
STATUTORY INSTRUMENTS

2003 No. 164

WATER RESOURCES, ENGLAND AND WALES

The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

Made - - - - 30th January 2003
Laid before Parliament 31st January 2003
Coming into force - - 1st April 2003

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment⁽²⁾, in exercise of powers conferred on her by that subsection, and having taken into account the selection criteria specified in Annex III to Council Directive 85/337/EEC⁽³⁾ (on the assessment of the effects of certain public and private projects on the environment) as inserted by Council Directive 97/11/EC amending Council Directive 85/337/EEC⁽⁴⁾, hereby makes the following Regulations:

PART I U.K.

GENERAL

Citation, commencement and extent U.K.

1.—(1) These Regulations may be cited as the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to England and Wales only.

Interpretation U.K.

2. In these Regulations, expressions which are used in the EIA Directive have the same meaning as in that Directive, and—

(1) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51).
(2) S.I.1988/785.
(3) OJ L175, 5.7.1985, p.40.
(4) OJ L73, 14.3.1997, p.5.

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003. (See end of Document for details)

“the 1991 Act” means the Water Resources Act 1991⁽⁵⁾;

“abstraction or impounding licence” means a licence under Chapter II of Part II of the 1991 Act;

^{F1} ...

^{F2}“appropriate authority” means—

- (a) the Environment Agency in relation to a project in England;
- (b) the Natural Resources Body for Wales in relation to a project in Wales;]

“appropriate Minister” means—

- (a) in relation to a project in Wales where the Secretary of State has not exercised her functions under paragraph 6 of Schedule 3 to the Government of Wales Act 1998⁽⁶⁾, the National Assembly for Wales;
- (b) in any other case, the Secretary of State;

“authorisation” means—

- (i) an abstraction or impounding licence, or
- (ii) a consent under Part III of these Regulations;

“consultation bodies” means—

- (a) the local planning authority within the meaning of Part I of the Town and Country Planning Act 1990⁽⁷⁾ within whose area the project is to be carried out;
- (b) in relation to a project to be carried out in England, the Countryside Agency, English Nature and English Heritage;^{F3}...
- (c) in relation to a project to be carried out in Wales, [^{F4}the Natural Resources Body for Wales] and the National Assembly for Wales in its exercise of functions in the field of ancient monuments and historic buildings⁽⁸⁾; [^{F5}and]
- (d) [^{F6}other bodies designated by statutory provision as having specific environmental responsibilities which [^{F7}the appropriate authority] or the appropriate Minister, as the case may be, considers likely to have an interest in the application;]

“the EIA Directive” means Council Directive [85/337/EEC](#), as amended by Council Directive [97/11/EC](#)^{F8} and Directive [2003/35/EC](#) of the European Parliament and the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives [85/337/EEC](#) and [96/61/EC](#);^{F9}...

“relevant project” has the meaning given by regulation 3 [^{F10}and]

^{F11}“the restriction on abstraction” means the restriction imposed by section 24(1) of the 1991 Act⁽⁵⁾.]

Textual Amendments

- F1** Words in reg. 2 omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 4 para. 164\(2\)](#) (with Sch. 7)

⁽⁵⁾ 1991 c. 57.

⁽⁶⁾ 1998 c. 38.

⁽⁷⁾ 1990 c. 8.

⁽⁸⁾ See the Government of Wales Act 1998, Schedule 2, paragraph 2.

⁽⁵⁾ 1991 c. 57.

- F2** Words in reg. 2 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 164(3)** (with Sch. 7)
- F3** Word in reg. 2 omitted (31.12.2006) by virtue of The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(a)(i)**
- F4** Words in reg. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 164(4)(a)** (with Sch. 7)
- F5** Word in reg. 2 added (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(a)(ii)**
- F6** Words in reg. 2 added (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(a)(iii)**
- F7** Words in reg. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 4 para. 164(4)(b)** (with Sch. 7)
- F8** Words in reg. 2 inserted (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(b)**
- F9** Word in reg. 2 omitted (31.12.2006) by virtue of The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(c)**
- F10** Word in reg. 2 inserted (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(d)**
- F11** Words in reg. 2 added (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(2)(e)**

Requirement for an environmental impact assessment **U.K.**

3.—(1) An environmental impact assessment shall be carried out in accordance with these Regulations in relation to a relevant project.

