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STATUTORY INSTRUMENTS

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**2003 No. 164**

**WATER RESOURCES, ENGLAND AND WALES**

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

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

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> 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<sup>(2)</sup>, 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](#)<sup>(3)</sup> (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](#)<sup>(4)</sup>, hereby makes the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement and extent**

**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**

**2.**—<sup>[F1(1)]</sup> In these Regulations<sup>F2</sup>...—

“the 1991 Act” means the Water Resources Act 1991<sup>(5)</sup>;

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(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.

(5) [1991 c. 57](#).

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

<sup>F3</sup> ...

[<sup>F4</sup>“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) [<sup>F5</sup>in relation to a project in Wales, the Welsh Ministers;]
- (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, [<sup>F6</sup>Natural England] and English Heritage;<sup>F7</sup> ...
- (c) in relation to a project to be carried out in Wales, [<sup>F8</sup>the Natural Resources Body for Wales] and the [<sup>F9</sup>Welsh Ministers for the] exercise of functions in the field of ancient monuments and historic buildings(8); [<sup>F10</sup>and]
- (d) [<sup>F11</sup>other bodies designated by statutory provision as having specific environmental responsibilities [<sup>F12</sup>or local or regional competences] which [<sup>F13</sup>the appropriate authority] or the appropriate Minister, as the case may be, considers likely to have an interest in the application;]

[<sup>F14</sup>“the EIA Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended by [Directive 2014/52/EU](#) of the European Parliament and of the Council;]

[<sup>F15</sup>“environmental impact assessment” means—

- (a) the preparation of an environmental statement under regulation 5;
- (b) the carrying out of consultations under regulation 7;
- (c) the consideration of the environmental statement and other information under regulation 7A(1);
- (d) reaching a conclusion about the likely significant environmental effects of the project under regulation 7A(2); and
- (e) the consideration of that conclusion in the decision of whether or not to grant an authorisation for, or for the variation of an authorisation relating to, a relevant project under regulation 8(2);]

[<sup>F15</sup>“environmental statement” has the meaning given in regulation 5;]

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(7) [1990 c. 8](#).

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

[<sup>F16</sup>“EU environmental assessment” means an assessment of the effect of anything on the environment carried out under retained EU law other than any law of any part of the United Kingdom that implemented the EIA Directive;]

[<sup>F15</sup>“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as last amended by Council Directive 2013/17/EU(<sup>5</sup>);]

[<sup>F17</sup>“public” means one or more natural or legal persons and, in accordance with the law or practice of any part of the United Kingdom, their associations, organisations or groups;]

“relevant project” has the meaning given by regulation 3; [<sup>F18</sup>and]

[<sup>F19</sup>“the restriction on abstraction” means the restriction imposed by section 24(1) of the 1991 Act(<sup>5</sup>);]

[<sup>F15</sup>“UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;]

[<sup>F15</sup>“the Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(<sup>6</sup>), as amended by Council Directive 2013/17/EU].

[<sup>F20</sup>(2) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of a relevant project, or a project which may be a relevant project, on the environment includes a reference to the effects of that project on the environment once any construction, installation or other intervention is completed and in operation.

(3) In paragraph (2) each reference to the environment includes a reference to the matters referred to in regulation 7A(2)(a) to (e).]

