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STATUTORY INSTRUMENTS

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**2011 No. 1824**

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

**PART 1**

**General**

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and shall come into force on 24 August 2011.

(2) Subject to paragraph (4), these Regulations shall apply in relation to England only.

(3) Paragraphs (2) and (6)(a) of regulation 17 shall not apply to the Isles of Scilly and, in relation to the Isles of Scilly, the reference in paragraph (7) of that regulation to paragraph (6) of that regulation shall be construed as a reference to paragraph (6)(b).

(4) Regulations 55 to 57 shall apply in relation to Scotland, Wales and Northern Ireland respectively<sup>(1)</sup>.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Town and Country Planning Act 1990 and references to sections are references to sections of that Act;

“the 1991 Act” means the Planning and Compensation Act 1991<sup>(2)</sup>;

“the 1995 Act” means the Environment Act 1995<sup>(3)</sup>;

“any other information” means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;

“any particular person” includes any non-governmental organisation promoting environmental protection;

“the consultation bodies” means—

- (a) any body which the relevant planning authority is required to consult, or would, if an application for planning permission for the development in question were before them, be required to consult by virtue of article 16 (consultations before the grant of permission) of the Order or of any direction under that article;

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(1) Regulations 55 to 57 relate to the Secretary of State’s power to direct that the Regulations shall not apply to development that constitutes or forms part of a project serving national defence purposes. The decision as to whether a direction should be made in respect of projects situated in the devolved administrations will be taken by the Secretary of State. National defence is a reserved matter for Scotland (see paragraph 9 of Schedule 5 to the Scotland Act 1998 (c. 46)), an excepted matter for Northern Ireland (see paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (c.47)), and a matter not devolved to Wales.

(2) 1991 c. 34.

(3) 1995 c. 25.

- (b) the Marine Management Organisation(4), in any case where the proposed development would affect, or would be likely to affect, any of the following areas—
- (i) waters in or adjacent to England up to the seaward limits of the territorial sea;
  - (ii) an exclusive economic zone(5), except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;
  - (iii) a Renewable Energy Zone(6), except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;
  - (iv) an area designated under section 1(7) of the Continental Shelf Act 1964(7), except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions;
- and
- (c) the following bodies if not referred to in sub-paragraph (a) or (b)—
- (i) any principal council for the area where the land is situated, if not the relevant planning authority;
  - (ii) Natural England(8);
  - (iii) the Environment Agency(9);
  - (iv) other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant planning authority or the Secretary of State, as the case may be, considers are likely to have an interest in the application;

“the Directive” means Council Directive [85/337/EEC](#);

“EIA application” means—

- (a) an application for planning permission for EIA development; or
- (b) a subsequent application in respect of EIA development;

“EIA development” means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental information” means the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development;

“environmental statement” means a statement—

- (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part 2 of Schedule 4;

“exempt development” means development in respect of which the Secretary of State has made a direction under regulation 4(4);

(4) See section 1 of the Marine and Coastal Access Act 2009 (c. 23).

(5) See section 41 of the Marine and Coastal Access Act 2009.

(6) See section 84(4) of the Energy Act 2004 (c. 20), substituted by the Marine and Coastal Access Act 2009.

(7) 1964 c. 29.

(8) See section 1(1) and 1(2) of the Natural Environment and Rural Communities Act 2006 (c.16).

(9) See section 1(1) of the Environment Act 1995 (c. 25).

“further information” has the meaning given in regulation 22(1);

“General Regulations” means the Town and Country Planning General Regulations 1992(10);

“inspector” means a person appointed by the Secretary of State pursuant to Schedule 6(1) to the Act(11) to determine an appeal;

“the land” means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“by local advertisement”, in relation to a notice, means—

- (a) by publication of the notice in a newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
- (b) where the relevant planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website;

“local development order” means a local development order made pursuant to section 61A(12);

“the Order” means the Town and Country Planning (Development Management Procedure) (England) Order 2010(13);

“principal council” has the meaning given by section 270(1) (general provisions as to interpretation) of the Local Government Act 1972(14);

“register” means a register kept pursuant to section 69 (registers of applications etc) and “appropriate register” means the register on which particulars of an application for planning permission for the relevant development have been placed or would fall to be placed if such an application were made;

“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 1991 Act;
- (b) 13 of Schedule 13 to the 1995 Act; or
- (c) 8 of Schedule 14 to the 1995 Act,

fall to determine the ROMP application in question;

“relevant planning authority” means the body to whom it falls, fell, or would, but for a direction under section 77(15) (reference of applications to Secretary of State), fall to determine an application for planning permission for the development 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 1991 Act (registration of old mining permissions);
- (b) 9(1) of Schedule 13 to the 1995 Act (review of old mineral planning permissions); or
- (c) 6(1) of Schedule 14 to the 1995 Act (periodic review of mineral planning permissions);

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

“ROMP subsequent application” means an application for approval of a matter where the approval—

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(10) S.I. 1992/1492. Relevant amending instruments are S.I. 1992/1982 and S.I. 1997/3006.

(11) Schedule 6 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 44.

(12) Section 61A of the Town and Country Planning Act 1990 was inserted by section 40 of the Planning and Compulsory Purchase Act 2004 (c.5).

(13) S.I. 2010/2184.

(14) 1972 c. 70.

(15) Section 77 was amended by the Planning and Compensation Act 1991, Schedule 7, paragraph 18.

- (a) is required by or under a condition to which a planning permission is subject following determination of a ROMP application; and
- (b) must be obtained before all or part of the minerals development permitted by the planning permission may be begun or continued;

“ROMP subsequent consent” means consent granted pursuant to a ROMP subsequent application;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of the table in Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

“scoping direction” and “scoping opinion” have the meanings given in regulation 13;

“screening direction” means a direction made by the Secretary of State as to whether development is EIA development;

“screening opinion” means a written statement of the opinion of the relevant planning authority as to whether development is EIA development;

“sensitive area” means any of the following—

- (a) land notified under section 28(1) (sites of special scientific interest) of the Wildlife and Countryside Act 1981<sup>(16)</sup>;
- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949<sup>(17)</sup>;
- (c) the Broads<sup>(18)</sup>;
- (d) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage<sup>(19)</sup>;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979<sup>(20)</sup>;
- (f) an area of outstanding natural beauty designated as such by an order made by Natural England under section 82(1) (areas of outstanding natural beauty) of the Countryside and Rights of Way Act 2000<sup>(21)</sup>;
- (g) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010<sup>(22)</sup>;

“subsequent application” means an application for approval of a matter where the approval—

- (a) is required by or under a condition to which a planning permission is subject; and

<sup>(16)</sup> 1981 c. 69, substituted by the Countryside and Rights of Way Act 2001 (c. 37) section 75(1) and Schedule 9, paragraph 1, and amended by the Natural Environment and Rural Communities Act 2006 (c. 16) section 105(1), Schedule 11, Part 1, paragraph 79, and by the Marine and Coastal Access Act 2009 (c. 23) section 148, schedule 13, Part 2, paragraph 2(1).

<sup>(17)</sup> 1949 (c. 97), s section 5(3).

<sup>(18)</sup> See the Norfolk and Suffolk Broads Act 1988 (c. 4).

<sup>(19)</sup> See Command Paper 9424.

<sup>(20)</sup> 1979 c. 46. See the definition in section 1(11).

<sup>(21)</sup> 2000 c. 37.

<sup>(22)</sup> S.I. 2010/490.

(b) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” means consent granted pursuant to a subsequent application.

(2) Subject to paragraph (3), expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations any reference to a Council Directive is a reference to that Directive as amended at the date these Regulations were made.

(5) In these Regulations references to the Secretary of State shall not be construed as references to an inspector.