(2) A project is a relevant project if—

- (a) it is a water management project for agriculture, including an irrigation project;
- (b) in the case of a project involving water abstraction, [^{F12}the abstraction is one which does not fall within the exception provided in section 27(1) of the 1991 Act in relation to the restriction on abstraction] ; and
- (c) it would be likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(3) A project is not a relevant project if it involves—

- (a) development within the meaning of section 55 of the Town and Country Planning Act 1990, or
- (b) improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999(9).

Textual Amendments

- F12** Words in reg. 3(2)(b) substituted (31.12.2006) by The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006 (S.I. 2006/3124), regs. 1, **2(3)**

PART II U.K.

ASSESSMENT OF RELEVANT PROJECTS

Determination whether a project is a relevant project U.K.

4.—(1) Any person (“the applicant”) who proposes to apply for, or for the variation of, an authorisation in relation to a project which may be a relevant project, may in writing request the [F13appropriate authority] to make a determination whether the project is a relevant project.

(2) The request shall be accompanied by—

- (a) a plan sufficient to identify the place where the project is to be carried out;
- (b) a brief description of the project and its possible effects on the environment; and
- (c) any other information or representations which the applicant wishes the [F13appropriate authority] to take into account.

(3) Where the [F13appropriate authority] considers that it has insufficient information to determine the request, it shall by notice in writing inform the applicant and specify what further information it requires.

(4) In determining whether a project is a relevant project the [F13appropriate authority] shall take into account such of the selection criteria set out in Schedule 1 as are relevant.

(5) The [F13appropriate authority] shall give the applicant written notice of its determination before the expiry of—

- (a) a period of three weeks beginning with—
 - (i) the date on which the request is received; or
 - (ii) where the [F13appropriate authority] has served a notice under paragraph (3), the date on which the further information specified is given to the [F13appropriate authority];
 or
- (b) such longer period as may be agreed in writing with the applicant.

(6) Where—

- (a) the [F13appropriate authority] fails to make a determination before the expiry of the period specified in paragraph (5); or
- (b) the applicant is dissatisfied with [F13appropriate authority's] determination that the proposed abstraction or impounding would amount to or form part of a relevant project,

the applicant may apply to the appropriate Minister for a determination on the matter by notice in writing not later than twenty-eight days after the expiry of that period or, as the case may be, after the date of the determination of the [F13appropriate authority].

(7) Where an application is made to the appropriate Minister under paragraph (6), the appropriate Minister shall send a copy of the application to the [F13appropriate authority].

(8) The appropriate Minister shall by notice in writing given to the applicant and the [F13appropriate authority]—

- (a) uphold the determination of the [F13appropriate authority]; or
- (b) substitute his own determination.

(9) A determination under this regulation shall be accompanied by a written statement of the reasons for that determination.

(10) The [^{F13}appropriate authority] or, as the case may be, the appropriate Minister shall take such steps as are considered appropriate to make a determination under this regulation available to the public.

(11) The applicant shall include a copy of any determination made under this regulation when he subsequently applies for, or for a variation of, an authorisation in relation to the project in question.

Textual Amendments

F13 Words in reg. 4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 4 para. 165](#) (with [Sch. 7](#))

Environmental statement to be provided in relation to an application for authorisation **U.K.**

5. An environmental statement which complies with regulation 6 shall be provided in relation to an application made after 31st March 2003 for, or for the variation of, an authorisation in connection with a relevant project.

