
STATUTORY INSTRUMENTS

2007 No. 1062

**The Highways (Environmental
Impact Assessment) Regulations 2007**

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Highways (Environmental Impact Assessment) Regulations 2007 and shall come into force on 26th April 2007.

(2) In these Regulations “the 1980 Act” means the Highways Act 1980 (1).

Environmental impact assessments

2.—(1) Section 105A of the 1980 Act (2) (environmental impact assessments) is amended as follows.

(2) In subsection (1)—

(a) omit the definition of “the Directive”; and

(b) omit “and” at the end of the definition of “Annex” and after this definition insert—

““the Directive” means Council Directive No.85/337/EEC(3) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive No. 97/11/EC(4) and Directive No. 2003/35/EC(5) of the European Parliament and Council;

“member of the public” includes any body of persons corporate or unincorporate;

“public authority” means any authority or other body on which functions are conferred by or under an enactment, including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament; and”.

(3) In subsection (3) for “publish an environmental statement” substitute “prepare an environmental statement and publish notice of it in accordance with subsections (3), (3A) and (7) of section 105B”.

Procedure

3.—(1) Section 105B of the 1980 Act (6) (procedure) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3) for “An” substitute “Notice of the”.

(4) After subsection (3) insert—

(1) 1980 c.66.

(2) Section 105A was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

(3) OJ No L 175, 5.7.85, p 40.

(4) OJ No L 73, 14.3.97, p 5.

(5) OJ No L 156, 25.6.03, p 17.

(6) Section 105B was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369). Subsection (8) (b) was amended by the Natural Environment and Rural Communities Act 2006 (c.16), Schedule 11, Part 1 paragraph 63.

“(3A) The notice must state—

- (a) that the Secretary of State, as the relevant highway authority, is considering implementing the project;
- (b) the proposed location and nature of the project;
- (c) that the project is subject to the environmental impact assessment procedure required by this Part of this Act and, where relevant, that section 105C applies;
- (d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);
- (e) the times at which the copy of the environmental statement may be so inspected;
- (f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);
- (g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;
- (h) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, that a copy of the environmental statement may be inspected on the website during the period specified under paragraph (i);
- (i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Secretary of State at a specified address within a specified period, being not less than 6 weeks from the date of publication of the notice and
- (j) that the Secretary of State will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(3B) The Secretary of State shall ensure that during the period specified under subsection (3A) (i)—

- (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (3A) (d);
- (b) copies of the environmental statement are available to be obtained by any person from the address specified under subsection (3A) (f); and
- (c) where under subsection (3A) (h) the notice states the address of a website, that a copy of the environmental statement is available for inspection by any person on that website.

(3C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Secretary of State for the supply of a copy of the environmental statement—

- (a) to a person other than a consultation body, or
- (b) to a consultation body to which one copy has already been supplied free of charge.

(5) In subsection (4) omit “published details of the”.

(6) In subsection (5) omit “and” at the end of paragraph (a) and for paragraph (b) substitute—

- “(b) any opinion on that statement or the project which is expressed in writing by—
 - (i) any of the consultation bodies; or
 - (ii) any other person;

and is received by the Secretary of State within any period specified for the purpose by him; and

- (c) where section 105C applies, and the EEA State has indicated in accordance with subsection (4) of that section that it wishes to participate in the procedure required by this Part of this Act, any opinion on that statement or the project which is expressed in writing by—

(i) the EEA State;

(ii) a member of the public in the EEA State; or

(iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6 (1) of the Directive;

and is received by the Secretary of State within any period specified for the purpose by him.”.

- (7) After subsection (5) insert—

“(5A) Where in order to proceed with the construction or improvement in relation to which an environmental statement has been made it is necessary for the Secretary of State to make—

(a) an order or scheme to which Schedule 1 to this Act applies; or

(b) a compulsory purchase order in the exercise of highway land acquisition powers;

the Secretary of State shall, so far as it is practicable to do so, take the steps required of him by this Part of this Act concurrently with the corresponding steps required of him by Schedule 1 to this Act or, as the case may be, the Acquisition of Land Act 1981(7) in connection with the making of the related instruments.”.

- (8) In subsection (6)—

(a) after “subsection (5)” insert “, and describing the right under section 105D (1) to challenge the validity of the decision,”;

(b) at the end of paragraph (b) omit “and”;

(c) at the end of paragraph (c), insert “and”; and

(d) after paragraph (c) insert—

“(d) information about the consultation carried out in compliance with this section and section 105C, the representations received on consultation, and any changes made as a result of those representations.”.

- (9) In subsection (7) for the words from “shall be” to the end substitute—

“shall be—

(a) in the London Gazette;

(b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is proposed to be situated; and

(c) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, on that website.”.