### **Prohibition on granting planning permission or subsequent consent without consideration of environmental information**

3.—(1) This regulation applies—

- (a) to every application for planning permission for EIA development received by the authority with whom it is lodged on or after the commencement of these Regulations;
- (b) to every application for planning permission for EIA development lodged by an authority pursuant to regulation 3 or 4 (applications for planning permission) of the General Regulations on or after that date;
- (c) to every subsequent application in respect of EIA development received by the authority with whom it is lodged on or after the commencement of these Regulations; and
- (d) to every subsequent application in respect of EIA development lodged by an authority pursuant to regulation 11 of the General Regulations on or after the commencement of these Regulations;

(2) For the purposes of paragraph (1)(a) and (b), the date of receipt of an application by an authority shall be determined in accordance with article 29(3) (time periods for decision) of the Order.

(3) For the purpose of paragraph (1)(c) and (d), the date of receipt of an application by an authority shall be determined in accordance with article 30 (applications made under planning condition) of the Order.

(4) The relevant planning authority or the Secretary of State or an inspector shall not grant planning permission or subsequent consent pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

## **PART 2**

### **Screening**

#### **General provisions relating to screening**

4.—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that development is EIA development.

(2) The events referred to in paragraph (1) are—

- (a) the submission by the applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
  - (b) the adoption by the relevant planning authority of a screening opinion to the effect that the development is EIA development.
- (3) A direction of the Secretary of State shall determine for the purpose of these Regulations whether development is or is not EIA development.
- (a) (4) (a) The Secretary of State may direct that these Regulations shall not apply in relation to a particular proposed development specified in the direction either—
    - (i) in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive), or
    - (ii) if the development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on those purposes;
  - (b) Where a direction is given under paragraph (4)(a) the Secretary of State must send a copy of any such direction to the relevant planning authority.
- (5) Where a direction is given under paragraph (4)(a)(i) the Secretary of State must—
- (a) make available to the public the information considered in making the direction and the reasons for making the direction;
  - (b) consider whether another form of assessment would be appropriate; and
  - (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.
- (6) Where a local planning authority or the Secretary of State has to decide under these Regulations whether Schedule 2 development is EIA development the authority or Secretary of State shall take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.
- (7) Where a local planning authority adopts a screening opinion under regulation 5(5), or the Secretary of State makes a screening direction under paragraph (3)—
- (a) that opinion or direction shall be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and
  - (b) the authority or the Secretary of State, as the case may be, shall send a copy of the opinion or direction and a copy of the written statement required by sub-paragraph (a) to the person who proposes to carry out, or who has carried out, the development in question.
- (8) The Secretary of State may make a screening direction either—
- (a) of the Secretary of State's own volition; or
  - (b) if requested to do so in writing by any person.
- (9) The Secretary of State may direct that particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of "Schedule 2 development" is satisfied in relation to that development.
- (10) The Secretary of State shall send a copy of any screening direction and a copy of the written statement required by paragraph (7)(a) to the relevant planning authority.

### **Requests for screening opinions of the local planning authority**

5.—(1) A person who is minded to carry out development may request the relevant planning authority to adopt a screening opinion.

(2) A request for a screening opinion in relation to an application for planning permission shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) A request for a screening opinion in relation to a subsequent application shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;
- (c) an explanation of the likely effects on the environment which were not identified at the time that the planning permission was granted; and
- (d) such other information or representations as the person making the request may wish to provide or make.

(4) 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, notify in writing the person making the request of the points on which they require additional information.

(5) An authority shall adopt a screening opinion within 3 weeks beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request.

(6) An authority which adopts a screening opinion pursuant to paragraph (5) shall send a copy to the person who made the request.

(7) Where an authority—

- (a) fails to adopt a screening opinion within the relevant period mentioned in paragraph (5); or
- (b) adopts an opinion to the effect that the development is EIA development;

the person who requested the opinion may request the Secretary of State to make a screening direction.

(8) The person may make a request pursuant to paragraph (7) even if the authority have not received additional information which they have sought under paragraph (4).

### **Requests for screening directions of the Secretary of State**

6.—(1) A person who pursuant to regulation 5(7) requests the Secretary of State to make a screening direction shall submit with the request—

- (a) a copy of the request to the relevant planning authority under regulation 5(1) and the documents which accompanied it;
- (b) a copy of any notification received under regulation 5(4) and of any response sent;
- (c) a copy of any screening opinion received from the authority and of any accompanying statement of reasons; and
- (d) any representations that the person wishes to make.

(2) A person making a request pursuant to regulation 5(7) shall send to the relevant planning authority a copy of that request and of any representations that person makes to the Secretary of State.

(3) 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 person making the request pursuant to regulation 5(7) of the points on which additional information is required, and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Secretary of State shall make a screening direction within 3 weeks beginning with the date of receipt of a request pursuant to regulation 5(7) 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 person who made the request.

## PART 3

### Procedures Concerning Applications for Planning Permission

#### **Applications which appear to require screening opinion**

7. Where it appears to the relevant planning authority that—

- (a) an application which is before them for determination is a Schedule 1 application or a Schedule 2 application; and
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (4) and (5) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1).

#### **Subsequent applications where environmental information previously provided**

8.—(1) This regulation applies where it appears to the relevant planning authority that—

- (a) an application which is before them for determination—
  - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
  - (ii) has not itself been the subject of a screening opinion or screening direction; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) either—
  - (i) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; or
  - (ii) the application is for the approval of a matter where the approval is required by or under a condition to which planning permission deemed by section 10(1) of the Crossrail Act 2008(23) is subject.

(2) Where it appears to the relevant planning authority that the environmental information already before them is adequate to assess the environmental effects of the development, they shall take that information into consideration in their decision for subsequent consent.

(3) Where it appears to the relevant planning authority that the environmental information already before them is not adequate to assess the environmental effects of the development, they shall serve a notice seeking further information in accordance with regulation 22(1).

### **Subsequent applications where environmental information not previously provided**

9. Where it appears to the relevant planning authority that—
- (a) an application which is before them for determination—
    - (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development;
    - (ii) has not itself been the subject of a screening opinion or screening direction; and
    - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these regulations; and
  - (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (4) and (5) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1).

### **Application made to a local planning authority without an environmental statement**

10.—(1) Where an EIA application which is before a local planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the authority shall notify the applicant in writing that the submission of an environmental statement is required.

(2) Where the relevant planning authority is aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, the relevant planning authority shall notify the applicant of any such person.

(3) An authority shall notify the applicant in accordance with paragraph (1) within 3 weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; but where the Secretary of State, after the expiry of that period of 3 weeks or of any longer period so agreed, makes a screening direction to the effect that the development is EIA development, the authority shall so notify the applicant within 7 days beginning with the date the authority received a copy of that screening direction.

(4) An applicant receiving a notification pursuant to paragraph (1) may, within 3 weeks beginning with the date of the notification, write to the authority stating—

- (a) that the applicant accepts their view and is providing an environmental statement; or
- (b) unless the condition referred to in paragraph (5) is satisfied, that the applicant is writing to the Secretary of State to request a screening direction.

(5) For the purpose of paragraph (4)(b) the condition is—

- (a) if the application referred to in paragraph (1) is an application for planning permission, that the Secretary of State has made a screening direction in respect of the development;
- (b) if the application referred to in paragraph (1) is a subsequent application, that the Secretary of State has made a screening direction subsequent to that application in respect of the development.

(6) If the applicant does not write to the authority in accordance with paragraph (4), the permission or subsequent consent sought shall, unless the condition referred to in paragraph (7) is satisfied, be deemed to be refused at the end of the relevant 3 week period, and the deemed refusal—

- (a) shall be treated as a decision of the authority for the purposes of article 36(4)(c) (register of applications) of the Order; but
  - (b) shall not give rise to an appeal to the Secretary of State by virtue of section 78 (right to appeal against planning decisions and failure to take such decisions).
- (7) For the purpose of paragraph (6) the condition is—
- (a) if the application referred to in paragraph (1) is an application for planning permission, that the Secretary of State has made a screening direction to the effect that the development is not EIA development;
  - (b) if the application referred to in paragraph (1) is a subsequent application, that the Secretary of State has made a screening direction subsequent to that application, to the effect that the development is not EIA development.
- (8) An authority which has given a notification in accordance with paragraph (1) shall, unless the Secretary of State makes a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission or subsequent consent if the applicant does not submit an environmental statement and comply with regulation 17(6).
- (9) A person who requests a screening direction pursuant to paragraph (4)(b) shall send to the Secretary of State with the request copies of—
- (a) the application;
  - (b) all documents sent to the authority as part of the application;
  - (c) all correspondence between the applicant and the authority relating to the proposed development;
  - (d) a copy of any planning permission granted for the development; and
  - (e) in the case of a subsequent application, documents or information relating to the planning permission granted for the development that are relevant to the application,
- and paragraphs (2) to (5) of regulation 6 shall apply to a request under this regulation as they apply to a request made pursuant to regulation 5(7).