Environmental statement, and opinions of the [^{F14}appropriate authority] on the contents of an environmental statement **U.K.**

6.—(1) An environmental statement shall include such of the information set out in Schedule 2 as is relevant to the relevant project and at least the following—

- (a) a description of the project comprising information on the site, design and size of the project;
- (b) a description of the aspects of the environment likely to be significantly affected by the project;
- (c) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects; and
- (e) a non-technical summary of the information provided under sub-paragraphs (a) to (d).

(2) If a person so requests before making an application for, or for the variation of, an authorisation, the [^{F14}appropriate authority] shall, having consulted the person making the request and the consultation bodies, give an opinion on the information which should be contained in an environmental statement accompanying such an application.

(3) The fact that the [^{F14}appropriate authority] has given an opinion under paragraph (2) shall not preclude it from subsequently requiring the person making the request to provide further information.

(4) The [^{F14}appropriate authority] and [^{F15}, if different,] the consultation bodies shall, if requested by a person proposing to make an application for which an environmental statement is required, enter into consultation with him to determine whether they have in their possession any information which may be relevant to the preparation of an environmental statement and, if they have, they shall make it available to him.

(5) Paragraph (4) shall not require the disclosure of information which is capable of being treated as confidential or must be so treated under [^{F16}regulations 12(1) or 13(1) of the Environmental Information Regulations 2004].

(6) Any body which provides information to a person under paragraph (4) may require him to pay a charge which reflects the cost of making that information available.

(7) If [^{F14}appropriate authority] considers that an environmental statement does not contain all the information required by paragraph (1), it shall by notice in writing—

- (a) inform the applicant, and
 - (b) specify what further information the [^{F14}appropriate authority] requires,
- and the applicant shall provide that information to the [^{F14}appropriate authority].

Textual Amendments

- F14** Words in reg. 6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 166(2)** (with Sch. 7)
- F15** Words in reg. 6(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 166(3)** (with Sch. 7)
- F16** Words in reg. 6(5) substituted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(4)**

^{F17}Publicity for environmental statement and related information **U.K.**

7.—(1) Where an environmental statement is provided in accordance with regulation 5 including where any further information is provided in accordance with regulation 6(7), the [^{F18}appropriate authority] shall publish, on its website and in at least one newspaper circulating in the locality of the relevant project, a notice—

- (a) stating—
 - (i) the applicant's name;
 - (ii) that he has made an application to which these Regulations apply; and
 - (iii) that he has provided the [^{F18}appropriate authority] with an environmental statement in accordance with regulation 5 and, where it is the case, that he has provided further information in accordance with regulation 6(7);
- (b) stating a place and times where, during a period of twenty-eight days beginning on the date on which the notice is published, copies of the application, the environmental statement, any information provided to the [^{F18}appropriate authority] in response to its consultation under regulation 6(2), and any further information provided in accordance with regulation 6(7) may be inspected, and that such inspection is free of charge;
- (c) specifying an address from which copies of the application, the environmental statement, any information provided to [^{F18}appropriate authority] in response to its consultation under regulation 6(2), and any further information provided in accordance with regulation 6(7) may be obtained from the [^{F18}appropriate authority] and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge;
- (d) specifying the other arrangements, if any, that have been made by the [^{F18}appropriate authority] for informing the public of the application and for consulting them in relation to it; and
- (e) stating that any person wishing to make representations in relation to the application should make them in writing addressed to the [^{F18}appropriate authority] at an address specified in the notice within a period of twenty-eight days beginning on the date on which the notice is published in accordance with this paragraph.

