
STATUTORY INSTRUMENTS

1999 No. 293

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

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⁽¹⁾ 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⁽²⁾;
- (b) order designating an enterprise zone⁽³⁾; 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:

(1) S.I. 1995/418, to which there are amendments not relevant to these Regulations.

(2) See section 83 and Schedule 7 to the Town and Country Planning Act 1990 (c. 8).

(3) 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).

- (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.

Unauthorised development

Prohibition on the grant of planning permission for unauthorised EIA development

Prohibition on the grant of planning permission for unauthorised EIA development

25.—(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(4) (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(5) 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

(4) Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.

(5) 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.

- (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⁽⁶⁾ 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”.

(6) See section 177(8) Town and Country Planning Act 1990.