (2) certified by or on behalf of the applicant as having been published in a named newspaper on a date specified in the certificate; and

(b) a certificate by or on behalf of the applicant which states either -

(i) that he has posted a notice on the land in compliance with this regulation and when he did so, and that the notice was left in position for not less than seven days in the 28 days immediately preceding the date of the submission of the statement, or that, without any fault or intention on his part, it was removed, obscured or defaced before seven days had elapsed and he took reasonable steps for its protection or replacement, specifying the steps taken; or

(ii) that the applicant was unable to comply with paragraphs (3) and (4) above because he did not have the necessary rights to do so; that he has taken such reasonable steps as are open to him to acquire those rights; and has been unable to do so, specifying the steps taken.

(6) Where an applicant indicates that he proposes to provide such a statement and in such circumstances as are mentioned in paragraph (1), the relevant planning authority, the Secretary of State or the inspector, as the case may be, shall (unless disposed to refuse the permission sought) suspend consideration of the application or appeal until receipt of the statement and the other documents mentioned in paragraph (5); and shall not determine it during the period of 21 days beginning with the date of receipt of the statement and the other documents so mentioned.

(7) If any person issues a certificate which purports to comply with the requirements of paragraph (5)(b) and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Where it is proposed to submit an environmental statement in connection with an appeal, this regulation applies with the substitution, except in paragraph (2)(a), of references to the appellant for references to the applicant.

Provision of copies of environmental statements and further information for the Secretary of State on referral or appeal

15. Where an applicant for planning permission has submitted to the relevant planning authority in connection with his application a statement which he refers to as an environmental statement for the purposes of these Regulations, or further information, and -

(a) the application is referred to the Secretary of State under section 77 (reference of applications to Secretary of State); or

(b) the applicant appeals under section 78 (right to appeal against planning decisions and failure to take such decisions),

the applicant shall supply the Secretary of State with three copies of the statement and, where relevant, the further information unless, in the case of a referred application, the relevant planning authority have done so when referring the application to him.

Procedure where an environmental statement is submitted to the Secretary of State

16. - (1) This regulation applies where an applicant submits to the Secretary of State, in relation to an EIA application which is before the Secretary of State or an inspector for determination or is the subject of an appeal to the Secretary of State, a statement which the applicant or appellant refers to as an environmental statement for the purposes of these Regulations.

(2) The applicant or appellant shall submit four copies of the statement to the Secretary of State who shall send one copy to the relevant planning authority.

(3) If at the same time as he submits a statement to the Secretary of State the applicant or appellant serves a copy of it on any other body, he shall comply with regulations 13(1)(a) and 13(1)(b) as if the reference in regulation 13(1)(b) to the relevant planning authority were a reference to the Secretary of State, and inform the Secretary of State of the matters mentioned in regulation 13(1)(c).

(4) The Secretary of State shall comply with regulation 13(2) (except sub-paragraph (a) of that regulation) and the applicant or appellant with regulation 13(3) as if -

(a) references in those provisions to the relevant planning authority were references to the Secretary of State; and,

(b) in the case of an appeal, references to the applicant were references to the appellant;

and the Secretary of State or the inspector shall comply with regulation 13(4) as if it referred to him instead of to the relevant planning authority.

Availability of copies of environmental statements

17. An applicant for planning permission or an appellant who submits in connection with his application or appeal a statement which he refers to as an environmental statement for the purposes of these Regulations shall ensure that a reasonable number of copies of the statement are available at the address named in the notices published or posted pursuant to article 8 of the Order or regulation 14 as the address at which such copies may be obtained.

Charges for copies of environmental statements

18. A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement made available in accordance with regulation 17.

Further information and evidence respecting environmental statements

19. - (1) Where the relevant planning authority, the Secretary of State or an inspector is dealing with an application or appeal in relation to which the applicant or appellant has submitted a statement

which he refers to as an environmental statement for the purposes of these Regulations, and is of the opinion that the statement should contain additional information in order to be an environmental statement, they or he shall notify the applicant or appellant in writing accordingly, and the applicant or appellant shall provide that additional information; and such information provided by the applicant or appellant is referred to in these Regulations as "further information".

