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STATUTORY INSTRUMENTS

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**1999 No. 2228**

**The Environmental Impact Assessment  
(Forestry) (England and Wales) Regulations 1999**

**Title, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 and shall come into force on 6th September 1999.

(2) These Regulations apply to England and Wales.

**Interpretation**

2.—(1) In these Regulations—

“afforestation” means initial afforestation (which has the same meaning as in paragraph 1(d) of Annex II to the Directive);

“the appropriate Authority” means, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the National Assembly for Wales;

“the Commissioners” means the Forestry Commissioners;

“countryside bodies” means—

(a) where the land is situated in England, the Countryside Agency<sup>(1)</sup> and the Nature Conservancy Council for England<sup>(2)</sup>,

(b) where the land is situated in Wales, the Countryside Council for Wales<sup>(3)</sup>; and

(c) where the land is situated in England or Wales, the Environment Agency<sup>(4)</sup>;

“deforestation” means deforestation for the purposes of conversion to another type of land use (which terms have the same meaning as in paragraph 1(d) of Annex II to the Directive);

“development” means development within the meaning of section 55 of the Town and Country Planning Act 1990<sup>(5)</sup>;

“the Directive” means Council Directive [85/337/EEC](#)<sup>(6)</sup> on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive [97/11/EC](#)<sup>(7)</sup>;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

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(1) See section 1(1) of the National Parks and Access to the Countryside Act [1949 \(c. 97\)](#) as substituted by the Environmental Protection Act [1990 \(c. 43\)](#), section 130 and Schedule 8 paragraph 1(2), and the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999 ([S.I. 1999/416](#)), article 3 and Schedule 1 paragraph 1(2).

(2) See section 128 of the Environmental Protection Act [1990 \(c. 43\)](#).

(3) See sections 128 and 130 of the Environmental Protection Act 1990.

(4) See section 1(1) of the Environment Act [1995 \(c. 25\)](#).

(5) [1990 c. 8](#).

(6) OJNo. L175, 5.7.85, p.40.

(7) OJ No. L73, 14.3.97, p.5.

“environmental information” means information in the environmental statement and any other information provided in accordance with these Regulations in relation to an application for consent or an appeal under regulation 17 or 21 relating to the likely environmental effects of the project which is the subject of the application or, as the case may be, appeal;

“environmental statement” means a statement—

- (a) that includes such of the information referred to in Part I of Schedule 1 as is reasonably required to assess the environmental effects of the project 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 II of Schedule 1;

“forest quarry works” means operations on land used or to be used for the purposes of forestry, or on land held or occupied with that land, to obtain the materials required for forest road works;

“forest road works” means the formation, alteration or maintenance of private ways on land used or to be used for the purposes of forestry;

“project” means the execution of construction works or of other installations or schemes or other intervention in the natural surroundings or landscape including those involving the extraction of mineral resources;

“proposer” means person who proposes to carry out a project;

“relevant project” shall be construed in accordance with regulation 3 below.

(2) In these regulations, any reference to an enforcement notice shall be construed as including, as the context requires, a reference to a notice of variation under regulation 20(6)(a) or to an enforcement notice as so varied.

(3) Any reference in these Regulations (other than regulation 22) to consent is a reference to the consent of the Commissioners required by regulation 4, and—

- (a) (where the context permits) includes consent by the appropriate Authority on an appeal under regulation 17; and
- (b) in regulations 4 and 20 to 23 includes (in accordance with regulation 25(9)) consent granted under the Environmental Assessment (Forestry) Regulations 1998<sup>(8)</sup>.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

### **Interpretation of “relevant project”**

3.—(1) For the purposes of these Regulations, a project is a relevant project if—

- (a) it is a project of a type specified in paragraph (2) of this regulation;
- (b) subject to paragraph (3) of this regulation, it is likely, by virtue of factors such as its nature, size or location, to have significant effects on the environment; and
- (c) the carrying out of the project—
  - (i) does not involve development, or
  - (ii) involves development in England and Wales which is not mentioned in Schedule 1 to or in column 1 of the table in Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>(9)</sup>, or

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<sup>(8)</sup> S.I. 1998/1731.

