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STATUTORY INSTRUMENTS

2018 No. 695

TOWN AND COUNTRY PLANNING

INFRASTRUCTURE PLANNING

**The Town and Country Planning and Infrastructure Planning
(Environmental Impact Assessment) (Amendment) Regulations
2018**

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| <i>Made</i> - - - - | <i>6th June 2018</i> |
| <i>Laid before Parliament</i> | <i>8th June 2018</i> |
| <i>Coming into force</i> - - | <i>1st October 2018</i> |

The Secretary of State has been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to the environment.

The Secretary of State in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 71A(1) and (2) of the Town and Country Planning Act 1990^(c), and having taken into account the selection criteria in Annex III to Council Directive 2011/92/EU^(d), makes the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018 and come into force on 1st October 2018.

Amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

2.—(1) The Town and Country Planning (Environmental Impact Assessment) Regulations 2017^(e) are amended in accordance with paragraphs (2) to (11).

(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(c) 1990 c. 8. Section 71A was inserted by section 15 of the Planning and Compensation Act 1991 (c. 34), and amended by paragraphs 1 and 16 of Schedule 12 to the Housing and Planning Act 2016 (c. 22) and S.I. 2011/1043.

(d) OJ No. L 26, 28.1.2012, p.1. The Directive has been amended by Council Directive 2014/52/EU, OJ No. L 124, 25.4.2014, p.1.

(e) S.I. 2017/571.

- (2) In regulation 12(2) after “regulation 6(2)” insert “or (3) as appropriate”.
- (3) In regulation 25(1) for “regulation 18(2) and (3)” substitute “regulation 18(3) and (4)”.
- (4) In regulation 32—
 - (a) in paragraph (3)(d) for “(11)” substitute “(12)”; and
 - (b) in paragraph (6)(d)(iv) before “request” insert “scoping direction”.
- (5) In regulation 33(5)—
 - (a) in sub-paragraph (e)(iii) omit “(8)”;
 - (b) in sub-paragraph (e)(iv) omit “(8)”;
 - (c) in sub-paragraph (g)(v) after “qualifying body”, but before the quotation marks, insert “if the qualifying body”;
 - (d) in sub-paragraph (q)(i) for “regulation 18(2) and (3)” substitute “regulation 18(3) and (4)”;
 - (e) in sub-paragraph (q)(v) before “planning permission”, but after the quotation marks, insert “application for”;
 - (f) in sub-paragraph (r)(ii)(aa) after “consent for EIA”, but before the quotation marks, insert “development”; and
 - (g) in sub-paragraph (r)(ii)(bb) omit “or” in the first place it occurs.
- (6) In Part 7, after regulation 33, insert—

“Other orders made by a local planning authority

33A.—(1) This regulation applies where, in relation to Schedule 1 or Schedule 2 development, a local planning authority proposes to grant or modify a planning permission by making an order under section 97 or 102 of, or paragraph 1 of Schedule 9 to, the Act (“an EIA order”).

(2) In a case to which this regulation applies regulation 32 shall apply with the following modifications—

- (a) references to a local development order were references to an EIA order; and
- (b) references to grant planning permission include the modification of planning permission.

Miscellaneous orders and notices made by the Secretary of State

33B.—(1) This regulation applies where, in relation to Schedule 1 or Schedule 2 development, the Secretary of State proposes to grant or modify a planning permission—

- (a) under section 98(6), 103(2) or 141(2) of the Act; or
- (b) by making an order under section 100(1) or 104(1) of the Act,

(“an EIA permission”).

(2) Where this regulation applies the Secretary of State must not make an EIA permission unless the local planning authority in whose area the development will be situated has prepared the information referred to in regulation 6(2) in accordance with regulation 6(4) and adopted a screening opinion, or the Secretary of State has made a screening direction; and regulation 5 shall apply in relation to that screening with the modifications provided for in regulation 32(3).

(3) Paragraphs (4) and (5) apply where—

- (a) the local planning authority adopts a screening opinion; or
- (b) the Secretary of State makes a screening direction under these Regulations,

to the effect that the development is EIA development.

