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STATUTORY INSTRUMENTS

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**2017 No. 580**

**The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017**

**PART 2**

Environmental impact assessment

CHAPTER 4

Procedure

**Application of Chapter**

- 21.** This Chapter applies where a person (the “developer”)—
- (a) makes an application (the “application”) for a section 36 or 37 consent, or a section 36 variation, for EIA development (the “development”); and
  - (b) provides the relevant authority with an EIA report (the “EIA report”).

**EIA report: publicity**

**22.—**(1) Subject to paragraphs (2) and (3), after providing the relevant authority with the EIA report, the developer must publish a notice in accordance with paragraphs (4) and (5).

(2) If the relevant authority informs the developer that—

- (a) the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state <sup>M1</sup>F1... or
- (b) an EEA state <sup>F1</sup>... has made a request under paragraph (1) of regulation 24 (development affecting <sup>F2</sup>... EEA states),

the developer must not publish the notice until after the relevant authority notifies the developer in writing that the relevant authority has sent the EEA state the information referred to in that paragraph.

(3) Where the application is for a section 36 variation, the developer must not publish the notice until after the developer is notified under regulation 4(6) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 <sup>M2</sup>F3, or in a case where the Welsh Ministers are the relevant authority, under regulation 4(6) of the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019,] that the application is suitable for publication.

(4) The notice must be published—

- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002 <sup>M3</sup>, in the Belfast Gazette; and

- (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
- (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
  - (ii) in a national newspaper or newspapers;
  - (iii) in Lloyd's List; and
  - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).
- (5) The notice must—
- (a) describe the application;
  - (b) state that an environmental impact assessment will be undertaken in respect of the development and, where the relevant authority so informs the developer, that the development is likely to have significant effects on the environment in an EEA state <sup>F1</sup>...
  - (c) state the nature of the possible decisions that may be taken in relation to the application;
  - (d) state that a copy of the EIA report may be accessed at the application website free of charge and give the address of the application website;
  - (e) state that a copy of the EIA report may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development will be carried out or, if the development will be carried out in relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);
  - (f) state how a copy of the EIA report may be obtained and the amount of any payment required;
  - (g) state that representations about the EIA report and the application may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published);
  - (h) set out how any further environmental information subsequently provided by the developer will be made available to the public and the procedures for making representations about the further environmental information (see regulations 26, 28, 29 and 30);
  - (i) set out how any additional environmental information provided to the relevant authority will be made available to the public (see regulations 28, 29 and 31);
  - (j) set out the circumstances in which a public inquiry into the application may be held under the Electricity Act 1989.
- (6) The notice may be combined with any other notice that the developer is required to publish in connection with the application.
- (7) The developer must send a copy of each notice published under paragraph (4) to the relevant authority together with evidence of the date and place of publication.
- (8) As soon as reasonably practicable after receiving a copy of the notice, the relevant authority must send a copy to—
- (a) every local planning authority for the area in which the development will be carried out; or
  - (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.
- (9) The developer must make a copy of the EIA report available for inspection free of charge at the address and times referred to in paragraph (5)(e).

### Textual Amendments

- F1** Words in reg. 22(2)(5) omitted (31.12.2020) by virtue of [The Pipe-lines, Petroleum, Electricity Works and Oil Stocking \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1325\)](#), regs. 1(1), **10(5)**; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in reg. 22(2)(b) omitted (31.12.2020) by virtue of [The Pipe-lines, Petroleum, Electricity Works and Oil Stocking \(Miscellaneous Amendments\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1325\)](#), regs. 1(1), **10(6)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 22(3) inserted (1.4.2019) by [The Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/292\)](#), regs. 1, **2(4)**

### Marginal Citations

- M1** “EEA state” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#).
- M2** [S.I. 2013/1570](#). Schedule 5 to these Regulations amends [S.I. 2013/1570](#).
- M3** [S.I. 2002/791](#).

### EIA report: provision to consultation bodies, etc.

**23.**—(1) As soon as reasonably practicable after receiving the EIA report, the relevant authority must notify the developer in writing of any public authority (other than a consultation body) that, by reason of its specific environmental responsibilities or local or regional competences, the relevant authority thinks is likely to have an interest in the development.

(2) The developer must—

- (a) send a copy of the EIA report (and a copy of the application and any plan submitted with the application, unless the developer has already done so) to every consultation body and every other public authority notified under paragraph (1); and
- (b) give notice in writing to every consultation body and every other public authority notified under paragraph (1) that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the EIA report and the application before—
- (i) the date stated in the notice published under regulation 22 as the date by which representations about the EIA report may be made; or
- (ii) if later, 30 days after the date on which the consultation body or public authority receives a copy of the EIA report (and, where relevant, a copy of the application and any plan submitted with the application).

