
STATUTORY INSTRUMENTS

2017 No. 572

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Citation and commencement

1. These Regulations may be cited as the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and come into force on 16th May 2017.

Review

2.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 16th May 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015⁽¹⁾ requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Directive are implemented in other Member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves a less onerous regulatory provision.

(6) In this regulation “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Interpretation

3.—(1) In these Regulations—

“the Act” means the Planning Act 2008⁽²⁾;

“applicant” means—

- (a) an applicant for an order granting development consent or a person who proposes to apply for such an order; or
- (b) an applicant for subsequent consent or a person who proposes to make a subsequent application;

(1) 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).

(2) 2008, c. 29.

“associated development” means development for which development consent may be granted in accordance with section 115(3) (development for which development consent may be granted);

“the consultation bodies” means—

- (a) a body prescribed under section 42(1)(a)(4) (duty to consult) and listed in column 1 of the table set out in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(5) where the circumstances set out in column 2 of that table are satisfied in respect of that body;
- (b) each authority that is within section 43(6) (local authorities for purposes of section 42(1)(b)); and
- (c) if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority;

“the Directive” means Council [Directive 2011/92/EU](#)(7);

“EIA” has the meaning given by regulation 5;

“EIA development” means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental information” means the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development;

“environmental statement” has the meaning given by regulation 14;

“Examining authority” means the Panel or single appointed person appointed under section 65 (appointment of members, and lead member, of Panel) or section 79 (appointment of single appointed person) to examine an application under section 37, and may include one or more members of the Panel allocated a function of the Panel in accordance with section 76 (allocation within Panel of Panel’s functions)(8);

“EU environmental assessment” means an assessment carried out under—

- (a) an obligation to which section 2(1) of the European Communities Act 1972(9) applies (other than the Directive); or
- (b) the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the Directive,

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- (3) Section 115 was amended by sections 128 and 237 of, paragraphs 1 and 56 of Part 1 of Schedule 13 to, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20); by section 43 of the Wales Act 2017 (c.4); and by section 160 of the Housing and Planning Act 2016 (c. 22).
 - (4) Section 42 was amended by section 23 of the Marine and Coastal Access Act 2009 (c. 23).
 - (5) [S.I. 2009/2264](#); relevant amending instruments are [S.I. 2010/439](#), [2012/2654](#), [2012/2732](#), [2013/522](#), [2013/755](#), [2014/469](#), [2015/377](#), [2015/1682](#).
 - (6) Section 43 was amended by section 23 of the Marine and Coastal Access Act 2009, and by section 133 of the Localism Act 2011.
 - (7) OJNo. L 26, 28.1.2012, p.1-21. Council [Directive 2011/92/EU](#) has been amended by Council [Directive 2014/52/EU](#), OJ No. L 124, 25.4.2014, p. 1–18.
 - (8) Under Part 6 of the Act the Secretary of State must decide whether an accepted application for an order granting development consent is to be handled by a Panel or by a single appointed person. The Panel or single appointed person (known as the “Examining authority”) must conduct an examination of the application and make a report to the Secretary of State setting out the Examining authority’s findings and conclusions in respect of the application and its recommendation as to the decision to be made by the Secretary of State on the application.
 - (9) [1972 c. 68](#). Section 2(1) was amended by section 3(3), and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

of the effect of anything on the environment;

“exempt development” means development in respect of which the Secretary of State has made a direction under regulation 33;

“further information” means additional information which, in the view of the Examining authority, the Secretary of State or the relevant authority, is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment and which it is necessary to include in an environmental statement or updated environmental statement in order for it to satisfy the requirements of regulation 14(2);

“monitoring measure” means a provision requiring the monitoring of any significant adverse effects on the environment of proposed development, including any measures contained in a requirement imposed by an order granting development consent;

“any other information” means any other substantive information provided by the applicant in relation to the environmental statement or updated environmental statement;

“register” means a register kept pursuant to section 39(10) (register of applications);

“relevant authority” means the body which determines a subsequent application;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1 to these Regulations;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Schedule 2 to these Regulations;

“scoping opinion” means a written statement—

- (a) by the Secretary of State as to the information to be provided in an environmental statement as described in regulation 10(1); or
- (b) by the relevant authority as to any further information to be provided in an updated environmental statement as described in regulation 10(2);

“screening direction” means a direction made by the Secretary of State as to whether or not development (including any associated development) is EIA development;

“screening opinion” means a written statement of the opinion of the Secretary of State or the Examining authority as to whether development (including any associated development) is EIA development;

“subsequent application” means an application to the relevant authority for approval of a matter where—

- (a) the application is made in pursuance of a requirement imposed by an order granting development consent; and
- (b) the approval must be obtained before all or part of the development permitted by the consent may begin;

“subsequent consent” means consent granted pursuant to a subsequent application;

“subsequent screening opinion” means a written statement of a relevant authority as to whether further information is required to enable it to determine a subsequent application;

“UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;

“updated environmental statement” means the environmental statement submitted as part of an application for an order granting development consent, updated to include any further information.

(2) Except in regulation 2, any reference in these Regulations to a section is a reference to a section of the Act.

(3) Expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(4) Expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

Prohibition on granting consent without consideration of environmental information

4.—(1) This regulation applies to—

- (a) applications for an order granting development consent for EIA development received by the Secretary of State; and
- (b) subsequent applications for EIA development received by a relevant authority.

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless an EIA has been carried out in respect of that application.

Environmental impact assessment process

5.—(1) The environmental impact assessment (“the EIA”) is a process consisting of—

- (a) the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant;
- (b) the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other enactment in respect of EIA development; and
- (c) the steps that are required to be undertaken by the Secretary of State under regulation 21 or by the relevant authority under regulation 25, as appropriate.

(2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under [Directive 92/43/EEC\(11\)](#) and [Directive 2009/147/EC\(12\)](#);
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.

(4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

(5) The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate.

(11) OJ No. L 206, 22.7.1992, p. 7.

(12) OJ No. L 20, 26.1.2010, p. 7.

When development is EIA development: general cases

6.—(1) The occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that development is EIA development.

