
STATUTORY INSTRUMENTS

2011 No. 1824

**The Town and Country Planning (Environmental
Impact Assessment) Regulations 2011**

PART 9

Unauthorised Development

Interpretation

30. In this Part, “unauthorised EIA development” means EIA development which is the subject of an enforcement notice under section 172(1).

Prohibition on the grant of planning permission for unauthorised EIA development

31. The Secretary of State or an inspector shall not grant planning permission or subsequent consent under section 177(1)(2) (grant or modification of planning permission on appeals against enforcement notices) in respect of unauthorised EIA development unless the Secretary of State or inspector has first taken the environmental information into consideration, and shall state in the decision that they have done so.

Screening opinions of the local planning authority

32.—(1) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development they shall, before the enforcement notice is issued, adopt a screening opinion.

(2) Where it appears to the local planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they shall serve with a copy of the enforcement notice a notice (“regulation 32 notice”) which shall—

- (a) include the screening opinion required by paragraph (1) and the written statement required by regulation 4(7); and
 - (b) require a person who gives notice of an appeal under section 174(3) to submit to the Secretary of State with the notice 2 copies of an environmental statement relating to that EIA development.
- (3) The authority by whom a regulation 32 notice has been served shall send a copy of it to—
- (a) the Secretary of State;

(1) Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.
(2) Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), sections 6(3) and 32, and Schedule 7 paragraph 24.
(3) Section 174 was amended by the Planning and Compensation Act 1991 (c. 34), section 6(1) and Schedule 7, paragraph 22, and by S.I 2003/956. See also section 177(5) which was amended by the Planning and Compensation Act 1991, Schedule 7, paragraph 24.

- (b) the consultation bodies; and
 - (c) any particular person of whom the authority is aware, who is likely to be affected by, or has an interest in, the regulation 32 notice.
- (4) Where an authority provide the Secretary of State with a copy of a regulation 32 notice they shall include with it a list of the other persons to whom a copy of the notice has been or is to be sent.

Screening directions of the Secretary of State

33. Any person on whom a regulation 32 notice is served may, within 3 weeks beginning with the date the notice is served, apply to the Secretary of State for a screening direction and the following shall apply—

- (a) an application under this regulation shall be accompanied by—
 - (i) a copy of the regulation 32 notice;
 - (ii) a copy of the enforcement notice which accompanied it; and
 - (iii) such other information or representations as the applicant may wish to provide or make;
- (b) at the same time as applying to the Secretary of State, the applicant shall send to the authority by whom the regulation 32 notice was served, a copy of the application under this regulation and of any information or representations provided or made in accordance with sub-paragraph (a)(iii);
- (c) if the Secretary of State considers that the information provided in accordance with sub-paragraph (a) is insufficient to make a direction, the Secretary of State shall notify the applicant and the authority of the matters in respect of which additional information is required; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice;
- (d) the Secretary of State shall send a copy of the direction to the applicant;
- (e) without prejudice to sub-paragraph (d), where the Secretary of State directs that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, the Secretary of State shall send a copy of the direction to every person to whom a copy of the regulation 32 notice was sent.

Provision of information

34.—(1) The relevant planning authority and any person, other than the Secretary of State, to whom a copy of the regulation 32 notice has been sent (“the consultee”) shall, if requested by the person on whom the regulation 32 notice was served, enter into consultation with that person to determine whether the consultee has in their possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to that person.

(2) Regulation 15(5) shall apply to information under paragraph (1) as it applies to any information falling within regulation 15(4).

Appeal to the Secretary of State without a screening opinion or screening direction

35.—(1) Where on consideration of an appeal under section 174 it appears to the Secretary of State that the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, the Secretary of State shall, before any notice is served pursuant to regulation 36, make a screening direction.

(2) 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.

(3) Before receiving 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.

(4) Where a question is referred under paragraph (2), the Secretary of State shall make a screening direction within 3 weeks beginning with the date on which the question was referred or such longer period as may be reasonably required.

(5) The Secretary of State shall send a copy of any screening direction made pursuant to paragraph (4) to the inspector.

(6) If the Secretary of State considers that sufficient information to make a screening direction has not been provided, the Secretary of State shall give notice in writing to the applicant and the authority by whom the regulation 32 notice was served of the matters in respect of which additional information is required; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice.

(7) If an appellant to whom notice has been given under paragraph (6) fails to comply with the requirements of that notice—

- (a) the application which is deemed to have been made by virtue of the appeal made under section 174; and
- (b) the appeal in so far as it is brought under the ground mentioned in section 174(2)(a) (“the ground (a) appeal”),

shall lapse at the end of the period specified in the notice.

