STATUTORY INSTRUMENTS

2008 No. 1556

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008

Made - - - -	*12th June 2008*
Laid before Parliament	*19th June 2008*
Coming into force - -	*22nd July 2008*

The Secretary of State, having been designated [M1] for the purposes of section 2(2) of the European Communities Act 1972 [M2] 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, in exercise of the powers conferred by that section, makes the following Regulations:

Marginal Citations

M1 The Secretary of State is so designated by S.I. 2008/301.

M2 1972 c.68. Section 2(2) includes power to make certain provision in relation to the European Economic Area by virtue of section 2(5) of the European Economic Area Act 1993 (1993 c.51). Council Directive 85/337/EEC was amended by Council Directive 97/11/EC and further amended by Council Directive 2003/35/EC.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008 and shall come into force on 22nd July 2008.

(2) In these Regulations—

"the 1990 Act" means the Town and Country Planning Act 1990 [M3];

"the 1999 Regulations" means the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 [M4];

"by site display" means by posting a copy of the notification by firm affixture to some object on the land or, as the case may be, on the surface of the land above the interest in question,

sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land;

"EIA development" has the same meaning as in the 1999 Regulations;

"minerals" has the same meaning as in section 336 of the 1990 Act;

"relevant mineral planning authority" means the body to whom it falls, fell, or would, but for a direction under paragraph—

(a) 7 of Schedule 2 to the Planning and Compensation Act 1991 [M5];

(b) 13 of Schedule 13 to the Environment Act 1995 [M6]; or

(c) 8 of Schedule 14 to the Environment Act 1995,

fall to determine the ROMP application in question;

"ROMP application" means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under paragraph—

(a) 2(2) of Schedule 2 to the Planning and Compensation Act 1991 (registration of old mining permissions);

(b) 9(1) of Schedule 13 to the Environment Act 1995 (review of old mineral planning permissions); or

(c) 6(1) of Schedule 14 to the Environment Act 1995 (periodic review of mineral planning permissions); and

"undetermined ROMP application" means a ROMP application which was received by the authority with whom it was lodged before 15th November 2000 but which was not determined by 22nd July 2008.

(3) These Regulations apply in relation to England only.

Marginal Citations

M3 1990 c.8. The definition of ?minerals? in section 336(1) was amended by the Planning and Compensation Act 1991 (c.34), **Schedule 1**, paragraph 12(c).

M4 S.I.1999/293. Relevant amendments were made by S.I. 2000/2867 and S.I. 2006/3295.

M5 1991 c.34.

M6 1995 c.25.

Application of the 1999 Regulations to undetermined ROMP applications

2.—(1) For the purposes of the 1999 Regulations, an undetermined ROMP application shall be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15th November 2000 and the 1999 Regulations shall, subject to the following modifications, apply accordingly.

(2) In regulation 5 (requests for screening opinions of the local planning authority)—

(a) for paragraph (3) substitute—

"(3) An authority receiving a request for a screening opinion shall, if they consider that they have not been provided with sufficient information to adopt an opinion, on, or as soon as reasonably practicable after, 22nd July 2008, notify in writing the person making the request of the points on which they require additional information and of the matters specified in sub-paragraphs (e) and (f) of paragraph (7).

(3A) The authority shall publicise the notification in paragraph (3), by site display, within 14 days of that notification, for a period of at least 14 days.";

(b) in paragraph (4) for the words "within three weeks" to the end substitute " on, or as soon as reasonably practicable after, 22nd July 2008 ";

(c) in paragraph 6 after "may" insert " , within three weeks beginning with the date of the notification in paragraph (7) or such other period as may be agreed in writing with the Secretary of State, " and omit sub-paragraph (a);

(d) omit paragraph (7); and

(e) after paragraph (6) insert—

"(7) Subject to paragraph (7A), when the authority comply with paragraph (5) they shall notify in writing the applicant of—

(a) the period within which compliance with regulation 7(4) is required to avoid the suspension of minerals development;

(b) the period within which an environmental statement and compliance with regulation 14(5) is required;

(c) the fact that they will now proceed to adopt a scoping opinion;

(d) any further information required pursuant to a notification under regulation 10(3);

(e) the fact that minerals development will automatically be suspended under regulation 26A(18) if the applicant does not take the steps specified in regulation 26A(17) within the specified periods; and

(f) the authority's duty to make an order under paragraph 3 of Schedule 9 to the Act after two years suspension under regulation 26A(18).