- (2) The events referred to in paragraph (1) are—
- (a) a person notifying the Secretary of State in writing under regulation 8(1)(b) that that person proposes to provide an environmental statement in respect of proposed development;
 - (b) the adoption by the Secretary of State or an Examining authority of a screening opinion to the effect that the development is EIA development; or
 - (c) the making of a screening direction by the Secretary of State pursuant to regulation 7 to the effect that the development is EIA development.

When development is EIA development: screening directions by the Secretary of State

7.—(1) A direction of the Secretary of State shall determine for the purpose of these Regulations whether or not development is EIA development but may only be given if—

- (a) the Secretary of State has accepted an application for an order granting development consent for that development; and
 - (b) paragraph (3) or paragraph (4) applies.
- (2) The Secretary of State may give a direction under paragraph (1)—
- (a) at any time until the relevant authority grants a subsequent consent; and
 - (b) either—
 - (i) of the Secretary of State's own volition; or
 - (ii) if requested to do so in writing by any person.
- (3) This paragraph applies if—
- (a) the proposed development has not been the subject of a screening opinion; and
 - (b) the application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.
- (4) This paragraph applies if—
- (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and
 - (b) the Secretary of State considers that the screening opinion did not take into account information that is material to the decision as to whether or not the proposed development is EIA development.
- (5) If the Secretary of State decides to give a screening direction following a request under paragraph (2)(b)(ii), the Secretary of State must—
- (a) request from the applicant the information set out in regulation 8(3);
 - (b) if the Secretary of State considers that sufficient information to make a screening direction has not been provided, notify the applicant of the points on which additional information is required; and
 - (c) give the screening direction within 90 days of the date on which the applicant provides sufficient information for the Secretary of State to make a direction.
- (6) Where the Secretary of State considers that, due to exceptional circumstances relating to the circumstances of the proposed development, it is not practicable to give a screening direction within the period specified in paragraph (5)(c), the Secretary of State may—

- (a) in the case of a screening direction being prepared under paragraph (2)(b)(i), extend that period by notice in writing given to the person bringing forward the development which is the subject of the proposed screening direction; or
 - (b) in the case of a screening direction being prepared under paragraph (2)(b)(ii), extend that period by notice in writing given to the person who made the request for a screening direction.
- (7) The Secretary of State must state in any notice given under paragraph (6) the reasons justifying the extension and the date when the direction is expected to be given.
- (8) The Secretary of State must send a copy of any screening direction to the relevant authority, or, if the Examining authority has been dealing with the application, to the Examining authority.

Procedure for establishing whether environmental impact assessment is required

- 8.—**(1) A person who proposes to make an application for an order granting development consent must, before carrying out consultation under section 42(13) (duty to consult) either—
- (a) ask the Secretary of State to adopt a screening opinion in respect of the development to which the application relates; or
 - (b) notify the Secretary of State in writing that the person proposes to provide an environmental statement in respect of that development.
- (2) A person who proposes to make a subsequent application may, before submitting that application—
- (a) ask the relevant authority to adopt a subsequent screening opinion in respect of the proposed development; or
 - (b) notify the relevant authority in writing that the person proposes to provide an updated environmental statement in respect of the proposed development.
- (3) A person making a request under paragraph (1)(a) must provide the following information—
- (a) a plan sufficient to identify the land;
 - (b) a description of the development, including in particular—
 - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
 - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
 - (c) a description of the aspects of the environment likely to be significantly affected by the development; and
 - (d) to the extent the information is available, a description of any likely significant effects of the development on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (4) A person making a request under paragraph (2)(a) must provide the following information—
- (a) the reference number applied by the Secretary of State to the application for an order granting development consent in respect of which the applicant proposes to make a subsequent application;

- (b) a description of any aspects of the environment likely to be significantly affected by the development which were not identified at the time the order granting development consent was made; and
 - (c) to the extent the information is available, a description of any likely significant effects on the environment not identified at the time the order granting development consent was made resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (5) A person requesting a screening opinion or subsequent screening opinion may also provide details of any features of the proposed development and any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (6) A person compiling the information set out in paragraphs (3), (4) and (5) must, where relevant, take into account—
- (a) the criteria set out in Schedule 3 to these Regulations; and
 - (b) the results of any relevant EU environmental assessment which is reasonably available to them.
- (7) Where—
- (a) the Secretary of State has received a request under paragraph (1)(a); or
 - (b) the relevant authority has received a request under paragraph (2)(a),
- the Secretary of State, or, as the case may be, the relevant authority, must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.
- (8) The Secretary of State or the relevant authority must adopt a screening opinion or a subsequent screening opinion within 21 days beginning with the date of receipt of a request made pursuant to paragraph (1)(a) or (2)(a), or where the Secretary of State or, as the case may be, the relevant authority, has notified the person making the request that it requires additional information, within 21 days of receiving that information.
- (9) Where the Secretary of State or the Examining authority adopts a screening opinion, or the Secretary of State makes a screening direction under regulation 7, the Secretary of State or the Examining authority, must—
- (a) state the main reasons for the conclusion of the Examining authority or the Secretary of State, as appropriate, with reference to the relevant criteria listed in Schedule 3 to these Regulations;
 - (b) if it is determined that the proposed development is not EIA development, state in that opinion or direction any features of the proposed development and measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment;
 - (c) send a copy of that opinion or direction and a copy of the written statement required by sub-paragraph (a) to the applicant; and
 - (d) where the Examining authority adopts the opinion, send a copy of the opinion and a copy of the written statement to the Secretary of State.
- (10) Where the relevant authority adopts a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application it must—

- (a) issue with the opinion a written statement stating the main reasons for the conclusion of the relevant authority, with reference to the relevant criteria listed in Schedule 3 to these Regulations; and
- (b) send a copy of the opinion and a copy of the written statement required by sub-paragraph (a) to the applicant and to the Secretary of State.

Considerations for screening decisions

9.—(1) Where the Secretary of State or the Examining authority has to decide under these Regulations whether Schedule 2 development is EIA development⁽¹⁴⁾ the Secretary of State or the Examining authority must take into account in making that decision—

- (a) any information provided to the Secretary of State or the Examining authority in accordance with regulation 8;
- (b) the results of any relevant EU environmental assessment which are reasonably available to the Secretary of State or the Examining authority; and
- (c) such of the selection criteria set out in Schedule 3 as are relevant to the proposed development.