<sup>(9)</sup> S.I. 1999/293.

(iii) involves development in England and Wales for which planning permission is granted by Part 7 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(10).

(2) The types of project referred to in paragraph (1)(a) of this regulation are—

- (a) afforestation;
- (b) deforestation;
- (c) forest road works;
- (d) forest quarry works.

(3) For the purposes of paragraph (1)(b) of this regulation, and subject to regulations 6(3) and 7(6), a project shall be taken not to be likely to have significant effects on the environment if the area covered, or to be covered, by the project does not exceed any relevant threshold set out in Schedule 2.

### **Restriction on relevant projects**

4.—(1) Subject to paragraph (2) below, no person shall carry out, on any land, work or operations relating to a relevant project unless—

- (a) consent has been granted for that project by the Commissioners or by the appropriate Authority, and
- (b) the project is carried out in accordance with the consent (including the conditions to which the consent is subject).

(2) In accordance with Article 2(3) of the Directive, the Commissioners may direct that a particular project is exempted from the application of these Regulations.

(3) A direction under paragraph (2) shall be in writing and shall be accompanied by a statement of the Commissioners' reasons for making it.

(4) No direction shall be made under paragraph (2) above where it appears to the Commissioners that the project would be likely to have significant effects on the environment in another EEA State.

### **Application for an opinion whether a project is a relevant project**

5.—(1) The proposer may apply in writing to the Commissioners for their opinion whether a project is a relevant project.

(2) An application under paragraph (1) above shall include or be accompanied by—

- (a) a map or plan sufficient to identify the land that is the subject of the proposed project and the extent of the proposed project,
- (b) a brief description of the nature of the proposed project and of its possible effects on the environment, and
- (c) such further information or representations as the proposer may wish to provide or make.

(3) The Commissioners shall, if they consider that they have not been provided with sufficient information to enable them to give an opinion under paragraph (1) above, notify the proposer in writing of the matters on which they require further information and the proposer shall supply that further information to the Commissioners within such period as the Commissioners reasonably may require or such other period as may be agreed in writing between the Commissioners and the proposer.

### **Opinions of the Commissioners**

6.—(1) Where the proposer applies to the Commissioners under regulation 5, they shall give to the proposer written notice of their opinion within—

- (a) 28 days beginning with the date of their receipt of the application or, where they notify the proposer under regulation 5(3) that they require further information, the date of their receipt of that information; or
- (b) such longer period as may be agreed in writing between the Commissioners and the proposer.

(2) Subject to paragraph (3), in considering, for the purpose of forming their opinion, whether the project is likely to have significant effects on the environment, the Commissioners shall take into account the selection criteria in Schedule 3.

(3) In a case where the project does not exceed any relevant threshold set out in Schedule 2, the Commissioners shall form their opinion in accordance with regulation 3(3) except where, in their opinion, there are exceptional circumstances which, taking account of the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.

(4) Where the opinion of the Commissioners is that the project is a relevant project, the Commissioners shall include in or provide with their opinion a written statement of their reasons for being of that opinion.

(5) The Commissioners may of their own motion give their opinion whether or not a project is or would be a relevant project and where they give an opinion under this paragraph—

- (a) they shall give written notice of their opinion to any person who reasonably appears to them to be the proposer, and
- (b) paragraphs (2), (3) and (4) of this regulation shall apply as they do to an opinion given in relation to an application under regulation 5(1).

(6) In paragraph (3), the reference to circumstances which are, in the opinion of the Commissioners, exceptional shall be construed in accordance with paragraph 4 of Schedule 2.

### **Directions by the appropriate Authority**

7.—(1) The proposer may apply in writing to the appropriate Authority for a direction whether a project is a relevant project where—

- (a) the Commissioners give notice of their opinion under regulation 6(1) or regulation 6(5) that the project is or would be a relevant project; or
- (b) the Commissioners fail to give notice of their opinion within the period of time required by regulation 6(1).