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| <b>F1</b> | Reg. 2 renumbered as reg. 2(1) (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017</a> (S.I. 2017/583), regs. 1(1), <b>3(1)</b> (with reg. 19)                                    |
| <b>F2</b> | Words in reg. 2(1) omitted (31.12.2020) by virtue of <a href="#">The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019</a> (S.I. 2019/25), regs. 1(1), <b>4(2)(a)</b> ; 2020 c. 1, Sch. 5 para. 1(1) |
| <b>F3</b> | Words in reg. 2 omitted (1.4.2013) by virtue of <a href="#">The Natural Resources Body for Wales (Functions) Order 2013</a> (S.I. 2013/755), art. 1(2), <b>Sch. 4 para. 164(2)</b> (with Sch. 7)  |
| <b>F4</b> | Words in reg. 2 inserted (1.4.2013) by <a href="#">The Natural Resources Body for Wales (Functions) Order 2013</a> (S.I. 2013/755), art. 1(2), <b>Sch. 4 para. 164(3)</b> (with Sch. 7)   |
| <b>F5</b> | Words in reg. 2(1) substituted (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017</a> (S.I. 2017/583), regs. 1(1), <b>3(2)(b)</b> (with reg. 19)                                 |
| <b>F6</b> | Words in reg. 2(1) substituted (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017</a> (S.I. 2017/583), regs. 1(1), <b>3(2)(c)(i)</b> (with reg. 19)                              |
| <b>F7</b> | Word in reg. 2 omitted (31.12.2006) by virtue of <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2006</a> (S.I. 2006/3124), regs. 1, <b>2(2)(a)(i)</b>  |
| <b>F8</b> | Words in reg. 2 substituted (1.4.2013) by <a href="#">The Natural Resources Body for Wales (Functions) Order 2013</a> (S.I. 2013/755), art. 1(2), <b>Sch. 4 para. 164(4)(a)</b> (with Sch. 7)   |

(5) 1991 c. 57.

(5) 1991 c. 57.

(6) 1998 c. 38.

- F9** Words in reg. 2(1) substituted (16.5.2017) by *The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017* (S.I. 2017/583), regs. 1(1), **3(2)(c)(ii)** (with reg. 19)
- F10** 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)**
- 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)(a)(iii)**
- F12** Words in reg. 2(1) inserted (16.5.2017) by *The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017* (S.I. 2017/583), regs. 1(1), **3(2)(c)(iii)** (with reg. 19)
- F13** 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)
- F14** Words in reg. 2(1) substituted (16.5.2017) by *The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017* (S.I. 2017/583), regs. 1(1), **3(2)(d)** (with reg. 19)
- F15** Words in reg. 2(1) inserted (16.5.2017) by *The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017* (S.I. 2017/583), regs. 1(1), **3(2)(a)** (with reg. 19)
- F16** Words in reg. 2(1) substituted (31.12.2020) by *The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019* (S.I. 2019/25), regs. 1(1), **4(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F17** Words in reg. 2(1) inserted (31.12.2020) by *The Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019* (S.I. 2019/25), regs. 1(1), **4(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** 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)**
- F19** 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)**
- F20** Reg. 2(2)(3) inserted (16.5.2017) by *The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017* (S.I. 2017/583), regs. 1(1), **3(3)** (with reg. 19)

### Requirement for an environmental impact assessment

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, [<sup>F21</sup>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.

[<sup>F22</sup>(3) A project is not a relevant project if it—

- (a) involves development within the meaning of section 55 of the Town and Country Planning Act 1990;
- (b) involves improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999; or
- (c) is exempt in accordance with a direction under regulation 3A(1) or (2) or 3B(1).]

- F21** 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)**
- F22** Reg. 3(3) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **4(1)** (with reg. 19)

### [<sup>F23</sup>Defence and civil emergencies

**3A.**—(1) The Secretary of State may direct that a relevant project, or a project which may be a relevant project, is exempt where—

- (a) the project has national defence as its sole purpose; and
- (b) the Secretary of State considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where—

- (a) the project has the response to a civil emergency as its sole purpose; and
- (b) the appropriate Minister considers that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(3) Following a direction under paragraph (1) or (2), the person who gave the direction must send notice in writing of the direction to the relevant appropriate authority.

(4) Following a direction under paragraph (1) in respect of a project in Wales, the Secretary of State must send notice in writing of the direction to the Welsh Ministers.