(7A) Paragraph (7) does not apply where the authority have adopted a screening opinion to the effect that the development is not EIA development.

(7B) The notification in paragraph (7) shall accompany the notification under regulation 7(2).

(7C) The authority shall publicise the notification in paragraph (7) with details of where the screening opinion can be inspected, by site display, within 14 days of that notification, for a period of at least 14 days.

(7D) The applicant shall affix firmly to some object on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the letter referred to in regulation 7(4), sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land within 14 days of the date of that letter, for a period of at least 14 days."

(3) In regulation 6 (requests for screening directions of the Secretary of State)—

(a) for paragraph (3) substitute—

"(3) On, or as soon as reasonably practicable after, 22nd July 2008 the Secretary of State shall, if he considers that he has not been provided with sufficient information to make a screening direction, notify in writing the applicant or appellant, as the case may be, of the points on which he requires additional information and of the matters specified in sub-paragraphs (e) and (f) of paragraph (7), and may request the relevant planning authority to provide such information as they can on any of those points.

(3A) The Secretary of State shall send a copy of the notification in paragraph (3) to the relevant mineral planning authority.

(3B) The authority, or the applicant where a request has been made under regulation 5(6), shall publicise the notification in paragraph (3), by site display, within 14 days of that notification, for a period of at least 14 days."; and

(b) after paragraph (5) insert—

"(6) An applicant receiving a copy of a screening direction to the effect that the development is EIA development pursuant to a request under regulation 5(6) may, within 3 weeks beginning with the date of the screening direction, or within such other period as may be agreed with the authority in writing, write to the authority stating that he is providing an environmental statement.

(7) Subject to paragraph (7A), when the Secretary of State complies with paragraph (5) he shall notify in writing the applicant or appellant, as the case may be, of—

(a) the period within which compliance with regulation 6(6), 8(4) or 9(5) is required to avoid the suspension of minerals development;

(b) the period within which an environmental statement and compliance with regulation 14(5) is required;

(c) in the case of an application referred to the Secretary of State or an appeal to the Secretary of State, the fact that he will now proceed to issue a scoping direction;

(d) in the case of an application referred to the Secretary of State or an appeal to the Secretary of State, any further information required pursuant to a notification under regulation 11(3);

(e) the fact that minerals development will automatically be suspended under regulation 26A(18) if the applicant or appellant does not take the steps specified in regulation 26A(17) within the specified periods; and

(f) the authority's duty to make an order under paragraph 3 of Schedule 9 to the Act after two years suspension under regulation 26A(18).

(7A) Paragraph (7) does not apply where the Secretary of State has issued a screening direction to the effect that the development is not EIA development.

(7B) The notification in paragraph (7) shall accompany the notification under regulation 8(2) or 9(4), as the case may be.

(7C) The Secretary of State shall send a copy of the notification in paragraph (7) to the relevant mineral planning authority.

(7D) The authority shall publicise the notification in paragraph (7) with details of where the screening direction can be inspected, by site display, within 14 days of that notification, for a period of at least 14 days.

(7E) The applicant or appellant, as the case may be, shall affix firmly to some object on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the letter referred to in regulation 6(6), 8(4) or 9(5), displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land within 14 days of the date of that letter, for a period of at least 14 days."

(4) In regulation 7 (application made to a local planning authority without an environmental statement)—

(a) paragraph (1) shall apply as if the conditions in sub-paragraphs (a), (b) and (c) had been met and the request had been made on 22nd July 2008;

(b) in paragraph (3)—

(i) for "within three weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant" substitute " on, or as soon as reasonably practicable after, 22nd July 2008 "; and

(ii) omit ", after the expiry of that period of three weeks or of any longer period so agreed,"; and

(c) in paragraph (4)(b) for the words "is writing" substitute " has written ".

