
STATUTORY INSTRUMENTS

2017 No. 571

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

PART 8

Unauthorised development

Interpretation

34. In this Part—

“enforcement functions” means—

- (a) the issuing of an enforcement notice under section 172^{M1} of the Act (Issue of enforcement notice);
- (b) making an application for a planning enforcement order under section 171BA^{M2} of the Act (Time limits in cases involving concealment);
- (c) the issuing of a planning contravention notice under section 171C^{M3} of the Act (Power to require information about activities on land);
- (d) the issuing of a temporary stop notice under section 171E^{M4} of the Act (Temporary stop notice);
- (e) the issuing of a stop notice under section 183^{M5} of the Act (Stop notices);
- (f) the service of a breach of condition notice under section 187A^{M6} of the Act (Enforcement of conditions); or
- (g) an application to the court for an injunction under section 187B^{M7} of the Act (Injunctions restraining breaches of planning control); and

“ground (a) appeal” has the meaning given in regulation 40; and

“unauthorised EIA development” means EIA development which is the subject of an enforcement notice under section 172 of the Act.

Marginal Citations

M1 Section 172 was substituted by section 5 of the [Planning and Compensation Act 1991 \(c.34\)](#).

M2 Section 171BA was inserted by section 124 of the [Localism Act 2011 \(c.20\)](#).

M3 Section 171C was inserted by section 1 of the [Planning and Compensation Act 1991](#), and amended by [S.I. 2003/956](#).

M4 Section 171E was inserted by section 52 of the [Planning and Compulsory Purchase Act 2004 \(c.5\)](#).

M5 Section 183 was amended by section 9 of the [Planning and Compensation Act 1991](#).

M6 Section 187A was inserted by section 2 of the [Planning and Compensation Act 1991](#), and amended by section 126 of the [Localism Act 2011](#).

M7 Section 187B was inserted by section 3 of the [Planning and Compensation Act 1991](#).

Duty to ensure objectives of the Directive are met

35. Relevant planning authorities, in the exercise of their enforcement functions, must have regard to the need to secure compliance with the requirements and objectives of the Directive.

Prohibition on the grant of planning permission for unauthorised EIA development

36. The Secretary of State or an inspector must not grant planning permission or subsequent consent under section 177(1)^{M8} of the Act (grant or modification of planning permission on appeals against enforcement notices) in respect of unauthorised EIA development unless an EIA has been carried out in respect of that development.

Marginal Citations

M8 Section 177 was amended by sections 6 and 32 of, and paragraph 24 of Schedule 7 to, the Planning and Compensation Act 1991; and by section 123 of the Localism Act 2011.

Screening opinions of the local planning authority

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

- (a) take such steps as appear reasonable to them in the circumstances, having regard to the requirements of regulation 6(2), to obtain information about the unauthorised development to inform a screening opinion; and
- (b) adopt a screening opinion.

(2) The local planning authority must adopt the screening opinion mentioned in paragraph (1) (b) within—

- (a) three weeks beginning with the date on which it obtained the information mentioned in paragraph (1)(a); or
- (b) such longer period not exceeding 90 days beginning with the date on which it obtained the information mentioned in paragraph (1)(a) as may be reasonably required.

(3) 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 must serve with a copy of the enforcement notice a notice (“regulation 37 notice”) which must—

- (a) include the screening opinion required by paragraph (1); and
- (b) require a person who gives notice of an appeal under section 174^{M9} of the Act (Appeal against enforcement notice) to submit to the Secretary of State with the notice 2 copies of an environmental statement relating to that EIA development.

(4) The authority which has served a regulation 37 notice must 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 37 notice.

(5) Where an authority provides the Secretary of State with a copy of a regulation 37 notice they must include with it a list of the other persons to whom a copy of the notice has been or is to be sent.

Marginal Citations

M9 Section 174 was amended by sections 6, 32 and 84 of, and paragraph 22 of Part 1 of Schedule 19 to, the Planning and Compensation Act 1991; S.I. 2003/956; section 123 of the Localism Act 2011; and section 63 of, and paragraphs 2 and 5 of Schedule 17 to, the Enterprise and Regulatory Reform Act 2013 (c.24).

