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STATUTORY INSTRUMENTS

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**2003 No. 164**

**The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003**

**PART II**

**ASSESSMENT OF RELEVANT PROJECTS**

**Determination whether a project is a relevant project**

4.—(1) Any person (“the applicant”) who proposes to apply for, or for the variation of, an authorisation in relation to a project which may be a relevant project, may in writing request the Agency to make a determination whether the project is a relevant project.

(2) The request shall be accompanied by—

- (a) a plan sufficient to identify the place where the project is to be carried out;
- (b) a brief description of the project and its possible effects on the environment; and
- (c) any other information or representations which the applicant wishes the Agency to take into account.

(3) Where the Agency considers that it has insufficient information to determine the request, it shall by notice in writing inform the applicant and specify what further information it requires.

(4) In determining whether a project is a relevant project the Agency shall take into account such of the selection criteria set out in Schedule 1 as are relevant.

(5) The Agency shall give the applicant written notice of its determination before the expiry of—

- (a) a period of three weeks beginning with—
  - (i) the date on which the request is received; or
  - (ii) where the Agency has served a notice under paragraph (3), the date on which the further information specified is given to the Agency; or
- (b) such longer period as may be agreed in writing with the applicant.

(6) Where—

- (a) the Agency fails to make a determination before the expiry of the period specified in paragraph (5); or
- (b) the applicant is dissatisfied with the Agency’s determination that the proposed abstraction or impounding would amount to or form part of a relevant project,

the applicant may apply to the appropriate Minister for a determination on the matter by notice in writing not later than twenty-eight days after the expiry of that period or, as the case may be, after the date of the determination of the Agency.

(7) Where an application is made to the appropriate Minister under paragraph (6), the appropriate Minister shall send a copy of the application to the Agency.

(8) The appropriate Minister shall by notice in writing given to the applicant and the Agency—

- (a) uphold the determination of the Agency; or
- (b) substitute his own determination.

(9) A determination under this regulation shall be accompanied by a written statement of the reasons for that determination.

(10) The Agency or, as the case may be, the appropriate Minister shall take such steps as are considered appropriate to make a determination under this regulation available to the public.

(11) The applicant shall include a copy of any determination made under this regulation when he subsequently applies for, or for a variation of, an authorisation in relation to the project in question.

### **Environmental statement to be provided in relation to an application for authorisation**

5. An environmental statement which complies with regulation 6 shall be provided in relation to an application made after 31st March 2003 for, or for the variation of, an authorisation in connection with a relevant project.

### **Environmental statement, and opinions of the Agency on the contents of an environmental statement**

6.—(1) An environmental statement shall include such of the information set out in Schedule 2 as is relevant to the relevant project and at least the following—

- (a) a description of the project comprising information on the site, design and size of the project;
- (b) a description of the aspects of the environment likely to be significantly affected by the project;
- (c) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects; and
- (e) a non-technical summary of the information provided under sub-paragraphs (a) to (d).

(2) If a person so requests before making an application for, or for the variation of, an authorisation, the Agency shall, having consulted the person making the request and the consultation bodies, give an opinion on the information which should be contained in an environmental statement accompanying such an application.

(3) The fact that the Agency has given an opinion under paragraph (2) shall not preclude it from subsequently requiring the person making the request to provide further information.

(4) The Agency and the consultation bodies shall, if requested by a person proposing to make an application for which an environmental statement is required, enter into consultation with him to determine whether they have in their possession any information which may be relevant to the preparation of an environmental statement and, if they have, they shall make it available to him.

(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(1).

(6) Any body which provides information to a person under paragraph (4) may require him to pay a charge which reflects the cost of making that information available.

(7) If the Agency considers that an environmental statement does not contain all the information required by paragraph (1), it shall by notice in writing—

(1) S.I.1992/3240, amended by S.I. 1998/1447.

- (a) inform the applicant, and
  - (b) specify what further information the Agency requires,
- and the applicant shall provide that information to the Agency.

### **Publicity for environmental statement**

7.—(1) Where an environmental statement or further information is provided in accordance with regulation 6, the applicant shall publish, in the London Gazette and at least once in each of two successive weeks in one or more newspapers circulating in the relevant locality, a notice—

- (a) stating the applicant's name and that he has made an application to which these Regulations apply and has provided the Agency with an environmental statement or further information in accordance with regulation 6;
- (b) naming a place in the relevant locality at which copies of the application, the environmental statement and any further information may be inspected free of charge at all reasonable hours within a period of twenty-eight days beginning on the date the notice was published;
- (c) specifying an address at which copies of the application, the environmental statement and any further information may be obtained from the applicant and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and
- (d) stating that any person wishing to make representations in relation to the application should make them to the Agency in writing within a period of twenty-eight days beginning on the date the notice was first published in a newspaper other than the London Gazette, at a specified address nominated by the Agency.

(2) By not later than such date as may be specified by the Agency, the applicant shall send a copy of the notice published in the London Gazette and the environmental statement or, as the case may be, the further information, to—

- (a) the consultation bodies;
- (b) the appropriate Minister; and
- (c) such other persons as the Agency may specify,

under cover of a letter stating that any representations in relation to the application should be made in writing to the Agency within a period of twenty-eight days beginning on the date of the letter.

(3) The applicant shall send to the Agency a copy of any notice published (other than in the London Gazette) under paragraph (1) and any letter sent under paragraph (2).

(4) Notice of an environmental statement under paragraph (1) may be combined with any notice required under other legislation which publicises the application in question.

### **Determination of application and notice of determination**

8.—(1) The Agency shall not determine an application for, or for the variation of, an authorisation relating to a relevant project before the latest date allowed under these Regulations for making representations or concluding any consultation.

(2) In determining the application the Agency shall take into consideration the environmental statement, any further information provided, and any representations relating to the environmental effects of the project made to the Agency in accordance with these Regulations.

(3) Within twenty-eight days of the decision on the application, the Agency shall publish in those newspapers in which a notice was published under regulation 7 a notice stating that the Agency has granted or refused the application and stating a place and times where any person may inspect—

- (a) any relevant authorisation or variation;

- (b) a document containing the relevant decision and the main reasons and considerations on which it 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 project.

(4) No appeal shall be brought under section 43 of the 1991 Act (appeals to the Secretary of State) on the grounds that the Agency has failed to give notice as required by subsection (1)(b) of that section before the expiry of a period of four months commencing with—

- (a) the date on which an environmental statement is furnished in accordance with regulation 6(1), or
- (b) the date on which any further information requested by the Agency is provided in accordance with regulation 6(7),

whichever is the later.