(2) The [^{F18}appropriate authority] shall make available to the public as indicated in paragraphs (1)(b) and (c)—

- (a) the application and the environmental statement provided in accordance with regulation 5; and
- (b) any information provided to the [F18appropriate authority] in response to its consultation under regulation 6(2), or any further information provided in accordance with regulation 6(7), which was in the possession of the [F18appropriate authority] on the date on which the notice was published in accordance with paragraph (1).
- (3) In relation to information which is relevant to the determination under regulation 8 and which becomes available to the [F18appropriate authority], whether as a result of a request by the [F18appropriate authority] or otherwise, after the date on which the notice was published in accordance with paragraph (1), the [F18appropriate authority] shall, on its website—
- (a) state a place and times where, during a period of twenty-eight days beginning on the day fourteen days after which the information becomes available to the [F18appropriate authority], a copy of the information may be inspected, and that inspection is free of charge; and
- (b) specify an address from which a copy of the information may be obtained from the [F18appropriate authority] and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge.
- (4) Not later than the date on which the notice in paragraph (1) is published, the [F18appropriate authority] shall send a copy of it and the environmental statement and any further information provided in accordance with regulation 6(7), to—
- (a) the consultation bodies,
- (b) the appropriate Minister, and
- (c) such other persons as the appropriate Minister may direct,
- under cover of a letter stating that any representations in relation to the application should be made in writing to the [F18appropriate authority] within a period of twenty-eight days beginning on the date of the letter.
- (5) A notice of an environmental statement under paragraph (1) may be combined with any notice required under any other enactment for the purpose of publicising the application in question.]

Textual Amendments

- F17** Reg. 7 substituted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(5)**
- F18** Words in regs. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(a)** (with Sch. 7)

Determination of application and notice of determination **U.K.**

8.—(1) The [F18appropriate authority] shall not determine an application for, or for the variation of, an authorisation relating to a relevant project before the latest date allowed under these Regulations for making representations or concluding any consultation.

(2) In determining the application the [F18appropriate authority] shall take into consideration the environmental statement, any further information provided, and any representations relating to the environmental effects of the project made to the [F18appropriate authority] in accordance with these Regulations.

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003. (See end of Document for details)

[^{F19}(3) Within twenty-eight days of the decision on the application, the [^{F18}appropriate authority] shall publish on its website and in the newspaper or newspapers in which the notice was published under regulation 7 a notice stating that the [^{F18}appropriate authority] has granted or refused the application and stating a place and times where any person may inspect—

- (a) any relevant authorisation or variation;
- (b) a document containing the relevant decision and the main reasons and considerations on which it is based, and information about the public participation process that has taken place;
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project; and
- (d) information regarding any right to challenge the validity of the decision and the procedures for doing so.]

(4) No appeal shall be brought under section 43 of the 1991 Act (appeals to the Secretary of State) on the grounds that the [^{F18}appropriate authority] has failed to give notice as required by subsection (1)(b) of that section before the expiry of a period of four months commencing with—

- (a) the date on which an environmental statement is furnished in accordance with regulation 6(1), or
- (b) the date on which any further information requested by the [^{F18}appropriate authority] is provided in accordance with regulation 6(7),

whichever is the later.

Textual Amendments

- F18** Words in regs. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(a)** (with Sch. 7)
- F19** Reg. 8(3) substituted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(6)**

PART III **U.K.**

RELEVANT PROJECTS WHICH REQUIRE CONSENT UNDER THESE REGULATIONS

Restriction on abstracting or impounding water **U.K.**

9.—(1) Subject to paragraphs (2) and (3), no person shall—

- (a) begin a relevant project except in pursuance of a consent granted under regulation 10 by the [^{F18}appropriate authority], or
- (b) carry it out except in accordance with the provisions of that consent.

(2) Consent under regulation 10 is not needed in relation to a project if an abstraction or impounding licence is required.

(3) A person may rely on a consent granted under regulation 10 even though he is not the person to whom the consent was granted.

(4) A person who contravenes paragraph (1) shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

Textual Amendments

F18 Words in regs. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(a)** (with Sch. 7)

[^{F20}Civil sanctions **E**

9A.—(1) The Environment Agency may impose a variable monetary penalty, restoration notice, compliance notice or stop notice, or accept an enforcement undertaking, in relation to an offence under regulation 9(4) as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (England) Order 2010.