#### **Application referred to the Secretary of State without an environmental statement**

**11.—**(1) Where an application has been referred to the Secretary of State for determination, and it appears to the Secretary of State that—

- (a) it is an EIA application; and
- (b) the development in question—
  - (i) has not been the subject of a screening opinion or screening direction; or
  - (ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the referral of the application were a request made by the applicant pursuant to regulation 5(7).

(2) Where an application has been referred to the Secretary of State for determination, and it appears to the Secretary of State that—

- (a) it is an EIA application, and

- (b) it is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the Secretary of State shall notify the applicant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(3) The Secretary of State shall notify the applicant in accordance with paragraph (2) within 3 weeks beginning with the date the application was received or such longer period as may be reasonably required.

(4) Where the Secretary of State is aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, the Secretary of State shall notify the applicant of any such person.

(5) An applicant who receives a notification under paragraph (2) may, within 3 weeks beginning with the date of the notification, confirm in writing to the Secretary of State that an environmental statement will be provided.

(6) If the applicant does not write in accordance with paragraph (5), the Secretary of State shall be under no duty to deal with the application; and at the end of the 3 week period shall inform the applicant in writing that no further action is being taken on the application.

(7) Where—

- (a) a notification has been given under paragraph (2), and
- (b) the applicant does not submit an environmental statement and comply with regulation 17(6),

the Secretary of State shall determine the relevant application only by refusing planning permission or subsequent consent.

### **Appeal to the Secretary of State without an environmental statement**

**12.**—(1) Where on consideration of an appeal under section 78 (right to appeal against planning decisions and failure to take such decisions) it appears to the Secretary of State that—

- (a) the relevant application is an EIA application; and
- (b) the development in question —
  - (i) has not been the subject of a screening opinion or screening direction; or
  - (ii) in the case of a subsequent application, was the subject of a screening opinion or direction before planning permission was granted to the effect that it is not EIA development; and
- (c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the appeal were a request made by the appellant pursuant to regulation 5(7).

(2) Where an inspector is dealing with an appeal and a question arises as to whether the relevant application is an EIA application and it appears to the inspector that it may be such an application, the inspector shall refer that question to the Secretary of State and shall not determine the appeal, except by refusing planning permission or subsequent consent, before a screening direction is made.

(3) Paragraphs (3) and (4) of regulation 6 shall apply to a question referred under paragraph (2) as if the referral of that question were a request made by the appellant pursuant to regulation 5(7).

(4) Where it appears to the Secretary of State that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, the Secretary of State shall notify the appellant in writing that

the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(5) Where the Secretary of State is aware that any particular person is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, the Secretary of State shall notify the appellant of any such person.

(6) An appellant who receives a notification under paragraph (4), may within 3 weeks beginning with the date of the notification, confirm in writing to the Secretary of State that an environmental statement will be provided.

(7) If the appellant does not write in accordance with paragraph (6), the Secretary of State or, where relevant, the inspector, shall be under no duty to deal with the appeal; and at the end of the 3 week period shall inform the appellant that no further action is being taken on the appeal.

(8) Where—

- (a) a notification has been given under paragraph (4), and
- (b) the appellant does not submit an environmental statement and comply with regulation 17(6),

the Secretary of State or, where relevant, the inspector shall determine the appeal only by refusing planning permission or subsequent consent.

## PART 4

### Preparation of Environmental Statements

#### **Scoping opinions of the local planning authority**

**13.**—(1) A person who is minded to make an EIA application may ask the relevant planning authority to state in writing their opinion as to the information to be provided in the environmental statement (a “scoping opinion”).

(2) A request under paragraph (1) shall include—

- (a) in relation to an application for planning permission—
  - (i) a plan sufficient to identify the land;
  - (ii) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
  - (iii) such other information or representations as the person making the request may wish to provide or make;
- (b) in relation to a subsequent application—
  - (i) a plan sufficient to identify the land;
  - (ii) sufficient information to enable the relevant planning authority to identify any planning permission granted for the development in respect of which a subsequent application has been made;
  - (iii) an explanation of the possible effects on the environment which were not identified at the time planning permission was granted; and
  - (iv) such other information or representations as the person making the request may wish to provide or make.

(3) 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 the person making the request of the points on which they require additional information.

(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, subject to paragraph (5), within 5 weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(5) Where a person has, at the same time as making a request for a screening opinion under regulation 5(1), asked the authority for an opinion under paragraph (1) above, and the authority have adopted a screening opinion to the effect that the development is EIA development, the authority shall, within 5 weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(6) Before adopting a scoping opinion the authority shall take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned; and
- (c) the environmental features likely to be affected by the development.

(7) Where an authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (4) or (5), the person who requested the opinion may under regulation 14(1) ask the Secretary of State to make a direction as to the information to be provided in the environmental statement (a “scoping direction”).

(8) Paragraph (7) applies notwithstanding that the authority may not have received additional information which they have sought under paragraph (3).

(9) An authority which have adopted a scoping opinion in response to a request under paragraph (1) shall not be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission or a subsequent application for the same development as was referred to in the request.

### **Scoping directions of the Secretary of State**

**14.—**(1) A request made under this paragraph pursuant to regulation 13(7) shall include—

- (a) a copy of the request to the relevant planning authority under regulation 13(1);
- (b) a copy of any relevant notification under regulation 13(3) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(2) A person making a request under paragraph (1) shall send to the relevant planning authority a copy of that request, but that copy need not include the matters mentioned in sub-paragraphs (a) to (c) of that paragraph.

(3) If the Secretary of State considers that the information provided pursuant to paragraph (1) is insufficient to make a scoping direction, the Secretary of State shall give notice in writing to the person making the request of any points on which additional information is required; and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Secretary of State—

- (a) shall consult the person making the request and the consultation bodies before making a scoping direction in response to a request under paragraph (1), and

(b) within 5 weeks beginning with the date of receipt of that request or such longer period as may be reasonably required, make a direction and send a copy to the person who made the request and to the relevant planning authority.

(5) Before making a scoping direction the Secretary of State shall take into account the matters specified in regulation 13(6).

(6) Neither the Secretary of State who has made a scoping direction in response to a request under paragraph (1) nor the relevant planning authority shall be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission or a subsequent application for the same development as was referred to in the request.

### **Procedure to facilitate preparation of environmental statements**

**15.**—(1) Any person who intends to submit an environmental statement to the relevant planning authority or the Secretary of State under these Regulations may give notice in writing to that authority or the Secretary of State under this paragraph.

(2) A notice under paragraph (1) shall include the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving the notice proposes to refer in his environmental statement.

(3) The recipient of—

(a) such notice as is mentioned in paragraph (1); or

(b) a written statement made pursuant to regulation 10(4)(a), or 11(5) or 12(6)

shall—

(i) notify the consultation bodies in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies by paragraph (4) to make information available to that person; and

(ii) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), the relevant planning authority and any body notified in accordance with paragraph (3) shall, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the authority or body has in its possession any information which that person or they consider relevant to the preparation of the environmental statement and, if they have, the authority or body shall make that information available to that person.

(5) A planning authority or other body which receives a request for information under paragraph (4) shall treat it as a request for information under regulation 5(1) of the Environmental Information Regulations 2004(24).

## **PART 5**

### **Publicity and Procedures on Submission of Environmental Statements**

#### **Procedure where an environmental statement is submitted to a local planning authority**

**16.**—(1) An applicant who makes an EIA application shall submit to the relevant planning authority a statement, referred to as an “environmental statement” for the purposes of these

(24) S.I. 2004/3391.

