
STATUTORY INSTRUMENTS

2006 No. 2362

The Environmental Impact Assessment
(Agriculture) (England) Regulations 2006

PART 3

Consent

Requirement for consent

10. A person must not begin or carry out a significant project unless he has first obtained consent from Natural England.

Scoping opinions

11.—(1) After receiving a screening decision that a project is a significant project, but before applying for consent, the applicant may ask Natural England to provide its opinion on what information should be provided in the environmental statement (“a scoping opinion”).

(2) If the applicant requests a scoping opinion, Natural England must consult the applicant and such of the consultation bodies as it thinks fit before providing its opinion.

(3) If Natural England considers that it does not have sufficient information to provide a scoping opinion, it may ask the applicant to supply any additional information it requires within 28 days of the date on which it received the request for the scoping opinion.

(4) Natural England must provide the applicant with the scoping opinion within 5 weeks of—

- (a) the date it received the request for a scoping opinion; or
- (b) where applicable, the date it received the additional information requested under paragraph (3).

Provision of information

12.—(1) This regulation applies if a consultation body—

- (a) is consulted by Natural England under regulation 11(2); or
- (b) receives a request for information from a person who intends to apply for consent.

(2) Where this regulation applies, the consultation body must—

- (a) determine whether it has in its possession any information it considers relevant to the preparation of the environmental statement; and
- (b) subject to paragraphs (3) and (4), make that information available to Natural England or the applicant (as the case may be) within 28 days of the date of the consultation or the request.

(3) A consultation body may make a reasonable charge to the applicant for providing information under paragraph (2)(b), to reflect the cost of making the information available.

(4) Paragraph (2)(b) does not require a consultation body to make available to the applicant any information which—

- (a) it may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(1); or
- (b) it is prevented from disclosing by regulation 13(1) of those Regulations.

(5) If a consultation body is not a public authority within the meaning of regulation 2(2) of the Environmental Information Regulations 2004, paragraph (4) applies as if it were such a public authority.

The consent application

13.—(1) An application for consent must include an environmental statement and must be made to Natural England.

(2) The applicant for consent must provide Natural England with as many copies of the application as it reasonably requires.

(3) After receiving the application for consent, Natural England must comply with paragraphs (4) and (5).

(4) Natural England must—

- (a) send a copy of the application to any of the consultation bodies it considers appropriate; and
- (b) inform them that they may make representations within 6 weeks of the date they received the copy of the application.

(5) In order to ensure that members of the public concerned are given an opportunity to make representations before the application is determined, Natural England must publish on its website and in a newspaper circulating in the locality of the relevant land a notice—

- (a) stating that the application has been made;
- (b) specifying an address—
 - (i) at which copies of the application can be inspected free of charge, and
 - (ii) where copies of the application may be takenat all reasonable hours within 6 weeks of the date the notice is published;
- (c) stating that representations on the likely environmental effects of the project may be made in writing to Natural England at the address specified under sub-paragraph (b) within 6 weeks of the date the notice is published;
- (d) stating that, if consent is granted, it will be subject to—
 - (i) the conditions in regulation 19(2), and
 - (ii) any other conditions that Natural England thinks fit; and
- (e) stating, if relevant, which of the other EEA States, the authorities referred to in Article 6(1) of the EIA Directive, and the public concerned in such EEA States will be consulted on the application.

(6) Natural England may make a reasonable charge for copies referred to in paragraph (5)(b)(ii).

Additional information

14.—(1) If, after complying with regulation 13(3), Natural England decides that it requires any additional environmental information in order to decide whether to grant, or refuse to grant, consent

for a significant project, it must notify the applicant of the information required, and the applicant must provide Natural England with that information.

- (2) Natural England must—
 - (a) send a copy of the additional environmental information to such of the consultation bodies as it thinks fit; and
 - (b) inform them that they may make representations within 28 days of the date they receive it.
- (3) Natural England must publish on its website and in a newspaper circulating in the locality of the relevant land a notice—
 - (a) referring to the application to which the additional environmental information relates and the date the application was made;
 - (b) stating that the additional environmental information has been received;
 - (c) specifying an address—
 - (i) at which copies of the additional environmental information can be inspected free of charge, and
 - (ii) where copies of the additional environmental information may be taken, at all reasonable hours within 6 weeks of the date the notice is published; and
 - (d) stating that representations in relation to the additional environmental information may be made in writing to Natural England at the address in sub-paragraph (c) within 28 days of the date the notice is published.
- (4) Natural England may make a reasonable charge for copies referred to in paragraph (3)(c)(ii).

