
STATUTORY INSTRUMENTS

2020 No. 928

**The Town and Country Planning (Border
Facilities and Infrastructure) (EU Exit)
(England) Special Development Order 2020**

Citation, commencement and application

1.—(1) This Order may be cited as the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 and comes into force on 24th September 2020.

(2) This Order applies to land in England within the areas specified in Schedule 1.

Interpretation

2.—(1) In this Order—

“border department” means any of—

- (a) the Commissioners for Her Majesty’s Revenue and Customs;
- (b) the Secretary of State for Business, Energy and Industrial Strategy;
- (c) the Secretary of State for the Environment, Food and Rural Affairs; or
- (d) the Secretary of State for Transport;

“building” includes any structure or erection, including plant and machinery, and gates, fences, walls or other means of enclosure, and any part of a building as so defined;

“development” means development as defined in section 55(1) of the Town and Country Planning Act 1990(1) carried out, or proposed to be carried out, in a particular case, pursuant to the planning permission granted by article 3(1);

“engagement parties” means the persons and bodies specified in Schedule 3;

“European offshore marine site” has the meaning given in regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017(2);

“European site” has the meaning given in regulation 8 of the Habitats Regulations;

“goods” includes animals and plants;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted;

“the Habitats Regulations” means the Conservation of Habitats and Species Regulations 2017(3);

(1) Section 55 was amended by the Planning and Compensation Act 1991 (c. 34), sections 13(1) and (2) and 14, Schedule 6, paragraph 9, and Schedule 19, Parts 1 and 2, and by the Planning and Compulsory Purchase Act 2004 (c. 5), Schedule 6, paragraphs 1 and 2 and Schedule 9. There are further amendments which are not relevant to this Order.

(2) S.I. 2017/1013, amended by S.I. 2019/579 and the European Union (Withdrawal Agreement) Act 2020, Schedule 5, paragraph 1(1); there are other amending instruments but none is relevant.

(3) S.I. 2017/1012, amended by S.I. 2019/579 and the European Union (Withdrawal Agreement) Act 2020, Schedule 5, paragraph 1(1); there are other amending instruments but none is relevant.

“hard surfacing” includes any artificial surfacing and may be permeable or porous;

“Highways England” means Highways England Company Limited, a company incorporated in England and Wales under company number 9346363;

“owner” means, in relation to any land, any person who—

- (a) is the estate owner in respect of the fee simple; or
- (b) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired;

“reinstatement plan” means a plan detailing the reinstatement works and a method statement and timetable for carrying out the reinstatement works;

“reinstatement works” means the cessation of the use, and removal of all buildings, for which planning permission is granted by article 3(1)(a) and (b) on a site and the restoration of the site to its condition before such development commenced, except as specified in a reinstatement plan approved by the Secretary of State;

“relevant approval” has the meaning given in article 4(1)(a);

“relevant owners and occupiers” means, in respect of a development—

- (a) those owners of land adjacent to the site; and
- (b) those occupiers of land adjacent to the site, or to roads that will be used by vehicles travelling to and from the site, that are likely to be affected by the development;

“safety hazard area” means an area notified to the relevant local planning authority—

- (a) by the Health and Safety Executive for the purposes of paragraph (e) of the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015⁽⁴⁾ (or any previous powers to the like effect); or
- (b) by the Office for Nuclear Regulation for the purposes of paragraph (f) of that Table;

“site” means the land on which a border department proposes to implement, or implements, in any particular case, the planning permission granted by article 3(1);

“site operator” means, in respect of a site, an official in a border department who is a member of the Senior Civil Service and whose name is notified in writing from time to time to the Secretary of State as responsible for site operations; and

“waste hierarchy” means the waste hierarchy set out in article 4(1) of [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste⁽⁵⁾.

(2) Except in the definition of “border department” in paragraph (1), and in paragraph 2 of Schedule 1, references to “the Secretary of State” in this Order are references to the Secretary of State for Housing, Communities and Local Government.

(3) Any reference in this Order to the height of a building is a reference to its height when measured from ground level; and in this paragraph “ground level” means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.

(4) Any reference in this Order to a measurement from a boundary is to a linear measurement to any point on the boundary in question.

(5) Any requirement of this Order—

- (a) on a border department to engage with engagement parties in respect of a development; or

⁽⁴⁾ [S.I. 2015/595](#), to which there are amendments not relevant to this Order.

⁽⁵⁾ [OJ L No. 312, 22.11.2008, p.3](#), to which there are amendments not relevant to this Order.