- F23** Regs. 3A-3C inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **5** (with reg. 19)

### Exceptional circumstances

**3B.**—(1) The appropriate Minister may direct that a relevant project, or a project which may be a relevant project, is exempt where the circumstances are exceptional and the appropriate Minister considers that—

- (a) an environmental impact assessment would have an adverse effect on the fulfilment of the project's purpose; and
- (b) the objectives of the EIA Directive will be met even though such an assessment is not carried out.

(2) Where the appropriate Minister gives a direction that a relevant project, or a project which may be a relevant project, is exempt under paragraph (1), the appropriate Minister must—

- (a) consider whether another form of assessment of the likely significant effects on the environment of the project is appropriate; and
- (b) make available to the public concerned—
  - (i) the direction including an explanation of the reasons for it; and
  - (ii) the information obtained under any other assessment referred to in sub-paragraph (a).

[<sup>F24</sup>(3) In paragraph (2)(b), the “public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest).]

- F23** Regs. 3A-3C inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **5** (with reg. 19)
- F24** [Reg. 3B\(3\)](#) inserted (31.12.2020) by [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/25), regs. 1(1), **4(3)**; 2020 c. 1, Sch. 5 para. 1(1)

## Coordination

**3C.** Where, in respect of a relevant project, there is a requirement to carry out an environmental impact assessment and a requirement to carry out an assessment under [<sup>F25</sup>regulation 24 or 63 of the Conservation of Habitats and Species Regulations 2017], the appropriate Minister must, where appropriate, ensure that the environmental impact assessment and the other assessment, or assessments, are coordinated.]

- F23** Regs. 3A-3C inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **5** (with reg. 19)
- F25** Words in reg. 3C substituted (30.11.2017) by [The Conservation of Habitats and Species Regulations 2017](#) (S.I. 2017/1012), reg. 1(2), **Sch. 6 para. 14**

## PART II

### ASSESSMENT OF RELEVANT PROJECTS

#### Determination whether a project is a relevant project

**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 [<sup>F26</sup>appropriate authority] to make a determination whether the project is a relevant project.

[<sup>F27</sup>(2) The request shall contain—

- (a) a description of the project, including in particular a description—
  - (i) of the physical characteristics of the whole project and, where relevant, of demolition works; and
  - (ii) of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (b) a description of the aspects of the environment likely to be significantly affected by the project;
- (c) a description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from—
  - (i) the expected residues and emissions and the production of waste, where relevant; and
  - (ii) the use of natural resources, in particular soil, land, water and biodiversity; and
- (d) if the applicant elects to provide it, a description of any measure proposed to be taken to avoid or prevent any likely significant adverse effects on the environment.

**(2A)** When compiling the information referred to in paragraph (2), the applicant shall take into account—

- (a) the selection criteria set out in Schedule 1; and

- (b) the results of any relevant EU environmental assessment which are reasonably available to the applicant.]
- (3) Where the [<sup>F26</sup>appropriate 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.
- [<sup>F28</sup>(4) In determining whether a project is a relevant project the appropriate authority shall take into account—
- (a) the selection criteria set out in Schedule 1; and
  - (b) the results of any relevant EU environmental assessment which are reasonably available to the applicant.]
- (5) The [<sup>F26</sup>appropriate 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 [<sup>F26</sup>appropriate authority] has served a notice under paragraph (3), the date on which the further information specified is given to the [<sup>F26</sup>appropriate authority]; or
  - [<sup>F29</sup>(b) where agreed in writing with the applicant, any other period of not more than 90 days beginning with—
    - (i) the date on which the request is received; or
    - (ii) where the appropriate authority has served a notice under paragraph (3), the date on which the further information is given to the appropriate authority.]
- [<sup>F30</sup>(5A) The appropriate authority—
- (a) may extend the period referred to in paragraph (5) in exceptional cases (such as where the nature, complexity, location or size of the works demands a longer period for determination); and
  - (b) where it does so, shall inform the applicant in writing of the reasons for the extension and of the date on which its determination under paragraph (1) is expected.]
- (6) Where—
- (a) the [<sup>F26</sup>appropriate authority] fails to make a determination before the expiry of the period specified in paragraph (5); or
  - (b) the applicant is dissatisfied with [<sup>F26</sup>appropriate 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 [<sup>F26</sup>appropriate 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 [<sup>F26</sup>appropriate authority].
- (8) The appropriate Minister shall by notice in writing given to the applicant and the [<sup>F26</sup>appropriate authority]—
- (a) uphold the determination of the [<sup>F26</sup>appropriate authority]; or
  - (b) substitute his own determination.
- [<sup>F31</sup>(9) A determination under this regulation shall be accompanied by a written statement—



