
STATUTORY INSTRUMENTS

2008 No. 2093

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

Amendments to Part 7 (special cases)

- 9.—(1) In regulation 22 (development by a local planning authority)—
- (a) in paragraph (1)(b) for “(2) to (7)” substitute “(2) to (10)”;
 - (b) for paragraph (1)(e)(i) substitute—
 - “(i) for paragraph (1), there were substituted—
 - “(1) When a relevant planning authority making an EIA application lodge a statement which they refer to as an environmental statement for the purposes of these Regulations, they shall—
 - (a) serve a copy of—
 - (i) that statement;
 - (ii) the relevant application and any plan submitted with it; and
 - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application,
 - on each consultation body;
 - (b) inform each consultation body that representations may be made to the relevant planning authority; and
 - (c) send to the Secretary of State within 14 days of lodging the statement—
 - (i) three copies of the statement;
 - (ii) a copy of the relevant application and of any documents submitted with the application; and
 - (iii) in the case of a subsequent application, the planning permission granted for the development in respect of which the subsequent application has been made and any documents or information relating to the application.”;
- (c) in paragraph (2) after “planning application” insert “or a subsequent application”.
- (2) In regulation 25 (unauthorised development)—
- (a) in paragraph (1)—
 - (i) after “Secretary of State” insert “or an inspector”;
 - (ii) after “shall not grant planning permission” insert “or subsequent consent”.
 - (b) in paragraph (9)—
 - (i) omit from “and, in either case” to “that development”;
 - (ii) omit “such”.

- (c) after paragraph (9) insert—
- “(9A) Where an inspector is dealing with an appeal under section 174 and a question arises as to whether the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, the inspector shall refer that question to the Secretary of State;
- (9B) Before he receives a screening direction the inspector shall not determine the application which is deemed to have been made by virtue of the appeal under section 174 (“the deemed application”) except to refuse that application;
- (9C) Where a question is referred to the Secretary of State under paragraph (9A) he shall make a screening direction within three weeks beginning with the date on which the question was referred to him or such longer period as he may reasonably require;
- (9D) The Secretary of State shall send a copy of any screening direction made pursuant to paragraph (9C) forthwith to the inspector.”;
- (d) in paragraph (11)(a) omit “(“the deemed application”)”;
- (e) in paragraph (12) after “Where the Secretary of State” insert “or an inspector”;
- (f) in paragraph (14)(a)—
- (i) after “where the Secretary of State” insert “or an inspector”;
- (ii) after “such period as the Secretary of State” insert “or the inspector”;
- (iii) after “such longer period as the Secretary of State” insert “or the inspector”.
- (g) in paragraph (16)—
- (i) after sub-paragraph (b) insert—
- “(bb) sufficient information to enable any planning permission for the development to be identified.”;
- (ii) in sub-paragraph (c) after “any other information” insert “and of any planning permission”;
- (h) in paragraph (18) after “he” insert “or an inspector”;
- (i) in paragraph (20) after “Secretary of State” insert “or an inspector”.
- (3) In regulation 26A (ROMP applications) for paragraphs (1) to (21) of regulation 26A (ROMP applications) substitute—

“General application of the Regulations to ROMP applications

- (1) These Regulations shall apply to—
- (a) a ROMP application as they apply to an application for planning permission;
- (b) a ROMP subsequent application as they apply to a subsequent application;
- (c) ROMP development as they apply to development in respect of which an application for planning permission is, has been, or is to be made;
- (d) a relevant mineral planning authority as they apply to a relevant planning authority;
- (e) a person making a ROMP application as they apply to an applicant for planning permission;
- (f) a person making a ROMP subsequent application as they apply to a person making a subsequent application;
- (g) the determination of a ROMP application as they apply to the granting of a planning permission; and

(h) the granting of ROMP subsequent consent as they apply to the granting of subsequent consent,
subject to the modifications and additions set out below.

