
 S T A T U T O R Y I N S T R U M E N T S

2000 No. 2867
TOWN AND COUNTRY PLANNING, ENGLAND AND WALES
The Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000

<i>Made</i> - - - - -	<i>18th October 2000</i>
<i>Laid before Parliament</i>	<i>25th October 2000</i>
<i>Coming into force</i> - -	<i>15th November 2000</i>

The Secretary of State for the Environment, Transport and the Regions, as respects England and Wales, being a designated Minister for the purposes of section 2(2) of the European Communities Act 1972(a), in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred upon him by that section and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 and shall come into force on 15th November 2000.

(2) In these Regulations, “the Regulations” means the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(b).

(3) These Regulations extend to England and Wales only.

Amendment of the Regulations

2.—(1) The Regulations shall be amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of “the Act” insert—

““the 1991 Act” means the Planning and Compensation Act 1991(c);

“the 1995 Act” means the Environment Act 1995(d);”;

(b) after the definition of “the Directive” insert—

(a) 1972 c. 68; section 2(2) includes power to make certain provision in relation to the European Economic Area by virtue of section 2(5) of the European Economic Area Act 1993 (1993 c. 51). Council Directive 85/337/EEC applies to the EEA by virtue of Article 74 of, and paragraph 1 of part 1 of Annex XX to, the Agreement on the European Economic Area. Council Directive 97/11/EC was extended to the European Economic Area by Decision No. 20/1999 of the European Economic Area Joint Committee of 26th February 1999, O.J. No. L 148, 22.6.2000, p.45.

(b) S.I. 1999/293.

(c) 1991 c. 34, to which there are amendments not relevant to these Regulations.

(d) 1995 c. 25, to which there are amendments not relevant to these Regulations.

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““EEA State” means a State party to the Agreement on the European Economic Area(a);”;

- (c) after the definition of “appropriate register” (included in the definition of “register”) insert—

““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;”;

- (d) after the definition of “relevant planning authority” insert—

““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;”.

- (e) after paragraph 5 add—

“(6) In its application to Wales, these Regulations shall have effect, with any necessary amendments, as if each reference to “the Secretary of State” were a reference to “the National Assembly for Wales”(b).”

- (3) In regulation 12 (procedure to facilitate preparation of environmental statements)—

- (a) in paragraph (4), before the words “body has” and “body shall” insert “authority or”;
- (b) in paragraph (6) for the words “a body, including the relevant planning authority” substitute “an authority or body”.

- (4) In regulations 26 to 28, for each reference to “Member State” substitute “EEA State”.

- (5) After regulation 26 (unauthorised development with significant transboundary effects) add—

“ROMP Applications

General application of the Regulations to ROMP applications

26A.—(1) These Regulations shall apply to—

- (a) a ROMP application as they apply to an application for planning permission;
- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a relevant mineral planning authority as they apply to a relevant planning authority;
- (d) a person making a ROMP application as they apply to an applicant for planning permission; and
- (e) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications and additions set out below.

(a) Cm 2073. The Agreement was adjusted by a Protocol signed at Brussels on 17th March 1993.

(b) The functions of the Secretary of State under the Regulations, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; see the entry at the end of Schedule 1 referring to the Regulations. That Order does not operate to transfer the substantial new functions made by these amending Regulations. This amendment operates so that those new functions of the Secretary of State, insofar as they apply to Wales, are those of the National Assembly for Wales and to clarify on the face of the instrument that all references to the Secretary of State shall have effect in its application to Wales as if they were a reference to the National Assembly for Wales.

Modification of provisions on prohibition of granting planning permission

(2) In regulation 3(1) (prohibition on granting planning permission without consideration of environmental information)—

- (a) in paragraph (a) for the words “these Regulations” substitute “the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000”;
- (b) in paragraph (b) for the words “3 or 4 (applications for planning permission)” substitute “11 (other consents)”;
- (c) for the words “determined in accordance with paragraph (3) of article 20 (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

(3) In regulation 7(4) (application made to a local planning authority without an environmental statement)—

- (a) for the word “three” substitute “six”; and
- (b) after “the notification” insert “, or within such other period as may be agreed with the authority in writing,”.

Disapplication of Regulations and modification of provisions on application referred to or appealed to the Secretary of State without an environmental statement

(4) Regulations 7(5) and (6), 8(5) and (6), 9(6) and (7), 22, and 32 shall not apply.

(5) In regulation 8(4) (application referred to the Secretary of State without an environmental statement) and 9(5) (appeal to the Secretary of State without an environmental statement)—

- (a) for the word “three” substitute “six”;
- (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

(6) In regulations 9(1) and 15(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)”.