(2) Paragraphs (3) to (9) shall apply in relation to further information, except in so far as the further information is provided for the purposes of an inquiry held under the Act and the request for that information made pursuant to paragraph (1) stated that it was to be provided for such purposes.

(3) The recipient of further information pursuant to paragraph (1) shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating -

(a) the name of the applicant for planning permission or the appellant (as the case may be) and the name and address of the relevant planning authority;

(b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State for determination or is the subject of an appeal to him;

(c) the address or location and the nature of the proposed development;

(d) that further information is available in relation to an environmental statement which has already been provided;

(e) that a copy of the further information may be inspected by members of the public at all reasonable hours;

(f) an address in the locality in which the land is situated at which the further information may be inspected and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);

(g) an address (whether or not the same as that given pursuant to sub-paragraph (f)) in the locality in which the land is situated at which copies of the further information may be obtained;

(h) that copies may be obtained there so long as stocks last;

(i) if a charge is to be made for a copy, the amount of the charge;

(j) that any person wishing to make representations about the further information should make them in writing, before the date specified in accordance with sub-paragraph (f), to the relevant planning authority, the Secretary of State or the inspector (as the case may be); and

(k) the address to which representations should be sent.

(4) The recipient of the further information shall send a copy of it to each person to whom, in accordance with these Regulations, the statement to which it relates was sent.

(5) Where the recipient of the further information is the relevant planning authority they shall send to the Secretary of State three copies of the further information.

(6) The recipient of the further information may by notice in writing require the applicant or appellant to provide such number of copies of the further information as is specified in the notice (being the number required for the purposes of paragraph (4) or (5)).



(7) Where information is requested under paragraph (1), the relevant planning authority, the Secretary of State or the inspector, as the case may be, shall suspend determination of the application or appeal, and shall not determine it before the expiry of 14 days after the date on which the further information was sent to all persons to whom the statement to which it relates was sent or the expiry of 21 days after the date that notice of it was published in a local newspaper, whichever is the later.

(8) The applicant or appellant who provides further information in accordance with paragraph (1) shall ensure that a reasonable number of copies of the information is available at the address named in the notice published pursuant to paragraph (3) as the address at which such copies may be obtained.

(9) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the further information made available in accordance with paragraph (8).

(10) The relevant planning authority or the Secretary of State or an inspector may in writing require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in his environmental statement.

## **PART VI**

### AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

Availability of opinions, directions etc. for inspection

20. - (1) Where particulars of a planning application are placed on Part I of the register, the relevant planning authority shall take steps to secure that there is also placed on that Part a copy of any relevant -

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) scoping direction;
- (e) notification given under regulation 7(2), 8(2) or 9(4);
- (f) direction under regulation 4(4);
- (g) environmental statement, including any further information;
- (h) statement of reasons accompanying any of the above.

(2) Where the relevant planning authority adopt a screening opinion or scoping opinion, or receive a request under regulation 10(1) or 11(2), a copy of a screening direction, scoping direction, or direction under regulation 4(4) before an application is made for planning permission for the development in question, the authority shall take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept. Copies of those documents shall remain so available for a period of two years.

Duties to inform the public and the Secretary of State of final decisions

21. - (1) Where an EIA application is determined by a local planning authority, the authority shall -

- (a) in writing, inform the Secretary of State of the decision;
- (b) inform the public of the decision, by publishing a notice in a newspaper circulating in the locality in which the land is situated, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing -
  - (i) the content of the decision and any conditions attached thereto;
  - (ii) the main reasons and considerations on which the decision is based; and
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

(2) Where an EIA application is determined by the Secretary of State or an inspector, the Secretary of State shall -

- (a) notify the relevant planning authority of the decision; and
- (b) provide the authority with such a statement as is mentioned in sub-paragraph (1)(c).

(3) The relevant planning authority shall, as soon as reasonably practicable after receipt of a notification under sub-paragraph (2)(a), comply with sub-paragraphs (b) and (c) of paragraph (1) in relation to the decision so notified as if it were a decision of the authority.