Procedure where a significant project in England may affect another EEA State

15.—(1) As soon as possible after receiving an application for consent for a significant project, Natural England must consider whether that project is also likely to have significant effects on the environment in another EEA State.

(2) If Natural England considers that such effects are likely, it must send the information and other material specified in paragraph (3) to—

- (a) the EEA State which it considers is likely to be affected; and
 - (b) any other EEA State which—
 - (i) is likely to be significantly affected by the project in question, and
 - (ii) requests the information and other material.
- (3) The information and other material referred to in paragraph (2) are—
- (a) details of the nature and location of the significant project;
 - (b) any information Natural England has on the impact it is likely to have on that EEA State;
 - (c) an indication of whether Natural England is minded to grant consent for the project, and the nature of any consent that might be granted; and
 - (d) a request that the EEA State should indicate within a reasonable time whether it wishes to participate in the procedure under this Part of these Regulations.
- (4) If the EEA State indicates that it wishes to participate in the procedure under this Part of these Regulations, Natural England must—
- (a) send it a copy of the application for consent, of the environmental statement and of any further information it considers relevant to the application; and
 - (b) provide it with information about the procedure under these Regulations.

- (5) Natural England must also—
- (a) arrange for the information and material in paragraphs (3) and (4) to be made available, in a reasonable time, to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State; and
 - (b) ensure that those authorities and the public concerned are given an opportunity to provide Natural England with their opinion on the information supplied within a reasonable time before consent for the project is granted.
- (6) In accordance with Article 7(4) of the EIA Directive, Natural England must—
- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate those effects; and
 - (b) seek to agree with the EEA State a reasonable period of time for those consultations, which must include time for consideration of any opinions received under paragraph (5)(b).

Procedure where a significant project in another EEA State may affect England

16.—(1) If Natural England receives information from another EEA State made available under Article 7(1) and (2) of the EIA Directive (which concern information relating to a project in one EEA State which is likely to have significant effects on the environment of another EEA State) in relation to a significant project in that EEA State, Natural England must—

- (a) arrange for that information to be made available, in a reasonable time, to the consultation bodies and such members of the public which, in its opinion, are likely to be concerned by the project;
 - (b) ensure that the consultation bodies and the members of the public referred to in subparagraph (a) are given an opportunity to forward their opinion on the information provided to the competent authority in the EEA State during any period agreed under paragraph (2)(b).
- (2) In accordance with Article 7(4) of the EIA Directive, Natural England must also—
- (a) enter into consultations with the EEA State concerned about, amongst other things, the potential significant effects of the project on the environment in England and the measures envisaged to reduce or eliminate those effects; and
 - (b) seek to agree with the EEA State a reasonable period, before consent for the project is granted, during which any opinions received under paragraph (1)(b) can be forwarded to that EEA State.

(3) If another EEA State has taken a decision to grant or refuse consent and has informed Natural England of that decision in accordance with Article 9(2) of the EIA Directive, Natural England must take such steps as it considers appropriate to bring to the attention of the public any information received from that EEA State in relation to that decision.

The consent decision

17.—(1) Natural England may grant, or refuse to grant, consent for a significant project in accordance with this regulation.

(2) When deciding whether to grant consent for a significant project, Natural England must consider—

- (a) the environmental statement;
- (b) any additional environmental information;
- (c) any representations it receives under—

- (i) regulation 13(4)(b) and (5)(c),
 - (ii) regulation 14(2)(b) and (3)(d), and
 - (iii) regulation 15(5)(b); and
- (d) any social or economic impacts which might result from a decision to refuse consent for the project.
- (3) Natural England must not reach its decision under paragraph (1) until after either—
 - (a) the expiry of the period in the notice under regulation 12(5)(c);
 - (b) the expiry of the period of 28 days after—
 - (i) the date on which any additional environmental information was sent to the consultation bodies, or
 - (ii) the date notice of the additional environmental information was published under regulation 14(3),whichever is the later; or
 - (c) the expiry of any period agreed with another EEA State under regulation 15(6)(b),whichever is the last to occur.

Additional requirements relating to the Habitats Regulations

18.—(1) Natural England must not grant consent for a project that would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations(2) (but that does not include anything for which a licence has been granted under regulation 44 of those Regulations).

(2) Paragraphs (3) to (6) apply when Natural England is deciding whether to grant consent for a project (a “habitats project”) which is likely to have a significant effect on a European site either alone or in combination with other projects.

(3) Unless paragraph (4) applies, Natural England may only grant consent for a habitats project if it has considered the implications of that project for the European site (including an appropriate assessment of the implications in view of that site’s conservation objectives) and is satisfied that that project will not adversely affect the integrity of the site.