- (10) For subsection (8) substitute—

“(8) In this section “the consultation bodies” means—

(a) any principal council as defined in subsection (1) of section 270 of the Local Government Act 1972(8) for the area where the land is situated;

(7) 1981 c.67. This Act was amended by the Planning and Compulsory Purchase Act 2004 (c.5).

(8) 1972 c.70.

- (b) where the land is situated in England—
 - (i) English Heritage and Natural England; and
 - (ii) the Countryside Council for Wales and the National Assembly for Wales where, in the opinion of the Secretary of State, the land is sufficiently near to Wales to be of interest to them;
- (c) where the land is situated in Wales—
 - (i) the Countryside Council for Wales; and
 - (ii) any organisation referred to in paragraph (b) (i) where, in the opinion of the National Assembly for Wales, the land is sufficiently near to England to be of interest to the organisation;
- (d) the Environment Agency; and
- (e) any other public authority which has environmental responsibilities and which the Secretary of State or the National Assembly for Wales considers to be likely to have an interest in the project.”.

Other EEA States

- 4.—(1) Section 105C of the 1980 Act (9) (other Member States) is amended as follows.
- (2) In subsections (1) to (6) for each reference to “Member State” or “a Member State” substitute “EEA State” or “an EEA State” as appropriate.
- (3) In subsection (2) for paragraph (c) substitute—
- “(c) such information about the procedure required by this Part of this Act as he considers appropriate; and”.
- (4) In subsection (4)—
- (a) for “in the environmental impact assessment procedure” substitute “in the procedure required by this Part of this Act”;
 - (b) omit “and” at the end of paragraph (a); and
 - (c) for paragraph (b) substitute—
 - “(b) the information required by subsection (3A) of section 105B to be included in the notice under subsection (3) of that section; and
 - (c) any information about the procedure required by this Part of this Act which he considers it appropriate to give and which has not already been given to the EEA State.”.
- (5) For subsection (7) substitute—
- “(7) Where an EEA State has been consulted in accordance with subsection (4) the Secretary of State must, after deciding whether to proceed with the project to which the environmental statement relates, inform the EEA State of the decision and give it documents containing the matters referred to in section 105B (6).”.
- (6) Omit subsection (8).
- (7) In the heading to the section, for “Member” substitute “EEA”.

Validity of decisions

5. After section 105C of the 1980 Act insert the following section—

(9) Section 105C was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

“Validity of decisions

105D.—(1) If a person aggrieved by a decision of the Secretary of State to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

- (a) it is not within the powers of this Act; or
- (b) any requirement of this Part of this Act has not been complied with in relation to the decision;

he may, within 6 weeks from the date on which the decision is first published under section 105B (6), make an application for the purpose to the High Court.

(2) On any such application, the Court—

- (a) may by interim order suspend the operation of the decision, or any aspect of it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the decision is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part of this Act, may quash the decision or any aspect of it, either generally or in so far as it affects any property of the applicant.

(3) Subject to subsection (2), a decision to which subsection (1) applies shall not be questioned in any legal proceedings whatever.”

Wales

6. In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999⁽¹⁰⁾, the reference to the 1980 Act is to be read as a reference to the 1980 Act as amended by these Regulations.

Application

7.—(1) These Regulations do not apply to a project in relation to which—

- (a) the Secretary of State or the National Assembly for Wales has before the commencement date given public notice of an environmental statement prepared under section 105A of the 1980 Act; or
- (b) a draft order or scheme has been published before the commencement date; or
- (c) the works contract has been let before the commencement date.

(2) In this regulation—

“commencement date” means the day on which these Regulations come into force;

“draft order or scheme” means any draft order or scheme to which Schedule 1 of the 1980 Act applies or any draft compulsory purchase order prepared in the exercise of any land acquisition powers of the Secretary of State or of the National Assembly for Wales, as the case may be, under sections 239, 240, 242 to 246⁽¹¹⁾ and 250(2) of the 1980 Act; and

“works contract” means a contract for the construction of a new highway or the improvement of an existing highway.

⁽¹⁰⁾ S.I. 1999/672.

⁽¹¹⁾ Section 245A was inserted by the Traffic Management Act 2004 (c.18), section 13 and has been brought into force in relation to England, but not in relation to Wales.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by authority of the Secretary of State for Transport

28th February 2007

S.J.Ladyman
Minister of State
Department for Transport

Signed on behalf of the National Assembly for Wales

20th March 2007

D.Elis-Thomas
The Presiding Officer of the National Assembly
for Wales

We consent to the making of these Regulations

5th March 2007

Alan Campbell
Dave Watts
Two of the Lords Commissioners of Her
Majesty's Treasury