(4) The Secretary of State must not make an EIA permission unless—

- (a) an environmental statement has been prepared in relation to that development; and
 - (b) the EIA has been carried out in respect of that development.
- (5) In a case to which this regulation applies these Regulations apply subject to the following modifications—
- (a) in regulation 2(1)—
 - (i) after the definition of “EIA order proposal” insert—
 - ““EIA permission” has the meaning given in regulation 33B(1);”;
 - (ii) in the definition of “any other information” for “applicant or the appellant as the case may be” substitute “local planning authority”;
 - (b) regulations 3, 6(10) and (11), 8 to 14, 16, 17, 21, 22 and 25 shall not apply;
 - (c) in regulation 7(1) the words “pursuant to regulation 6(10)” were omitted;
 - (d) in regulation 15—
 - (i) for paragraph (1) substitute—
 - “(1) Where a proposed EIA permission is EIA development, the Secretary of State may state in writing his opinion as to the scope and level of detail of the information to be provided in the environmental statement (“a scoping direction”) and the Secretary of State must not adopt a scoping direction before he has consulted the consultation bodies.”;
 - (ii) omit paragraphs (2) to (5) and sub-paragraph (a) of paragraph (6);
 - (iii) for paragraph (7) substitute—
 - “(7) A local planning authority may ask the Secretary of State to make a scoping direction as to the information to be provided in the environmental statement.”;
 - (iv) omit paragraphs (8) and (9);
 - (e) in regulation 18—
 - (i) omit paragraphs (1) and (2); and
 - (ii) in paragraphs (3)(d) and (5)(a) and (b) for “the developer” substitute “the Secretary of State”;
 - (f) for regulation 19 substitute the modified version of regulation 19 provided in regulation 32(6)(f) with the following modifications—
 - (i) for references to local planning authority substitute the Secretary of State;
 - (ii) for references to a local development order substitute an EIA permission; and
 - (iii) for references to grant planning permission include modify planning permission.
 - (g) for regulation 23 substitute—

“Availability of copies of environmental statements

- 23.** The Secretary of State must ensure that—
- (a) a reasonable number of copies of the statement referred to as the environmental statement prepared in relation to EIA development for the EIA permission are available at his principal office during normal office hours; and
 - (b) the environmental statement can be accessed at the website referred to in the notice required under regulation 20(2)(f).”;
- (h) in regulation 26(1) for “an application or appeal” substitute “whether to make an EIA permission”;
 - (i) in regulation 28—

(i) in paragraph (1) for “Where particulars of an application for planning permission or of a subsequent application are placed on Part 1 of the register, the relevant planning authority” substitute “Each local planning authority must keep a record on the appropriate part of the register of any EIA permission relating to land in their area, and the authority”;

(ii) for paragraph (2) substitute—

“(2) Where the local planning authority adopts a screening opinion or scoping opinion, or receives a request under regulation 15(1), a copy of a screening direction, scoping direction, or direction under regulation 63 before an EIA permission is made, the authority must 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 part of that register) is kept, and copies of those documents must remain so available for a period of 2 years.”.

(j) in regulation 29 for paragraph (1) substitute—

“(1) Where the Secretary of State makes an EIA permission he must prepare a statement setting out the information specified in paragraph (2).” ;

(k) for regulation 30 substitute—

“Duty to inform the public of final decisions

30. Where the Secretary of State makes an EIA permission he must—

- (a) notify the local planning authority;
- (b) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection, at his principal office during normal office hours, a statement containing—
 - (i) the content of the decision and any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision is based;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development permitted; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”.

(1) in regulation 58—

(i) in paragraph (1), for sub-paragraph (a) substitute—

“(a) it comes to the attention of the Secretary of State that EIA development proposed to be carried out in England for which an EIA permission is proposed to be granted is likely to have significant effects on the environment in another EEA state; or”;

(ii) in paragraphs (3) and (6) for “application” substitute “proposed EIA permission”.

(7) In regulation 40—

- (a) in paragraph (4)(a)(ii) for “the appellant submits the information required under regulation 38(a)” substitute “the question was referred”;
- (b) in paragraph (5) for “paragraphs (4)(a)(iii)” substitute “paragraphs (4)(a)(ii) and (iii)”;
- and
- (c) in paragraph (8) for “by whom the regulation 37 notice was served” substitute “by whom or on whose behalf the enforcement notice was issued”.