(2) An application under paragraph (1) above shall be accompanied by, or by copies of—

- (a) any application by the proposer to the Commissioners under regulation 5(1) and any documents supplied to the Commissioners by the proposer in connection with that application; and
- (b) in a case falling within paragraph (1)(a) above, the opinion of the Commissioners and any written statement of reasons which they provided with it,

and may include such further information or representations as the proposer may wish to provide or make.

(3) Where the appropriate Authority considers that the documents supplied under paragraph (2) above do not provide sufficient information to enable a direction to be given, the appropriate Authority—

- (a) shall notify the proposer in writing of the matters on which further information is required, and
  - (b) may seek further information on those matters from the Commissioners and the Commissioners shall supply that further information to the appropriate Authority if it is in their possession.
- (4) The appropriate Authority shall give a direction within 28 days (or such longer period as the appropriate Authority may reasonably require) beginning with—
- (a) the date of receipt of the application under paragraph (1) above; or
  - (b) where the appropriate Authority has required or sought further information under paragraph (3) above, the date of receipt by the appropriate Authority of that information.
- (5) Subject to paragraph (6), in considering, for the purpose of deciding on a direction, whether the project is likely to have significant effects on the environment, the appropriate Authority shall take into account the selection criteria in Schedule 3.
- (6) In a case where the project does not exceed any relevant threshold set out in Schedule 2, the appropriate Authority shall make its decision in accordance with regulation 3(3) except where, in its opinion, there are exceptional circumstances which, taking account of the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.
- (7) The appropriate Authority shall provide the proposer and the Commissioners with a written statement of the direction including, where the direction is that the project is or would be a relevant project, the reasons for this direction.
- (8) The appropriate Authority may of its own motion give a direction whether or not a project is or would be a relevant project and where a direction is given under this paragraph—
- (a) a written statement of the direction shall be provided to the Commissioners and to any person who reasonably appears to the appropriate Authority to be the proposer, and
  - (b) paragraphs (5), (6) and (7) of this regulation shall apply as they do to a direction given in relation to an application under paragraph (1).
- (9) In paragraph (6), the reference to circumstances which are, in the opinion of the appropriate Authority, exceptional shall be construed in accordance with paragraph 4 of Schedule 2.

### **Effect of directions and opinions**

- 8.—**(1) This paragraph applies to a direction given under regulation 7 that a project is not or would not be a relevant project or, in the absence of a direction under that regulation, to an opinion given under regulation 6 to that effect.
- (2) A direction or opinion to which paragraph (1) above applies—
- (a) shall have the effect of determining for the purpose of these Regulations that the project specified in the direction or opinion (but only that project) is not or would not be a relevant project; but
  - (b) shall cease to have effect (without prejudice to the availability of a further direction or opinion) on the expiry of—
    - (i) the period of five years beginning with the date on which the direction or opinion is given, or
    - (ii) such shorter period as may be specified in the direction or opinion,if the work relating to the project has not been completed within that period.
- (3) This paragraph applies to a direction given under regulation 7 that a project is or would be a relevant project or, in the absence of a direction under that regulation, to an opinion given under regulation 6 to that effect.

(4) A direction or opinion to which paragraph (3) applies shall have the effect of determining for the purposes of these Regulations that the project specified in the direction or opinion is or would be a relevant project.

#### **Request as to the information to be included in an environmental statement**

9.—(1) Before applying for consent to carry out work in relation to a project, a proposer may request the Commissioners to give their opinion as to the information to be contained in the environmental statement required for that project.

(2) Where a proposer requests an opinion under paragraph (1) above before a determination has been made whether the project is or would be a relevant project, the Commissioners shall deal with the request on the assumption that the project is a relevant project.

(3) Before giving an opinion under paragraph (1) above, the Commissioners shall consult the proposer, the countryside bodies and any relevant local authority.

(4) The Commissioners shall, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be agreed in writing with the proposer, give their opinion under paragraph (1) above and shall send a copy to the proposer.

(5) Where the Commissioners fail to give their opinion under paragraph (1) above within the relevant period, the proposer may request the appropriate Authority to make a direction as to the information to be contained in the environmental statement required for the project.