- (a) of the reasons for the determination with reference to such of the selection criteria set out in Schedule 1 as are relevant; and
  - (b) if the determination under paragraph (1) is that the project is not a relevant project, describing any measure disclosed under paragraph (2)(d).]
- (10) The [<sup>F26</sup>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.

- F26** 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)
- F27** Reg. 4(2)(2A) substituted for reg. 4(2) (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **6(2)** (with reg. 19)
- F28** Reg. 4(4) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **6(3)** (with reg. 19)
- F29** Reg. 4(5)(b) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **6(4)** (with reg. 19)
- F30** Reg. 4(5A) inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **6(5)** (with reg. 19)
- F31** Reg. 4(9) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **6(6)** (with reg. 19)

### Environmental statement to be provided in relation to an application for authorisation

5. [<sup>F32</sup>A written statement (an “environmental statement”)] which complies with regulation 6 shall be provided in relation to an application <sup>F33</sup>... for, or for the variation of, an authorisation in connection with a relevant project.

- F32** Words in reg. 5 substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **7(a)** (with reg. 19)
- F33** Words in reg. 5 omitted (16.5.2017) by virtue of [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **7(b)** (with reg. 19)

### Environmental statement, and opinions of the [<sup>F34</sup>appropriate authority] on the contents of an environmental statement

- 6.—[<sup>F35</sup>(1) The environmental statement shall be prepared by a competent person and shall—
- (a) include—
    - (i) the information specified in paragraph (1A); and
    - (ii) any additional information which, taking into account current knowledge and methods of assessment, may reasonably be required by the appropriate authority to reach a conclusion about the likely significant environmental effects of the relevant project;
  - (b) be based on any opinion given under paragraph (2) in respect of the relevant project;



(c) take into account the results of any relevant UK environmental assessment which are reasonably available to the applicant; and

(d) state the relevant expertise and qualifications of the competent person.

(1A) The specified information is—

(a) a description of the relevant project comprising information on its site, design, size and other relevant features;

(b) a description of the likely significant effects of the relevant project on the environment;

(c) a description of the features of the relevant project or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the relevant project on the environment;

(d) a description of the reasonable alternatives studied by the applicant, which are relevant to the relevant project and its specific characteristics, and an indication of the main reasons for the applicant's choice, taking into account the environmental effects;

(e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and

(f) any additional information referred to in Schedule 2 relevant to the specific characteristics of the relevant project and to the environmental features likely to be affected.]

(2) If a person so requests before making an application for, or for the variation of, an authorisation, the [F34appropriate authority] shall, having consulted the person making the request and the consultation bodies, give an opinion on the [F36scope and level of detail of] information which should be contained in an environmental statement accompanying such an application.

[F37(2A) The request for an opinion under paragraph (2) shall be in writing and include—

(a) a plan sufficient to identify the land;

(b) a brief description of the nature and purpose of the relevant project, including its location and technical capacity;

(c) an explanation of the likely significant effects of the relevant project on the environment; and

(d) any other information the person wishes to provide.]

(3) The fact that the [F34appropriate 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 [F34appropriate authority] and [F38, 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 [F39regulations 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 [F34appropriate 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 [F34appropriate authority] requires,

and the applicant shall provide that information to the [F34appropriate authority].