Screening directions of the Secretary of State

38. Any person on whom a regulation 37 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 for a screening direction under this regulation must be accompanied by—
 - (i) a copy of the regulation 37 notice;
 - (ii) a copy of the enforcement notice which accompanied it; and
 - (iii) the information required under regulation 6(2), such information to be prepared, where relevant, in accordance with regulation 6(4);
- (b) at the same time as applying to the Secretary of State, the applicant must send to the authority by whom the regulation 37 notice was served a copy of the application under this regulation and of any information or representations provided or made in accordance with paragraph (a)(iii);
- (c) if the Secretary of State considers that the information provided in accordance with subparagraph (a) is insufficient to make a direction, the Secretary of State must notify the applicant and the authority of the matters in respect of which additional information is required; and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice;
- (d) the Secretary of State must make a screening direction within—
 - (i) 3 weeks beginning with the date of receipt of a request made pursuant to this regulation; or
 - (ii) where the Secretary of State gives notice under paragraph (c), such longer period not exceeding 90 days beginning with the date on which the person making the request for a screening direction submits the information required under paragraph (c) as may be reasonably required;
- (e) the Secretary of State must send a copy of the direction to the applicant; and
- (f) without prejudice to paragraph (e), 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 must send a copy of the direction to every person to whom a copy of the regulation 37 notice was sent.

Provision of information

39.—(1) The relevant planning authority and any person, other than the Secretary of State, to whom a copy of the regulation 37 notice has been sent (“the consultee”) must, if requested by the person on whom the regulation 37 notice was served, declare to that person 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 must make any such information available to that person.

(2) Regulation 17(5) shall apply to information under paragraph (1) as it applies to any information falling within regulation 17(4).

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

40.—(1) Where on consideration of an appeal under section 174 of the Act (Appeal against enforcement notice) 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 must, before any notice is served pursuant to regulation 41, make a screening direction.

(2) Where an inspector is dealing with an appeal under section 174 of the Act (Appeal against enforcement notice) 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 must refer that question to the Secretary of State.

(3) Before receiving a screening direction the inspector must not determine the application which is deemed to have been made by virtue of the appeal under section 174 of the Act (Appeal against enforcement notice) (“the deemed application”) except to refuse that application.

(4) The Secretary of State must make a screening direction—

(a) in a case where a question is referred to the Secretary of State under paragraph (2) within—

(i) 3 weeks beginning with the date on which the question was referred;

(ii) where no notice is given under paragraph (8), such longer period as may be reasonably required not exceeding 90 days from the date on which the appellant submits the information required under regulation 38(a); or

(iii) where the Secretary of State gives notice under paragraph (8), such longer period as may be reasonably required, not exceeding 90 days from the date on which the person making the request for a screening direction submits the information required by the notice given under paragraph (8).

(b) in all other cases falling within this regulation within—

(i) 3 weeks beginning with the date on which an appeal under section 174 of the Act (Appeal against enforcement notice) was lodged; or

(ii) where the Secretary of State gives notice under paragraph (8), such longer period not exceeding 90 days beginning with the date on which the person making the appeal submits the information required by notice given under paragraph (8) as may be reasonably required.

(5) Where the Secretary of State considers that, due to exceptional circumstances relating to the development, it is not practicable for the Secretary of State to adopt a screening direction within the period of 90 days beginning with the dates referred to in paragraphs (4)(a)(iii) and (4)(b)(ii), the Secretary of State may extend that period by giving notice in writing to the person who made the request for a screening direction.

(6) The Secretary of State must state in any notice given under paragraph (5) the reasons justifying the extension and the date when the determination is expected.

(7) The Secretary of State must send a copy of any screening direction made pursuant to paragraph (2) to the inspector.

(8) If the Secretary of State considers that sufficient information to make a screening direction has not been provided, the Secretary of State must give notice in writing to the appellant and the authority by whom the regulation 37 notice was served of the matters in respect of which additional information is required; and the information so requested must be provided by the appellant within such reasonable period as may be specified in the notice.

(9) A person providing additional information pursuant to a notice under paragraph (8) must, where that information is of a type specified in regulation 6(2) or (3), prepare that information in accordance with the requirements of regulation 6(4).

(10) If an appellant to whom notice has been given under paragraph (8) fails to comply with the requirements of that notice the appeal in so far as it is brought under the ground mentioned in section 174(2)(a) of the Act (Appeal against enforcement notice) (“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

41. Where the Secretary of State or an inspector is considering an appeal under section 174 of the Act 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 must, 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 paragraph (c);
- (b) notice need not be given under paragraph (a) where the appellant has submitted an environmental statement to the Secretary of State for the purposes of an appeal under section 78^{M10} of the Act (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 of the Act (Appeal against enforcement notice) relates; and
 - (ii) is to be determined at the same time as that appeal under section 174 of the Act (Appeal against enforcement notice),and that statement, any further information, any other information and the representations (if any) made in relation to it must be treated as the environmental statement for the purpose of regulation 36;
- (c) the appellant must, 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 must send to the relevant planning authority a copy of any notice sent to the appellant under paragraph (a);
- (e) if an appellant to whom notice has been given under sub-paragraph (a) fails to comply with the requirements of paragraph (c), the ground (a) appeal shall lapse at the end of the period allowed; and
- (f) as soon as reasonably practicable after the occurrence of the event mentioned in paragraph (e), the Secretary of State must notify the appellant and the local planning authority in writing that the ground (a) appeal has lapsed.