## **PART VII**

### **SPECIAL CASES**

Development by a local planning authority

22. - (1) Where the relevant planning authority is also (or would be) the applicant (whether alone or jointly with any other person), these Regulations shall apply to a Schedule 1 application or Schedule 2 application (or proposed application) subject to the following modifications -

- (a) subject to sub-paragraph (b) of this paragraph and to paragraphs (2) and (3) below, regulations 5 and 6 shall not apply;
- (b) paragraphs (2) to (7) of regulation 7 shall not apply, and paragraph 7(1) shall apply as if the reference to paragraph (3) of regulation 5 were omitted;
- (c) regulations 10 and 11 shall not apply;
- (d) paragraphs (1) to (3) of regulation 12 shall not apply, and regulation 12(4) shall apply to any consultation body from whom the relevant planning authority requests assistance as it applies to a body notified in accordance with regulation 12(3);
- (e) save for the purposes of regulations 16(3) and (4), regulation 13 shall apply as if -
  - (i) for paragraph (1), there were substituted;

" (1) When a relevant planning authority making an EIA application lodge a statement which they refer to as an environmental statement for the purposes of these Regulations, they shall -

(a) serve a copy of that statement, the relevant application and any plan submitted with it on each consultation body;

(b) inform each consultation body that representations may be made to the relevant planning authority; and

(c) send to the Secretary of State within 14 days of lodging the statement three copies of the statement and a copy of the relevant application and of any documents submitted with the application."

(ii) paragraphs (2) and (3) were omitted;

(f) regulation 16 shall apply as if paragraph (2) were omitted.

(2) An authority which is minded to make a planning application in relation to which it would be the relevant planning authority may adopt a screening opinion or request the Secretary of State in writing to make a screening direction, and paragraphs (3) and (4) of regulation 6 shall apply to such a request as they apply to a request made pursuant to regulation 5(6).

(3) A relevant planning authority which proposes to carry out development which they consider may be -

(a) development of a description specified in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995[25] other than development of a description specified in article 3(12) of that Order; or

(b) development for which permission would be granted but for regulation 23(1),

may adopt a screening opinion or request the Secretary of State to make a screening direction, and paragraphs (3) and (4) of regulation 6 shall apply to such a request as they apply to a request made pursuant to regulation 5(6).

(4) A request under paragraph (2) or (3) shall be accompanied by -

(a) a plan sufficient to identify the land;

(b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and

(c) such other information or representations as the authority may wish to provide or make.

(5) An authority making a request under paragraph (2) or (3) shall send to the Secretary of State any additional information he may request in writing to enable him to make a direction.

Restriction of grant of permission by old simplified planning zone schemes or enterprise zone orders  
23. - (1) Any:

(a) adoption or approval of a simplified planning zone scheme[26];

(b) order designating an enterprise zone[27]; or

(c) approval of a modified scheme in relation to an enterprise zone,

which has effect immediately before the commencement of these Regulations to grant planning permission shall, on and after that date, cease to have effect to grant planning permission for Schedule

1 development, and cease to have effect to grant planning permission for Schedule 2 development unless either:

- (i) the relevant planning authority has adopted a screening opinion; or
- (ii) the Secretary of State has made a screening direction,

to the effect that the particular proposed development is not EIA development.

(2) Paragraph (1) shall not affect the completion of any development begun before the commencement of these Regulations.

Restriction of grant of permission by new simplified planning zone schemes or enterprise zone orders  
24. - No:

- (a) adoption or approval of a simplified planning zone scheme;
- (b) order designating an enterprise zone made; or
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations shall:

- (i) grant planning permission for EIA development; or
- (ii) grant planning permission for Schedule 2 development unless that grant is made subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

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**Unauthorised development**

25. - Prohibition on the grant of planning permission for unauthorised EIA development  
(1) The Secretary of State shall not grant planning permission under sub-section (1) of section 177 (grant or modification of planning permission on appeals against enforcement notices) in respect of EIA development which is the subject of an enforcement notice under section 172[28] (issue of enforcement notice) ("unauthorised EIA development") unless he has first taken the environmental information into consideration, and he shall state in his decision that he has done so.