- F34** 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)
- F35** [Reg. 6\(1\)\(1A\)](#) substituted for [reg. 6\(1\)](#) (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **8(2)** (with reg. 19)
- F36** Words in [reg. 6\(2\)](#) inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **8(3)** (with reg. 19)
- F37** [Reg. 6\(2A\)](#) inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **8(4)** (with reg. 19)
- F38** 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)
- F39** 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)**

#### **[<sup>F40</sup>Publicity for environmental statement and related information**

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 [<sup>F41</sup>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 [<sup>F41</sup>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 [<sup>F42</sup>thirty] days beginning on the date on which the notice is published, copies of the application, the environmental statement, any information provided to the [<sup>F41</sup>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 the [<sup>F41</sup>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 [<sup>F41</sup>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 [<sup>F41</sup>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 [<sup>F41</sup>appropriate authority] at an address specified in the notice within a period of [<sup>F43</sup>thirty] days beginning on the date on which the notice is published in accordance with this paragraph.
- (2) The [<sup>F41</sup>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 [F41appropriate 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 [F41appropriate 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 [F41appropriate authority], whether as a result of a request by the [F41appropriate authority] or otherwise, after the date on which the notice was published in accordance with paragraph (1), the [F41appropriate authority] shall, on its website—

- (a) state a place and times where, during a period of [F44thirty] days beginning on the day fourteen days after which the information becomes available to the [F41appropriate 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 [F41appropriate 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 [F41appropriate 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 [F41appropriate authority] within a period of [F45thirty] 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.]

- F40** 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)**
- F41** 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)
- F42** Word in reg. 7(1)(b) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **9(2)** (with reg. 19)
- F43** Word in reg. 7(1)(e) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **9(3)** (with reg. 19)
- F44** Word in reg. 7(3)(a) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **9(4)** (with reg. 19)
- F45** Word in reg. 7(4) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **9(5)** (with reg. 19)

## [F46Conclusion about environmental impact

**7A.—**(1) The appropriate authority must consider (ensuring that in doing so it has or has access to any expertise it considers necessary)—

- (a) the environmental statement;
  - (b) any further information given under regulation 6(3) or (7);
  - (c) any representations made under regulation 7(1)(e) or (4); and
  - (d) any features of the relevant project or measures to avoid, prevent, reduce or offset any likely significant adverse effects of the relevant project on the environment.
- (2) Following that consideration, the appropriate authority must reach a conclusion about the likely significant effects (including the expected effects deriving from the vulnerability of the relevant project to risks of major accidents or disasters) of the relevant project on—
- (a) population and human health;
  - (b) biodiversity, with particular attention to species and habitats protected under [<sup>F47</sup>any law of any part of the United Kingdom that implemented] the Habitats Directive and the Wild Birds Directive;
  - (c) land, soil, water, air and climate;
  - (d) material assets, cultural heritage and the landscape;
  - (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).]

**F46** Reg. 7A inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **10** (with reg. 19)

**F47** Words in reg. 7A(2)(b) inserted (31.12.2020) by [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/25\)](#), regs. 1(1), **4(4)**; 2020 c. 1, Sch. 5 para. 1(1)

### Determination of application and notice of determination

**8.—(1)** The [<sup>F41</sup>appropriate 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 [<sup>F41</sup>appropriate authority] shall take into consideration [<sup>F48</sup>(ensuring that in doing so it has, or has access to, any expertise it considers necessary)—

- (a) the conclusion reached under regulation 7A(2);
- (b) whether it is appropriate to require the applicant to monitor the significant adverse effects of the relevant project on the environment, and if so—
  - (i) whether the authorisation should contain provisions to ensure that the applicant is under such a duty; and
  - (ii) whether the authorisation should contain provisions to require remedial action to be taken in circumstances described in the authorisation; and
- (c) whether, having regard to the likely significant environmental effects of the relevant project, the authorisation should contain provisions for any other purpose.]