(2) Where a relevant authority has to decide under these Regulations whether further information is required to enable it to determine a subsequent application it must take into account in making that decision—

- (a) any information provided to it in accordance with regulation 8;
- (b) the results of any relevant EU environmental assessment which are reasonably available to the relevant authority;
- (c) such of the selection criteria set out in Schedule 3 to these Regulations as are relevant to the development;
- (d) whether information that was available to the decision-maker when it decided to grant development consent for the development has changed since it made that decision;
- (e) whether new information on the likely environmental effects of the development has become available since the decision-maker decided to grant development consent; and
- (f) whether the new information referred to in sub-paragraphs (d) and (e) is material to the decision as to whether the proposed development is likely to have significant effects on the environment, or as to the particular nature or extent of those effects.

Application for a scoping opinion

10.—(1) A person who proposes to make an application for an order granting development consent may ask the Secretary of State to state in writing their opinion as to the scope, and level of detail, of the information to be provided in the environmental statement.

(2) A person who proposes to make a subsequent application may ask the relevant authority to state in writing its opinion as to the scope, and level of detail, of the further information to be provided in the updated environmental statement.

(3) A request under paragraph (1) must include—

- (a) a plan sufficient to identify the land;
- (b) a description of the proposed development, including its location and technical capacity;
- (c) an explanation of the likely significant effects of the development on the environment; and

⁽¹⁴⁾ See regulations 7 and 8 for the Secretary of State's role, and regulation 19 for the Examining authority's role.

- (d) such other information or representations as the person making the request may wish to provide or make.
- (4) A request under paragraph (2) must include—
- (a) the reference number of the order granting development consent in respect of which the applicant proposes to make a subsequent application;
 - (b) a description of the proposed development, including its location and technical capacity;
 - (c) an explanation of the likely significant effects of the development on the environment which were not identified at the time the order granting development consent was made; and
 - (d) such other information or representations as the person making the request may wish to provide or make.
- (5) When the Secretary of State or the relevant authority, as the case may be, has received a request for a scoping opinion under paragraph (1) or (2), they must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.
- (6) The Secretary of State or the relevant authority must not adopt a scoping opinion in response to a request under paragraph (1) or (2) until they have consulted the consultation bodies, but must, subject to paragraph (7), within 42 days beginning with the date of receipt of that request, or where they have notified the person making the request that they require additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.
- (7) Where a person has, at the same time as making a request for a screening opinion under regulation 8(1), asked the Secretary of State for a scoping opinion under paragraph (1), and the Secretary of State has adopted a screening opinion to the effect that the development is EIA development, the Secretary of State must, within 42 days beginning with the date on which that screening opinion was adopted or, where the Secretary of State has notified the person making the request that they require additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.
- (8) Where a person has, at the same time as making a request for a subsequent screening opinion under regulation 8(2), asked the relevant authority for a scoping opinion under paragraph (2), and the relevant authority has adopted a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application, the relevant authority must, within 42 days beginning with the date on which the subsequent screening opinion was adopted or, where it has notified the person making the request that it requires additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.
- (9) Before adopting a scoping opinion the Secretary of State or the relevant authority must take into account—
- (a) any information provided about the proposed development;
 - (b) the specific characteristics of the development;
 - (c) the likely significant effects of the development on the environment; and
 - (d) in the case of a subsequent application, the environmental statement submitted with the original application.
- (10) When the Secretary of State or the relevant authority has adopted a scoping opinion in response to a request under paragraph (1) or (2), neither the Secretary of State nor the relevant authority shall be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an

environmental statement or an updated environmental statement in connection with an application for an order granting development consent or a subsequent application for the same development as was referred to in the request.

(11) If a consultation body does not within 28 days of being consulted under paragraph (6) respond stating—

- (a) the information it considers should be provided in the environmental statement or the updated environmental statement; or
- (b) that it does not have any comments,

the Secretary of State or the relevant authority is entitled to assume that the consultation body in question does not have any comments on the information to be provided in the environmental statement or the updated environmental statement.

Procedure to facilitate preparation of environmental statements

11.—(1) Where paragraph (2) applies, the Secretary of State or the relevant authority must—

- (a) notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on the consultation bodies by paragraph (3) to make information available to that person;
- (b) inform the applicant in writing of the names and addresses of the bodies so notified; and
- (c) notify the applicant in writing of any particular person whom it considers—
 - (i) to be, or to be likely to be, affected by, or to have an interest in the proposed development; and
 - (ii) to be unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 (applications for orders granting development consent) of the Act.

(2) This paragraph applies if—

- (a) a person has notified the Secretary of State or the relevant authority under regulation 8(1)(b) or 8(2)(b); or
- (b) either—
 - (i) in the case of an application for an order granting development consent, the Secretary of State has given a screening opinion to the effect that the proposed development is EIA development; or
 - (ii) in the case of a subsequent application, the relevant authority has given a subsequent screening opinion to the effect that further information is required to enable it to determine the application.

(3) Subject to paragraph (4), the Secretary of State, the relevant authority and any body notified in accordance with paragraph (1), other than a person notified in accordance with paragraph (1)(c), must, if so requested by the applicant, enter into consultation with that person to determine whether the Secretary of State, the relevant authority or body, as the case may be, has in its possession any information which is considered relevant to the preparation of the environmental statement or the updated environmental statement; and, if that is the case, the Secretary of State, or the relevant authority or body must make that information available to the applicant.

(4) Paragraph (3) does not require the disclosure of information which is exempted from the duty to disclose environmental information under the Environmental Information Regulations 2004⁽¹⁵⁾

(15) [S.I. 2004/3391](#), to which there are amendments not relevant to these Regulations.

or regulation 10(5) (as read with regulation 10(6)) of the Environmental Information (Scotland) Regulations 2004(16).

(5) The Secretary of State, relevant authority or body making information available in accordance with paragraph (3) may make a reasonable charge reflecting the cost of making the relevant information available to the applicant.

(6) In this regulation, “any particular person” includes any non-governmental organisation promoting environmental protection.