Appeal to the Secretary of State without an environmental statement

36. Where the Secretary of State or an inspector is considering an appeal under section 174 and the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development, and the documents submitted for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, the following procedure shall apply—

- (a) the Secretary of State shall, subject to sub-paragraph (b), within the period of 3 weeks beginning with the day on which the appeal is received, or such longer period as may be reasonably required, notify the appellant in writing of the requirements of sub-paragraph (c) below;
- (b) notice need not be given under sub-paragraph (a) where the appellant has submitted an environmental statement to the Secretary of State for the purposes of an appeal under section 78 (right to appeal against planning decisions and failure to take such decisions) which—
 - (i) relates to the development to which the appeal under section 174 relates; and
 - (ii) is to be determined at the same time as that appeal under section 174;and that statement, any further information, any other information and the representations (if any) made in relation to it shall be treated as the environmental information for the purpose of paragraph (2) of this regulation;
- (c) the appellant shall, within the period specified in the notice or such longer period as the Secretary of State may allow, submit to the Secretary of State 2 copies of an environmental statement relating to the unauthorised EIA development in question;

- (d) the Secretary of State shall send to the relevant planning authority a copy of any notice sent to the appellant under sub-paragraph (a);
- (e) if an appellant to whom notice has been given under sub-paragraph (a) fails to comply with the requirements of sub-paragraph (c), the deemed application and the ground (a) appeal (if any) shall lapse at the end of the period specified or allowed (as the case may be);
- (f) as soon as reasonably practicable after the occurrence of the event mentioned in sub-paragraph (e), the Secretary of State shall notify the appellant and the local planning authority in writing that the deemed application and the ground (a) appeal (if any) have lapsed.

Procedure where an environmental statement is submitted to the Secretary of State

37. Where the Secretary of State receives (otherwise than as mentioned in regulation 36(b)) an environmental statement in connection with an enforcement appeal, the Secretary of State shall—

- (a) send a copy of that statement to the relevant planning authority, advise the authority that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations; and
- (b) notify the persons to whom a copy of the relevant regulation 32 notice was sent that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations and that, if they wish to receive a copy of the statement or any part of it, they must notify the Secretary of State of their requirements within 7 days of the receipt of the Secretary of State's notice; and
- (c) respond to requirements notified in accordance with sub-paragraph (b) by providing a copy of the statement or of the part requested (as the case may be).

Further information and evidence respecting environmental statements

38. Regulations 22(1) and 22(10) shall apply to statements provided in accordance with this regulation with the following modifications—

- (a) where the Secretary of State or an inspector notifies the appellant under regulation 22(1), the appellant shall provide the further information within such period as the Secretary of State or the inspector may specify in the notice or such longer period as the Secretary of State or the inspector may allow;
- (b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allowed (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

Publicity for environmental statements or further information

39.—(1) Where an authority receive a copy of a statement or further information by virtue of regulation 37(a) or any other information they shall publish by local advertisement a notice stating—

- (a) the name of the appellant and that the enforcement notice has been appealed to the Secretary of State;
- (b) the address or location of the land to which the notice relates and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the statement, further information or any other information and of any planning permission may be inspected by members of the public at all reasonable hours;

- (e) an address in the locality in which the land is situated at which the statement or further information or any other information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (f) that any person wishing to make representations about any matter dealt with in the statement or further information or any other information should make them in writing, no later than 14 days after the date named in accordance with sub-paragraph (e), to the Secretary of State; and
- (g) the address to which any such representations should be sent.

(2) The authority shall as soon as practicable after publication of a notice in accordance with paragraph (1) send to the Secretary of State a copy of the notice certified by or on behalf of the authority as having been published by local advertisement on a date specified in the certificate.

(3) Neither the Secretary of State receiving a certificate under paragraph (2) nor an inspector shall determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 14 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

Public inspection of documents

40.—(1) The relevant planning authority shall make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept a copy of—

- (a) every regulation 32 notice given by the authority;
- (b) every notice received by the authority under regulation 36(d); and
- (c) every statement and all further information received by the authority under regulation 37(a);

and copies of those documents shall remain so available for a period of 2 years or until they are entered in Part 2 of the register in accordance with paragraph (2), whichever is the sooner.

(2) Where particulars of any planning permission granted by the Secretary of State or an inspector under section 177 are entered in Part 2 of the register(4), the relevant planning authority shall take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (1) as are relevant to the development for which planning permission has been granted.

(3) The provisions of regulations 24(2) and 24(3) apply to a deemed application and a grant of planning permission under section 177 as they apply to an application for and grant of planning permission under Part 3 of the Act.

Significant transboundary effects

41. Regulation 53 shall apply to unauthorised EIA development as if—

- (a) for regulation 53(1)(a) there were substituted—
 - “(a) on consideration of an appeal under section 174 the Secretary of State is of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA State; or”
- (b) in regulation 53(3)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”;
- (c) in regulation 53(3)(c) the words “to which that application relates” were omitted; and

(4) See section 177(8) Town and Country Planning Act 1990.

(d) in regulation 53(6) the word “application” was replaced by the word “appeal”.