(8) In regulation 52—

- (a) in paragraph (2)—
 - (i) for “paragraph (4)” substitute “paragraph (5)”;
 - (ii) the paragraph as substituted is renumbered as paragraph (5); and
 - (iii) for “article 15(2)” substitute “article 15(1A)”;
- (b) for paragraph (3)(a) substitute—
 - “(a) in paragraph (2)(a)—
 - (i) omit “for planning permission or subsequent consent”; and
 - (ii) after “to the relevant planning authority or the Secretary of State” insert “for determination of the conditions to which a planning permission is to be subject, the relevant provisions of the 1991 Act or the 1995 Act pursuant to which the application is made””; and
- (c) in paragraph (5) for “regulation 19(4)” substitute “regulation 19(5)”.
- (9) In regulation 55(6)(a) for “paragraph 6(b)” substitute “paragraph 2(6)(b)”.
- (10) In regulation 58(4) for “development consent” substitute “planning permission”.
- (11) In the table in Schedule 2, in the entry numbered 10(a) (industrial estate development projects), in column 2 (applicable thresholds and criteria) for “0.5 hectare” substitute “5 hectares”.

Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015

- 3.**—(1) Article 15 of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a) is amended in accordance with paragraphs (2) and (3).
- (2) In paragraph (5) for the text from “In a case to which” to “the application must” substitute “In a case to which paragraphs (1A), (2), (4) and (4A) do not apply the application must”.
 - (3) In paragraph (6) for “paragraph (3A)(a)” substitute “paragraph (1A)(a)”.

Amendments to the Town and Country Planning (General Permitted Development) (England) Order 2015

- 4.**—(1) Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015(b) is amended in accordance with paragraphs (2) and (3).
- (2) In paragraphs (10) and (11) for “regulation 63(1)(a)” substitute “regulation 63(1)”.
 - (3) In paragraph (11)(a) for “regulation 4(8) or 6(4)” substitute “regulation 5(3)”.

Amendments to the Town and Country Planning (Brownfield Land Register) Regulations 2017

- 5.**—(1) Regulation 14 of the Town and Country Planning (Brownfield Land Register) Regulations 2017(c) is amended in accordance with paragraphs (2) to (4).
- (2) In paragraph (2)—
 - (a) in sub-paragraph (a)(i) for “(2)(a) and (b) of regulation 5 of the EIA Regulations 2011” substitute “(2)(a) to (d) of regulation 6 of the EIA Regulations 2017”;
 - (b) in sub-paragraph (a)(iii) and (iv) for “regulation 5 of the EIA Regulations 2011” substitute “regulation 6 of the EIA Regulations 2017”;
 - (c) in sub-paragraph (b) for “regulation 4 or paragraph (4) of regulation 6 of the EIA Regulations 2011” substitute “regulation 5 or paragraph (5) of regulation 7 of the EIA Regulations 2017”; and

(a) S.I. 2015/595 amended by S.I. 2017/402 and 2017/571.
 (b) S.I. 2015/596 amended by S.I. 2017/571; there are other amending instruments, but none is relevant.
 (c) S.I. 2017/403.

- (d) in sub-paragraph (c) for “paragraph (4) of regulation 4 of the EIA Regulations 2011” substitute “regulation 63 of the EIA Regulations 2017”.
- (3) In paragraph (3)—
 - (a) for “regulation 5 (requests for screening opinions of the local planning authority) of the EIA Regulations 2011” substitute “regulation 6 (requests for screening opinions of the relevant planning authority) of the EIA Regulations 2017”; and
 - (b) for sub-paragraphs (c) and (d) substitute—
 - “(c) as if in paragraph (4) “or (3)” were omitted;
 - (d) as if paragraph (6) were omitted and replaced by—
 - “(6) An authority may adopt a screening opinion.”; and
 - (e) as if paragraphs (3), (5) and (7) to (11) were omitted.”.
- (4) In paragraph (5)—
 - (a) in the definitions of “EIA development” and “Schedule 1 development” and “Schedule 2 development” for “2011” substitute “2017”; and
 - (b) for the definition of “the EIA Regulations 2011” substitute—
 - “the EIA Regulations 2017” means the Town and Country Planning (Environmental Impact Assessment) Regulations 2017”.