Marginal Citations

M10 Section 78 has been amended by section 17 of the 1991 Act; section 43 of the Planning and Compulsory Purchase Act 2004; sections 196 and 197 of, paragraphs 1 and 3 of Schedule 10 to, and paragraphs 1 and 2 of Schedule 11 to, the Planning Act 2008; sections 121 and 123 of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011; section 1 of, and paragraphs 1 and 8 of Schedule 1 to, the Growth and Infrastructure Act 2013; article 3 of, and paragraphs 1 and 3 of Schedule 1 to, S.I. 2014/2773; section 30 of, and paragraphs 2 and 12 of Part 2 of Schedule 4 to, the Infrastructure Act

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2015; and section 150 of, and paragraphs 1 and 21 of Schedule 12 to, the Housing and Planning Act 2016.

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

42. Where the Secretary of State receives (otherwise than as mentioned in regulation 41(b)) an environmental statement in connection with an enforcement appeal, the Secretary of State must—

- (a) send a copy of that environmental statement to the relevant planning authority, advise the authority that the environmental statement will be taken into consideration in determining the ground (a) appeal, and inform them that they may make representations;
- (b) notify the persons to whom a copy of the relevant regulation 37 notice was sent that the environmental statement will be taken into consideration in determining the ground (a) appeal, and inform them that they may make representations and that, if they wish to receive a copy of the environmental statement or any part of it, they must notify the Secretary of State within 7 days of the receipt of the Secretary of State's notice; and
- (c) respond to notification under paragraph (b) by providing a copy of the environmental statement or of the part requested (as the case may be).

Further information and evidence respecting environmental statements

43. Regulation 25(1) and (11) applies to environmental statements provided in accordance with this Part with the following modifications—

- (a) where the Secretary of State or an inspector, as the case may be, notifies the appellant under regulation 25(1) that further information is required, the appellant must provide that 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; and
- (b) if an appellant to whom a notice has been given under paragraph (a) fails to provide the further information within the period specified or allowed (as the case may be), the ground (a) appeal shall lapse at the end of that period.

Publicity for environmental statements or further information

44.—(1) Where a relevant planning authority receives a copy of an environmental statement or further information by virtue of regulation 42(a) or any other information it must 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 environmental 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 environmental 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 30 days later than the date on which the notice is published);

- (f) details of a website maintained by or on behalf of the authority on which those documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
 - (g) that any person wishing to make representations about any matter dealt with in the environmental statement or further information or any other information should make them in writing before the latest date named in accordance with sub-paragraph (e) or (f), to the Secretary of State; and
 - (h) the address to which any such representations should be sent.
- (2) The authority must 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 ground (a) appeal in respect of the development to which the certificate relates until the expiry of 30 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

- 45.**—(1) The relevant planning authority must 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 37 notice given by the authority;
 - (b) every notice received by the authority under regulation 41(d); and
 - (c) every statement and all further information received by the authority under regulation 42(a);

and copies of those documents must 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^{M11} of the Act (Grant or modification of planning permission on appeals against enforcement notices) are entered in Part 2 of the register, the relevant planning authority must 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 regulation 30(2) and(3) apply to a grant of planning permission under section 177 of the Act (Grant or modification of planning permission on appeals against enforcement notices) as they apply to an application for and grant of planning permission under Part 3 of the Act (Control over development).

Marginal Citations

M11 Section 177 was amended by sections 6 and 32 of, and paragraph 24 of Schedule 7 to, the 1991 Act; and by section 123 of the Localism Act 2011.

Significant transboundary effects

- 46.** Regulation 58 shall apply to unauthorised EIA development as if—
- (a) for paragraph (1)(a) there were substituted—
 - “(a) on consideration of an appeal under section 174 of the Act (Appeal against enforcement notice), the Secretary of State is of the opinion that the matters which

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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 paragraph (3)

(i) in sub-paragraph (a) for “a copy of the application concerned” there were substituted “ a description of the development concerned ”; and

(ii) in sub-paragraph (b) for “application” there were substituted “ appeal ”;

(c) in paragraph (3)(d) the words “to which that application relates” were omitted; and

(d) in paragraph (6) for “application” there were substituted “ appeal ”.

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