(5) In regulation 8 (application referred to the Secretary of State without an environmental statement)—

(a) paragraph (1) shall apply as if—

(i) the conditions in sub-paragraphs (a), (b) and (c) had been met and the request had been made on 22nd July 2008; and

(ii) at the end of paragraph (1) there were inserted " and as if the reference to three weeks in paragraph (4) of regulation 6 was replaced with "on, or as soon as reasonably practicable after, 22nd July 2008" ;

(b) in paragraph (3), for the words "within three weeks" to the end substitute " on, or as soon as reasonably practicable after, 22nd July 2008 "; and

(c) after paragraph (6) insert—

"(7) An applicant may ask the Secretary of State to make a scoping direction under paragraph (1) of regulation 11.".

(6) In regulation 9 (appeal to the Secretary of State without an environmental statement)—

(a) paragraph (1) shall apply as if—

(i) the conditions in sub-paragraphs (a), (b) and (c) had been met and the request had been made on 22nd July 2008; and

(ii) at the end of paragraph (1) there were inserted " and as if the reference to three weeks in paragraph (4) of regulation 6 was replaced with "on, or as soon as reasonably practicable after, 22nd July 2008" ;

(b) In paragraph (4), after "notify the appellant in writing" insert " on, or as soon as reasonably practicable after, 22nd July 2008 "; and

(c) after paragraph (7) insert—

"(8) An appellant may ask the Secretary of State to make a scoping direction under paragraph (1) of regulation 11.".

(7) Unless the authority have adopted a screening opinion or the Secretary of State has made a screening direction to the effect that the development is not EIA development, for the purposes of regulation 10, a request for the relevant planning authority to make a scoping opinion shall be deemed to have been made under paragraph (1) of that regulation on 22nd July 2008.

(8) In regulation 10 (scoping opinions of the local planning authority)—

(a) for paragraph (3) substitute—

"(3) On, or as soon as reasonably practicable after, 22nd July 2008 an authority receiving a request under paragraph (1) shall, if they consider that they have not been provided with sufficient information to adopt a scoping opinion, notify in writing the person making the request of the points on which they require additional information and of the matters specified in sub-paragraphs (c) and (d) of paragraph (10).

(3A) The authority shall publicise the notification in paragraph (3), by site display, within 14 days of that notification, for a period of at least 14 days.";

(b) for paragraph (4) substitute—

"(4) An authority shall not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the person who made the request and the consultation bodies, but shall, on, or as soon as reasonably practicable after the date they adopted a screening opinion, adopt a scoping opinion and send a copy to the person who made the request.";

(c) omit paragraph (5);

(d) for paragraph (7) substitute—

"(7) The person who requested the opinion may, within three weeks beginning with the date on which the scoping opinion was adopted or such longer period as may be agreed in writing with the Secretary of State—

(a) write to the authority stating that he accepts their view and is providing an environmental statement; or

(b) request the Secretary of State to make a direction pursuant to regulation 11 as to the information to be provided in the environmental statement (a "scoping direction") and notify the authority in writing that he has written to the Secretary of State to request such a direction."; and

(e) after paragraph (9) insert—

"(10) When the authority comply with paragraph (4) they shall notify in writing the applicant of—

(a) the period within which compliance with regulation 10(7) is required to avoid the suspension of minerals development;

(b) the period within which an environmental statement and compliance with regulation 14(5) is required;

(c) the fact that minerals development will automatically be suspended under regulation 26A(18) if the applicant or appellant does not take the steps specified in regulation 26A(17) within the specified periods; and

(d) the authority's duty to make an order under paragraph 3 of Schedule 9 to the Act after two years suspension under regulation 26A(18).

(10A) The authority shall publicise the notification in paragraph (10) with details of where the scoping opinion can be inspected, by site display, within 14 days of that notification, for a period of at least 14 days.".

(9) Unless the Secretary of State has made a screening direction to the effect that the development is not EIA development, in the case of an application referred to the Secretary of State or an appeal to the Secretary of State, for the purposes of regulation 11, a request for the Secretary of State to make a scoping direction shall be deemed to have been made under paragraph (1) of that regulation on the date that the screening direction was made.