(6) Before making a direction under paragraph (5) above, the appropriate Authority shall consult the proposer, the countryside bodies and any relevant local authority.

(7) The appropriate Authority shall, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be required for the purpose, make a direction under paragraph (5) above and shall send a copy to the proposer and to the Commissioners.

(8) In paragraphs (3) and (6), “relevant local authority” means a local authority for the area in which it is proposed to carry out the project which appears to the Commissioners or, as the case may be, the appropriate Authority to have an interest in the issue of what information the environmental statement should contain.

#### **Applications for consent**

10.—(1) An application for consent shall be made in writing to the Commissioners and shall be accompanied by—

- (a) a map or plan sufficient to identify the land on which the relevant project would be carried out and the extent of any planting, regeneration, construction, works or operations;
- (b) a description of the nature of the relevant project;
- (c) an environmental statement in respect of the relevant project; and
- (d) a copy of the notice to be published in accordance with regulation 13(1).

(2) An applicant for consent shall supply to the Commissioners such number of copies of the application and the documents accompanying it as the Commissioners reasonably may require.

#### **Provision of further information**

11. Where in the opinion of the Commissioners—

- (a) further information is reasonably required for their proper consideration of the likely environmental effects of the relevant project to which an application for consent relates; and

- (b) the applicant could (having regard in particular to current knowledge and methods of assessment) provide such information,

the Commissioners shall notify the applicant in writing of the matter on which they require further information and the applicant shall provide that further information.

### **Assistance in preparation of environmental statements**

**12.**—(1) Subject to paragraphs (2) and (3) below, the Commissioners, each of the countryside bodies or any local authority for the area in which it is proposed to carry out the project shall, if requested by an applicant for consent, and may without such a request, enter into consultation with an applicant for consent to determine whether the Commissioners, the countryside body or the local authority have in their possession any information which may be relevant to the preparation of the environmental statement and if the Commissioners, the countryside body or local authority have such information, they shall make it available to the applicant.

(2) Paragraph (1) above shall not require disclosure of information which is capable of being treated as confidential, or must be so treated, under regulation 4 of the Environmental Information Regulations 1992<sup>(11)</sup>.

(3) Paragraph (1) above shall not prevent the Commissioners or a countryside body imposing a charge reflecting the cost of making the information available (including for the identification, preparation and copying of any information) or making the payment of such a charge a condition of providing the information.

### **Publicity**

**13.**—(1) A person who makes an application for consent under regulation 10 or who provides further information under regulation 11 shall publish a notice in accordance with paragraph (2) below in such newspapers (not being less than two) as the Commissioners reasonably may require for the purposes of ensuring—

- (a) the application for consent or, as the case may be, the information provided under regulation 11, is made available to the public; and
- (b) the public concerned is given an opportunity to express an opinion before the application for consent is determined.

(2) A notice required by paragraph (1) above shall—

- (a) state that the application has been made or, as the case may be, that the further information has been furnished to the Commissioners;
- (b) specify an office of the Commissioners or other place nominated by them at which copies of the application or the further information may be inspected free of charge at all reasonable hours within 28 days beginning with the date of publication of the notice;
- (c) specify an address at which copies of the application or the further information may be obtained from the applicant and if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and
- (d) state that any person wishing to make representations regarding the application or the further information should make them in writing to the Commissioners, at an address nominated by them and specified in the notice, within 28 days beginning with the date of publication of the notice.

(3) On receipt of an application for consent under regulation 10, or of further information under regulation 11, the Commissioners shall provide copies of the application or, as the case may be, the

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<sup>(11)</sup> S.I. 1992/3240, amended by S.I. 1998/1447.

further information, together with a notice stating that any representations regarding the application or the further information should be made in writing to the Commissioners within 28 days beginning with the date of the notice, to—

- (a) the countryside bodies, and
- (b) any local authority or other public authority which appears to the Commissioners to have an interest in the application.

(4) In this regulation, reference to an application includes a reference to the documents accompanying that application.