**Screening opinions of the local planning authority**

(2) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development they shall, before the enforcement notice is issued, adopt a screening opinion.

(3) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they shall serve with a copy of the enforcement notice a notice ("regulation 25 notice") which shall -

- (a) include the screening opinion required by paragraph (2) and the written statement required by regulation 4(6); and

(b) require a person who gives notice of an appeal under section 174[29] to submit to the Secretary of State with the notice four copies of an environmental statement relating to that EIA development.

(4) The authority by whom a regulation 25 notice has been served shall send a copy of it to -

(a) the Secretary of State; and

(b) the consultation bodies.

(5) Where an authority provide the Secretary of State with a copy of a regulation 25 notice they shall also provide him with a list of the other persons to whom a copy of the notice has been or is to be sent.

Screening directions of the Secretary of State

(6) Any person on whom a regulation 25 notice is served may apply to the Secretary of State for a screening direction and the following shall apply -

(a) an application under this paragraph shall be accompanied by -

(i) a copy of the regulation 25 notice;

(ii) a copy of the enforcement notice which accompanied it; and

(iii) such other information or representations as the applicant may wish to provide or make;

(b) the applicant shall send to the authority by whom the regulation 25 notice was served, at such time as he applies to the Secretary of State, a copy of the application under this paragraph and of any information or representations provided or made in accordance with sub-paragraph (a)(iii);

(c) if the Secretary of State considers that the information provided in accordance with sub-paragraph (a) is insufficient to enable him to make a direction, he shall notify the applicant and the authority of the matters in respect of which he requires additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice;

(d) the Secretary of State shall send a copy of his direction to the applicant;

(e) without prejudice to sub-paragraph (d), where the Secretary of State directs that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, he shall send a copy of the direction to every person to whom a copy of the regulation 25 notice was sent.

Provision of information

(7) The relevant planning authority and any person, other than the Secretary of State, to whom a copy of the regulation 25 notice has been sent ("the consultee") shall, if requested by the person on whom the regulation 25 notice was served, enter into consultation with that person to determine whether the consultee has in his possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to that person.

(8) The provisions of regulations 12(5) and 12(6) shall apply to information under paragraph (7) as they apply to any information falling within regulation 12(4).

Appeal to the Secretary of State without a screening opinion or screening direction

(9) Where on consideration of an appeal under section 174 it appears to the Secretary of State that the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development and, in either case, no screening opinion has been adopted and no screening direction has been made in respect of that development, the Secretary of State shall, before any notice is served pursuant to paragraph (12), make such a screening direction.

(10) If the Secretary of State considers that he has not been provided with sufficient information to make a screening direction he shall notify the applicant and the authority by whom the regulation 25 notice was served of the matters in respect of which he requires additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice.

(11) If an appellant to whom notice has been given under paragraph (10) fails to comply with the requirements of that notice:

(a) the application which is deemed to have been made by virtue of the appeal made under section 174 ("the deemed application"); and

(b) the appeal in so far as it is brought under the ground mentioned in section 174(2)(a) ("the ground (a) appeal"),

shall lapse at the end of the period specified in the notice.

Appeal to the Secretary of State without an environmental statement

(12) Where the Secretary of State is considering an appeal under section 174 and the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development, and the documents submitted to him for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, the following procedure shall apply -

(a) the Secretary of State shall, subject to sub-paragraph (b), within the period of three weeks beginning with the day on which he receives the appeal, or such longer period as he may reasonably require, notify the appellant in writing of the requirements of sub-paragraph (c) below;

(b) notice need not be given under sub-paragraph (a) where the appellant has submitted a statement which he refers to as an environmental statement for the purposes of these Regulations to the Secretary of State for the purposes of an appeal under section 78 (right to appeal against planning decisions and failure to take such decisions) which -

(i) relates to the development to which the appeal under section 174 relates; and