(3) After complying with paragraph (2), the developer must inform the relevant authority in writing of the date on which the last consultation body or public authority to receive a copy of the EIA report (and, where relevant, a copy of the application and any plan submitted with the application) and the notice referred to in paragraph (2)(b) does so.

### Development affecting <sup>F4</sup>... EEA states

**24.**—(1) Where the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state <sup>F5</sup>... or where an EEA state <sup>F5</sup>... so requests, the relevant authority must, as soon as reasonably practicable, send to the EEA state—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in EEA states <sup>F6</sup>...;
- (b) a notice explaining the nature of the possible decisions that may be taken in relation to the application and informing the EEA state that it may, within such reasonable period as

may be specified in the notice, inform the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(2) Paragraphs (3) to (5) apply where an EEA state informs the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(3) As soon as reasonably practicable after being so informed, the relevant authority must send to the EEA state (to the extent that the relevant authority has not already done so)—

- (a) a copy of the notice published by the developer under regulation 22;
- (b) a copy of the EIA report; and
- (c) any other available information that is relevant to the development.

(4) The relevant authority must ensure that a reasonable period of time is given for the authorities of the EEA state [<sup>F7</sup>designated by the EEA state concerned to be consulted about the project] and the public concerned in the EEA state to make representations about the information sent under paragraphs (1) and (3) to the relevant authority before the application is determined.

(5) The relevant authority must enter into consultations with the EEA state, for a reasonable period of time agreed with the EEA state, regarding, amongst other things, the likely significant effect of the development on the environment of the EEA state and the measures envisaged to reduce or eliminate those effects.

(6) This regulation is subject to regulation 36 (confidential information, etc.).

#### Textual Amendments

- F4** Word in reg. 24 heading omitted (31.12.2020) by virtue of *The Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1325)*, regs. 1(1), **10(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in reg. 24(1) omitted (31.12.2020) by virtue of *The Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1325)*, regs. 1(1), **10(7)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 24(1)(a) omitted (31.12.2020) by virtue of *The Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1325)*, regs. 1(1), **10(7)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in reg. 24(4) substituted (31.12.2020) by *The Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1325)*, regs. 1(1), **10(7)(d)**; 2020 c. 1, Sch. 5 para. 1(1)

#### When relevant authority must request further environmental information

**25.**—(1) Where at any time before the application is determined the relevant authority thinks that it is necessary, for the purpose of reaching the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d), for—

- (a) the information in the EIA report to be supplemented by any other information that is required to be or may be included in the EIA report; or
- (b) the information in the EIA report, or any information that the developer provides to the relevant authority to supplement that information, to be verified by such evidence as the relevant authority may reasonably call for,

the relevant authority must, by notice in writing, require the developer to provide the information or evidence.

(2) If the developer fails to provide the information or evidence required under paragraph (1) within such reasonable period or periods as the relevant authority may notify in writing, the relevant

authority may treat the application as having been withdrawn; and, if so, the relevant authority must notify the developer of that fact in writing.

**Further environmental information: publicity and provision to consultation bodies, etc.**

**26.**—(1) Where the developer provides any further environmental information to the relevant authority, the developer must publish a notice in accordance with paragraphs (2) and (3).

(2) The notice must be published—

- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, in the Belfast Gazette; and
- (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
  - (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
  - (ii) in a national newspaper or newspapers;
  - (iii) in Lloyd's List; and
  - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(3) The notice must—

- (a) describe the application;
- (b) state that the developer has provided the further environmental information in connection with the environmental impact assessment that must be undertaken in respect of the development;
- (c) state that a copy of the further environmental information may be accessed at the application website free of charge and give the address of the application website;
- (d) state that a copy of the further environmental information may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development will be carried out or, if the development will be carried out in relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);
- (e) state how a copy of the further environmental information may be obtained and the amount of any payment required;
- (f) state that representations about the further environmental information may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published).

(4) The developer must send a copy of each notice published under paragraph (2) to the relevant authority together with evidence of the date and place of publication.

(5) As soon as reasonably practicable after receiving a copy of the notice, the relevant authority must send a copy to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(6) The developer must make a copy of the further environmental information available for inspection free of charge at the address and times referred to in paragraph (3)(d).