Modification of provisions on prohibition of granting planning permission or subsequent consent

(2) In regulation 3(1) (prohibition on granting planning permission or subsequent consent without consideration of environmental information)—

- (a) in sub-paragraphs (a),(c) and (d) for the words “of these Regulations” substitute “ of the Town and Country Planning (Environmental Impact Assessment)(England and Wales) (Amendment) Regulations 2000(1)”;
- (b) in sub-paragraph (b) for the words “3 or 4 (applications for planning permission)” substitute “11 (other consents)”;
- (c) in the case of a ROMP application, for the words “determined in accordance with paragraph (3) of article 20 (time periods for decision) of the Order”, substitute “ the date on which a ROMP application has been made which complies with the provisions of paragraphs 2(3) to (5) and 4(1) of Schedule 2 to the 1991 Act, 9(2) of Schedule 13 to the 1995 Act, or 6(2) of Schedule 14 to the 1995 Act”;

Modification of provisions on application to local planning authority without an environmental statement

(3) In the case of a ROMP application, in regulation 7(5) (application made to a local planning authority without an environmental statement)—

- (a) for the word “three” substitute “six”; and
- (b) after “the notification” insert “, or within such other period as may be agreed with the authority in writing”.

Disapplication of Regulations and modifications of provisions on application referred to or appealed to the Secretary of State without an environmental statement

(4) In the case of a ROMP application, regulations 7(7) and (9), 8(5) and (6), 9(6) and (7), 22 and 32 shall not apply.

(5) In the case of a ROMP application, in regulation 8(4) (application referred to the Secretary of State without an environmental statement) and in regulation 9(5) (appeal to the Secretary of State without an environmental statement)—

- (a) for the word “three” substitute “six”;
- (b) after “the notification” insert “, or within such other period as may be agreed with the Secretary of State in writing,”.

Substitution of references to section 78 right of appeal and modification of provisions on appeal to the Secretary of State without an environmental statement

(6) In the case of a ROMP application, in regulations 9(1) and 15(b), for the references to “section 78 (right to appeal against planning decisions and failure to take such decisions)” substitute—

“paragraph 5(2) of Schedule 2 to the 1991 Act, paragraph 11(1) of Schedule 13 to the 1995 Act or paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal)”.

(7) In the case of a ROMP application, in regulation 9(2) (appeal to the Secretary of State without an environmental statement) omit the words “, except by refusing planning permission or subsequent consent.”.

Modification of provisions on preparation, publicity and procedures on submission of environmental statements

(8) In the case of a ROMP application, in regulations 10(9) and 11(6) for the words “an application for planning permission or a subsequent application” substitute “a ROMP application which relates to another planning permission which authorises”.

(9) In the case of a ROMP application, in regulation 13 (procedure where an environmental statement is submitted to a local planning authority) after paragraph (3) insert—

“(3A) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 8 of and Schedule 3 to the Order (publicity for applications for planning permission) shall apply to a ROMP application under paragraph—

- (a) 2(2) of Schedule 2 to the 1991 Act; and
- (b) 6(1) of Schedule 14 to the 1995 Act(2)

as they apply to a planning application falling within paragraph 8(2) of the Order except that for the references in the notice in Schedule 3 to the Order to “planning permission” there shall be substituted “determination of the conditions to which a planning permission is to be subject” and that notice shall refer to the relevant provisions of the 1991 or 1995 Act pursuant to which the application is made.”.

(10) In the case of a ROMP application, in regulation 14 (publicity where an environmental statement is submitted after the planning application)—

- (a) in paragraph (2)(a) for the words “and that he is the applicant for planning permission or subsequent consent” substitute—

“, that he has applied for determination of the conditions to which a planning permission is to be subject, the relevant provisions of the 1991 or 1995 Act pursuant to which the application is made”;

- (b) for paragraph (6) substitute—

“(6) Where an applicant indicates that he proposes to provide such a statement and in such circumstances as are mentioned in paragraph (1), the relevant planning authority, the Secretary of State or the inspector, as the case may be, shall suspend consideration of the application or appeal until the date specified by the authority or the Secretary of State for submission of the environmental statement and compliance with paragraph (5); and shall not determine it during the period of 21 days beginning with the date of receipt of the statement and the other documents mentioned in paragraph (5).”.

(11) In the case of a ROMP application, in regulation 15 (provision of copies of environmental statements and further information for the Secretary of State on referral or appeal), in paragraph (a) for “section 77” substitute “paragraph 7(1) of Schedule 2 to the 1991 Act, paragraph 13(1) of Schedule 13 to the 1995 Act or paragraph 8(1) of Schedule 14 to the 1995 Act”.

(12) In the case of a ROMP application, in regulation 17 (availability of copies of environmental statements) after “the Order” insert “(as applied by regulation 13(3A) or by paragraph 9(5) of Schedule 13 to the 1995 Act).”.

(2) The provisions of the Order are not applied to applications under paragraph 9(1) of Schedule 13 to the 1995 Act as they are applied by paragraph 9(5) of Schedule 13 to the 1995 Act.