(ii) is to be determined at the same time as that appeal under section 174;

and that statement, any further information, and the representations (if any) made in relation to it shall be treated as the environmental statement and representations for the purpose of paragraph (1) of this regulation;

(c) the requirements of this sub-paragraph are that the appellant shall, within the period specified in the notice or such longer period as the Secretary of State may allow, submit to the Secretary of State four copies of an environmental statement relating to the unauthorised EIA development in question;

(d) the Secretary of State shall send to the relevant planning authority a copy of any notice sent to the appellant under sub-paragraph (a);

(e) if an appellant to whom notice has been given under sub-paragraph (a) fails to comply with the requirements of sub-paragraph (c), the deemed application and the ground (a) appeal (if any) shall lapse at the end of the period specified or allowed (as the case may be);

(f) as soon as reasonably practicable after the occurrence of the event mentioned in sub-paragraph (e), the Secretary of State shall notify the appellant and the local planning authority in writing that the deemed application and the ground (a) appeal (if any) have lapsed.

#### Procedure where an environmental statement is submitted to the Secretary of State

(13) Where the Secretary of State receives (otherwise than as mentioned in paragraph (12)(b)) in connection with an enforcement appeal a statement which the appellant refers to as an environmental statement for the purposes of these Regulations he shall -

(a) send a copy of that statement to the relevant planning authority, advise the authority that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations; and

(b) notify the persons to whom a copy of the relevant regulation 25 notice was sent that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations and that, if they wish to receive a copy of the statement or any part of it, they must notify the Secretary of State of their requirements within seven days of the receipt of the Secretary of State's notice; and

(c) respond to requirements notified in accordance with sub-paragraph (b) by providing a copy of the statement or of the part requested (as the case may be).

#### Further information and evidence respecting environmental statements

(14) Regulations 19(1) and 19(10) shall apply to statements provided in accordance with this regulation with the following modifications -

(a) where the Secretary of State notifies the appellant under regulation 19(1), the appellant shall provide the further information within such period as the Secretary of State may specify in the notice or such longer period as the Secretary of State may allow;

(b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allowed (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(15) Paragraph (13) shall apply in relation to further information received by the Secretary of State in accordance with paragraph (14) as it applies to such a statement as is referred to in that paragraph.

#### Publicity for environmental statements or further information

(16) Where an authority receive a copy of a statement or further information by virtue of paragraph (13)(a) they shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating -

(a) the name of the appellant and that he has appealed to the Secretary of State against the enforcement notice;

(b) the address or location of the land to which the notice relates and the nature of the development;

(c) that a copy of the statement or further information may be inspected by members of the public at all reasonable hours;

(d) an address in the locality in which the land is situated at which the statement or further information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);

(e) that any person wishing to make representations about any matter dealt with in the statement or further information should make them in writing, no later than 14 days after the date named in accordance with sub-paragraph (d), to the Secretary of State; and

(f) the address to which any such representations should be sent.

(17) The authority shall as soon as practicable after publication of a notice in accordance with paragraph (16) send to the Secretary of State a copy of the notice certified by or on behalf of the authority as having been published in a named newspaper on a date specified in the certificate.

(18) Where the Secretary of State receives a certificate under paragraph (17) he shall not determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 14 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

#### Public inspection of documents

(19) The relevant planning authority shall make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept a copy of -

(a) every regulation 25 notice given by the authority;

(b) every notice received by the authority under paragraph (12)(d); and

(c) every statement and all further information received by the authority under paragraph (13)(a);

and copies of those documents shall remain so available for a period of two years or until they are entered in Part II of the register in accordance with paragraph (20), whichever is the sooner.

(20) Where particulars of any planning permission granted by the Secretary of State under section 177 are entered in Part II of the register<sup>[30]</sup> the relevant planning authority shall take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (19) as are relevant to the development for which planning permission has been granted.

(21) The provisions of regulations 21(2) and 21(3) apply to a deemed application and a grant of planning permission under section 177 as they apply to an application for and grant of planning permission under Part III of the Act.