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

(4) This regulation applies only in England.]

Textual Amendments

F20 Reg. 9A inserted (E.) (6.4.2010) by [The Environmental Civil Sanctions \(Miscellaneous Amendments\) \(England\) Regulations 2010 \(S.I. 2010/1159\)](#), regs. 1, **5**

The [^{F21}appropriate authority's] decision on an application for consent **U.K.**

10. On an application made in writing to the [^{F21}appropriate authority] for a consent for the purposes of regulation 9, the [^{F21}appropriate authority] may, subject to the requirements of Part II—

- (a) grant a consent containing such provisions as it considers appropriate; or
- (b) refuse consent,

taking into account any significant effects the relevant project is likely to have on the environment.

Textual Amendments

F21 Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)

Appeals in relation to consents **U.K.**

11.—(1) Subject to the following provisions of this regulation, where an application has been made to the [^{F21}appropriate authority] for a consent under regulation 10, the applicant may by notice in writing appeal to the appropriate Minister if—

- (a) the applicant is dissatisfied with the decision of the [^{F21}appropriate authority] on the application; or
- (b) the [^{F21}appropriate authority] fails to give notice to the applicant of the [^{F21}appropriate authority's] decision within a period of three months from the date of receipt of the application or within such extended period as may be agreed in writing between the applicant and the [^{F21}appropriate authority].

(2) A notice of appeal under paragraph (1) shall be served within a period of twenty-eight days from—

- (a) the date on which the decision to which it relates was notified to the applicant; or
- (b) the end of the period referred to in paragraph (1)(b),

whichever is the later.

(3) The applicant shall serve a copy of the notice of appeal on the [F21appropriate authority] before the expiry of the period of twenty-eight days referred to in paragraph (2).

(4) Where any representations in writing with respect to the application were made within the period specified in accordance with [F22regulation 7(1)(e)], the [F21appropriate authority] shall serve a copy of the notice of appeal on each of the persons who made those representations; and any person so served with a copy of the notice of appeal may make further representations to the appropriate Minister in writing within a period of twenty-one days from the date on which the copy of the notice is served on him.

(5) No appeal shall be brought by virtue of paragraph (1)(b) before the expiry of a period of four months commencing with—

- (a) the date on which an environmental statement is furnished in accordance with regulation 6(1), or
- (b) the date on which any further information requested by the [F21appropriate authority] is provided in accordance with regulation 6(7),

whichever is the later.

(6) The appropriate Minister—

- (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the [F21appropriate authority], whether the appeal relates to that part of the decision or not; and
- (b) may deal with the application as if it had been made to the appropriate Minister in the first instance.

(7) Before determining the appeal, the appropriate Minister may—

- (a) cause a local inquiry to be held; or
- (b) afford to the applicant and the [F21appropriate authority] an opportunity of appearing before, and being heard by, a person appointed by the appropriate Minister for the purpose;

and the appropriate Minister shall act as mentioned in sub-paragraph (a) or (b) if so requested by the applicant or the [F21appropriate authority].

(8) Subsections (2) to (5) of section 250 of the Local Government Act 1972(10) (local inquiries, evidence and costs) apply in relation to inquiries or other hearings under this regulation as they apply to inquiries under that section, but as if—

- (a) the references to the Minister were references to the appropriate Minister; and
- (b) the reference in subsection (4) of that section to a local authority were a reference to the [F21appropriate authority].

(9) The appropriate Minister, in determining the appeal, shall take into account—

- (a) any further representations in writing received by the appropriate Minister from the persons and within the period referred to in paragraph (4);
- (b) the requirements of the applicant, in so far as they appear to the appropriate Minister to be reasonable requirements.

(10) 1972 c. 70; section 250(4) was amended by Part II of Schedule 12 to the Housing and Planning Act 1986 (c. 63).

(10) Where the decision on the appeal is that a consent is to be granted, the decision shall include a direction to the [^{F21}appropriate authority] to grant a consent containing such provisions as may be specified in the direction.