(4) If Natural England is satisfied that a habitats project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (5), may be of a social or economic nature) and that there is no alternative solution, it may grant consent for that project even though the assessment of its implications for a European site is negative.

(5) If the European site hosts a priority natural habitat type or a priority species, the reasons in paragraph (4) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment, or
- (b) other reasons which in the opinion of the European Commission are, in the case of the site concerned, imperative reasons of overriding public interest.

(6) If Natural England decides to grant consent for a habitats project in accordance with paragraph (4), it must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (within the meaning of regulation 2(1) of the Habitats Regulations) is protected.

(2) [S.I. 1994/2716](#); regulations 39, 41, 43 and 44 have been amended, but the amendments do not apply to England.

Conditions of consent

- 19.**—(1) Any consent granted under regulation 17(1) is to be subject to—
- (a) the conditions in paragraph (2); and
 - (b) any other conditions Natural England thinks fit.
- (2) The conditions required by paragraph (1)(a) are—
- (a) the consent lapses if the project is not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
 - (b) the consent expires if the project is not completed within 3 years of the date on which it was granted; and
 - (c) the consent only authorises the project described in the consent application, subject to any amendments approved by Natural England under paragraph (4).
- (3) After the expiry of a consent in accordance with paragraph (2)(b), Natural England may require a further application for consent in accordance with paragraph (5) in respect of any further operations or uses forming part of the project.
- (4) Natural England may approve any amendments at the request of an applicant, but any material change in the authorised operations or uses requires a further application for consent in accordance with paragraph (5).
- (5) Further applications for consent under paragraphs (3) and (4) may be subject to any requirement of these Regulations that Natural England considers appropriate.
- (6) In this regulation, a project is “completed” if all the works permitted by the consent have been carried out and all changes in the use, or the level of use, of the relevant land have been implemented.

Procedure following a consent decision

- 20.** When Natural England has decided to grant or not to grant consent in respect of a significant project it must—
- (a) notify the applicant, any consultation bodies to whom copies of the consent application were sent under regulation 13(4)(a), any EEA State it consulted under regulation 15(6) and any authority or person who forwarded their opinion under regulation 15(5)(b) of—
 - (i) its decision,
 - (ii) the full reasons and considerations on which the decision is based, and
 - (iii) any representations made by the public concerned in respect of the application;
 - (b) inform the public of its decision by publishing a notice in a newspaper in the locality in which the relevant land is situated or by any other means it considers reasonable in the circumstances; and
 - (c) make available for public inspection a statement containing—
 - (i) the content of the decision,
 - (ii) the full reasons and considerations on which the decision is based,
 - (iii) where relevant, a description of the principal measures that must be taken to avoid, reduce or offset the major adverse effects of the project,
 - (iv) a summary of any representations made by the public concerned in relation to the application, and
 - (v) information regarding the right to challenge the decision and the procedures for doing so.

Transborder projects

21.—(1) In the case of a transborder project where the greater part of the land is situated in England, that project will be subject only to these Regulations, unless an agreement to the contrary has been reached under paragraph (2).

(2) If so requested by the Scottish Ministers or the National Assembly for Wales, Natural England may agree that a transborder project referred to in paragraph (1) will be subject only to the equivalent Regulations applicable to the project in Scotland or Wales as the case may be.

(3) In the case of a transborder project where the greater part of the land is situated in Scotland or Wales, that project will be subject only to the equivalent Regulations applicable to the project in Scotland or Wales as the case may be, unless an agreement to the contrary has been reached under paragraph (4).

(4) If Natural England so requests, and the Scottish Ministers or the National Assembly for Wales as appropriate agree, a transborder project referred to in paragraph (3) will be subject only to these Regulations.

(5) If a transborder project is being considered under these Regulations in accordance with paragraph (1) or (4), Natural England must consult the Scottish Ministers or the National Assembly for Wales as appropriate before—

- (a) making a screening decision under regulation 9;
- (b) providing a scoping opinion under regulation 11; or
- (c) granting or refusing consent under regulation 17.

(6) In this regulation, “transborder project” means a restructuring project or an uncultivated land project where the relevant land is situated either—

- (a) partly in England and partly in Wales, or
- (b) partly in England and partly in Scotland.

Review of decisions and consents

22. Schedule 4 applies if, after the date of—

- (a) a decision that a project is not a significant project, or
- (b) a decision to grant consent for a project,

a site becomes a European site and Natural England considers that the carrying out or completion (within the meaning of “completed” in regulation 19(6)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.