#### Unauthorised development with significant transboundary effects

26. - (1) Regulation 27 shall apply to unauthorised EIA development as if -

(a) for regulation 27(1)(a) there were substituted -

" (a) on consideration of an appeal under section 174 the Secretary of State is of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another Member State; or"

(b) in regulation 27(3)(a) the words "a copy of the application concerned" were replaced by the words "a description of the development concerned";

(c) in regulation 27(3)(b) the words "to which that application relates" were omitted; and



(d) in regulation 27(6) the word "application" was replaced by the word "appeal".

## **PART VIII**

### DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

Development in England and Wales likely to have significant effects in another Member State

27. - (1) Where -

(a) it comes to the attention of the Secretary of State that development proposed to be carried out in England or Wales is the subject of an EIA application and is likely to have significant effects on the environment in another Member State; or

(b) another Member State likely to be significantly affected by such development so requests,

the Secretary of State shall -

(i) send to the Member State as soon as possible and no later than their date of publication in The London Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if he thinks fit, the information referred to in paragraph (3); and

(ii) publish the information in sub-paragraph (i) above in a notice placed in The London Gazette indicating the address where additional information is available; and

(iii) give the Member State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in paragraph (1)(i) are -

(a) a description of the development, together with any available information on its possible significant effect on the environment in another Member State; and

(b) information on the nature of the decision which may be taken.

(3) Where a Member State indicates, in accordance with paragraph (1)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Secretary of State shall as soon as possible send to that Member State the following information -

(a) a copy of the application concerned;

(b) a copy of the environmental statement in respect of the development to which that application relates; and

(c) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the Member State earlier in accordance with paragraph (1)(i).

(4) The Secretary of State, insofar as he is concerned, shall also -

(a) arrange for the particulars and information referred to in paragraphs (2) and (3) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the Member State likely to be significantly affected; and

(b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied.

(5) The Secretary of State shall in accordance with Article 7(4) of the Directive -

(a) enter into consultations with the Member State concerned regarding, inter alia, the potential significant effects of the development on the environment of that Member State and the measures envisaged to reduce or eliminate such effects; and

(b) determine in agreement with the other Member State a reasonable period of time for the duration of the consultation period.

(6) Where a Member State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Secretary of State shall inform the Member State of the decision and shall forward to it a statement of -

(a) the content of the decision and any conditions attached thereto;

(b) the main reasons and considerations on which the decision is based; and

(c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Projects in another Member State likely to have significant transboundary effects

28. - (1) Where the Secretary of State receives from another Member State pursuant to Article 7(2) of the Directive information which that Member State has gathered from the developer of a proposed project in that Member State which is likely to have significant effects on the environment in England and Wales, the Secretary of State shall, in accordance with Article 7(4) of the Directive:

(a) enter into consultations with that Member State regarding, inter alia, the potential significant effects of the proposed project on the environment in England and Wales and the measures envisaged to reduce or eliminate such effects; and

(b) determine in agreement with that Member State a reasonable period, before development consent for the project is granted, during which members of the public in England and Wales may submit to the competent authority in that Member State representations pursuant to Article 7(3)(b) of the Directive.

(2) The Secretary of State, insofar as he is concerned, shall also -

(a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in England and Wales which he considers are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in England and Wales; and

(b) ensure that those authorities and the public concerned in England and Wales are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant Member State, within a reasonable time, their opinion on the information supplied.

## **PART IX**

### **MISCELLANEOUS**

Service of notices etc.

29. Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 329 (service of notices).

Application to the High Court

30. For the purposes of Part XII of the Act (validity of certain decisions), the reference in section 288 to action of the Secretary of State which is not within the powers of the Act shall be taken to extend to a grant of planning permission by the Secretary of State in contravention of regulations 3 or 25(1).

Hazardous waste and material change of use

31. A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of Schedule 1 involves a material change in the use of that land or those buildings for the purposes of paragraph (1) of section 55 (meaning of "development" and "new development").