Textual Amendments

- F21** Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)
- F22** Words in reg. 11(4) substituted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, 2(7)

Validity of decisions of appropriate Minister **U.K.**

12.—(1) Except as provided by the following provisions of this regulation, the validity of a decision of the appropriate Minister on any appeal under regulation 11 shall not be questioned in any legal proceedings whatsoever,

(2) If the [^{F21}appropriate authority] or the applicant desires to question the validity of the decision of the appropriate Minister on the grounds—

- (a) that the decision is not within the powers of these Regulations; or
- (b) that any of the requirements of these Regulations which are applicable to the appeal have not been complied with,

the [^{F21}appropriate authority] or, as the case may be, the applicant may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this regulation.

(3) On any application under paragraph (2), the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.

(4) If the High Court is satisfied, on an application under paragraph (2)—

- (a) that the decision to which the application relates is not within the powers of these Regulations; or
- (b) that the interests of the person making the application under this regulation have been substantially prejudiced by a failure to comply with any of the requirements mentioned in paragraph (2)(b) above,

the High Court may quash the decision.

Textual Amendments

- F21** Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)

PART IV U.K.**MODIFICATION OF PART II FOR PARTICULAR CASES****Called-in applications in relation to abstraction or impounding licences U.K.**

13. The provisions of regulations 6(7) and 8 shall apply in relation to any called-in application within the meaning of section 42 of the 1991 Act (consideration of called-in applications) as if any reference in those provisions to the [F21appropriate authority] were a reference to the appropriate Minister.

Textual Amendments

F21 Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)

Variation of abstraction or impounding licence at instance of [F21appropriate authority] or Secretary of State U.K.

14.—(1) Where proposals are formulated under section 52(1) of the 1991 Act (proposals for modification at the instance of the [F21appropriate authority] or Secretary of State) for the variation of an abstraction or impounding licence, the [F21appropriate authority] shall determine whether those proposals would amount to or form part of a relevant project; and in making that determination the [F21appropriate authority] shall take into account such of the selection criteria set out in Schedule 1 as are relevant.

(2) The [F21appropriate authority] shall give written notice of its determination to the licence holder and to the appropriate Minister.

(3) The appropriate Minister may review the determination of the [F21appropriate authority], by giving notice to the [F21appropriate authority] not later than four weeks after the receipt of a notice under paragraph (2); and where he does so, having taken into account such of the selection criteria set out in Schedule 1 as are relevant, he shall by notice in writing given to the licence holder and the [F21appropriate authority] —

- (a) uphold the determination of the [F21appropriate authority]; or
- (b) substitute his own determination.

(4) The notice required by section 52(4) of the 1991 Act (notice of proposals formulated under that section)—

- (a) in the case of a review under paragraph (3), shall not be served before notice is given to the [F21appropriate authority] under that paragraph; and
- (b) shall include notice of the determination under this regulation.

Textual Amendments

F21 Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)

Modifications where regulation 14 applies **U.K.**

15.—(1) This regulation applies where it is determined under regulation 14 that the proposals would amount to or form part of a relevant project.

(2) The [^{F21}appropriate authority] shall prepare an environmental statement in accordance with regulation 6(1).

(3) Regulations 6(2) to (7), 7 and 8 shall not apply.

(4) Section 52(4) to (8) of the 1991 Act (notice of proposals under that section) shall apply as if the environmental statement were part of the proposals formulated by the [^{F21}appropriate authority] .

[^{F23}(4A) Where a notice is published in accordance with section 52(4) of the 1991 Act in respect of proposals in relation to which this regulation applies, the notice shall specify any other arrangements that have been made for informing the public of the proposals and for consulting them in relation to them.]

(5) The [^{F21}appropriate authority] shall, not later than the date of publication of the notice for the purposes of section 52(4) of the 1991 Act, send to the appropriate Minister and the consultation bodies a copy of the proposals and the environmental statement under cover of a letter stating that any representations on the proposals should be made in writing to the [^{F21}appropriate authority] within a period of twenty-eight days beginning on the date of that notice.

