
STATUTORY INSTRUMENTS

2017 No. 580

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

PART 3

Miscellaneous

Provision of information by consultation bodies, etc.

35.—(1) A relevant body—

- (a) must, if requested by a person (the “developer”) who has made (or intends to make) an application for a section 36 or 37 consent, or a section 36 variation, for development, or may without such a request, enter into consultation with the developer to determine whether the relevant body has in its possession any information that either it or the developer thinks is relevant to the preparation of an EIA report or the undertaking of an environmental impact assessment in respect of the development; and
 - (b) if it has such information, must make it available to the developer.
- (2) In paragraph (1), “relevant body” means—
- (a) a consultation body;
 - (b) any other public authority notified under regulation 20(4)(a).
- (3) This regulation is subject to regulation 36 (confidential information, etc.)

Confidential information, etc.

36. Nothing in these Regulations requires the disclosure of—

- (a) information that is subject to a duty of confidentiality under the law of England and Wales;
- (b) information that must not be disclosed, or in respect of which disclosure may be refused, under regulation 12 of the Environmental Information Regulations 2004⁽¹⁾ (exceptions to the duty to disclose environmental information).

Applications made by relevant authority: separation of functions

37. Where the relevant authority is also the person making an application for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must ensure that, in order to avoid any conflict of interest, employees who take part in making the application do not also—

- (a) advise on the exercise of the relevant authority’s functions under these Regulations or the Electricity Act 1989 in relation to the application; or
- (b) exercise those functions on behalf of the relevant authority in relation to the application.

(1) [S.I. 2004/3391](#).

Exemptions for defence and civil emergencies

38.—(1) The Secretary of State may direct in writing that Part 2 of these Regulations or, in the case of a transitional application, the requirements of the 2000 Regulations cease to have effect in relation to an application or a proposed application for a section 36 or 37 consent, or a section 36 variation, for development where—

- (a) the sole purpose of the development is defence or the response to civil emergencies (or both); and
- (b) the Secretary of State thinks that the application of the procedures in these Regulations or, as the case may be, the 2000 Regulations would have an adverse effect on that purpose or those purposes.

(2) In this regulation—

“2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

“transitional application” means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 43 (transitional provision)).

Exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required

39.—(1) This regulation applies where—

- (a) a person (the “developer”) makes an application for a section 36 consent, or a section 36 variation, for development that is EIA development (or, in the case of a transitional application, EIA development within the meaning of the 2000 Regulations); and
- (b) a marine licence or a variation of a marine licence is also required (in addition to the section 36 consent or the section 36 variation) for the development.

(2) If the relevant authority is satisfied that—

- (a) the licensing authority has undertaken (or will undertake) under the Marine Works (Environmental Impact Assessment) Regulations 2007⁽²⁾ an assessment (the “marine works assessment”) of any significant effects on the environment of the development in connection with deciding whether or not to grant or vary the marine licence;
- (b) the marine works assessment is (or will be) sufficient to meet the requirements of the EIA Directive; and
- (c) except where the relevant authority is also the licensing authority, the licensing authority has made (or will make) available to the relevant authority, for the purposes of determining the application, the results of the marine works assessment and any information relating to the marine works assessment that the relevant authority may reasonably require,

the relevant authority may decide that an environmental impact assessment under these Regulations does not need to be undertaken in respect of the development (or, in the case of a transitional application, that there is no need to assess the environmental effects of the development under the 2000 Regulations); and, if the relevant authority so decides, paragraphs (3) to (10) apply.

(3) The relevant authority must in writing notify the developer and, except where the relevant authority is also the licensing authority, the licensing authority of the decision.

(4) Subject to paragraphs (8) to (10), Part 2 of these Regulations (or, in the case of a transitional application, the requirements of the 2000 Regulations) cease to have effect in relation to the application.

(2) [S.I. 2007/1518](#), amended by [S.I. 2011/735](#), [2011/1043](#), [2013/755](#) and [2015/446](#).

(5) Except where the relevant authority is also the licensing authority, the relevant authority must consult the licensing authority before determining the application and must not grant the application unless it is satisfied that to do so would be compatible with the licensing authority's measures to comply with the EIA Directive.

(6) The relevant authority must determine the application within a reasonable time after the date on which the relevant authority has all the information and evidence necessary 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).

(7) But the relevant authority must not determine the application before the later of the following dates—

(a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act, as the date by which objections or representations may be made in relation to the application; and

(b) the date on which the marine works assessment is concluded.