Extension of the period for an authority's decision on a planning application

32. - (1) In determining for the purposes of section 78 (right to appeal against planning decisions and failure to take such decisions) the time which has elapsed without the relevant planning authority giving notice to the applicant of their decision in a case where -

(a) the authority have notified an applicant in accordance with regulation 7(2) that the submission of an environmental statement is required; and

(b) the Secretary of State has given a screening direction in relation to the development in question, no account shall be taken of any period before the issue of the direction.

(2) Where it falls to an authority to determine an EIA application, article 20 (time periods for decision) of the Order shall have effect as if -

(a) for the reference in paragraph (2)(a) of that article to a period of 8 weeks there were substituted a reference to a period of 16 weeks;

(b) after paragraph (3)(b) of that article there were inserted -

" (ba) 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."

Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with

33. The provisions enabling the Secretary of State to give directions which may be included in a development order by virtue of section 60 (permission granted by development order) shall include provisions enabling him to direct that development which is both of a description mentioned in Column 1 of the table in Schedule 2, and of a class described in the direction is EIA development for the purposes of these Regulations.

Revocation of Statutory Instruments and transitional provisions

34. - (1) The instruments in Schedule 5 are hereby revoked to the extent shown in that Schedule.

(2) Nothing in paragraph (1) shall affect the continued application of the Instruments revoked by that paragraph to any application lodged or received by an authority before the commencement of these Regulations, to any appeal in relation to such an application, or to any matter in relation to which a local planning authority has before that date issued an enforcement notice under section 172; and these Regulations shall not apply to any such application, appeal, or matter.

Miscellaneous and consequential amendments

35. - (1) In section 55(2)(b) of the Act after the words "improvement of the road" there are inserted the words "but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment".

(2) In Article 3(6) (Use Classes) of the Town and Country Planning (Use Classes) Order 1987[31], after sub-paragraph (i) there are inserted the words:

" (j) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex IIA to Directive 75/442/EEC[32] under heading D9), or landfill of waste to which Directive 91/689/EEC[33] applies."

(3) For paragraphs (10) and (11) of article 3 (permitted development) of the Town and Country Planning (General Permitted Development) Order 1995[34] there is substituted -

" (10) Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the EIA Regulations") is not permitted by this Order unless:

(a) the local planning authority has adopted a screening opinion under regulation 5 of those Regulations that the development is not EIA development;

(b) the Secretary of State has made a screening direction under regulation 4(7) or 6(4) of those Regulations that the development is not EIA development; or

(c) the Secretary of State has given a direction under regulation 4(4) of those Regulations that the development is exempted from the application of those Regulations.

(11) Where:

(a) the local planning authority has adopted a screening opinion pursuant to regulation 5 of the EIA Regulations that development is EIA development and the Secretary of State has in relation to that development neither made a screening direction to the contrary under regulation 4(7) or 6(4) of those Regulations nor directed under regulation 4(4) of those Regulations that the development is exempted from the application of those Regulations; or

(b) the Secretary of State has directed that development is EIA development,

that development shall be treated, for the purposes of paragraph (10), as development which is not permitted by this Order."

(4) For the words "3rd June 1995" in articles 3(12)(e) and 3(12)(f) of the Town and Country Planning (General Permitted Development) Order 1995 there are substituted the words "14th March 1999".

(5) For Class A of Part 13 in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 there is substituted -

" A. The carrying out by a local highway authority -

(a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development by virtue of section 55(2)(b) of the Act; or

(b) on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway."

(6) In sub-paragraph (a) of article 8(2) of the Order for the words "the subject of an E.A. Schedule 1 or E.A. Schedule 2 application" there are substituted the words "an EIA application".

(7) In article 8(7) of the Order for the definitions of "E.A. Schedule 1 application" and "E.A. Schedule 2 application" there is substituted -

" "EIA application" has the meaning given in regulation 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, and "environmental statement" means a statement which the applicant refers to as an environmental statement for the purposes of those Regulations."

(8) For article 14(2) of the Order there is substituted -

" (2) The Secretary of State may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, and of a class described in the direction is EIA development for the purposes of those Regulations."