Regulations, and shall provide the authority with 1 additional copy of the statement for transmission to the Secretary of State. If at the same time the applicant serves a copy of the statement to any other body, the applicant shall—

- (a) serve with it a copy of the application and any plan submitted with the application (unless these have already been provided to the body in question);
- (b) inform the body that representations may be made to the relevant planning authority; and
- (c) inform the authority of the name of every body so served and of the date of service.

(2) When a relevant planning authority receive in connection with an EIA application a statement as described in paragraph (1) the authority shall—

- (a) send to the Secretary of State, within 14 days of receipt of the statement, 1 copy of the statement and a copy of the relevant application and of any documents submitted with the application;
- (b) inform the applicant of the number of copies required to enable the authority to comply with sub-paragraph (c) below;
- (c) forward to any consultation body which has not received a copy direct from the applicant a copy of the statement and inform any such consultation body that they may make representations;
- (d) where the relevant planning authority are aware of any particular person who is or is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, send a notice to such person containing the details set out in regulation 17(2)(b) to (j) and the name and address of the relevant planning authority.

(3) The applicant shall send the copies required for the purposes of paragraph (2)(c) to the relevant planning authority.

(4) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 13 of and Schedule 3 to the Order (publicity for applications for planning permission) shall apply to a subsequent application as they apply to a planning application falling within paragraph 13(2) of the Order except that for the reference in the notice in Schedule 3 to the Order to “planning permission to” there shall be substituted “subsequent application in respect of”.

(5) The relevant planning authority shall not determine the application until the expiry of 14 days from the last date on which a copy of the statement was served in accordance with this regulation.

### **Publicity where an environmental statement is submitted after the planning application**

17.—(1) Where an application for planning permission or a subsequent application has been made without an environmental statement and the applicant proposes to submit such a statement, the applicant shall, before submitting it, comply with paragraphs (2) to (5).

(2) The applicant shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the applicant’s name, that an application is being made for planning permission or subsequent consent, and the name and address of the relevant planning authority;
- (b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State for determination or is the subject of an appeal to the Secretary of State;
- (c) the address or location and the nature of the proposed development;
- (d) that—

- (i) a copy of the application, any accompanying plan and other documents, and a copy of the environmental statement, and
  - (ii) in the case of a subsequent application, a copy of the planning permission in respect of which that application has been made and supporting documents,
- 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 those documents may be inspected, and the latest date on which they will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
  - (f) an address (whether or not the same as that given under sub-paragraph (e)) in the locality in which the land is situated at which copies of the statement may be obtained;
  - (g) that copies may be obtained there so long as stocks last;
  - (h) if a charge is to be made for a copy, the amount of the charge;
  - (i) that any person wishing to make representations about the application should make them in writing, before the date named in accordance with sub-paragraph (e), to the relevant planning authority or (in the case of an application referred to the Secretary of State or an appeal) to the Secretary of State; and
  - (j) in the case of an application referred to the Secretary of State or an appeal, the address to which representations should be sent.
- (3) An applicant who is notified under regulation 10(2), 11(4) or 12(5) of such a person as mentioned in any of those paragraphs shall serve a notice on every such person; and the notice shall contain the information specified in paragraph (2), except that the date specified as the latest date on which the documents will be available for inspection shall not be less than 21 days later than the date on which the notice is first served.
- (4) The applicant shall post on the land a notice containing the information specified in paragraph (2), except that the date named as the latest date on which the documents will be available for inspection shall be not less than 21 days later than the date on which the notice is first posted. This provision shall not apply if the applicant has not, and is not reasonably able to acquire, such rights as would enable the applicant to comply.
- (5) The notice mentioned in paragraph (4) must—
- (a) be left in position for not less than 7 days in the 28 days immediately preceding the date of the submission of the statement; and
  - (b) be affixed firmly to some object on the land and 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.
- (6) The statement, when submitted, shall be accompanied by—
- (a) a copy of the notice mentioned in paragraph (2) certified by or on behalf of the applicant as having been published in a named newspaper on a date specified in the certificate; and
  - (b) a certificate by or on behalf of the applicant which states either—
    - (i) that a notice was posted on the land in compliance with this regulation and when this was done, and that the notice was left in position for not less than 7 days in the 28 days immediately preceding the date of the submission of the statement, or that, without any fault or intention on the applicant's part, it was removed, obscured or defaced before 7 days had elapsed and the applicant took reasonable steps for its protection or replacement, specifying the steps taken; or
    - (ii) that the applicant was unable to comply with paragraphs (4) and (5) because the applicant did not have the necessary rights to do so; that any reasonable steps

available to acquire those rights have been taken but unsuccessfully, specifying the steps taken.

(7) Where an applicant indicates that it is proposed to provide a statement in the circumstances mentioned in paragraph (1), the relevant planning authority, the Secretary of State or the inspector, as the case may be, shall (unless disposed to refuse the permission or subsequent consent sought) suspend consideration of the application or appeal until receipt of the statement and the other documents mentioned in paragraph (6); and shall not determine it during the period of 21 days beginning with the date of receipt of the statement and the other documents so mentioned.

(8) Where it is proposed to submit an environmental statement in connection with an appeal, this regulation applies with the substitution of references to the appellant for references to the applicant.

### **Provision of copies of environmental statements and further information for the Secretary of State on referral or appeal**

**18.** Where an applicant for planning permission or subsequent consent has submitted to the relevant planning authority in connection with that application an environmental statement, or further information, and—

- (a) the application is referred to the Secretary of State under section 77 (reference of applications to Secretary of State); or
- (b) the applicant appeals under section 78 (right to appeal against planning decisions and failure to take such decisions),

the applicant shall supply the Secretary of State with 1 copy of the statement and, where relevant, the further information unless, in the case of a referred application, the relevant planning authority have already done so.

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

**19.**—(1) This regulation applies where an applicant submits an environmental statement to the Secretary of State, in relation to an EIA application which is before the Secretary of State or an inspector for determination or is the subject of an appeal to the Secretary of State.

(2) The applicant or appellant shall submit 2 copies of the statement to the Secretary of State who shall send 1 copy to the relevant planning authority.

(3) An applicant or appellant who submits an environmental statement to the Secretary of State may provide a copy of it to any other body, and if so shall comply with regulations 16(1)(a) and (b) as if the reference in regulation 16(1)(b) to the relevant planning authority were a reference to the Secretary of State, and inform the Secretary of State of the matters mentioned in regulation 16(1)(c).

(4) The Secretary of State shall comply with regulation 16(2) (except sub-paragraph (a) of that regulation) and the applicant or appellant with regulation 16(3) as if—

- (a) references in those provisions to the relevant planning authority were references to the Secretary of State; and,
- (b) in the case of an appeal, references to the applicant were references to the appellant,

and the Secretary of State or the inspector shall comply with regulation 16(5) as if it referred to the Secretary of State or the inspector instead of to the relevant planning authority.

### **Availability of copies of environmental statements**

**20.** An applicant for planning permission or subsequent consent, or an appellant, who submits an environmental statement in connection with an application or appeal, shall ensure that a reasonable number of copies of the statement are available at the address named in the notices published or

posted pursuant to article 13 of the Order or regulation 17 as the address at which such copies may be obtained.

### **Charges for copies of environmental statements**

21. A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement made available in accordance with regulation 20.

### **Further information and evidence respecting environmental statements**

22.—(1) A relevant planning authority, Secretary of State or inspector dealing with an application or appeal in relation to which the applicant or appellant has submitted an environmental statement, if of the opinion that the statement should contain additional information in order to be an environmental statement, shall notify the applicant or appellant in writing accordingly, and the applicant or appellant shall provide that additional information; and such information provided by the applicant or appellant is referred to in these Regulations as “further information”.

(2) Paragraphs (3) to (9) shall apply in relation to further information and any other information except in so far as the further information and any other information is provided for the purposes of an inquiry or hearing held under the Act and the request for the further information made pursuant to paragraph (1) stated that it was to be provided for such purposes.