Consultation statement requirements

12.—(1) The consultation statement prepared under section 47(17) (duty to consult local community) must set out—

- (a) whether the development for which the applicant proposes to make an application for an order granting development consent is EIA development; and
- (b) if that development is EIA development, how the applicant intends to publicise and consult on the preliminary environmental information.

(2) In this regulation, “preliminary environmental information” means information referred to in regulation 14(2) which—

- (a) has been compiled by the applicant; and
- (b) is reasonably required for the consultation bodies to develop an informed view of the likely significant environmental effects of the development (and of any associated development).

Pre-application publicity under section 48 (duty to publicise)

13. Where the proposed application for an order granting development consent is an application for EIA development, the applicant must, at the same time as publishing notice of the proposed application under section 48(1), send a copy of that notice to the consultation bodies and to any person notified to the applicant in accordance with regulation 11(1)(c).

Environmental statements

14.—(1) An application for an order granting development consent for EIA development must be accompanied by an environmental statement.

(2) An environmental statement is a statement which includes at least—

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;
- (c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(16) S.I. 2004/520, to which there are amendments not relevant to these Regulations.

(17) Section 47 was amended by section 134 of the Localism Act.

- (f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.
- (3) The environmental statement referred to in paragraph (1) must—
 - (a) where a scoping opinion has been adopted, be based on the most recent scoping opinion adopted (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion);
 - (b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
 - (c) be prepared, taking into account the results of any relevant UK environmental assessment, which is reasonably available to the applicant with a view to avoiding duplication of assessment.
- (4) In order to ensure the completeness and quality of the environmental statement—
 - (a) the applicant must ensure that the environmental statement is prepared by competent experts; and
 - (b) the environmental statement must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

Obligations of Secretary of State on receipt of application

15.—(1) Where—

- (a) an application has been made for an order granting development consent that includes Schedule 1 or Schedule 2 development but is not accompanied by an environmental statement; and
- (b) either paragraph (5) or (6) applies,

paragraphs (7), (8) and (9) of regulation 8 shall apply as if the receipt of the application were a request made under regulation 8(1)(a).

(2) Where paragraph (1) applies the Secretary of State must, without prejudice to the generality of regulation 8(7), make a request for additional information under that regulation to ensure that the applicant has provided at least the information referred to in regulation 8(3) before giving or adopting a screening direction or opinion.

(3) Where paragraph (2) applies the applicant must prepare the information referred to in regulation 8(3) by reference to the requirements of regulation 8(6).

(4) Where pursuant to paragraph (1), the Secretary of State has adopted a screening opinion to the effect that proposed development is EIA development and complies with regulation 8(9), the Secretary of State must suspend consideration of the application until the applicant has provided an environmental statement.

(5) This paragraph applies if—

- (a) the proposed development has not been the subject of a screening opinion; and
- (b) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purpose of these Regulations.

(6) This paragraph applies if—

- (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and

- (b) the Secretary of State is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.
- (7) Where paragraph (8) applies, the Secretary of State must—
 - (a) issue a written statement giving clearly and precisely the reasons for the conclusion;
 - (b) send a copy of that written statement to the applicant; and
 - (c) suspend consideration of the application until the applicant has provided the further information required.
- (8) This paragraph applies if—
 - (a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and
 - (b) the Secretary of State is of the view that it is necessary for the statement to contain further information.
- (9) Regulations 10 (application for scoping opinion) and 11 (procedure to facilitate preparation of environmental statements) apply to an application for an order granting development consent for EIA development which has been suspended under paragraph (4) as if, in regulation 10(1), for “A person who proposes to make an application” there were substituted “An applicant”.

Accepted application—publicity and consultation for EIA development

16.—(1) This regulation applies where an application for an order for development consent for EIA development is accepted by the Secretary of State.

(2) Where this regulation applies, the applicant must at the same time as it gives the notice required to be given under section 56(18) (notifying persons of accepted application)—

- (a) send a copy of that notice to any person notified to the applicant under regulation 11(1)(c); and
- (b) send to the consultation bodies—
 - (i) a copy of the accepted application and a map showing where the proposed development is to be sited; and
 - (ii) a copy of the environmental statement.

Certifying compliance with regulation 16

17. Where regulation 16 applies, the applicant must send to the Secretary of State a certificate of compliance with that regulation—

- (a) in the form set out in certificate 1 in Schedule 5 to these Regulations;
- (b) at the same time as complying with regulation 10 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(19).

Effect of failure to comply with regulation 16

18. Where—

- (a) an Examining authority is examining an application for an order granting development consent; and

(18) Section 56 was amended by sections 128 and 138(2) of, and paragraphs 1 and 14 of Schedule 13 to, the Localism Act 2011, and by section 23(5) of the Marine and Coastal Access Act 2009 (c. 23).

(19) S.I. 2009/2264, amended by S.I. 2012/635; there are other amending instruments but none is relevant.

- (b) the applicant has not complied with regulation 16,

the Examining authority must suspend consideration of the application until the applicant has certified to the Examining authority that the requirements of regulation 16 have been complied with, in the form set out in certificate 1 in Schedule 5 to these Regulations.

Accepted application—effect of screening opinion not taking account of all relevant information

19.—(1) Where—

- (a) an Examining authority is examining an application for an order granting development consent; and
- (b) paragraph (2) applies,

the Examining authority must comply with the requirements in paragraph (3).

(2) This paragraph applies if—

- (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and
- (b) the Examining authority is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.

(3) The requirements mentioned in paragraph (1) are that—

- (a) the Examining authority must suspend consideration of the application until it has adopted a further screening opinion;
- (b) if the Examining authority considers that there is insufficient information with which to adopt such an opinion, the Examining authority must request the applicant to provide additional information;
- (c) the Examining authority must adopt a further screening opinion provided there is sufficient information with which to do so; and
- (d) the Examining authority must adopt a further screening opinion within 21 days of a suspension of an application as described in sub-paragraph (a), or where the Examining authority has requested additional information in accordance with sub-paragraph (b), within 21 days of receiving that information.

(4) Where the Examining authority requests that the applicant provide additional information pursuant to sub-paragraph (3)(b), the applicant must prepare such additional information as falls within regulation 8(3) by reference to the requirements of regulation 8(6).