[<sup>F49</sup>(2A) The appropriate authority may grant the authorisation only if satisfied that the conclusion reached under regulation 7A(2) in respect of the relevant project and the reasons for it address the likely significant environmental effects of the relevant project.]

[<sup>F50</sup>(3) Within a period of twenty-eight days beginning with the date of the determination of the application the appropriate authority shall—

- (a) give notice in writing to the applicant and consultation bodies; and

(b) publish a notice on its website and in the newspaper or newspapers in which the notice was published under regulation 7(1),  
stating that the appropriate authority has granted or refused the application and stating a place and times where any person may inspect the information referred to in paragraph (3A).

(3A) The information is—

- (a) any relevant authorisation or variation;
- (b) a document containing the determination and the reasons for it, including a summary of—
  - (i) the environmental statement;
  - (ii) the results of any representations the appropriate authority receives under regulation 7(1)(e) or (4); and
  - (iii) how the information referred to in sub-paragraphs (i) and (ii) has been taken into account;
- (c) a description, where necessary, of any features of the relevant project or measures to avoid, reduce or offset any likely significant adverse effect of the relevant project on the environment; and
- (d) information about any right to challenge the determination 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 [<sup>F41</sup>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 [<sup>F41</sup>appropriate authority] is provided in accordance with regulation 6(7),

whichever is the later.

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| <b>F41</b> | Words in regs. 7-9 substituted (1.4.2013) by <a href="#">The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)</a> , art. 1(2), <b>Sch. 4 para. 167(a)</b> (with Sch. 7)   |
| <b>F48</b> | Words in <a href="#">reg. 8(2)</a> substituted (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 (S.I. 2017/583)</a> , regs. 1(1), <b>11(2)(a)</b> (with <a href="#">reg. 19</a> )                       |
| <b>F49</b> | <a href="#">Reg. 8(2A)</a> inserted (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 (S.I. 2017/583)</a> , regs. 1(1), <b>11(3)</b> (with <a href="#">reg. 19</a> )                                     |
| <b>F50</b> | <a href="#">Reg. 8(3)(3A)</a> substituted for <a href="#">reg. 8(3)</a> (16.5.2017) by <a href="#">The Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2017 (S.I. 2017/583)</a> , regs. 1(1), <b>11(4)</b> (with <a href="#">reg. 19</a> ) |

## PART III

### RELEVANT PROJECTS WHICH REQUIRE CONSENT UNDER THESE REGULATIONS

#### Restriction on abstracting or impounding water

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 [<sup>F41</sup>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.

**F41** 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](#))

### **[<sup>F51</sup>Civil sanctions**

- 9A.**—(1) The [<sup>F41</sup>appropriate authority] 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.]

**F41** 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](#))

**F51** 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 [<sup>F52</sup>appropriate authority's] decision on an application for consent**

- 10.** On an application made in writing to the [<sup>F52</sup>appropriate authority] for a consent for the purposes of regulation 9, the [<sup>F52</sup>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.

**F52** 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**

- 11.**—(1) Subject to the following provisions of this regulation, where an application has been made to the [<sup>F52</sup>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 [F52appropriate authority] on the application; or
  - (b) the [F52appropriate authority] fails to give notice to the applicant of the [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F53regulation 7(1)(e)] , the [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F52appropriate authority].
- (8) Subsections (2) to (5) of section 250 of the Local Government Act 1972(9) (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

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(9) 1972 c. 70; section 250(4) was amended by Part II of Schedule 12 to the Housing and Planning Act 1986 (c. 63).



- (b) the reference in subsection (4) of that section to a local authority were a reference to the [F52appropriate 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) Where the decision on the appeal is that a consent is to be granted, the decision shall include a direction to the [F52appropriate authority] to grant a consent containing such provisions as may be specified in the direction.

- F52** 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)
- F53** 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

**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 [F52appropriate 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 [F52appropriate 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.