### **Information for another EEA State**

**14.**—(1) Where it appears to the Commissioners that a project in relation to which they have received an application for consent would be likely to have significant effects on the environment of another EEA State or where another EEA State likely to be significantly affected so requests, the Commissioners shall provide a copy of the environmental statement relating to the project to the appropriate Authority.

(2) Where it appears to the appropriate Authority that a project would be likely to have significant effects on the environment of another EEA State or where another EEA State likely to be significantly affected so requests, the appropriate Authority shall—

- (a) send to the EEA State as soon as possible, and no later than the date of its publication as required by sub-paragraph (b) of this paragraph, the information mentioned in paragraph (3) of this regulation and, if the appropriate Authority thinks fit, the information mentioned in paragraph (4) of this regulation;
- (b) publish the information referred to in sub-paragraph (a) above in a notice placed in the London Gazette with an indication of where further information is available;
- (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide; and
- (d) inform the applicant for consent.

(3) The information referred to in paragraph (2)(a) of this regulation is—

- (a) a description of the project, together with any available information on its possible significant effects on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the appropriate Authority shall as soon as possible send to that EEA State the following information—

- (a) a copy of the application for consent;
- (b) a copy of the environmental statement; and
- (c) 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 (2) of this regulation.

(5) The appropriate Authority, insofar as concerned, shall also—

- (a) arrange for the information referred to in paragraphs (3) and (4) of this regulation 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 the determination of the application for consent, to forward to the appropriate Authority, within a reasonable time, their opinion on the information supplied.
- (6) The appropriate Authority 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 project 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.
- (7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the appropriate Authority 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 thereto;
  - (b) the main reasons and considerations on which the decision is based; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

#### **Determination of applications**

**15.**—(1) Where an application is made to the Commissioners for consent, they may, subject to the following provisions of this regulation—

- (a) grant consent either subject only to the conditions required by regulation 18 or also subject to such further conditions as they see fit, or
- (b) refuse consent.

(2) The Commissioners shall not determine an application until after the expiry of the periods referred to in regulation 13 during which representations may be sent to the Commissioners or any period of consultation with an EEA State in accordance with regulation 14.

(3) In determining an application, the Commissioners shall take into consideration the environmental information, any representations received by them in relation to the application and any other material consideration, including in particular their assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

#### **Notification of decisions**

**16.** Where an application for consent has been determined by the Commissioners they shall—

- (a) give notice in writing of their decision to the applicant and any person from whom they received representations in relation to the application, stating that they have taken into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based; and
- (b) publish a notice of their decision in the newspapers in which notice of the application was published in accordance with regulation 13(1) which gives details of the place and times at which the public may inspect a statement of—
  - (i) the content of the Commissioners' decision and any conditions attached thereto;
  - (ii) the main reasons and considerations on which the decision is based; and
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

## Appeals against decisions of the Commissioners

17.—(1) An applicant for consent may appeal to the appropriate Authority where the Commissioners—

- (a) have refused the application;
- (b) have granted consent subject to conditions in addition to those required by regulation 18; or
- (c) have granted consent subject only to the conditions required by regulation 18 but have specified a period for the purposes of one or both of those conditions less than the maximum period permitted by that regulation.

(2) An appeal under this regulation shall be made within 28 days, or such longer period as the appropriate Authority may allow, beginning with the date on which the applicant receives notification of the Commissioners' decision under regulation 16.

(3) An appeal shall be made by notice in writing to the appropriate Authority accompanied by, or by copies of—

- (a) the application to which it relates, and any documents provided by the applicant to the Commissioners in relation to it;
- (b) the decision of the Commissioners; and
- (c) any other information or representations which the appellant wishes to provide or make.

(4) On receipt of a notice of appeal duly made, the appropriate Authority shall send a copy of it to the Commissioners who shall, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the appropriate Authority copies of any representation or information provided to them in relation to the application.

(5) On an appeal under this regulation, the appropriate Authority may allow or dismiss the appeal or vary any part of the Commissioner's decision; and, where its decision is that consent should be granted, may accordingly grant consent either subject only to the conditions required by regulation 18 or also subject to such further conditions as it may determine.