(3) The recipient of further information pursuant to paragraph (1) or any other information shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name of the applicant for planning permission or subsequent consent or the appellant (as the case may be) and the name and address of the relevant planning authority;
- (b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State for determination or is the subject of an appeal to the Secretary of State;
- (c) in the case of a subsequent application, sufficient information to enable the planning permission for the development to be identified;
- (d) the address or location and the nature of the proposed development;
- (e) that further information or any other information is available in relation to an environmental statement which has already been provided;
- (f) that a copy of the further information or any other information and of any environmental statement which relates to any planning permission or subsequent application may be inspected by members of the public at all reasonable hours;
- (g) an address in the locality in which the land is situated at which the 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);
- (h) an address (whether or not the same as that given pursuant to sub-paragraph (g)) in the locality in which the land is situated at which copies of the further information or any other information may be obtained;
- (i) that copies may be obtained there so long as stocks last;
- (j) if a charge is to be made for a copy, the amount of the charge;
- (k) that any person wishing to make representations about the further information or any other information should make them in writing, before the date specified in accordance with sub-paragraph (g), to the relevant planning authority, the Secretary of State or the inspector (as the case may be); and

- (l) the address to which representations should be sent.
- (4) The recipient of the further information or any other information shall send a copy of it to each person to whom, in accordance with these Regulations, the statement to which it relates was sent.
- (5) Where the recipient of the further information or any other information is the relevant planning authority they shall send to the Secretary of State 1 copy of the further information.
- (6) The recipient of the further information may by notice in writing require the applicant or appellant to provide such number of copies of the further information or any other information as is specified in the notice (being the number required for the purposes of paragraph (4) or (5)).
- (7) Where information is requested under paragraph (1) or any other information is provided, the relevant planning authority, the Secretary of State or the inspector, as the case may be, shall suspend determination of the application or appeal, and shall not determine it before the expiry of 14 days after the date on which the further information or any other information was sent to all persons to whom the statement to which it relates was sent or the expiry of 21 days after the date that notice of it was published in a local newspaper, whichever is the later.
- (8) The applicant or appellant who provides further information or any other information, in accordance with paragraph (1) shall ensure that a reasonable number of copies of the information are available at the address named in the notice published pursuant to paragraph (3) as the address at which such copies may be obtained.
- (9) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the further information or any other information, made available in accordance with paragraph (8).
- (10) The relevant planning authority or the Secretary of State or an inspector may in writing require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in the environmental statement.

## PART 6

### Availability of Directions etc and Notification of Decisions

#### **Availability of opinions, directions etc for inspection**

**23.**—(1) Where particulars of a planning application or of a subsequent application are placed on Part 1 of the register, the relevant planning authority shall take steps to secure that there is also placed on that Part a copy of any relevant—

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) scoping direction;
- (e) notification given under regulation 10(1), 11(2) or 12(4);
- (f) direction under regulation 4(4);
- (g) environmental statement, including any further information and any other information;
- (h) statement of reasons accompanying any of the above.

(2) Where the relevant planning authority adopt a screening opinion or scoping opinion, or receive a request under regulation 13(1) or 14(1), a copy of a screening direction, scoping direction, or direction under regulation 4(4) before an application is made for planning permission or subsequent consent for the development in question, the authority shall take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for

public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept. Copies of those documents shall remain so available for a period of 2 years.

#### **Duties to inform the public and the Secretary of State of final decisions**

**24.**—(1) Where an EIA application is determined by a local planning authority, the authority shall—

- (a) in writing, inform the Secretary of State of the decision;
- (b) inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing—
  - (i) the content of the decision and any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(2) Where an EIA application is determined by the Secretary of State or an inspector, the Secretary of State shall—

- (a) notify the relevant planning authority of the decision; and
- (b) provide the authority with such a statement as is mentioned in sub-paragraph (1)(c).

(3) The relevant planning authority shall, as soon as reasonably practicable after receipt of a notification under paragraph (2)(a), comply with sub-paragraphs (b) and (c) of paragraph (1) in relation to the decision so notified as if it were a decision of the authority.

## **PART 7**

### **Development By a Local Planning Authority**

#### **Modifications where application by a local planning authority**

**25.** Where the relevant planning authority is also (or would be) the applicant (whether alone or jointly with any other person), these Regulations shall apply to an EIA application (or proposed application) subject to the following modifications—

- (a) subject to regulations 26(1) and (2), regulations 5 and 6 shall not apply;
- (b) regulations 7 and 8 shall apply as if the reference to paragraph (4) of regulation 5 were omitted;
- (c) regulation 10 shall not apply;
- (d) regulations 13 and 14 shall not apply;
- (e) paragraphs (1) to (3) of regulation 15 shall not apply, and regulation 15(4) shall apply to any consultation body from whom the relevant planning authority requests assistance as it applies to a body notified in accordance with regulation 15(3);
- (f) save for the purposes of regulations 19(3) and (4), regulation 16 shall apply as if—

(i) for paragraph (1), there were substituted—

“(1) When a relevant planning authority making an EIA application lodge a statement, referred to as an “environmental statement” for the purposes of these Regulations, they shall—

(a) provide 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,

to 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) 1 copy 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.”;

(ii) paragraphs (2) and (3) were omitted;

(g) regulation 19 shall apply as if paragraph (2) were omitted.

### Screening opinions and directions

**26.**—(1) An authority which is minded to make a planning application or a subsequent application in relation to which it would be the relevant planning authority may adopt a screening opinion or request the Secretary of State in writing to make a screening direction, and paragraphs (3) and (4) of regulation 6 shall apply to such a request as they apply to a request made pursuant to regulation 5(7).

(2) A relevant planning authority which proposes to carry out development which they consider may be—

(a) development of a description specified in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(25) other than development of a description specified in article 3(12) of that Order; or

(b) development for which permission would be granted but for regulation 27(1),

may adopt a screening opinion or request the Secretary of State to make a screening direction, and paragraphs (3) and (4) of regulation 6 shall apply to such a request as they apply to a request made pursuant to regulation 5(7).

(3) A request under paragraph (1) or (2) shall be accompanied by—

(a) in the case of a planning application, the documents described in regulation 5(2);

(b) in the case of a subsequent application, the documents described in regulation 5(3).

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(25) S.I. 1995/418, to which there are amendments not relevant to these Regulations.

(4) An authority making a request under paragraph (1) or (2) shall send to the Secretary of State any additional information which is requested in writing to enable the Secretary of State to make a direction.

## PART 8

### Restrictions of Grants of Permission

#### Old simplified planning zone schemes or enterprise orders

27.—(1) Any—

- (a) adoption or approval of a simplified planning zone scheme<sup>(26)</sup>;
- (b) order designating an enterprise zone<sup>(27)</sup>; or
- (c) approval of a modified scheme in relation to an enterprise zone,

which has effect immediately before the commencement of these Regulations to grant planning permission shall, on and after that date, cease to have effect to grant planning permission for Schedule 1 development, and cease to have effect to grant planning permission for Schedule 2 development unless either:

- (i) the relevant planning authority has adopted a screening opinion; or
- (ii) the Secretary of State has made a screening direction,

to the effect that the particular proposed development is not EIA development.

(2) Paragraph (1) shall not affect the completion of any development begun before the commencement of these Regulations.

#### New simplified planning zone schemes or enterprise zone orders

28. No—

- (a) adoption or approval of a simplified planning zone scheme;
- (b) order designating an enterprise zone made; or
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations shall:

- (i) grant planning permission for EIA development; or
- (ii) grant planning permission for Schedule 2 development unless that grant is made subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

#### Local development orders

29.—(1) This regulation applies in relation to Schedule 2 development for which a local planning authority propose to grant planning permission by local development order.

(2) Where this regulation applies, the local planning authority shall not make a local development order unless they have adopted a screening opinion or the Secretary of State has made a screening direction.

<sup>(26)</sup> See section 83 and Schedule 7 to the Town and Country Planning Act 1990 (c. 8).

<sup>(27)</sup> See sections 88 and 89 of the Town and Country Planning Act 1990 (c. 8) and Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65).