(b) on a site operator to publish a document, includes such use of hard copy, electronic means (including social media), or other forms of communication as the site operator or border department considers appropriate to bring the document or development to the attention of those who are to be made aware of it.

Grant of temporary planning permission

3.—(1) Subject to the following provisions of this article and regulation 63 of the Habitats Regulations, planning permission is granted for—

- (a) the making of a material change in the use of land to use for the purpose of or in connection with—
 - (i) any activity that forms part of, or is incidental to, functions required to be carried out by or on behalf of a border department in connection with vehicles (in particular goods vehicles) and goods entering or exiting, or that are about to enter or exit, Great Britain, including—
 - (aa) recording vehicles entering or exiting the site;
 - (bb) providing, reviewing, checking, endorsing and approving customs declarations, permits and other documents relating to vehicles and goods;
 - (cc) examining, seizing and detaining goods;
 - (dd) inspecting vehicles and goods for any other lawful purpose;
 - (ee) storing or holding goods carried in vehicles; and
 - (ff) checking vehicles to ensure compliance with the conditions imposed by this Order,
("border processing");
 - (ii) the associated stationing of vehicles; and
 - (iii) carrying out repairs to vehicles, where an examiner appointed pursuant to section 66A of the Road Traffic Act 1988⁽⁶⁾ has—
 - (aa) examined the vehicle on the site;
 - (bb) determined, pursuant to section 69(1) of that Act (power to prohibit driving of unfit vehicles), that owing to any defects in the vehicle, it is, or is likely to become, unfit for service; and
 - (cc) prohibited the driving of the vehicle on a road;
- (b) the construction, installation, provision, operation, maintenance, improvement or alteration, decommissioning or removal of any buildings, and the carrying out of any works and earth modelling, required or provided in connection with the use of the site pursuant to sub-paragraph (a), including but not limited to the provision of—
 - (i) facilities for drivers of vehicles;
 - (ii) facilities for persons engaged in border processing;
 - (iii) roads and other means of access;
 - (iv) any main, pipe, cable or other apparatus for the provision of water, gas, electricity or other services;
 - (v) any foul water and surface water drainage systems;

⁽⁶⁾ 1988 c. 52. Section 66A of the 1988 Act was inserted by the Road Traffic Act 1991 (c. 40), section 9(1) and was amended by the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23), Schedule 7, paragraph 11. Section 69 of the 1988 Act was substituted by the Road Traffic Act 1991 (c. 40), section 12.

- (vi) hard surfacing;
- (vii) lighting;
- (viii) landscaping; and
- (ix) noise attenuation measures; and
- (c) reinstatement works.
- (2) The planning permission granted by paragraph (1) is subject to—
 - (a) the conditions specified in Schedule 2; and
 - (b) such other conditions as the Secretary of State may specify in a relevant approval.
- (3) In granting a relevant approval, the Secretary of State may vary or waive any condition that is specified in paragraphs B.1 to B.12 of Part 1, or Parts 2 to 4, of Schedule 2, as the Secretary of State considers appropriate in relation to a particular site.
- (4) This Order does not permit Schedule 1 development, or Schedule 2 development, as defined in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(7), unless, in respect of Schedule 2 development, the Secretary of State has—
 - (a) concluded in determining a submission made under article 4(1)(a) that the development is not EIA development as defined in that regulation and has made a screening direction to that effect under regulation 5(3) of those Regulations; or
 - (b) directed under regulation 63(1) of those Regulations that the development is exempt from the requirements of those Regulations.
- (5) Subject to paragraph (6)—
 - (a) a border department may carry out reinstatement works specified in a reinstatement plan approved by the Secretary of State until 31st December 2026; and
 - (b) in respect of all other development, the planning permission granted by paragraph (1) ceases on 31st December 2025.
- (6) A condition of a relevant approval may specify, in respect of a particular site—
 - (a) a date for the completion of reinstatement works that is earlier than 31st December 2026; or
 - (b) a date for the cessation of all other development that is earlier than 31st December 2025.

Relevant approvals

- 4.—(1) No development on any site may commence unless—
- (a) a border department has made a written submission to the Secretary of State for approval for the use of the land and the operations comprised in the development (“relevant approval”);
 - (b) the Secretary of State has ascertained that the development will not adversely affect the integrity of any European site or European offshore marine site, either alone or in combination with other plans or projects; and
 - (c) the border department has obtained the relevant approval.
- (2) A submission made under paragraph (1)(a) must include—
- (a) the name of the border department by or on whose behalf the submission is made (“the relevant border department”) and the name of the site operator;
 - (b) a plan, reproduced from or based on an Ordnance Survey map, drawn to an identified scale, which shows the location and boundary of the site to which the submission relates;

(7) [S.I. 2017/571](#), amended by [S.I. 2018/575](#), [2018/695](#); there are other amending instruments but none is relevant.