(6) The [^{F21}appropriate authority] or, as the case may be, the appropriate Minister shall not determine an application for, or for the variation of, an authorisation relating to a relevant project before the latest date allowed under these Regulations for making representations or concluding any consultation.

(7) In determining whether a licence should be varied, the [^{F21}appropriate authority] or, as the case may be, the appropriate Minister shall have regard to the environmental statement and any representations relating to the environmental effects of the project made to the [^{F21}appropriate authority] or the appropriate Minister within the period referred to in paragraph (5).

(8) Where a licence is varied in pursuance of proposals to which this regulation applies, the [^{F21}appropriate authority] shall, within twenty-eight days of the variation, publish in those newspapers in which a notice was published under section 52(4) of the 1991 Act a notice stating that the [^{F21}appropriate authority] has varied the licence, and stating a place where any person may inspect—

- (a) the document by which the determination was made;
- (b) written notice of the main reasons and considerations on which the determination is based [^{F24}, and information about the public participation process that has taken place;]
- (c) [^{F25}where necessary,] a description of the main measures to avoid, reduce and if possible offset the major adverse effects of the project [^{F26}; and]

[^{F27}(d) information regarding any right to challenge the validity of the decision and the procedures for doing so.]

Textual Amendments

F21 Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 4 para. 167\(b\)](#) (with Sch. 7)

F23 Reg. 15(4A) inserted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, [2\(8\)\(a\)](#)

F24 Words in reg. 15(8)(b) substituted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, [2\(8\)\(b\)\(i\)](#)

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003. (See end of Document for details)

- F25** Words in reg. 15(8)(c) inserted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(8)(b)(ii)**
- F26** Word in reg. 15(8)(c) inserted (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(8)(b)(ii)**
- F27** Reg. 15(8)(d) added (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(8)(b)(iii)**

PART V **U.K.**

REGISTERS

Register of environmental statements and further information **U.K.**

16. The Agency shall keep in the register maintained under section 189 of the 1991 Act (register of abstraction and impounding licences)—

- ^{F28}(a) any determination under regulation 4 or 14;
- (b) any environmental statement or further information furnished under regulation 6;
- (c) any documents, other than the environmental statement prepared in accordance with regulations 5 and 6, which have been provided to the [^{F21}appropriate authority and are relevant to the determination under regulation 14; and
- (d) any further information which is relevant to the determination under regulation 14 and which becomes available to the [^{F21}appropriate authority] after the time that the public was given notice in accordance with section 52(4) of the 1991 Act.]

Textual Amendments

- F21** Words in regs. 10-16 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 167(b)** (with Sch. 7)
- F28** Reg. 16(a)-(d) substituted for reg 16(a)(b) (31.12.2006) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2006 \(S.I. 2006/3124\)](#), regs. 1, **2(9)**

Signed by authority of the Secretary of State

Elliot Morley
Parliamentary Under-Secretary of State,
Department for Environment, Food and Rural
Affairs]

SCHEDULE 1 U.K.

Regulation 4(4)

SELECTION CRITERIA FOR RELEVANT PROJECTS

Characteristics of projects U.K.

1. The characteristics of projects must be considered having regard, in particular, to—
 - (a) the size of the project;
 - (b) the cumulation with other projects;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of projects U.K.

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to—
 - (a) the existing land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under EEA States' legislation; special protection areas designated by EEA States pursuant to Council Directive 79/409/EEC on the conservation of wild birds⁽¹¹⁾ and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora⁽¹²⁾;
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas;
 - (viii) landscapes of historical, cultural or archaeological significance.

Characteristics of the potential impact U.K.