(5) Where, pursuant to paragraph (3), the Examining authority adopts a screening opinion to the effect that the proposed development is EIA development, the Examining authority must—

- (a) issue with the opinion a written statement stating the main reasons for the conclusion, with reference to the relevant criteria listed in Schedule 3 to these Regulations;
- (b) send to the applicant a copy of the opinion and a copy of the written statement mentioned in sub-paragraph (a); and
- (c) suspend consideration of the application until the requirements of paragraph (6) and, where appropriate, paragraph (7), are satisfied.

(6) The requirements mentioned in paragraph (5)(c) are that the applicant must—

- (a) provide the Examining authority with a copy of the environmental statement;
- (b) publish a notice (in accordance with sub-paragraph (c)) which sets out the following information—

- (i) the name and address of the applicant;
 - (ii) that the applicant has made an application to the Secretary of State for an order granting development consent for EIA development;
 - (iii) that the Secretary of State has accepted the application and the reference number of the application;
 - (iv) that consideration of the application by the Examining authority has been suspended until an environmental statement has been provided and publicised;
 - (v) a summary of the main proposals, specifying the location or route of the proposed development;
 - (vi) that the environmental statement is available for inspection free of charge—
 - (aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and
 - (bb) on a website maintained by or on behalf of the Secretary of State;
 - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in sub-paragraph (b)(x));
 - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
 - (ix) details of how to respond to the publicity; and
 - (x) a deadline for receipt of responses being not less than 30 days following the date on which the notice is last published;
- (c) publish the notice—
- (i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land in which the proposed development is situated;
 - (ii) once in a national newspaper;
 - (iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and
 - (iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal.
- (d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
- (e) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b);
- (f) arrange for the notice to be published on a website maintained by or on behalf of the Secretary of State;
- (g) send to the consultation bodies a copy of the environmental statement and a notice setting out the information specified in sub-paragraph (b)(i) to (v);
- (h) inform those bodies—
- (i) how and to whom they may make representations; and
 - (ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the additional information was sent in accordance with sub-paragraph (e); and
- (i) certify to the Examining authority in the form set out in certificate 2 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (h).

(7) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—

- (a) the requirements set out in paragraph (6)(c)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (6)(b) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and
- (b) the requirements set out in paragraph (6)(d) to display the notice referred to in paragraph (6)(b) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

(8) Regulation 11 (procedure to facilitate preparation of environmental statements) applies to an application for an order granting development consent for EIA development that has been suspended under sub-paragraph (3)(a), subject to the following modifications—

- (a) in paragraphs (1), (3) and (5) of regulation 11, for “the Secretary of State”, in each place, substitute “the Examining authority”; and
- (b) in regulation 11(2)—
 - (i) sub-paragraph (a) shall not apply; and
 - (ii) in sub-paragraph (b)(i) for “the Secretary of State” substitute “the Examining authority”.

Accepted application—effect of environmental statement being inadequate

20.—(1) Where an Examining authority is examining an application for an order granting development consent and paragraph (2) applies, the Examining authority must—

- (a) issue a written statement giving clearly and precisely the reasons for its conclusion;
- (b) send a copy of that written statement to the applicant; and
- (c) suspend consideration of the application until the requirements of paragraph (3) and, where appropriate, paragraph (4) are satisfied.

(2) This paragraph applies if—

- (a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and
- (b) the Examining authority is of the view that it is necessary for the statement to contain further information.

(3) The requirements mentioned in paragraph (1) are that the applicant must—

- (a) provide the Examining authority with the further information;
- (b) publish a notice (in accordance with sub-paragraph (c)) which sets out the following information—
 - (i) the name and address of the applicant;
 - (ii) that the applicant has made an application to the Secretary of State for an order granting development consent for EIA development;
 - (iii) that the Secretary of State has accepted the application and the reference number of the application;
 - (iv) that consideration of the application by the Examining authority has been suspended until further information and any other information required for the environmental statement has been provided and publicised;

- (v) a summary of the main proposals, specifying the location or route of the proposed development;
 - (vi) that the environmental statement and the further information and any other information are available for inspection free of charge—
 - (aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and
 - (bb) on a website maintained by or on behalf of the Secretary of State;
 - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in sub-paragraph (b)(x));
 - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
 - (ix) details of how to respond to the publicity; and
 - (x) a deadline for receipt of responses being not less than 30 days following the date on which the notice is last published;
- (c) publish the notice—
- (i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;
 - (ii) once in a national newspaper;
 - (iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and
 - (iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal;
- (d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
- (e) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b), except that the date specified as the latest date on which the documents will be available for inspection must not be less than 30 days later than the date on which the notice is first served;
- (f) arrange for the notice to be published on a website maintained by or on behalf of the Secretary of State;
- (g) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v); and
- (h) inform those bodies—
- (i) how and to whom they may make representations;
 - (ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the additional information was sent in accordance with sub-paragraph (e); and
 - (iii) certify to the Examining authority in the form set out in certificate 3 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (g).
- (4) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—
- (a) the requirement set out in paragraph (3)(c)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (3)(b) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and

- (b) the requirements set out in paragraph (3)(d) to display the notice referred to in paragraph (3)(b) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

Consideration of whether development consent should be granted

21.—(1) When deciding whether to make an order granting development consent for EIA development the Secretary of State must—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;
- (c) integrate that conclusion into the decision as to whether an order is to be granted; and
- (d) if an order is to be made, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be up to date at the time that the decision as to whether the order is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the Secretary of State it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the Secretary of State must—

- (a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;
- (b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and
- (c) consider, in order to avoid duplication of monitoring, whether any existing monitoring arrangements carried out in accordance with an obligation under the law of any part of the United Kingdom, other than under the Directive, are more appropriate than imposing a monitoring measure.

Subsequent application for EIA development

22.—(1) This regulation applies in relation to a subsequent application if either—

- (a) the applicant has notified the relevant authority under regulation 8(2)(b); or
- (b) the relevant authority has given a screening opinion to the effect that further information is required to enable it to determine the subsequent application.

(2) Where this regulation applies, the applicant must—

- (a) submit an updated environmental statement with the subsequent application;
- (b) comply with the requirements of paragraph (3); and
- (c) certify to the relevant authority in the form set out in certificate 4 in Schedule 5 to these Regulations that the applicant has complied with the requirements of paragraph (3).