(8) Except where the application is a transitional application, regulation 33 (decision notice: content) has effect in relation to the application as though that regulation had been amended—

(a) by omitting paragraph (2)(b) and substituting the following—

“(b) information about the participation of the public in the marine works assessment, including a summary of the results of the consultations undertaken and the information gathered during the marine works assessment and how these results have been incorporated or otherwise addressed in the relevant authority's decision, in particular any comments received from an EEA state;”;

(b) by omitting paragraph (2)(c)(i) and substituting the following—

“(i) a summary of the licensing authority's reasoned conclusion, after completing the marine works assessment, on the significant effects of the development on the environment;”.

(9) Except where the application is a transitional application, regulation 34 (decision notice: publicity) has effect in relation to the application as though that regulation had been amended by omitting paragraph (1) and substituting the following—

“(1) The relevant authority must send a copy of the decision notice to every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.”.

(10) Where the application is a transitional application, the relevant authority must on determining the application send a statement containing the information referred to in regulation 10(3A) of the 2000 Regulations⁽³⁾ (publicity of determinations and provision of information to the local planning authority) to—

(a) the developer; and

(b) every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.

(11) In this regulation—

“2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

(3) Regulation 10(3A) was inserted by [S.I. 2007/1977](#).

“licensing authority”, in relation a marine licence, means the person to whom an application to grant or vary the licence has been or will be made;

“marine licence” means a marine licence under Part 4 of the Marine and Coastal Access Act 2009;

“transitional application” means an application for a section 36 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 42 (transitional provision)).

Service of notices, etc.

40.—(1) Any notice or other document that is required to be given, provided or sent to a person under these Regulations may be given, provided or sent—

- (a) in a manner specified in section 109 of the Electricity Act 1989; or
- (b) in a case where an address for correspondence using electronic communications is given by the person, by sending it using electronic communications to the person at that address, provided that the condition referred to in paragraph (2) is satisfied.

(2) The condition is that the notice or other document is—

- (a) capable of being accessed by the person;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference.

(3) Paragraph (1)(b) does not apply if the person indicates that the person does not wish the notice or other document to be sent using electronic communications.

(4) In this regulation—

“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

“electronic communication” has the same meaning as in the Electronic Communications Act 2000(4);

“legible in all material respects”, in relation to a notice or other document, means that the information contained in the notice or document is available to the person to whom it is sent to no lesser extent than it would be if given, provided or sent by means of a notice or document in printed form.

Revocation and savings

41.—(1) The following Regulations are revoked—

- (a) the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;
- (b) the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007(5).

(2) Despite paragraph (1), the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 continue to have effect as set out in regulation 42 (transitional provision).

(4) [2000 c.7](#). The definition of “electronic communication” is in section 15(1). The definition was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 ([c.21](#)).

(5) [S.I. 2007/1977](#).

Transitional provision

42.—(1) The following applications for a section 36 or 37 consent or a section 36 variation must be dealt with under the 2000 Regulations as if they had not been revoked (and not under these Regulations)—

- (a) an application received by a relevant authority before 16th May 2017 if an environmental statement (within the meaning of the 2000 Regulations) is also received by the relevant authority before that date;
- (b) an application for development in respect of which the relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May 2017.

(2) Where a relevant authority receives a request for a screening opinion under regulation 5 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(3) Where, before 16th May 2017, a relevant authority receives an application for a section 36 or 37 consent or a section 36 variation and the question of whether or not the application is for EIA development (within the meaning of the 2000 Regulations) falls to be determined under regulation 6 of those Regulations, that question must be determined under those Regulations as if they had not been revoked.

(4) Where a relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(5) For the purposes of these Regulations, a determination under regulation 5 or 6 of the 2000 Regulations that an application for a section 36 or 37 consent, or a section 36 variation, is for EIA development (within the meaning of the 2000 Regulations) must be treated as a screening decision under these Regulations that the application is for EIA development (within the meaning of these Regulations).

(6) In this regulation, “2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000.

(7) This regulation is subject to—

- (a) regulation 38 (exemptions for defence and civil emergencies);
- (b) regulation 39 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required).

Amendments to other Regulations

43.—(1) The Electricity (Applications for Consent) Regulations 1990⁽⁶⁾ and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (the “2013 Regulations”) are amended in accordance with Schedule 5 (amendments to other Regulations).

(2) Despite paragraph (1), the 2013 Regulations continue to apply to a transitional application as if the amendments made by Schedule 5 had not been made.

(3) In this regulation, “transitional application” means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 42 (transitional provision)).

Review

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

(6) S.I. 1990/455, amended by S.I. 2013/495; there are other amending instruments but none is relevant.

- (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⁽⁷⁾ requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EIA Directive is 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 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).

(7) 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).