3. The potential significant effects of projects must be considered in relation to criteria set out under paragraphs 1 and 2, and having regard in particular to—
 - (a) the extent of the impact (geographical area and size of the affected population);
 - (b) the transfrontier nature of the impact;
 - (c) the magnitude and complexity of the impact;
 - (d) the probability of the impact;

⁽¹¹⁾ O.J. No. L103, 25.4.1979, p.1. Directive as last amended by the 1994 Act of Accession.

⁽¹²⁾ O.J. No. L206, 22.7.1992, p.7.

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- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 2 U.K.

Regulation 6(1)

INFORMATION ABOUT PROPOSED PROJECT

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description(13) of the likely significant effects of the proposed project on the environment resulting from:
 - (a) the existence of the project;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste,and the description by the developer of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under the above headings.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

(13) This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations complete the implementation, in relation to water management projects for agriculture in England and Wales, of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1975, p.40), as amended by Council Directive [97/11/EC](#) (O.J. No. L73, 14.3.1997, p.5).

The Regulations impose procedural requirements in relation to the consideration of applications or proposals for an abstraction or impounding licence under Chapter II of Part II of the Water Resources Act 1991 and require consent in other cases. The Environment Agency is the competent authority in England and Wales for these Regulations.

Part I of the Regulations contains general provisions. Regulation 3 requires an environmental impact assessment (“EIA”) to be carried out for water management projects for agriculture (including irrigation projects) which would be likely to have significant effects on the environment by virtue inter alia of their nature, size or location. Projects involving the abstraction of water are only included if the amounts abstracted exceed 20 cubic metres in any 24 hours. There is an exclusion for development within the meaning of section 55 of the Town and Country Planning Act 1990 and land drainage improvement works (where there are other arrangements for an EIA to be carried out).

Part II of the Regulations provides the procedure for an EIA.

Regulations 4 and 5 provide the procedure for determining whether a water management project requires an EIA, and require an environmental statement to be provided where an EIA is required. The Agency determines, at the request of the person applying or proposing to apply, whether the proposed project is a relevant project, using the selection criteria in Schedule 1. If the person who makes the request is dissatisfied with the Agency’s determination, he may apply to the appropriate Minister to make his own determination. The determination must be made public, and must accompany any subsequent application for authorisation of the project.

Regulation 6 and Schedule 2 set out the information which an environmental statement must contain. The applicant may enter into consultation with any body to determine whether that body possesses information relevant to the environmental statement. The Agency is required to give an opinion on the content of an environmental statement if so requested.

Regulation 7 provides for environmental information to be publicised in the same way as the application. In addition the applicant must send a copy of the application and the environmental information to the consultation bodies defined in regulation 2.

Regulation 8 requires the Agency or the appropriate Minister to have regard to the environmental information provided and any representations received in determining the application. A notice of the outcome must be published stating where the relevant documentation is available for public inspection.

Part III of the Regulations provides for relevant projects which require consent under these Regulations. Regulation 9 makes it an offence to begin or carry out a relevant project without the Agency’s consent in cases where no abstraction or impounding licence is required. The Agency may grant or refuse such consent taking into account any significant effects the project is likely to have on the environment: regulation 10.

Regulations 11 and 12 provide for appeals to be made to the appropriate Minister where the applicant is dissatisfied with the Agency’s decision on an application for consent under regulation 10, and for

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decisions of the appropriate Minister on such appeals to be challenged in the High Court within 6 weeks.

Part IV of the Regulations applies the Regulations with modifications to licence applications called in by the appropriate Minister and proposals for modification of abstraction or impounding licences.

Part V of the Regulations requires determinations of whether a project requires EIA, and environmental statements or further information provided under these Regulations, to be kept in the Agency's register of abstraction and impounding licences.

A Regulatory Impact Appraisal has been prepared in connection with these Regulations. It has been placed in the Library of each House of Parliament, and copies may be obtained from WSR5 Division, Department for Environment, Food and Rural Affairs, Ashdown House, 123 Victoria Street, London SW1E 6DE (telephone 020-7944-5368).

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