(7) In regulation 9(2) (appeal to the Secretary of State without an environmental statement) omit the words “, except by refusing planning permission,”.

Modification of provisions on preparation, publicity and procedures on submission of environmental statements

(8) In regulations 10(9) and 11(6) for the words “an application for planning permission for” substitute “a ROMP application which relates to another planning permission which authorises”.

(9) In regulation 13 (procedure where an environmental statement is submitted to a local planning authority) after paragraph (3) insert—

“(3A) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 8 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(a),

as they apply to a planning application falling within paragraph 8(2) of the Order

(a) 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.

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.”.

(10) In regulation 14 (publicity where an environmental statement is submitted after the planning application)—

(a) in paragraph (2)(a) for the words “and that he is the applicant for planning permission” substitute—

“, that he has applied 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) in paragraph (6) for the words—

(i) “(unless disposed to refuse the permission sought) suspend consideration of the application or appeal until receipt of the statement and the other documents mentioned in paragraph (5)” substitute—

“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 (5)”;

(ii) “so mentioned” substitute “mentioned in paragraph (5)”.

(11) In regulation 15 (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”.

(12) In regulation 17 (availability of copies of environmental statements) after the words “the Order” insert “(as applied by regulation 13(3A) or by paragraph 9(5) of Schedule 13 to the 1995 Act),”.

(13) In regulation 19 (further information and evidence respecting environmental statements)—

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

“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 specified by them or him for submission of the further information”.

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

(14) For regulation 30 (application to the High Court) substitute—

“Application to the High Court

30. For the purposes of Part XII 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.”.

(15) The direction making power substituted by regulation 35(8) shall apply to ROMP development as it applies to development in respect of which a planning application is made.

Suspension of minerals development

(16) Where the authority, the Secretary of State or an inspector notifies the applicant or appellant, as the case may be, that—

(a) the submission of an environmental statement is required under regulation 7(2), 8(2) or 9(4) then such notification shall specify the period within which the environmental statement and compliance with regulation 14(5) is required; or

(b) a statement should contain additional information under regulation 19(1) then such notification shall specify the period within which that information is to be provided.

(17) Subject to paragraph (18), 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 the 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 six week or other period agreed pursuant to regulations 7(4), 8(4) or 9(5);
- (b) submit an environmental statement and comply with regulation 14(5) 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; or
- (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.

(18) Where paragraph (17) applies, the planning permission shall not authorise any minerals development from the end of—

- (a) the relevant six week or other period agreed in writing as referred to in paragraph (17)(a);
- (b) the period specified or agreed in writing as referred to in paragraphs (17)(b) and (c),

(“suspension of minerals development”) until the applicant has complied with all of the provisions referred to in paragraph (17) which are relevant to the application or appeal in question.

(19) 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.

(20) Paragraph (17) shall not affect any minerals development carried out under the planning permission before the date of suspension of minerals development.

(21) For the purposes of paragraphs (17) to (20) “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

(22) 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(a); 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 20 as applied by paragraph (1), and with paragraph (19).

(a) These provisions are not applied to applications under paragraph 2(2) to the 1991 Act as they are applied by paragraph 9 of Schedule 2 to the 1991 Act.

(23) 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.

(24) 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.

(25) For the purposes of paragraph (24) a ROMP application is not received by the authority until—

- (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, has been received by the authority.

(26) Where paragraph (22)(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 (24); 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 six months from the expiry of the 16 week or other period agreed pursuant to paragraph (24).

(27) 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 7(2) 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

(28) 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 (29) below, regulations 5, 6, 7, 9, 10, 11, 13 (save for the purposes of regulations 16(3) and (4)) 15 and 21(1) shall not apply;
- (b) in regulation 4 (general provisions relating to screening)—
 - (i) in paragraph (4), omit the words “and shall send a copy of such direction to the relevant planning authority”;
 - (ii) paragraph (9) shall be omitted;
- (c) in regulation 8(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 12 (procedure to facilitate preparation of environmental statements)—
 - (i) in sub-paragraph (3)(b) for the words “7(4)(a), or 8(4) or 9(5)” substitute “8(4)”;
 - (ii) in paragraph (4) omit the words “the relevant planning authority and”;
 - (e) in regulation 14(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 16 (procedure where an environmental statement is submitted to the Secretary of State), in paragraph (2) omit the words “who shall send one copy to the relevant planning authority”;
 - (g) in regulation 19(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 20 (availability of opinions, directions etc. for inspection) and 21(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.
- (29) 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(6) 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.
- (30) A request under paragraph (29) 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.
- (31) An authority making a request under paragraph (29) shall send to the Secretary of State any additional information he may request in writing to enable him to make a direction.”