Amendments to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

- 6.—**(1) The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(a) are amended in accordance with paragraphs (2) to (9).
- (2) In regulation 3(1), at the end of the definition of “environmental information” insert “and of any associated development”.
 - (3) In regulation 8 after paragraph (3) insert—
 - “(3A) A person notifying the Secretary of State under paragraph (1)(b) must provide, at the same time as giving notification, the information listed in paragraph (3)(a) and (b).”.
 - (4) In regulation 19—
 - (a) for paragraph (6)(e) substitute—
 - “(e) where a person has been notified to the applicant under regulation 11(1)(c), serve on that person a copy of that notice, at the same time as the notice is published;”;
 - and
 - (b) in paragraph (6)(h)(ii) for “(e)” substitute “(g)”.
 - (5) In regulation 20—
 - (a) for paragraph (3)(e) substitute—
 - “(e) where a person has been notified to the applicant under regulation 11(1)(c), serve on that person a copy of that notice, at the same time as the notice is published;”;
 - (b) in paragraph (3)—
 - (i) in sub-paragraph (h)(ii) for “(e)” substitute “(g)”; and
 - (ii) renumber paragraph (iii) of sub-paragraph (h) as sub-paragraph (i); and
 - (iii) in that sub-paragraph (i) for “sub-paragraphs (b) to (g)” substitute “sub-paragraphs (b) to (h)”
 - (6) In regulation 22(3)(d) for “as”, in the first place it occurs, substitute “at”.
 - (7) For regulation 24(3)(d) substitute—

(a) S.I. 2017/572.

“(d) where a person has been notified to the applicant under regulation 11(1)(c), serve on that person a copy of that notice, at the same time as the notice is published;”.

(8) In paragraph 10(k) of Schedule 2 after “oil and gas pipeline installations” insert “and pipelines for the transport of carbon dioxide streams for the purposes of geological storage”.

(9) In Schedule 5—

(a) in certificate 2—

(i) after paragraph (a) insert—

“(aa) the notice was sent to the Secretary of State for publication on a website maintained by, or on behalf of, the Secretary of State in accordance with regulation 19(6)(f);”;

(ii) for the words “received by the Secretary of State” substitute “received by the Examining authority”;

(b) in certificate 3—

(i) after paragraph (a) insert—

“(aa) the notice was sent to the Secretary of State for publication on a website maintained by, or on behalf of, the Secretary of State in accordance with regulation 20(3)(f);”;

(ii) for the words “received by the Secretary of State no later” substitute “received by the Examining authority no later”;

(c) in certificate 4 for the words “received by the Secretary of State no later” substitute “received by the relevant authority no later”; and

(d) in certificate 5—

(i) after paragraph (a) insert—

“(aa) the notice was sent to the relevant authority for publication on a website maintained by the authority in accordance with regulation 24(3)(e);”;

(ii) for the words “received by the Secretary of State no later” substitute “received by the relevant authority no later”.

Signed by authority of the Secretary of State for Housing, Communities and Local Government

Dominic Raab
Minister of State

6th June 2018

Ministry of Housing, Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) and the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017 (S.I. 2017/572) to correct minor drafting defects identified in those instruments.

Additionally, these Regulations amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595), and the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) to correct the effect of minor defects in the amendments made by S.I. 2017/571.

These Regulations amend the Town and Country Planning (Brownfield Land Register) Regulations 2017 (S.I. 2017/403) to refer to provisions of S.I. 2017/571 instead of to the now-revoked provisions of S.I. 2011/1824.

These Regulations also insert new Regulations 33A and 33B into S.I. 2017/571 to make provision where, in relation to Schedule 1 development or Schedule 2 development, a local planning

authority (under section 97 or 102 of, or paragraph 1 of Schedule 9, to the Town and Country Planning Act 1990) or the Secretary of State (under section 98(6), 103(2), 141(2), 100(1) or 104(1) of the Town and Country Planning Act 1990) proposes to grant or modify a planning permission.

These Regulations were notified to the European Commission in accordance with Article 2 of Directive 2014/52/EU(a).

It is normal practice to make available to Parliament, alongside primary or secondary legislation giving effect to European Directives, a Transposition Note that sets out how the Government will transpose the main elements of those Directives into UK law. The Transposition Notes which accompanied the Explanatory Memoranda to S.I. 2017/571 and 2017/572 are available from legislation.gov.uk.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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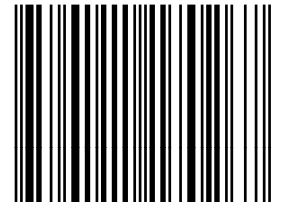
(a) OJ No. L 124, 25.4.2014, p. 1.

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