(6) The appropriate Authority shall determine an appeal within 28 days (or such longer period as it reasonably may require) beginning with the date of receipt of the representations or information supplied in accordance with paragraph (4) above.

(7) In determining an appeal, the appropriate Authority shall take into consideration the environmental information, any representations in relation to the appeal and any other material consideration, including in particular its assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

(8) Where an appeal has been determined, the appropriate Authority shall—

- (a) give notice of the decision stating that this takes into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based to—
  - (i) the appellant,
  - (ii) the Commissioners, and
  - (iii) any person from whom the Commissioners received representations in relation to the application to which the appeal relates; and
- (b) publish a notice of the decision in the newspapers in which the decision of the Commissioners to which the appeal relates was published in accordance with regulation 16(b) which gives details of the place and times at which the public may inspect a statement of—
  - (i) the content of the appropriate Authority's decision and any conditions attached thereto;

- (ii) the main reasons and considerations on which the decision is based; and
- (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

#### **Conditions to be included in every consent**

- 18.** Every consent shall include conditions to the effect that—
- (a) work in relation to the relevant project shall be commenced within such period (not being more than 5 years beginning with the date consent is granted) as is specified in the consent; and
  - (b) no work shall be carried out in relation to the relevant project after the expiration of such period (not being more than 10 years beginning with the date consent is granted) as is specified in the consent.

#### **Application to the court by person aggrieved**

**19.—(1)** On the application of any person aggrieved by the grant of consent, the court may make an order quashing the consent where it is satisfied that the consent was given contrary to whichever of regulation 15(3) or 17(7) applies in the case or that the interests of the applicant have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(2) An application to the court under this regulation shall be made within 6 weeks from the date of publication of the decision in accordance with regulation 16(b) or 17(8)(b).

(3) The court may by interim order, pending the determination of an application under this regulation, stay the operation of the consent of such terms as it may think fit.

(4) In this regulation “the court” means the High Court.

#### **Enforcement notices**

**20.—(1)** Where it appears to the Commissioners that a person is carrying out or has carried out work in relation to a relevant project—

- (a) without consent, where consent is required by regulation 4, or
- (b) in breach of a condition subject to which consent has been granted in relation to that relevant project,

the Commissioners may serve an enforcement notice on that person.

(2) An enforcement notice may require that the person on whom it is served shall take such one or more of the following measures as appear to the Commissioners to be suitable in the circumstances, namely—

- (a) apply to the Commissioners for consent;
- (b) discontinue work in relation to the relevant project;
- (c) restore the land to its condition before any work in relation to the relevant project was carried out;
- (d) carry out on the land any works or operations, specified in the enforcement notice, which in the opinion of the Commissioners are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project.

(3) An enforcement notice shall specify the period during which any of the measures mentioned in paragraph (2)(a), (c) or (d) is to be taken and may specify different periods for different measures.

(4) Either—

- (a) an enforcement notice served by virtue of paragraph (1)(a) above shall include or be accompanied by a written statement of the Commissioners' reasons for being of the opinion that the project is a relevant project; or
  - (b) the Commissioners shall serve such a written statement on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.
- (5) Either—
- (a) an enforcement notice shall include or be accompanied by a notice explaining how, to whom and within what period an appeal may be brought and whether the requirements of the enforcement notice will be stayed while an appeal is pending; or
  - (b) the Commissioners shall serve such a notice on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.
- (6) The Commissioners may, at any time—
- (a) by a further notice served on the person on whom the enforcement notice was served, vary an enforcement notice; and
  - (b) withdraw an enforcement notice.
- (7) An enforcement notice may be served on any person—
- (a) by delivering it to him personally;
  - (b) by leaving it for him at his last known place of abode or business; or
  - (c) by sending it through the post addressed to him at his last known place of abode or business;
- (8) An enforcement notice may—
- (a) in the case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body;
  - (b) in the case of a partnership, be served on a partner or person having the control or management of the partnership business.

### **Appeals against enforcement notices**

**21.—**(1) Any person on whom an enforcement notice has been served in accordance with regulation 20 may appeal to the appropriate Authority.