- (3) Paragraphs (4) to (6) apply where—
- (a) the local planning authority adopts a screening opinion; or
  - (b) the Secretary of State makes a screening direction under these Regulations,
- to the effect that the development is EIA development.
- (4) The local planning authority shall not make a local development order which would grant planning permission for EIA development unless—
- (a) an environmental statement has been prepared in relation to that development; and
  - (b) the authority has first taken the environmental information into consideration, and they state in their decision that they have done so.
- (5) In a case to which this regulation shall have effect these Regulations shall apply subject to the following modifications—
- (a) regulations 3, 5 to 12, 15, 18 and 19 shall not apply;
  - (b) in regulation 4—
    - (i) paragraph (2)(a) shall not apply;
    - (ii) in paragraph (2)(b) for “relevant” substitute “local”;
    - (iii) in paragraph (4)(b) for “relevant” substitute “local”;
    - (iv) in paragraph (10) for “relevant” substitute “local”;
  - (c) for regulation 13(1) substitute—

“(1) Where a proposed local development order is EIA development, the local planning authority shall state in writing its opinion as to the information to be provided in the environmental statement (“a scoping opinion”).”
  - (d) in regulation 14(1)(a) and (3) for “relevant” substitute “local”;
  - (e) for regulation 16 substitute—

**“Procedure where an environmental statement is prepared in relation to a local development order**

- 16.—(1) Where a statement, referred to as an “environmental statement” for the purposes of these Regulations, has been prepared in relation to EIA development for which a local planning authority proposes to grant planning permission by a local development order, the local planning authority shall—
- (a) send to the Secretary of State 1 copy of the statement;
  - (b) send a copy of the statement to the consultation bodies and inform them that they may make representations; and
  - (c) notify any particular person of whom the authority are aware, who is likely to be affected by, or has an interest in, the application, who is unlikely to become aware of it by means of a site notice or by local advertisement, of an address in the locality in which the land is situated where a copy of the statement may be obtained and the address to which representations may be sent.
- (2) The local planning authority shall not make the local development order until the expiry of 14 days from the last date on which a copy of the statement was served in accordance with this regulation.”;
- (f) in regulation 17—
- (i) omit paragraph (1);
  - (ii) for paragraph (2) substitute—

“(2) The local planning authority shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name and address of the local planning authority;
- (b) the address or location and the nature of the development referred to in the proposed local development order;
- (c) that a copy of the draft local development order and of any plan or other documents accompanying it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- (d) an address in the locality in which the land is situated at which those documents may be inspected, and the latest date on which they will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (e) an address (whether or not the same as that given under sub-paragraph (d)) in the locality in which the land is situated at which copies of the statement may be obtained;
- (f) that copies may be obtained there so long as stocks last;
- (g) if a charge is to be made for a copy, the amount of the charge; and
- (h) that any person wishing to make representations about the local development order should make them in writing, before the date specified in accordance with sub-paragraph (d), to the local planning authority.”;

(iii) in paragraph (4), for “applicant” substitute “local planning authority”.

(iv) omit paragraphs (6) to (9);

(g) for regulation 20 substitute—

**“Availability of copies of environmental statements**

**20.** The local planning authority shall ensure that a reasonable number of copies of the statement referred to as the environmental statement prepared in relation to EIA development for which the authority propose to grant planning permission by a local development order are available at—

- (a) their principal office during normal office hours; and
- (b) at such other places within their area as they consider appropriate.”;

(h) in regulation 22—

(i) for paragraph (1) substitute—

“(1) Where an environmental statement has been submitted and the local planning authority is of the opinion that the statement should contain additional information in order to be an environmental statement, the local planning authority shall ensure that additional information is provided and such information provided is referred to in these Regulations as “further information””;

(ii) for paragraph (3) substitute—

“(3) The local planning authority shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name and address of the local planning authority;
- (b) the address or location and the nature of the development referred to in the proposed local development order;

- (c) that further information is available in relation to an environmental statement which has already been provided;
  - (d) that a copy of the further information 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 further 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) an address (whether or not the same as that given under sub-paragraph (e)) in the locality in which the land is situated at which copies of the further information may be obtained;
  - (g) that copies may be obtained there so long as stocks last;
  - (h) if a charge is to be made for a copy, the amount of the charge;
  - (i) that any person wishing to make representations about the further information should make them in writing, before the date specified in accordance with sub-paragraph (e), to the local planning authority;
  - (j) the address to which representations should be sent.”;
- (iii) for paragraph (4) substitute—

“(4) The local planning authority shall send a copy of the further information to each person to whom, in accordance with the Regulations, the statement to which it relates was sent and to the Secretary of State.”;
- (iv) omit paragraphs (5) and (6);
- (v) for paragraph (7) substitute—

“(7) Where information is provided under paragraph (1) the local planning authority shall not make the local development order before the expiry of 14 days after the date on which the further information was sent to all persons to whom the statement which it relates was sent or the expiry of 21 days after the date that notice of it was published in a local newspaper, whichever is the later.”;
- (vi) in paragraph (8)—
  - (aa) for “The applicant or appellant who provides further information or any other information in accordance with paragraph (1)” substitute “The local planning authority”; and
  - (bb) after “number of copies of the” insert “further or other”;
- (vii) for paragraph (10) substitute—

“(10) The local planning authority may in writing require the applicant or appellant to provide such evidence as they may reasonably call for to verify any information in the environmental statement.”;
- (i) in regulation 23—
  - (i) for paragraph (1) substitute—

“(1) Where particulars of a draft local development order are placed on Part 3 of the register, the local planning authority shall take steps to secure that there is also placed on that Part a copy of any relevant—

    - (a) scoping opinion;
    - (b) screening opinion;
    - (c) screening direction;

- (d) direction under regulation 4(4);
  - (e) the statement referred to as the environmental statement including any further information;
  - (f) statement of reasons accompanying any of the above.”;
  - (ii) omit paragraph (2);
  - (j) in regulation 24—
    - (i) in paragraph (1) for “Where an EIA application is determined by a local planning authority” substitute “Where a local planning authority make a local development order granting permission for development which constitutes EIA development”; and
    - (ii) omit paragraphs (2) and (3); and
  - (k) in regulation 53—
    - (i) in paragraph (1) for sub-paragraph (a) substitute—
      - “(a) it comes to the attention of the Secretary of State that EIA development proposed to be carried out in England for which a local planning authority propose to grant planning permission by a local development order is likely to have significant effects on the environment in another EEA state; or”; and
    - (ii) in paragraphs (3) and (6) for “application” substitute “proposed local development order”.
- (6) In paragraphs (6)(a), (6)(b)(i), and (c)(i) and paragraph (10) of article 34 of the Order after “local development order” insert “, the environmental statement” in each place where the words occur.

## 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(28).

#### 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)(29) (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

(28) Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.

(29) Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), sections 6(3) and 32, and Schedule 7 paragraph 24.

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(30) 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;
- (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.

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(30) 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.

**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<sup>(31)</sup>, 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

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

## **PART 10**

### **ROMP Applications**

#### **General application of the Regulations to ROMP applications**

42. 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 in this Part.

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

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

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

- (a) in sub-paragraph (1)(b) for “3 or 4 (applications for planning permission)” substitute “11 (other consents)”;
- (b) in paragraph (2), in the case of a ROMP application, for the words “determined in accordance with article 29(2) (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**

**44.** In the case of a ROMP application, in regulation 10(4) (application made to a local planning authority without an environmental statement)—

- (a) for “3” substitute “6”; 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**

**45.—**(1) In the case of a ROMP application, regulations 10(6) and (8), 11(6) and (7), 12(7) and (8), 25 and 61 shall not apply.

(2) In the case of a ROMP application, in regulation 11(5) (application referred to the Secretary of State without an environmental statement) and in regulation 12(6) (appeal to the Secretary of State without an environmental statement)—

- (a) for “3” substitute “6”;
- (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**

**46.—**(1) In the case of a ROMP application, in regulations 12(1) and 18(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)”.