- F52** 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

### MODIFICATION OF PART II FOR PARTICULAR CASES

#### Called-in applications in relation to abstraction or impounding licences

**13.** The provisions of regulations 6(7) [<sup>F54</sup>, 7A] 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 [<sup>F52</sup>appropriate authority] were a reference to the appropriate Minister.

- F52** 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)
- F54** Word in reg. 13 inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **12** (with reg. 19)

#### Variation of abstraction or impounding licence at instance of [<sup>F52</sup>appropriate authority] or Secretary of State

**14.—(1)** Where proposals are formulated under section 52(1) of the 1991 Act (proposals for modification at the instance of the [<sup>F52</sup>appropriate authority] or Secretary of State) for the variation of an abstraction or impounding licence, the [<sup>F52</sup>appropriate authority] shall determine whether those proposals would amount to or form part of a relevant project; and in making that determination the [<sup>F52</sup>appropriate authority] shall take into account such of the selection criteria set out in Schedule 1 as are relevant.

(2) The [<sup>F52</sup>appropriate 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 [<sup>F52</sup>appropriate authority], by giving notice to the [<sup>F52</sup>appropriate 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 [<sup>F52</sup>appropriate authority] —

- (a) uphold the determination of the [<sup>F52</sup>appropriate 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 [<sup>F52</sup>appropriate authority] under that paragraph; and
- (b) shall include notice of the determination under this regulation.

- F52** 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

**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 [F52appropriate 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 [F55(7)] (notice of proposals under that section) shall apply as if the environmental statement were part of the proposals formulated by the [F52appropriate authority] .

[F56(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 [F52appropriate 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 [F52appropriate authority] within a period of twenty-eight days beginning on the date of that notice.

(6) The [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F52appropriate 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 [F57, and information about the public participation process that has taken place;]
- (c) [F58where necessary,] a description of the main measures to avoid, reduce and if possible offset the major adverse effects of the project [F59; and]
- [F60(d) information regarding any right to challenge the validity of the decision and the procedures for doing so.]

**F52** 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)

**F55** Word in reg. 15(4) substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **13** (with reg. 19)

**F56** 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)**

**F57** 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)**

**F58** 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)**

- F59** 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)**
- F60** 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

### REGISTERS [<sup>F61</sup>AND REVIEW]

- F61** Words in Pt. V heading inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **14** (with reg. 19)

#### Register of environmental statements and further information

**16.**—[<sup>F62</sup>(1)] The Agency shall keep in the register maintained under section 189 of the 1991 Act (register of abstraction and impounding licences)—

- [<sup>F63</sup>(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 [<sup>F52</sup>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 [<sup>F52</sup>appropriate authority] after the time that the public was given notice in accordance with section 52(4) of the 1991 Act.]

[<sup>F64</sup>(2) In respect of a determination under regulation 4, the information kept in the register shall include—

- (a) the main reasons for the determination with reference to the relevant criteria listed in Schedule 1; and
- (b) in the case of a determination that an environmental impact assessment is not required, any features of the relevant project or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.]

- F52** 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)
- F62** Reg. 16(1): reg. 16 renumbered as reg. 16(1) (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **15(2)** (with reg. 19)
- F63** 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)**
- F64** Reg. 16(2) inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017](#) (S.I. 2017/583), regs. 1(1), **15(3)** (with reg. 19)

**[<sup>F65</sup>Review**

- 17.**—(1) In relation to England, the Secretary of State must, from time to time—
- (a) carry out a review of the regulatory provision contained in these Regulations; and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 16th May 2022.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 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).]

**F65** Reg. 17 inserted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), **16** (with [reg. 19](#))

Signed by authority of the Secretary of State

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

## SCHEDULE 1

Regulations 4, 14 and 16

### [<sup>F66</sup>Selection criteria for relevant projects

**F66** Sch. 1 substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), 17, **Sch. 1** (with reg. 19)

### Characteristics of projects

1. The characteristics of relevant projects, with particular regard to—
  - (a) the size and design of the whole project;
  - (b) cumulation with other existing or approved projects;
  - (c) the use of natural resources, in particular land, soil, water and biodiversity;
  - (d) the production of waste;
  - (e) pollution and nuisances;
  - (f) the risk of major accidents or disasters which are relevant to the project, including those caused by climate change, in accordance with scientific knowledge;
  - (g) the risks to human health (for example due to water contamination or air pollution).

### Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by relevant projects, with particular regard to—
  - (a) the existing and approved land use;
  - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
  - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
    - (i) wetlands, riparian areas, river mouths;
    - (ii) coastal zones and the marine environment;
    - (iii) mountain and forest areas;
    - (iv) nature reserves and parks;
    - (v) areas classified or protected under national legislation and Natura 2000 areas designated by member States pursuant to the Habitats Directive and the Wild Birds Directive;
    - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in EU legislation [<sup>F67</sup>as it applied in the United Kingdom immediately prior to exit day, or in retained EU law] and relevant to the project, or in which it is considered that there is such a failure;
    - (vii) densely populated areas;
    - (viii) landscapes and sites of historical, cultural or archaeological significance.

**F67** Words in [Sch. 1 para. 2\(c\)\(vi\)](#) inserted (31.12.2020) by [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/25\)](#), regs. 1(1), **4(5)**; 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

### Type and characteristics of the potential impact

3. The likely significant effects of relevant projects on the environment in relation to criteria set out in paragraphs 1 and 2 of this Schedule, with regard to the impact of the project on the factors specified in regulation 7A(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing or approved projects;
- (h) the possibility of effectively reducing the impact.]

## SCHEDULE 2

Regulation 6(1)

### [<sup>F68</sup>Information about proposed projects

**F68** Sch. 2 substituted (16.5.2017) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/583\)](#), regs. 1(1), 18, **Sch. 2** (with reg. 19)

1. A description of the relevant project, including in particular—

- (a) a description of the location of the relevant project;
- (b) a description of the physical characteristics of the whole relevant project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the relevant project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed relevant project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the relevant project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 7A(2) likely to be significantly affected by the relevant project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing),



water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the relevant project on the environment resulting from, among other things—

- (a) the construction and existence of the relevant project, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the relevant project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the relevant project to climate change;
- (g) the technologies and the substances used.

6. The description referred to in paragraph 4 of the likely significant effects on the factors specified in regulation 7A(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the relevant project. That description must take into account the environmental protection objectives established [<sup>F69</sup>in retained EU law or under the law of any part of the United Kingdom] which are relevant to the relevant project.

**F69** Words in Sch. 2 para. 6 substituted (31.12.2020) by [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/25), regs. 1(1), 4(6)(a); 2020 c. 1, Sch. 5 para. 1(1)

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered in compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description must explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the relevant project on the environment deriving from the vulnerability of the relevant project to risks of major accidents or disasters which are relevant to the relevant project. Relevant information available and obtained through risk assessments pursuant to [<sup>F70</sup>retained EU law such as any law that implemented] [Directive 2012/18/EU](#) of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council [Directive 96/82/EC](#) or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations or UK environmental assessments may be used for this purpose provided that the requirements of [<sup>F71</sup>any law that implemented] the EIA Directive are met. Where appropriate, the

description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

- F70** Words in Sch. 2 para. 9 substituted (31.12.2020) by [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/25), regs. 1(1), [4\(6\)\(b\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F71** Words in Sch. 2 para. 9 inserted (31.12.2020) by virtue of [The Environment, Food and Rural Affairs \(Environmental Impact Assessment\) \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/25), regs. 1(1), [4\(6\)\(b\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)

**10.** A non-technical summary of the information provided under paragraphs 1 to 9.

**11.** A reference list detailing the sources used for the descriptions and assessments included in the statement.]

## 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 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).

**Changes to legislation:**

There are currently no known outstanding effects for the The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003.