(2) An appeal under this regulation shall be made within 28 days, or such longer period as the appropriate Authority may allow, beginning with the date on which the appellant receives the enforcement notice.

(3) An appeal shall be made by notice in writing to the appropriate Authority accompanied by, or by copies of—

- (a) the enforcement notice;
- (b) any relevant consent; and
- (c) any other information or representations which the appellant wishes to provide or make.

(4) On receipt of a notice of appeal duly made, the appropriate Authority shall send a copy of it to the Commissioners who shall, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the appropriate Authority copies of any representation or information provided to them in relation to any relevant consent or application for consent.

(5) On an appeal under this regulation, the appropriate Authority may, subject to paragraph (9) below, allow or dismiss the appeal or vary any part of the enforcement notice.

(6) The appropriate Authority shall determine an appeal within 28 days (or such longer period as it reasonably may require) beginning with—

- (a) the date of receipt of the representations or information supplied in accordance with paragraph (4) above; or
- (b) where there is no consent or application for consent relevant to the enforcement notice, the date of receipt by the appropriate Authority of the notice of appeal.

(7) In determining an appeal, the appropriate Authority shall take into consideration any environmental information, any representations received by the appropriate Authority in relation to the appeal and any other material consideration, including in particular its assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

(8) Where an appeal has been determined, the appropriate Authority shall give notice of the decision, giving the reasons and considerations on which the decision was based, to the appellant and the Commissioners.

(9) The appropriate Authority shall not allow an appeal against an enforcement notice served by virtue of regulation 20(1)(a) where it appears to the appropriate Authority that consent is required by regulation 4.

(10) The making of an appeal under this regulation shall have the effect of suspending the operation of any requirement in the enforcement notice to which it relates to take measures described in paragraphs (a), (c) or (d) of regulation 20(2) until the appeal is determined by the appropriate Authority or, where the appeal is withdrawn, until withdrawal of the appeal.

### **Penalties for non-compliance with enforcement notices**

**22.**—(1) Any person who carries out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served on him in accordance with regulation 20 shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment to a fine.

(2) Any person on whom an enforcement notice has been served in accordance with regulation 20 who fails, within the period specified in the enforcement notice, to carry out any measure, other than discontinuance of the relevant project, required by the enforcement notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an offence under paragraph (1) or (2) above which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

### **Power of entry and default powers**

**23.**—(1) Subject to paragraph (2) below, any person duly authorised in writing by the Commissioners may at any reasonable time enter any land on which he or the Commissioners reasonably suspects or suspect that work in relation to a relevant project is being or has been carried out—

- (a) without consent, where such consent is required under regulation 4, or
- (b) in breach of a condition subject to which consent has been granted.

(2) Where any measures required by an enforcement notice by virtue of regulation 20(2) (other than discontinuance of the relevant project) have not been taken within the period specified in the enforcement notice—

- (a) any person duly authorised by the Commissioners may at any reasonable time enter the land to which the enforcement notice relates and take those measures, and
- (b) the Commissioners may recover from the person on whom the enforcement notice was served any expenses reasonably incurred by them in doing so.

(3) A person authorised under paragraphs (1) or (2) above to enter any land shall, if so requested, produce evidence of his authority before so entering.

### **Registers of opinions, directions, determinations etc. for public inspection**

**24.**—(1) At each of their Conservancy offices in England and Wales, the Commissioners shall keep a register of the following, so far as relating to the area of that Conservancy—

- (a) each direction received under regulation 4(2);
- (b) each opinion under regulation 6(1) or (5);
- (c) each direction received under regulation 7(7);
- (d) each opinion under regulation 9(1);
- (e) each direction received under regulation 9(7);
- (f) each determination under regulation 15(1);
- (g) each determination received under regulation 17(8);
- (h) statements of reasons accompanying any of the above;
- (i) each environmental statement received, including any further information.

(2) Each register kept under this regulation shall be available for inspection by the public at all reasonable hours.