(10) In regulation 11 (scoping directions of the Secretary of State)—

(a) in paragraph (1)(a) for "the relevant request to the relevant planning authority" substitute " the relevant request to the relevant planning authority where one has been made ";

(b) in paragraph (3)—

(i) before "notify in writing" insert " on, or as soon as reasonably practicable after, 22nd July 2008 "; and

(ii) after "scoping direction" insert " and of the matters specified in sub-paragraphs (c) and (d) of paragraph (8) ";

(c) after paragraph (3) insert—

"(3A) The authority, or the applicant where a request has been made under regulation 10(7), shall publicise the notification in paragraph (3), by site display, within 14 days of that notification, for a period of at least 14 days."; and

(d) after paragraph (6) insert—

"(7) An applicant or appellant receiving a copy of a scoping direction pursuant to paragraph (4) may, within 3 weeks beginning with the date of the scoping direction, or

within such other period as may be agreed in writing with the authority or the Secretary of State , as the case may be—

(a) in the case of an application referred to the Secretary of State or an appeal, write to the Secretary of State stating that he accepts his view and is providing an environmental statement; or

(b) where a scoping direction has been requested under regulation 10(7), write to the authority stating that he proposes to provide an environmental statement.

(8) When the Secretary of State complies with paragraph (4) he shall notify in writing the applicant or appellant, as the case may be, of—

(a) the period within which compliance with regulation 11(7) is required to avoid the suspension of permission for minerals development;

(b) the period within which an environmental statement and compliance with regulation 14(5) is required;

(c) the fact that minerals development will automatically be suspended under regulation 26A(18) if the applicant or appellant does not take the steps specified in regulation 26A(17) within the specified periods; and

(d) the authority's duty to make an order under paragraph 3 of Schedule 9 to the Act after two years suspension under regulation 26A(18).

(8A) The Secretary of State shall send a copy of the notification in paragraph (8) to the relevant mineral planning authority.

(8B) The authority shall publicise the notification in paragraph (8) with details of where the scoping direction can be inspected, by site display, within 14 days of the notification in paragraph (8), for a period of at least 14 days.

(8C) The applicant or appellant, as the case may be, shall affix firmly to some object on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the letter referred to in paragraph (7), displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land within 14 days of the date of that letter, for a period of at least 14 days.”.

(11) In regulation 20(1) (availability of opinions, directions etc for inspection) for sub-paragraph (e) substitute—

“(e) notification given under regulation 5(3), 5(8), 6(3), 6(7), 7(2), 8(2), 9(4), 10(3), 10(10), 11(3) or 11(8);”.

(12) In regulation 26A (ROMP applications)—

(a) in paragraph (3) omit sub-paragraph (a) and in sub-paragraph (b) for “the authority” substitute “ the Secretary of State ”;

(b) in paragraph (5) omit sub-paragraph (a);

(c) in paragraph (17) for sub-paragraphs (a) to (c) substitute—

“(a) write to the authority or the Secretary of State within the three week or other period agreed pursuant to regulation 6(6), 7(4), 8(4), 9(5), 10(7) or 11(7);

(b) submit an environmental statement and comply with regulation 14(5) within four months beginning with the date of the notification in regulation 10(10) or, where a scoping direction has been requested under regulation 11(1), the date of the scoping direction, or within such other period as may be agreed in writing by the authority or the Secretary of State, as the case may be;

(c) provide additional information in accordance with regulation 19(1) within the period specified by the authority, the Secretary of State or an inspector in

accordance with paragraph (16), or within such other period as may be agreed in writing by the authority, the Secretary of State or an inspector, as the case may be; or";

(d) in paragraph (18), in sub-paragraph (a) for "six" substitute " three " and for "paragraph (17)(a)" substitute " paragraphs (17)(a) and (d) ";

(e) in paragraph (22)(a) omit "unless either the mineral planning authority has adopted a screening opinion or the Secretary of State has made a screening direction to the effect that the ROMP development in question is not EIA development"; and

(f) after paragraph (27) insert—

"(27A) This paragraph applies—

(a) where an authority has adopted a screening opinion, or the Secretary of State has made a screening direction, to the effect that the ROMP development in question is not EIA development;

(b) in determining for the purposes of paragraphs 2(6)(b) of Schedule 2 to the 1991 Act, 9(9) of Schedule 13 to the 1995 Act and 6(8) of Schedule 14 to the 1995 Act (determination of conditions) the time which has elapsed without the mineral planning authority giving the applicant written notice of their determination;

and where this paragraph applies, no account shall be taken of any period before the adoption of the opinion or the making of the screening direction.".