- (c) a plan showing the maximum extent (in terms of height and area) and general layout of, and the means of access to, the development;
- (d) details of any planning permission (including planning permission granted by another development order) that the relevant border department proposes to rely on;
- (e) a document confirming that the owners of the site have been notified of the relevant border department's intention to make a submission under paragraph (1)(a);
- (f) a document identifying any other land in the vicinity of the site of which the relevant border department is the owner;
- (g) if the relevant border department considers that it is likely to cease to need the planning permission granted by article 3(1)(a) and (b) on or by a date substantially earlier than 31st December 2025, that earlier date;
- (h) an analysis of the likely environmental effects of the development;
- (i) a Habitats Regulations screening report, and where that report identifies a likely significant effect on a European site or European offshore marine site, a Habitats Regulations assessment report, and for the purposes of this sub-paragraph—
 - (i) “Habitats Regulations assessment report” means a report which includes an assessment of whether, having regard to any mitigation measures proposed, any residual effects of the development would adversely affect the integrity of a European site or European offshore marine site, either alone or in combination with other plans or projects, in view of that site's conservation objectives; and
 - (ii) “Habitats Regulations screening report” means a report which includes an appraisal of whether the development, either alone or in combination with other plans or projects, is likely to have a significant effect on a European site or a European offshore marine site;
- (j) a report which—
 - (i) summarises—
 - (aa) the methods used to engage with the engagement parties regarding the development;
 - (bb) the information provided to the engagement parties and when it was provided to them; and
 - (cc) the outcomes of engagement with each engagement party; and
 - (ii) includes—
 - (aa) a statement of the period given to each engagement party to make representations about the development, being not less than 14 calendar days and beginning with the date on which they were invited to make such representations; and
 - (bb) copies of the main representations received from engagement parties.
- (k) an assessment of the traffic impacts of the development;
- (l) an assessment of the impacts of the development on any part of the site which is shown as safeguarded on a safeguarding map issued for the purposes of the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002⁽⁸⁾;

⁽⁸⁾ The Direction is annexed to Joint Circular 01/2003 issued on 27 January 2003 by the Office of the Deputy Prime Minister, a copy of which can be inspected at the Planning Directorate, Ministry of Housing, Communities and Local Government, 2 Marsham Street, London SW1P 4DF; see also <https://www.gov.uk/government/publications/safeguarding-aerodromes-technical-sites-and-military-explosives-storage-areas> .

- (m) a statement from the Health and Safety Executive and the Office of Nuclear Regulation (as appropriate) in respect of the development where the site or any part of it is in, or includes, a safety hazard area;
- (n) a statement including—
 - (i) a description of the development;
 - (ii) a summary of the planning history of the site;
 - (iii) identification of the national and local planning policies relevant to the site and the development;
 - (iv) an assessment of any other material considerations which are relevant to the determination of the submission and which are, in the opinion of the border department, important to that determination;
 - (v) an assessment of how the carrying out of the development will comply with section 6 of the Human Rights Act 1998⁽⁹⁾; and
 - (vi) a description of how the relevant border department has complied with its duties under section 149 of the Equality Act 2010⁽¹⁰⁾ in respect of the development; and
- (o) such other information or documents as the Secretary of State may require the relevant border department to submit as being necessary for the purpose of determining the submission.

(3) Where a condition in Schedule 2 requires the approval of the Secretary of State to be obtained in respect of any document or other matter, such approval may only be granted in relation to a site in respect of which a relevant approval has been obtained.

(4) Approval of any document or other matter pursuant to a condition of a relevant approval may be given subject to such further conditions as the Secretary of State considers appropriate in relation to the subject matter of the approval.

(5) Before approving any document or other matter pursuant to a condition of a relevant approval, the Secretary of State may engage with such engagement parties as the Secretary of State considers appropriate.

Signed by the Secretary of State for Housing, Communities and Local Government

Robert Jenrick
Secretary of State
Ministry of Housing, Communities and Local
Government

1st September 2020

⁽⁹⁾ 1998 c. 42. There are amendments that are not relevant to this Order.

⁽¹⁰⁾ 2010 c. 15.