(3) The requirements mentioned in paragraph (2)(b) are that the applicant must—

- (a) publish a notice of the subsequent application (in accordance with sub-paragraph (b)) which sets out the following information—

- (i) the name and address of the applicant;
 - (ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent;
 - (iii) the reference number of the order granting development consent;
 - (iv) that the order granting development consent is for EIA development;
 - (v) a summary of the main proposals, specifying the location or route of the proposed development;
 - (vi) that the updated environmental statement and supporting documents are available for inspection free of charge—
 - (aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and
 - (bb) on a website maintained by or on behalf of the relevant authority;
 - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in paragraph (x));
 - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
 - (ix) details of how to respond to the publicity; and
 - (x) a deadline for receipt of responses being not less than 30 days following the date when the notice is last published;
- (b) publish the notice—
- (i) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;
 - (ii) once in a national newspaper;
 - (iii) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
 - (iv) in the case of offshore development, once in Lloyds List; and once in an appropriate fishing trade journal;
- (c) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
- (d) where a person has been notified to the applicant under regulation 11(1)(c), serve on that person a copy of that notice, as the same time as the notice is published;
- (e) arrange for the notice to be published on a website maintained by or on behalf of the relevant authority; and
- (f) send to the consultation bodies—
- (i) a notice setting out the details listed at sub-paragraph (a)(i) to (v);
 - (ii) details of how to respond to the consultation;
 - (iii) a deadline for receipt of responses being not less than 30 days following the date when the body receives the notice;
 - (iv) a map showing where the proposed development is to be sited; and
 - (v) a copy of the updated environmental statement and of any supporting documents.
- (4) Where the proposed development consists of, or includes, works with a route or alignment exceeding 5 kilometres in length—

- (a) the requirement set out in paragraph (3)(b)(i) shall be taken to include a requirement to publish the notice referred to in paragraph (3)(a) for at least 2 successive weeks in one or more local newspapers circulating in the vicinity of the land along the route or alignment of the works described in the application; and
- (b) the requirements set out in paragraph (3)(c) to display the notice referred to in paragraph (3)(a) shall be taken to include a requirement to display the notice at intervals of not more than 5 kilometres along the whole proposed route or alignment of the works described in the application, except where this is impracticable due to the land in question being covered in water.

Subsequent application where environmental information previously provided

23.—(1) This regulation applies where—

- (a) a relevant authority is dealing with a subsequent application;
- (b) the applicant has not notified the relevant authority in accordance with regulation 8(2)(b); and
- (c) the application is not accompanied by a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations.

(2) Where it appears to the relevant authority that the environmental information already before it is adequate to assess the environmental effects of the development in accordance with regulation 25, it must take that information into consideration in its decision as to subsequent consent.

(3) Where it appears to the relevant authority that the environmental information already before it is not adequate to assess the environmental effects of the development—

- (a) the relevant authority must issue a written statement giving clearly and precisely the reasons for that conclusion;
- (b) the applicant must comply with the requirements of regulation 22(2); and
- (c) the relevant authority must suspend consideration of the application until the requirements of regulation 22(2) are complied with.

Subsequent application not complying with EIA requirements

24.—(1) This regulation applies where—

- (a) the relevant authority is dealing with a subsequent application;
- (b) the applicant has submitted a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations; and
- (c) the relevant authority is of the opinion that the statement should contain further information.

(2) Where paragraph (1) applies, the relevant authority must—

- (a) issue a written statement giving clearly and precisely the reasons for that conclusion; and
- (b) suspend consideration of the application until the requirements of paragraph (3) and, where appropriate, paragraph (4) are met.

(3) Where paragraph (1) applies, the applicant must—

- (a) provide the relevant authority with the further information;
- (b) publish (in accordance with sub-paragraph (c)) a notice which sets out the following information—
 - (i) the name and address of the applicant;

- (ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent for EIA development;
- (iii) the reference number of the order granting development consent;
- (iv) a summary of the main proposals, specifying the location or route of the proposed development;
- (v) that consideration of the application has been suspended until additional information required for the updated environmental statement has been provided and publicised;
- (vi) that the further information, the updated environmental statement and supporting documents are available for inspection free of charge—
 - (aa) at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and
 - (bb) on a website maintained by or on behalf of the relevant authority;
- (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline referred to in paragraph (x) below);
- (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
- (ix) details of how to respond to the publicity; and
- (x) a deadline for receipt of responses being not less than 30 days following the date when the notice is last published;
- (c) publish and post the notice referred to in paragraph (3)(b) in the same manner as prescribed in regulation 20(3)(c) and (d) and, where appropriate, in regulation 20(4);
- (d) serve on any person of whom the applicant has been notified under regulation 11(1)(c) a notice containing the information specified in sub-paragraph (b);
- (e) arrange for the notice to be published on a website maintained by or on behalf of the relevant authority;
- (f) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v);
- (g) inform those bodies—
 - (i) how and to whom they may make representations; and
 - (ii) of the deadline for making representations which must be not less than 30 days later than the last date on which the further information was sent in accordance with sub-paragraph (f); and
- (h) certify to the relevant authority in the form set out in certificate 5 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (g).

Decision-making on subsequent applications

25.—(1) When deciding whether to grant subsequent consent for EIA development the relevant authority must—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, any supplementary examination considered necessary;
- (c) integrate that conclusion into the decision as to whether subsequent consent is to be granted; and

(d) if subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1)(b) must be up to date at the time that the decision as to whether subsequent consent is to be granted is taken, and that conclusion shall be taken to be up to date if in the opinion of the relevant authority it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the development described in the application.

(3) When considering whether to impose a monitoring measure under paragraph (1)(d), the relevant authority must—

- (a) if monitoring is considered to be appropriate, consider whether to make provision for potential remedial action;
- (b) take steps to ensure that the type of parameters to be monitored and the duration of the monitoring are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment; and
- (c) consider, in order to avoid duplication of monitoring, whether any existing monitoring arrangements carried out in accordance with an obligation under the law of any part of the United Kingdom, other than under the Directive, are more appropriate than imposing a monitoring measure.

Co-ordination

26.—(1) Where in relation to EIA development there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulation Assessment, the Secretary of State or the relevant authority, as the case may be, must where appropriate ensure that the Habitats Regulation Assessment and EIA are co-ordinated.