(2) In the case of a ROMP application, in regulation 12(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**

47.—(1) In the case of a ROMP application, in regulations 13(9) and 14(6) for the words “an application for planning permission or a subsequent application for” substitute “a ROMP application which relates to another planning permission which authorises”.

(2) In the case of a ROMP application, in regulation 16 (procedure where an environmental statement is submitted to a local planning authority) for paragraph (4) substitute—

“(3A) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 13 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(32),

as they apply to a planning application falling within paragraph 13(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.”

(3) In the case of a ROMP application, in regulation 17 (publicity where an environmental statement is submitted after the planning application)—

(a) in paragraph (2)(a) for the words “that an application is being made for planning permission or subsequent consent” substitute—

“that an application is being made 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 (7) substitute—

“(7) Where an applicant indicates that it is proposed 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 (6); 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 (6).”

(4) In the case of a ROMP application, in regulation 18 (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”.

(5) In the case of a ROMP application, in regulation 20 (availability of copies of environmental statements) after “the Order” insert “(as applied by regulation 16(4) or by paragraph 9(5) of Schedule 13 to the 1995 Act).”.

(6) In the case of a ROMP application, in regulation 22 (further information and evidence respecting environmental statements)—

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

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(32) 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.

“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 they specify for submission of the further information”.

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

**48.**—(1) In the case of a ROMP application, for regulation 59 (application to the High Court) substitute—

#### **“Application to the High Court**

**59.** 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.”

(2) The direction making power in article 25(2) of the Order shall apply to ROMP development as it applies to development in respect of which a planning application is made.

### **Suspension of minerals development**

**49.**—(1) 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 10(1), 11(2) or 12(4) then such notification shall specify the period within which the environmental statement and compliance with regulation 17(6) is required; or
- (b) a statement should contain additional information under regulation 22(1) then such notification shall specify the period within which that information is provided.

(2) Subject to paragraph (3), 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 6 week or other period agreed pursuant to regulation 10(4), 11(5) or 12(6);
- (b) submit an environmental statement and comply with regulation 17(6) 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(4), 6(3), 13(3) or 14(3) has been received, provide the additional information requested within 3 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.

(3) Where paragraph (2) applies, the planning permission shall not authorise any minerals development from the end of—

(a) the relevant 6 week or other period agreed in writing as referred to in sub-paragraph (2)(a); and

(b) the period specified or agreed in writing as referred to in sub-paragraphs (2)(b), (c), and (d), until the applicant has complied with all of the provisions referred to in paragraph (2) which are relevant to the application or appeal in question.

(4) 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.

(5) Paragraph (2) shall not affect any minerals development carried out under the planning permission before the date of suspension of minerals development.

(6) For the purposes of paragraphs (2) to (5) “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

### **Determination of conditions and right of appeal on non-determination**

**50.**—(1) Where it falls to—

(a) a mineral planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 2(6)(b) of Schedule 2 to the 1991 Act, paragraph 9(9) of Schedule 13 to the 1995 Act or paragraph 6(8) of Schedule 14 to the 1995 Act shall not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject 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;

(b) a mineral planning authority or the Secretary of State to determine a Schedule 1 or a Schedule 2 application—

(i) section 69 (register of applications, etc), and any provisions of the Order made by virtue of that section, shall have effect with any necessary amendments as if references to applications for planning permission included ROMP applications under paragraph 9(1) of Schedule 13 to the 1995 Act and paragraph 6(1) of Schedule 14 to the 1995 Act<sup>(33)</sup>; and

(ii) where the relevant mineral planning authority is not the authority required to keep the register, the relevant mineral planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 69 as applied by sub-paragraph (i), with regulation 23 as applied by regulation 42, and with regulation 49(4).

(2) Where it falls to the mineral planning authority or the Secretary of State to determine an EIA application which is made under paragraph 2(2) of Schedule 2 to the 1991 Act, paragraph 4(4) of that Schedule shall not apply.

(3) Where it falls to the mineral planning authority to determine an EIA application, the authority shall give written notice of their determination of the ROMP application within 16 weeks beginning with the date of receipt by the authority of the ROMP application or such extended period as may be agreed in writing between the applicant and the authority.

(4) For the purposes of paragraph (3) a ROMP application is received by the authority when it receives—

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<sup>(33)</sup> These provisions are not applied to applications under paragraph 2(2) of Schedule 2 to the 1991 Act as they are applied by paragraph 9 of Schedule 2 to the 1991 Act.

- (a) a document referred to by the applicant as an environmental statement for the purposes of these Regulations;
  - (b) any documents required to accompany that statement; and
  - (c) any additional information which the authority has notified the applicant that the environmental statement should contain.
- (5) Where paragraph (1)(a) applies—
- (a) paragraph 5(2) of Schedule 2 to the 1991 Act, paragraph 11(1) of Schedule 13 to the 1995 Act and paragraph 9(1) of Schedule 14 to the 1995 Act (right of appeal) shall have effect as if there were also a right of appeal to the Secretary of State where the mineral planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (3); and
  - (b) paragraph 5(5) of Schedule 2 to the 1991 Act, paragraph 11(2) of Schedule 13 to the 1995 Act and paragraph 9(2) of Schedule 14 to the 1995 Act (right of appeal) shall have effect as if they also provided for notice of appeal to be made within 6 months from the expiry of the 16 week or other period agreed pursuant to paragraph (3).
- (6) In determining for the purposes of paragraphs—
- (a) 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); or
  - (b) paragraph 5(5) of Schedule 2 to the 1991 Act, paragraph 11(2) of Schedule 13 to the 1995 Act and paragraph 9(2) of Schedule 14 to the 1995 Act (right of appeal) as applied by paragraph (26)(b),

the time which has elapsed without the mineral planning authority giving the applicant written notice of their determination in a case where the authority have notified an applicant in accordance with regulation 10(1) that the submission of an environmental statement is required and the Secretary of State has given a screening direction in relation to the ROMP development in question no account shall be taken of any period before the issue of the direction.

### **ROMP application by a mineral planning authority**

**51.**—(1) Where a mineral planning authority proposes to make or makes a ROMP application to the Secretary of State under regulation 11 (other consents) of the General Regulations which is a Schedule 1 or a Schedule 2 application (or proposed application), these Regulations shall apply to that application or proposed application as they apply to a ROMP application referred to the Secretary of State under 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 (reference of applications to the Secretary of State) subject to the following modifications—

- (a) subject to paragraph (2) below, regulations 5 to 10, 12, 13, 14, 16 (save for the purposes of regulations 19(3) and (4)), 18 and 24(1) shall not apply;
- (b) in regulation 4 (general provisions relating to screening), paragraphs (4)(b) and (10) shall not apply;
- (c) in regulation 11(2) (application referred to the Secretary of State without an environmental statement), omit the words “and shall send a copy of that notification to the relevant planning authority”;
- (d) in regulation 15 (procedure to facilitate preparation of environmental statements)—
  - (i) in sub-paragraph (3)(b) for the words “10(4)(a), or 11(5) or 12(6)” substitute “11(5)”;
  - (ii) in paragraph (4) omit the words “the relevant planning authority and” and “authority or”;

- (e) in regulation 17(2) (publicity where an environmental statement is submitted after the planning application)—
  - (i) in sub-paragraph (a) omit the words “and the name and address of the relevant planning authority”;
  - (ii) for sub-paragraph (b) substitute—
    - “(b) the date on which the application was made and that it has been made to the Secretary of State under regulation 11 of the General Regulations;”;
- (f) in regulation 19 (procedure where an environmental statement is submitted to the Secretary of State), in paragraph (2) omit the words “who shall send 1 copy to the relevant planning authority”;
- (g) in regulation 22(3) (further information and evidence respecting environmental statements)—
  - (i) in sub-paragraph (a) omit the words “and the name and address of the relevant planning authority”;
  - (ii) for sub-paragraph (b) substitute—
    - “(b) the date on which the application was made and that it has been made to the Secretary of State under regulation 11 of the General Regulations;”;
- (h) regulations 23 (availability of opinions, directions etc for inspection) and 24(2) (duties to inform the public and the Secretary of State of final decisions) shall apply as if the references to a “relevant planning authority” were references to a mineral planning authority.