(13) In the case of a ROMP application, in regulation 19 (further information and evidence respecting environmental statements)—

- (a) in paragraph (3) for the words “applicant for planning permission or subsequent consent or the appellant (as the case may be)” substitute—

“person who has applied for or who has appealed in relation to the determination of the conditions to which the planning permission is to be subject, the relevant provisions of the 1991 or 1995 Act pursuant to which the application is made”;

- (b) in paragraph (7) after the words “application or appeal” insert “until the date specified by them or him for submission of the further information”.

Modification of provisions on application to the High Court and giving of directions

(14) In the case of a ROMP application, for regulation 30 (application to the High Court) substitute—

“Application to the High Court

30. For the purposes of Part 12 of the Act (validity of certain decisions), the reference in section 288, as applied by paragraph 9(3) of Schedule 2 to the 1991 Act, paragraph 16(4) of Schedule 13 to the 1995 Act or paragraph 9(4) of Schedule 14 to the 1995 Act, to action of the Secretary of State which is not within the powers of the Act shall be taken to extend to the determination of a ROMP application by the Secretary of State in contravention of regulation 3.”.

(15) The direction making power substituted by regulation 35(8) shall apply to ROMP development as it applies to development in respect of which a planning application is made.

Suspension of minerals development

(16) Where the authority, the Secretary of State or an inspector is dealing with a ROMP application or an appeal arising from a ROMP application and notifies the applicant or appellant, as the case may be, that—

- (a) the submission of an environmental statement is required under regulation 7(2), 8(2) or 9(4) then such notification shall specify the period within which the environmental statement and compliance with regulation 14(5) is required; or
- (b) a statement should contain additional information under regulation 19(1) then such notification shall specify the period within which that information is provided.

(17) Subject to paragraph (18), the planning permission to which the ROMP application relates shall not authorise any minerals development (unless the Secretary of State has made a screening direction to the effect that ROMP development is not EIA development) if the applicant or the appellant does not—

- (a) write to the authority or Secretary of State within the six week or other period agreed pursuant to regulation 7(5), 8(4) or 9(5);
- (b) submit an environmental statement and comply with regulation 14(5) within the period specified by the authority or the Secretary of State in accordance with paragraph (16) or within such extended period as is agreed in writing;
- (c) provide additional information within the period specified by the authority, the Secretary of State or an inspector in accordance with paragraph (16) or within such extended period as is agreed in writing; or
- (d) where a notification under regulation 5(3), 6(3), 10(3) or 11(3) has been received, provide the additional information requested within three weeks beginning with the date of the

notification, or within such extended period as may be agreed in writing with the authority or Secretary of State, as the case may be.

(18) Where paragraph (17) applies, the planning permission shall not authorise any minerals development from the end of—

- (a) the relevant six week or other period agreed in writing as referred to in paragraph (17)(a);
- (b) the period specified or agreed in writing as referred to in paragraphs (17)(b) and (c),

(“suspension of minerals development”) until the applicant has complied with all of the provisions referred to in paragraph 17 which are relevant to the application or appeal in question.

(19) Particulars of the suspension of minerals development and the date when that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

(20) Paragraph (17) shall not affect any minerals development carried out under the planning permission before the date of suspension of minerals development.

(21) For the purposes of paragraphs (17) to (20) “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.”.

(4) After regulation 26A insert—

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

26B.—(1) This regulation applies if, in relation to a minerals development—

- (a) a period of two years beginning with the suspension date has expired, and
- (b) the steps specified in regulation 26(A)(17) have yet to be taken.

(2) The “suspension date” is the date on which the suspension of minerals development (within the meaning of regulation 26A(18)) begins.

(3) Paragraph 3 of Schedule 9 to the Act has effect in relation to any part of a site as it has effect in relation to the whole site.

(4) Sub-paragraph (1) of that paragraph has effect as if for the words from “the mineral planning authority may by order” to the end there were substituted—

“the mineral planning authority—

- (i) must by order prohibit the resumption of the winning and working or the depositing; and
- (ii) may in the order impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).”.

(5) In sub-paragraphs (2)(a) and (b) of that paragraph, references to winning and working or depositing are to be read as references to winning and working or depositing for which permission is not suspended by virtue of regulation 26A(18).

(6) Paragraph 4(7) of Schedule 9 to the Act has effect as if for “have effect” there were substituted “authorise that development”.”.