ROMP applications: suspension of planning permission for minerals development if screening or scoping information is not provided

[F1]3. . . . . . .

Textual Amendments

F1 Reg. 3 revoked (1.9.2008) by The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008 (S.I. 2008/2093), regs. 1(1), **13**

ROMP applications: duty to make a prohibition order after two years suspension of permission

[F2]4. . . . . . .

Textual Amendments

F2 Reg. 4 revoked (1.9.2008) by The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2008 (S.I. 2008/2093), regs. 1(1), **13**

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

Department for Communities and Local Government

Kay Andrews
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293) as amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations (S.I. 2000/2867) and the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006 (S.I. 2006/3295) implemented, in England and Wales, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1985, p.40), as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.1997, p.5) and Council Directive 2003/35/EC (O.J.No. L156, 25.6.2003, p.17), in relation to applications to mineral planning authorities to determine the conditions to which a mineral planning permission is subject under Schedule 2 to the Planning and Compensation Act 1991 and Schedules 13 and 14 to the Environment Act 1995 ("ROMP applications").

The 2000 Regulations applied the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the 1999 Regulations"), with modifications, to ROMP applications made on or after the commencement of the 2000 Regulations (15th November 2000) which had yet to be determined.

These Regulations apply in relation to England only. They apply the 1999 Regulations, with modifications, to ROMP applications made before 15th November 2000 which are undetermined on 22nd July 2008 ("undetermined ROMP applications"). They also make provisions which apply to all ROMP applications.

The 1999 Regulations are modified so that screening opinions must be provided for all undetermined ROMP applications as soon as reasonably practicable on or after 22nd July 2008 and acceptance of the screening opinion or an application for a screening direction should be made in writing within three weeks of the screening opinion. Where an applicant receives a screening opinion requiring EIA, a screening direction may be requested from the Secretary of State within 3 weeks or such longer period as is agreed with the Secretary of State *(regulation 2(2) and (4))*. Regulation 6 of the 1999 Regulations is modified to make similar provision in relation to screening directions for applications which have been called in for determination by the Secretary of State, and for appeals made to the Secretary of State *(regulation 2(3), (5) and (6))*.

Regulation 10 of the 1999 Regulations is modified so that scoping opinions must be provided for all undetermined ROMP applications as soon as reasonably practicable after screening, and acceptance of the scoping opinion or an application for a scoping direction from the Secretary of State should be made in writing within three weeks of the scoping opinion *(regulations 2(7) and 2(8))*. Regulation 11 of the 1999 Regulations is modified to make similar provision in relation to scoping directions for applications which have been called in for determination by the Secretary of State, and for appeals to the Secretary of State *(regulations 2(9) and 2(10))*. Mineral planning authorities or the Secretary of State must warn applicants or appellants of the consequences of not providing a new environmental statement within 4 months of the scoping opinion or direction (or such extended period as is agreed in writing) *(regulations 2(8) and 2(10))*.

Provision is made for requests for further information to enable screening and scoping, and the notifications accompanying screening and scoping opinions and directions, to be placed on the planning register *(regulation 2(11))*.

Regulation 26A of the 1999 Regulations is modified to amend the time periods within which applicants or appellants of undetermined ROMP applications must supply information, and applies the sanction of suspension of permission where these time periods are not complied with *(regulation 2(12))*.

Regulation 3 amends the 1999 Regulations by applying the sanction of automatic suspension under regulation 26A of the 1999 Regulations to all ROMP applications for the non-provision of information to enable mineral planning authorities or the Secretary of State to make screening or scoping opinions or directions.
Regulation 4 imposes a duty on mineral planning authorities to make a prohibition order in relation to the whole or part of a minerals site as they see fit where regulation 26A(17) of the 1999 Regulations has not been complied with and, as a consequence, permission for minerals development has been suspended for two years.
An impact assessment has been prepared in relation to these Regulations. It has been placed in the library of each House of Parliament and copies may be obtained from Planning Resources and Environment Policy Division, Department for Communities and Local Government, Zone 1/J5, Eland House, Bressenden Place, London, SW1E 5DU (Telephone: 020 7944 3876).

Changes to legislation:
There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008.