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

Richard G. Caborn  
Minister of State Department of the Environment, Transport and the Regions

10th February 1999

Alun Michael  
Secretary of State for Wales

10th February 1999

(Schedules (five) omitted).

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Notes:

[1] S.I. 1988/785. See also the Secretary of State for the Environment, Transport and the Regions Order 1997 (S.I. 1997/2971).back

[2] 1972 c. 68.back

[3] 1990 c. 8. Section 71A was inserted by section 15 of the Planning and Compensation Act 1991 (c. 34).back

[4] O.J. No. L 175, 5.7.1985, p. 40.back

[5] O.J. No. L 73, 14.3.1997, p. 5.back

[6] 1990 c. 8.back

[7] See section 1(1) of the National Parks and Access to the Countryside Act 1949 (c. 97), as substituted by the Environmental Protection Act 1990 (c. 43), section 130 and Schedule 8, paragraph 1.back

- [8] See section 128 of the Environmental Protection Act 1990.[back](#)
- [9] See section 130 of the Environmental Protection Act 1990.[back](#)
- [10] See section 1(1) of the Environment Act 1995 (c. 25).[back](#)
- [11] O.J. No. L 175, 5.7.1985, p. 40. Council Directive 85/337/EEC was amended by Council Directive 97/11/EC, O.J. No. L 73, 14.3.1997, p. 5.[back](#)
- [12] S.I. 1992/1492. Relevant amending instruments are S.I. 1992/1982 and S.I. 1997/3006.[back](#)
- [13] Schedule 6 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 44.[back](#)
- [14] S.I. 1995/419. Relevant amendments were made by S.I. 1996/1817. See also paragraph 233(1) of Schedule 22 to the Environment Act 1995.[back](#)
- [15] 1972 c. 70.[back](#)
- [16] Section 77 was amended by the Planning and Compensation Act 1991, Schedule 7, paragraph 18.[back](#)
- [17] 1981 c. 69, amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act 1988 (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).[back](#)
- [18] 1949 c. 97. Relevant amendments were made by the Environment Act 1995 (c. 25), Schedule 10, paragraph 2.[back](#)
- [19] See the Norfolk and Suffolk Broads Act 1988 (c. 4).[back](#)
- [20] See Command Paper 9424.[back](#)
- [21] 1979 c. 46. See the definition in section 1(11).[back](#)
- [22] 1949 c. 97. Section 87 was amended by paragraph 1(12) of Schedule 8 to the Environmental Protection Act 1990 (c. 43).[back](#)
- [23] S.I. 1994/2716.[back](#)
- [24] S.I. 1992/3240, amended by S.I. 1998/1447.[back](#)
- [25] S.I. 1995/418, to which there are amendments not relevant to these Regulations.[back](#)
- [26] See section 83 and Schedule 7 to the Town and Country Planning Act 1990 (c. 8).[back](#)
- [27] See sections 88 and 89 of the Town and Country Planning Act 1990 (c. 8) and Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65).[back](#)
- [28] Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.[back](#)
- [29] Section 174 was amended by the Planning and Compensation Act 1991 (c. 34), section 6(1) and Schedule 7, paragraph 22. See also section 177(5) which was amended by the Planning and Compensation Act 1991, Schedule 7, paragraph 24.[back](#)

[30] See section 177(8) Town and Country Planning Act 1990.back

[31] S.I. 1987/764. Relevant amending instruments are S.I. 1991/1567, S.I. 1992/610, and S.I. 1994/724.back

[32] O.J. No. L 194, 25.7.1975, p. 39. Council Directive 75/442/EEC was amended by Council Directive 91/156/EEC (O.J. No. L 78, 26.3.1991, p. 32), and by Commission Decision 94/3/EC (O.J. No. L5, 7.1.1994, p.15).back

[33] O.J. No. L 337, 31.12.1991, p. 20. Council Directive 91/689/EEC was amended by Council Directive 94/31/EC (O.J. No. L 168, 2.7.1994, p. 28).back

[34] S.I. 1995/418, to which there are amendments not relevant to these Regulations.back

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