(2) A mineral planning authority which is minded to make a ROMP application to the Secretary of State under regulation 11 of the General Regulations may request the Secretary of State in writing to make a screening direction, and paragraphs (3) and (4) of regulation 6 shall apply to such a request as they apply to a request made pursuant to regulation 5(7) except that in paragraph (3) the words “, and may request the relevant planning authority to provide such information as they can on any of those points” shall be omitted.

(3) A request under paragraph (2) shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the ROMP development and of its possible effects on the environment; and
- (c) such other information as the authority may wish to provide or make.

(4) An authority making a request under paragraph (2) shall send to the Secretary of State any additional information he may request in writing to enable him to make a direction.

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

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

- (a) a period of 2 years beginning with the suspension date has expired, and
- (b) the steps specified in regulation 49(2) have yet to be taken.

(2) The “suspension date” is the date on which the suspension of minerals development (within the meaning of regulation 49(3)) begins.

(3) Paragraph 3 of Schedule 9 to the Act<sup>(34)</sup> (prohibition of resumption of mineral working) 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 49(3).

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

## PART 11

### Development with Significant Transboundary Effects

#### Development in England likely to have significant effects in another EEA State

53.—(1) Where—

(a) it comes to the attention of the Secretary of State that development proposed to be carried out in England is the subject of an EIA application and is likely to have significant effects on the environment in another EEA State; or

(b) another EEA State likely to be significantly affected by such development so requests, the Secretary of State shall—

(i) send to the EEA State as soon as possible and no later than their date of publication in The London Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if relevant, the information referred to in paragraph (3); and

(ii) publish the information in sub-paragraph (i) above in a notice placed in The London Gazette indicating the address where additional information is available; and

(iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in paragraph (1)(b)(i) are—

(a) a description of the development, together with any available information on its possible significant effect on the environment in another Member State; and

(b) information on the nature of the decision which may be taken.

(3) Where a EEA State indicates, in accordance with paragraph (1)(b)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Secretary of State shall as soon as possible send to that EEA State the following information—

(a) a copy of the application concerned;

(b) a copy of any planning permission relating to the development;

<sup>(34)</sup> Paragraph 3 was amended by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 15(6).

(c) a copy of any environmental statement in respect of the development to which that application relates; and  
(d) relevant information regarding the procedure under these Regulations,  
but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(b)(i).

(4) The Secretary of State shall also—

- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any further information and any other information to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied.

(5) The Secretary of State shall in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(6) Where a EEA State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Secretary of State shall inform the EEA State of the decision and shall forward to it a statement of—

- (a) the content of the decision and any conditions attached to it;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

#### **Projects in another EEA State likely to have significant transboundary effects**

**54.**—(1) Where the Secretary of State receives from another EEA State, pursuant to Article 7(1) or 7(2) of the Directive, information which that EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on the environment in England, the Secretary of State shall, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding the potential significant effects of the proposed project on the environment in England and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in England may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive.

(2) The Secretary of State shall also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in England which are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in England;

- (b) ensure that those authorities and the public concerned in England are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied; and
- (c) so far as such information has been received by the Secretary of State, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA State; and in particular—
  - (i) any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
  - (iii) a description of the main measures to avoid, reduce and, if possible, offset any major adverse effects that have been identified.

## PART 12

### Projects serving national defence purposes

#### **Projects serving national defence purposes in Scotland**

**55.**—(1) If a development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011<sup>(35)</sup> would have an adverse effect on those purposes the Secretary of State may direct that those Regulations shall not apply to a project specified in the direction.

(2) The Secretary of State shall notify the Scottish Ministers prior to making a direction.

(3) The Secretary of State shall send a copy of the direction to the Scottish Ministers and the relevant planning authority.

#### **Projects serving national defence purposes in Wales**

**56.**—(1) If a development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>(36)</sup> would have an adverse effect on those purposes the Secretary of State may direct that these Regulations as amended for Wales shall not apply to a project specified in the direction.

(2) The Secretary of State shall notify the Welsh Ministers prior to making a direction.

(3) The Secretary of State shall send a copy of the direction to the Welsh Ministers and the relevant planning authority.

#### **Projects serving national defence purposes in Northern Ireland**

**57.**—(1) If a development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999<sup>(37)</sup> would have an adverse effect on those purposes the Secretary of State may direct that those Regulations shall not apply to a project specified in the direction.

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<sup>(35)</sup> S.S.I. 2011/139.

<sup>(36)</sup> S.I. 1999/293, which were amended for Wales by S.I. 2000/2867, S.I. 2006/3295, S.I. 2006/3099 and SI 2008/2335.

<sup>(37)</sup> SR 1999 No 73.

(2) The Secretary of State shall notify the Department of the Environment prior to making a direction.

(3) The Secretary of State shall send a copy of the direction to the relevant planning authority.

## PART 13

### Miscellaneous

#### **Service of notices etc**

**58.** Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 329(38) (service of notices).

#### **Application to the High Court**

**59.** For the purposes of Part 12 of the Act (validity of certain decisions), the reference in section 288 to action of the Secretary of State which is not within the powers of the Act shall be taken to extend to a grant of planning permission or subsequent consent by the Secretary of State in contravention of regulations 3 or 31.

#### **Hazardous waste and material change of use**

**60.** A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of Schedule 1 involves a material change in the use of that land or those buildings for the purposes of section 55(1) (meaning of “development” and “new development”).

#### **Extension of the period for an authority’s decision on a planning application**

**61.—(1)** In determining for the purposes of section 78 (right to appeal against planning decisions and failure to take such decisions) the time which has elapsed without the relevant planning authority giving notice to the applicant of their decision in a case where—

- (a) the authority have notified an applicant in accordance with regulation 10(1) that the submission of an environmental statement is required; and
- (b) the Secretary of State has given a screening direction in relation to the development in question,

no account shall be taken of any period before the issue of the direction.

(2) Where it falls to an authority to determine an EIA application, articles 29 (time periods for decision) and 30 (applications made under planning condition) of the Order shall have effect as if for each of the references in article 29(2)(a) and (b) and 30 to a period of 13 and 8 weeks respectively there were substituted a reference to a period of 16 weeks.

#### **Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with**

**62.** The provisions enabling the Secretary of State to give directions which may be included in a development order by virtue of section 60 (permission granted by development order) shall include provisions enabling him to direct that development which is both of a description mentioned in

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(38) Section 329 was amended by the Town and Country Planning (Electronic Communications) (England) Order 2003 (S.I. 2003/956).

Column 1 of the table in Schedule 2, and of a class described in the direction is EIA development for the purposes of these Regulations.

### **Application to the Crown**

**63.**—(1) These regulations shall apply to the Crown with the following modifications.

(2) In regulation 11 (application referred to the Secretary of State without an environmental statement)—

- (a) in paragraph (1)—
  - (i) before “referred” insert “made or”; and
  - (ii) before “referral” insert “making or the”; and
- (b) in paragraph (2), before “referred” insert “made or”.

### **Review**

**64.**—(1) Before the end of each review period, the Secretary of State must—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of 5 years beginning with the day on which these Regulations came into force, and
- (b) subject to paragraph (5), each successive period of 5 years.

(5) If a report under this regulation is laid published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

### **Revocation of statutory instruments and transitional provisions**

**65.**—(1) The statutory instruments in Schedule 5 are revoked, to the extent shown in that Schedule.

(2) Nothing in paragraph (1) shall affect the continued application of the instruments revoked by that paragraph in relation to—

- (a) any application lodged or received by an authority before the commencement of these Regulations,
- (b) any undetermined ROMP application to which those instruments apply in accordance with the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008(39),

- (c) any appeal in relation to an application under paragraph (a) or (b), or
- (d) any matter in relation to which a local planning authority has before that date issued an enforcement notice under section 172,

and these Regulations shall not apply in relation to any such application, appeal, or matter.

**Consequential amendments**

- 66. The instruments in Schedule 6 are amended to the extent shown in that Schedule.

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

19th July 2011

*Bob Neill*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government