(7) The developer must—

- (a) send a copy of the further environmental information to every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23(2); and
- (b) give notice in writing to every such consultation body or public authority that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the further environmental information before—
  - (i) the date stated in the notice published under paragraph (2) as the date by which representations about the further environmental information may be made; or
  - (ii) if later, 30 days after the date on which the consultation body or public authority receives a copy of the further environmental information.

(8) After complying with paragraph (7), the developer must inform the relevant authority in writing of the date on which the last consultation body or public authority to receive a copy of the further environmental information and the notice referred to in paragraph (7)(b) does so.

(9) In this regulation, “further environmental information” means any information or evidence that the developer—

- (a) is required to provide to the relevant authority under regulation 25(1); or
- (b) otherwise provides to the relevant authority to supplement the information in the EIA report.

#### **Additional environmental information**

27.—(1) Where any additional environmental information is received by the relevant authority, the relevant authority must send a copy of the additional environmental information to the developer and to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) In paragraph (1), “additional environmental information” means any information and representations (other than further environmental information) received by the relevant authority under the procedures provided by this Chapter after the date on which the EIA report is provided to the relevant authority and before the relevant authority determines the application that the relevant authority thinks is of material relevance to the matters set out in Schedule 4.

#### **Application website**

28.—(1) The developer or, where paragraph (2) applies, the relevant authority must ensure that a copy of each item set out in an entry in column 1 of the table is able to be accessed by the public at a website (the “application website”) free of charge from the date set out in the corresponding entry in column 2 until the date on which the application is determined.

<b>(1) Item</b>	<b>(2) Date from which item must be accessible at application website</b>
Notice published under regulation 22	The date on which the first notice is published under regulation 22(4)
EIA report	The date on which the first notice is published under regulation 22(4)

Notice published under regulation 26	The date on which the first notice is published under regulation 26(2)
Further environmental information	The date on which the first notice is published under regulation 26(2)
Additional environmental information	As soon as reasonably practicable after the date on which the additional environmental information is received by the developer or, where paragraph (2) applies, the relevant authority

(2) This paragraph applies where the relevant authority notifies the developer in writing that the relevant authority will comply with the obligations in paragraph (1).

(3) Where the relevant authority notifies the developer under regulation 5(2A) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013<sup>M4</sup><sup>F8</sup>, or in a case where the Welsh Ministers are the relevant authority, under regulation 5(3) of the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019,<sup>J</sup> that the relevant authority will, instead of the developer, comply with the obligations in paragraph (2) of that regulation to publish material on a website, the relevant authority must also notify the developer under paragraph (2) of this regulation that the relevant authority will comply with the obligations in paragraph (1) of this regulation.

(4) The application website must be the same website on which information is published under regulation 5(2) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013<sup>F9</sup>, or in a case where the Welsh Ministers are the relevant authority, under regulation 5(2) of the Electricity (Offshore Generating Stations) (Variation of Consents) (Wales) Regulations 2019<sup>J</sup>.

#### Textual Amendments

- F8** Words in reg. 28(3) inserted (1.4.2019) by [The Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/292\)](#), regs. 1, **2(5)(a)**
- F9** Words in reg. 28(4) inserted (1.4.2019) by [The Electricity Works \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) \(Wales\) Regulations 2019 \(S.I. 2019/292\)](#), regs. 1, **2(5)(b)**

#### Marginal Citations

- M4** Regulation 5(2A) is inserted by paragraph 8 of Schedule 5 to these Regulations. Regulation 5(2) is substituted by that paragraph.

### Local planning authority must place copy of EIA report, etc. on Part 1 of planning register

**29.**—(1) Where a local planning authority that keeps the planning register receives a copy of—

- (a) a notice under regulation 22(8) or 26(5);
- (b) the EIA report under regulation 23(2);
- (c) further environmental information under regulation 26(7); or
- (d) additional environmental information under regulation 27(1),

the local planning authority must place a copy of the document on Part 1 of the planning register as soon as reasonably practicable after receipt.

(2) Where a local planning authority that keeps the planning register receives a copy of—

- (a) a screening decision in respect of the development under regulation 16(1);

(b) a scoping opinion in relation to the EIA report under regulation 19(1),  
the local planning authority must place a copy of the decision or opinion on Part 1 of the planning register as soon as reasonably practicable after receipt of any of the documents referred to in paragraph (1).

(3) The documents referred to in paragraphs (1) and (2) must be kept on Part 1 of the planning register until the application is determined.

#### **Developer must provide copy of EIA report, etc. to public**

**30.**—(1) Where before the application is determined a person requests the developer to provide a copy of any of the following, the developer must do so as soon as reasonably practicable after receiving the request—

- (a) the EIA report;
- (b) any further environmental information.