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

18th October 2000

Nick Raynsford
Minister of State,
Department of the Environment, Transport and the Regions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in England and Wales, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1985, p.40), as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.1997, p.5) (“the Directives”), in relation to applications to mineral planning authorities to determine the conditions to which a planning permission is subject under—

- (a) Schedule 2 to the Planning and Compensation Act 1991 (“the 1991 Act”);
- (b) Schedules 13 and 14 to the Environment Act 1995 (“the 1995 Act”),

(“ROMP applications”). The Regulations make other provisions described in the third paragraph of this note.

These Regulations amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999/293) (“the 1999 Regulations”) which implemented the Directives in relation to town and country planning in England and Wales. The 1999 Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning Act 1990.

The main amendment to the 1999 Regulations is the insertion of a new regulation 26A (ROMP applications) by regulation 2(5) of these Regulations. Regulation 2(5) applies the provisions of the 1999 Regulations to ROMP applications as they apply to applications for planning permission, subject to the modifications and additions set out in regulation 2(5). Regulation 2(3) makes minor technical amendments to regulation 12 of the 1999 Regulations. Regulation 2(4) makes minor amendments to regulations 26-28 of the 1999 Regulations to reflect the application of Directive 97/11/EC to the European Economic Area by Decision No. 20/1999 of the European Economic Area Joint Committee.

1. The main differences in the application of the 1999 Regulations to ROMP applications as opposed to planning applications are:

- (a) the time period for writing to the mineral planning authority or the Secretary of State on receipt of a notice that an environmental statement is required is six weeks or such other period as may be agreed instead of three weeks (inserted regulation 26A(3) and (5));
- (b) a notice that an environmental statement or additional information is required must specify a period within which these are required and by which the applicant or appellant must have complied with the publicity provisions in regulation 14(5) of the 1999 Regulations. The period may be extended by agreement in writing (see inserted regulation 26A(16) and (17));
- (c) if the applicant or appellant does not comply with the time periods in (a) or (b), then minerals development shall be suspended until these provisions are complied with (see inserted regulation 26A(17) and (18)). The provisions in the 1999 Regulations providing for refusal of permission or that there is no duty to deal with the application on a failure by the applicant or appellant to comply with specified time periods do not apply to ROMP applications (see inserted regulation 26A(4));

2. Regulation 2(5) also applies the mineral planning provisions in the 1991 and 1995 Acts with certain amendments (see inserted regulations 26A(22)-(27)). In particular—

- (a) where a ROMP application is in respect of a mineral planning permission which authorises development which falls within Schedule 1 or Schedule 2 to the 1999 Regulations then the deemed consent provisions in the 1991 or 1995 Acts shall not operate to treat the authority as having determined the ROMP application unless a screening direction or screening opinion has been adopted or made to the effect that the development is not development falling within Schedule 1 to the 1999 Regulations or is not development falling within Schedule 2 to the 1999 Regulations which is likely to have significant effects on the environment (“EIA development”) (see inserted regulation 26A(22));
- (b) where a mineral planning authority have to determine a ROMP application which relates to a planning permission authorising EIA development which has yet to be carried out, they must give notice of their decision within 16 weeks or such extended period as is agreed (see inserted regulation 26A(24));

- (c) where paragraph 2(a) applies, the 1991 and 1995 Acts apply as if there were a right of appeal to the Secretary of State on the mineral planning authority failing to give their decision within 16 weeks or such extended period as it agreed (see inserted regulation 26A(26)).

The 1999 Regulations apply to ROMP applications by mineral planning authorities as they apply to ROMP applications referred to the Secretary of State, with the further modifications set out in inserted regulations 26A(28)-(31). These modifications are mainly to delete references to the relevant mineral planning authority.

Regulation 2(2) inserts definitions relating to ROMP applications into the 1999 Regulations. Regulation 2(2)(e) provides for references to the Secretary of State to be substituted for a reference to the National Assembly for Wales in the application of the 1999 Regulations to Wales.

A Regulatory Impact Appraisal has been prepared in relation to these Regulations. It has been placed in the library of each House of Parliament and copies may be obtained from PD2B Division, Department of the Environment, Transport and the Regions, Eland House, Bressenden Place, London SW1E 5DU (Telephone 020 7944 3883) or Planning Division, National Assembly for Wales, Cathays Park, Cardiff CF1 3NQ (Tel 029 2082 3888).

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