(2) In this regulation, a “Habitats Regulation Assessment” means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010⁽²⁰⁾.

Availability of copies of environmental statements

27.—(1) An applicant who submits in connection with an application a statement which the applicant refers to as an environmental statement or an updated environmental statement, must ensure that a reasonable number of copies of the statement are available at the address set out in the notices published or posted pursuant to these Regulations as the address at which copies may be obtained.

(2) The Secretary of State, or relevant authority, responsible for determining an application for EIA development under these Regulations must ensure that the environmental statement submitted in respect of that application is available on the website referred to in the notices published or posted pursuant to these Regulations and regulation 9 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽²¹⁾.

Charges for copies of environmental statements

28. A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of an environmental statement made available in accordance with regulation 27.

⁽²⁰⁾ S.I. 2010/490. Regulation 61 was amended by S.I. 2012/1927.

⁽²¹⁾ S.I. 2009/2264, amended by S.I. 2012/635; there are other amending instruments but none is relevant.

Availability of directions etc and notification of decisions

29.—(1) Where particulars of an application for an order granting development consent are placed on the register, the Secretary of State must take steps to secure that there is also placed on the register a copy of any relevant—

- (a) screening opinion;
- (b) scoping opinion;
- (c) statement given under regulation 15(7), 19(5)(a) or 20(1)(a);
- (d) direction under regulation 33;
- (e) environmental statement, including any further information and any other information; and
- (f) statement of reasons accompanying any of the above.

(2) Where a relevant authority receives an application for subsequent consent, it must take steps to secure that details of the application are entered in the register and to secure that there is also placed on the register a copy of any relevant—

- (a) subsequent screening opinion;
- (b) screening direction;
- (c) scoping opinion that it has adopted;
- (d) statement given under regulation 19(5)(a) or 20(1)(a);
- (e) updated environmental statement, including any further information and any other information; and
- (f) statement of reasons accompanying any of the above.

(3) Where the Secretary of State or an Examining authority, as the case may be—

- (a) adopts a screening opinion or scoping opinion;
- (b) receives a request under regulation 8(1)(a); or
- (c) receives a copy of a direction under regulation 33,

the Secretary of State 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 register is kept.

(4) Where the relevant authority—

- (a) adopts a subsequent screening opinion or scoping opinion; or
- (b) receives a request under regulation 8(2)(a);

it must take steps to secure that a copy of the opinion or request and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the register is kept.

Decision notices

30.—(1) Where—

- (a) the Secretary of State has determined an application for an order granting development consent for EIA development; or
- (b) the relevant authority has determined a subsequent application,

a notification of the decision must be given to the applicant (“the decision notice”) which must include the information specified in paragraph (2).

(2) The information is—

- (a) information regarding the right to challenge the validity of the decision and the procedures for doing so; and
- (b) if the decision is —
 - (i) to approve the application—
 - (aa) the reasoned conclusion of the Secretary of State or the relevant authority, as the case may be, on the significant effects of the development on the environment, taking into account the results of the examination referred to, in the case of an application for an order granting development consent in regulation 21, and in the case of a subsequent application, in regulation 25;
 - (bb) where relevant, any requirements to which the decision is subject which relate to the likely significant environmental effects of the development on the environment;
 - (cc) a description of any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset, likely significant adverse effects on the environment; and
 - (dd) any monitoring measures considered appropriate by the Secretary of State or relevant authority, as the case may be; or
 - (ii) to refuse the application, the main reasons for the refusal.

Duties to inform consultees, public and the Secretary of State of final decisions

31.—(1) Paragraph (2) applies where—

- (a) the Secretary of State determines an application for an order granting development consent for EIA development; or
 - (b) the relevant authority determines a subsequent application to which regulation 22 applies.
- (2) Where this paragraph applies, the Secretary of State or, as the case may be, the relevant authority must—
- (a) inform the consultation bodies of the decision in writing;
 - (b) where the decision has been made by a relevant authority which is not the Secretary of State, inform the Secretary of State of the decision in writing;
 - (c) inform the public of the decision by publication of a notice of the decision in the manner prescribed in paragraph (3) and—
 - (i) where the decision has been made by the Secretary of State, by publication of a notice of the decision on the website of the Secretary of State; or
 - (ii) where the decision has been made by a relevant authority which is not the Secretary of State and where that authority maintains a website for the purpose of advertisement of applications, by publication of a notice of the decision on the website of that authority; and
 - (d) make available for public inspection, at the place where the register is kept, a statement containing—
 - (i) the main reasons and considerations on which the decision is based, including information about the arrangements taken to ensure the public had the opportunity to participate in the decision-making procedures;
 - (ii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results, in particular the comments received from an EEA State pursuant to consultation under regulation 32, have been incorporated or otherwise addressed; and

- (iii) details of the matters referred to in regulation 30(2).
- (3) Notice of the decision must be published—
 - (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development is situated;
 - (b) once in a national newspaper;
 - (c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
 - (d) in the case of offshore development, once in Lloyd's List; and once in an appropriate fishing trade journal.

Development with significant transboundary effects

- 32.**—(1) This regulation applies where—
- (a) an event mentioned in regulation 6(2) occurs and the Secretary of State is of the view that the development is likely to have significant effects on the environment in another EEA State;
 - (b) it otherwise comes to the attention of the Secretary of State that development proposed to be carried out in England, Wales or Scotland is the subject of an application for EIA development made under these Regulations and the Secretary of State is of the view that such development is likely to have significant effects on the environment in another EEA State; or
 - (c) another EEA State likely to be significantly affected by such development so requests.
- (2) Where this regulation applies, the Secretary of State must—
- (a) send to the EEA State as soon as possible and no later than the date of publication in The London Gazette referred to in sub-paragraph (b), the particulars required by paragraph (3) and, if the Secretary of State thinks fit, the information referred to in paragraph (4);
 - (b) publish the information mentioned in sub-paragraph (a) in a notice placed in—
 - (i) the London Gazette, in relation to all proposed development; and
 - (ii) the Edinburgh Gazette, in relation to development proposed to be carried out in Scotland,indicating the address where additional information is available; and
 - (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (3) The particulars mentioned in paragraph (2)(a) are—
- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
 - (b) information on the nature of the decision which may be taken.
- (4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Secretary of State must as soon as possible send to that EEA State the following information—
- (a) a copy of the application concerned;
 - (b) details of the authority responsible for deciding the application;
 - (c) a copy of any environmental statement in respect of the development to which that application relates; and
 - (d) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

(5) The Secretary of State must also ensure that the EEA State concerned is given an opportunity, before development consent for the development is granted, to forward to the Secretary of State, within a reasonable time, the opinions of its public and of the authorities referred to in Article 6(1) of the Directive on the information supplied.