(2) The developer may make a reasonable charge reflecting printing and distribution costs in relation to the provision of a copy of the EIA report or any further environmental information (but any copy that the developer is required to send under regulation 23(2) or regulation 26(7) must be provided free of charge).

#### **Relevant authority must provide copy of additional environmental information to public**

**31.**—(1) Where before the application is determined a person requests the relevant authority to provide a copy of any additional environmental information, the relevant authority must do so as soon as reasonably practicable after receiving the request.

(2) The relevant authority may make a reasonable charge reflecting printing and distribution costs in relation to the provision of a copy of the additional environmental information (but any copy that the relevant authority is required to send under regulation 27(1) must be provided free of charge).

#### **Determination of application: timing**

**32.**—(1) The relevant authority must determine the application within a reasonable time after the relevant authority has all the information and evidence necessary to reach the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d) and to determine the application (including, where a public inquiry under the Electricity Act 1989 is held in relation to the application, the inspector's report).

(2) But the relevant authority must not determine the application before the latest of the following dates—

- (a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act or regulations 22 or 26 of these Regulations, as the date by which objections or representations may be made in relation to the application;
- (b) 30 days after the date on which every person to whom the developer is required to send a copy of the following documents receives a copy—
  - (i) the EIA report (see regulation 23(2)(a));
  - (ii) any further environmental information (see regulation 26(7)(a));
- (c) the date on which any reasonable period for the authorities and public of an EEA state to make representations referred to in regulation 24(4) ends or, if later, the date on which any consultations with an EEA state referred to in regulation 24(5) end.

### **Decision notice: content**

**33.**—(1) On determining the application, the relevant authority must give notice in writing of the decision (the “decision notice”) to the developer.

(2) The decision notice must include the following information—

- (a) the terms of the decision;
- (b) information about the participation of the public, including a summary of the results of the consultations undertaken and information gathered under regulations 22 to 26 and how these results have been incorporated or otherwise addressed, in particular the comments received from every EEA state that invoked the procedure provided by regulation 24;
- (c) if the decision is to grant the application—
  - (i) the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d);
  - (ii) any environmental conditions to which the decision is subject;
  - (iii) a description of any features or measures to be implemented by the developer that it is envisaged will avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment; and
  - (iv) a description of any measures to monitor significant adverse effects on the environment that the relevant authority thinks are appropriate;
- (d) if the decision is to refuse the application, the main reasons for the refusal; and
- (e) information about how the validity of the decision can be challenged and the procedures for doing so.

(3) Where the relevant authority thinks it is appropriate to include any monitoring measures referred to in paragraph (2)(c)(iv)—

- (a) the type of parameters to be monitored and the duration of the monitoring must be proportionate to the nature, location and size of the development and the significance of its effects on the environment; and
- (b) existing monitoring measures under other legislation may be used, if appropriate, with a view to avoiding duplication of monitoring.

### **Decision notice: publicity**

**34.**—(1) As soon as reasonably practicable after determining the application, the relevant authority must send a copy of the decision notice to—

- (a) every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23(2);
- (b) every EEA state that invoked the procedure provided by regulation 24.

(2) Where a local planning authority that keeps the planning register receives a copy of the decision notice, the local planning authority must place a copy on Part 2 of the planning register as soon as reasonably practicable after receipt.

(3) As soon as reasonably practicable after receiving a copy of the decision notice, the developer must publish a notice in accordance with paragraphs (4) and (5).

(4) The notice must be published—

- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the *Adjacent Waters Boundaries (Northern Ireland) Order 2002*, in the Belfast Gazette; and

- (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
  - (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
  - (ii) in a national newspaper or newspapers;
  - (iii) in Lloyd's List; and
  - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).
- (5) The notice must state—
  - (a) that the application has been determined;
  - (b) that a section 36 or 37 consent has been granted or refused or that a section 36 variation has been made or not, as the case may be;
  - (c) where a copy of the decision notice is sent to a local planning authority that keeps the planning register, that a copy of the decision notice is available for public inspection on the planning register and give the address where the planning register may be inspected;
  - (d) that a copy of the decision notice may be accessed at the website referred to in paragraph (6) and give the address of the website.
- (6) As soon as reasonably practicable after determining the application, the relevant authority must ensure that a copy of the decision notice is able to be accessed by the public free of charge at a website maintained by or on behalf of the relevant authority.

**Changes to legislation:**

There are currently no known outstanding effects for the The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017, CHAPTER 4.