### **Revocation and transitional provisions**

**25.**—(1) The Environmental Assessment (Forestry) Regulations 1998<sup>(12)</sup> (in this regulation called “the 1998 Regulations”) are hereby revoked with respect to England and Wales, subject to paragraph (2).

(2) Paragraph (1) of this regulation shall not affect the continued application of the 1998 Regulations in England and Wales in respect of any matter relating to—

- (a) a breach of regulation 3 of those Regulations which occurred before the date of coming into force of these Regulations; or
- (b) an enforcement notice issued under regulation 16 of those Regulations;

and these Regulations shall not apply to such a matter.

(3) Where, before the date of coming into force of these Regulations, an application under regulation 4(1) of the 1998 Regulations has been received by the Commissioners in relation to land in England and Wales but the Commissioners have not given their opinion in relation to that application—

- (a) the application shall be treated as an application under regulation 5(1) of these Regulations; and

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(12) S.I. 1998/1731.

- (b) any notification by the Commissioners under regulation 4(3) of the 1998 Regulations shall be treated as a notification under regulation 5(3) of these Regulations (but without prejudice to their power to make a further notification under the latter regulation).
- (4) Where, before the date of coming into force of these Regulations, an application under regulation 6(1) of the 1998 Regulations has been received by the Minister<sup>(13)</sup> in relation to land in England and Wales but a direction has not been given in relation to that application—
- (a) the application shall be treated as an application under regulation 7(1) of these Regulations; and
- (b) any notification by the Minister under regulation 6(3) of the 1998 Regulations shall be treated as a notification under regulation 7(3) of these Regulations (but without prejudice to the power to make a further notification under the latter regulation).
- (5) Where, before the date of coming into force of these Regulations, an application under regulation 7 of the 1998 Regulations has been received by the Commissioners in relation to land in England and Wales but the Commissioners have not determined that application—
- (a) the application shall be treated as an application under regulation 10 of these Regulations;
- (b) any notification by the Commissioners under regulation 8 of the 1998 Regulations shall be treated as a notification under regulation 11 of these Regulations (but without prejudice to their power to make a further notification under the latter regulation).
- (6) Where, before the date of coming into force of these Regulations, an appeal under regulation 13 of the 1998 Regulations has been received by the Minister in relation to land in England and Wales but that appeal has not been determined, the appeal shall be treated as an appeal under regulation 17 of these Regulations.
- (7) Where—
- (a) a case falls to be treated under these Regulations by virtue of paragraph (3), (4) or (6) above, and
- (b) part or all of a period of time specified in regulation 6(1), 7(4) or (as appropriate) 17(4) or (6) of these Regulations (“the relevant provision”) expired before the date of the coming into force of these Regulations,
- the whole of the specified period shall be taken into account for the purposes of these Regulations in the same way as if the relevant provision had been in force on the date specified in the relevant provision as the date on which the period began to run.
- (8) A direction of the Minister under regulation 6 of the 1998 Regulations that a particular project was not a relevant project for the purpose of those Regulations, or in the absence of such a direction an opinion of the Commissioners under regulation 5 of those Regulations to that effect,—
- (a) shall be treated, after the coming into force of these Regulations, as determining that the project specified in the direction or opinion (but only that project) is not a relevant project for the purposes of these Regulations; but
- (b) shall cease to have the effect stated in sub-paragraph (a) (without prejudice to the availability of a further direction or opinion under these Regulations) on the expiry of the period of five years beginning with the date of coming into force of these Regulations if the work relating to the project has not been completed within that period.
- (9) Regulations 4 and 20 to 23 of these Regulations apply in relation to any consent given under the 1998 Regulations (including any conditions to which that consent is subject) as they apply to a consent (including such conditions) given under these Regulations.

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(13) Defined by regulation 2(1) of the 1998 Regulations (so far as relevant) as, in relation to England, the Minister of Agriculture, Fisheries and Food and, in relation to Wales, the Secretary of State.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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6th August 1999

*Elliot Morley*  
Parliamentary Secretary, Ministry of Agriculture,  
Fisheries and Food

9th August 1999

*David Hanson*  
Parliamentary Under Secretary of State, Welsh  
Office