(6) The Secretary of State must in accordance with Article 7(4) of the Directive—

- (a) enter into consultation with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Secretary of State must inform the EEA State of the decision and must forward to it a copy of the decision notice referred to in regulation 30.

Exemptions

33.—(1) The Secretary of State may direct that a proposed development is exempt from the requirements of these Regulations where—

- (a) the circumstances are exceptional and the Secretary of State considers that—
 - (i) compliance with these Regulations in respect of the development would have an adverse effect on the fulfilment of the development's purpose; and
 - (ii) (despite an EIA not being carried out) the objectives of the Directive will be met; or
- (b) the development comprises or forms part of a development having national defence as its sole purpose, or comprises a development having the response to civil emergencies as its sole purpose, and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on those purposes.

(2) Where a direction is given under paragraph (1) the Secretary of State must send a copy of that direction to the relevant authority or, if the Examining authority has been dealing with the application, to the Examining authority.

(3) The Secretary of State must not make a direction under paragraph (1)(a) that a project is exempt unless—

- (a) the Secretary of State has considered whether another form of assessment is appropriate; and
- (b) where the Secretary of State considers that the development is likely to have significant effects on the environment in another EEA State, or where another EEA State likely to be significantly affected so requests, the Secretary of State carries out a form of consultation with that EEA State broadly equivalent to the form described in regulation 32, or is satisfied that such an equivalent consultation has been carried out, before an order granting development consent or subsequent consent is made in respect of the development.

(4) After the Secretary of State directs that a development is exempt under paragraph (1)(a), the Secretary of State must as soon as practicable make available to the public—

- (a) the direction including an explanation of the reasons for it; and
- (b) the information obtained under any other assessment considered appropriate by the Secretary of State under paragraph (3)(a).

(5) Before an order granting development consent or subsequent consent is made in respect of a development which is exempt under paragraph (1)(a), the Secretary of State, the Examining Authority or the relevant authority, as appropriate, must take into account the results of —

- (a) any other assessment considered appropriate by the Secretary of State under paragraph (3)(a); and
- (b) any consultation with another EEA State carried out under paragraph (3)(b) about the development.

(6) Before an order granting development consent or subsequent consent is made in respect of a development which is exempt under paragraph (1)(a), the Secretary of State must inform the European Commission of the matters referred to in paragraph (4).

(7) The effect of a direction under paragraph (1) is that these Regulations do not apply to it save to the extent set out in this regulation.

Service of notices etc

34. Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in sections 229 to 231 (service of notices).

Objectivity and bias

35.—(1) Where the Secretary of State, Examining authority or a relevant authority has a duty under these Regulations, they must perform that duty in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where a relevant authority, or the Secretary of State, is bringing forward a proposal for development and that relevant authority or the Secretary of State, as appropriate, will also be responsible for determining its own proposal, the relevant authority or the Secretary of State must make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.

Amendment of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

36.—(1) The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽²²⁾ are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) in the definition of “EIA development” and “environmental statement” for “2009” substitute “2017”.

(3) In regulation 5(2)(a) for “Regulation 2009” substitute “Regulations 2017”.

(4) In regulation 9 (publicising an accepted application)—

- (a) in paragraph (1), after “where applicable” insert “, (2A), and”;
- (b) after paragraph (2), insert—

“(2A) In the case of EIA development, the notice must be made available on a website maintained by or on behalf of the Secretary of State.”; and

(c) in paragraph (4)—

- (i) for sub-paragraph (f) substitute—

“(f) a statement that a copy of the application form and its accompanying documents, plans and maps are available for inspection—

(22) S.I. 2009/2264; relevant amending instruments are S.I. 2010/602, 2012/635, 2012/2732, 2013/522 and 2014/2381.

- (i) free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice; and
- (ii) in the case of EIA development on a website maintained by or on behalf of the Secretary of State;” and
- (ii) for sub-paragraph (j) substitute—
 - “(j) a deadline for the receipt by the Secretary of State of those representations being not less than—
 - (i) in the case of development which is not EIA development, 28 days; and
 - (ii) in the case of EIA development, 30 days,
 following the date that the notice is last published.”

Revocation and transitional provision

37.—(1) Subject to paragraphs (2) and (3), the following instruments are revoked to the extent specified—

- (a) the 2009 Regulations(**23**);
- (b) the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2011(**24**);
- (c) the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012(**25**); and
- (d) regulation 2 of the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012(**26**).

(2) Notwithstanding the revocations in paragraph (1), the 2009 Regulations continue to apply to any application for an order granting development consent or subsequent consent where before the commencement of these Regulations—

- (a) the applicant has—
 - (i) submitted an environmental statement or updated environmental statement (as defined in the 2009 Regulations), as the case may be, in connection with that application;
 - (ii) requested the Secretary of State or the relevant authority to adopt a scoping opinion (as defined in the 2009 Regulations) in respect of the development to which the application relates; or
 - (iii) made a request for—
 - (aa) a screening opinion under regulation 6(1)(a) of the 2009 Regulations (including a deemed request under regulation 12(1)); or
 - (bb) a subsequent screening opinion under regulation 6(2)(a) of the 2009 Regulations; or
- (b) the Secretary of State has initiated the making of a screening direction under regulation 5(2)(b)(i) of the 2009 Regulations.

(23) S.I. 2009/2263, amended by S.I. 2011/988, 2011/1043, 2011/2741, 2012/635, 2012/787.

(24) S.I. 2011/2741.

(25) S.I. 2012/787.

(26) S.I. 2012/635.

(3) In this regulation “the 2009 Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(27).

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

Gavin Barwell
Minister of State
Department for Communities and Local
Government

18th April 2017