

2006 No. 3124

WATER RESOURCES, ENGLAND AND WALES

**The Water Resources (Environmental Impact Assessment)
(England and Wales) (Amendment) Regulations 2006**

<i>Made</i> - - - -	<i>21st November 2006</i>
<i>Laid before Parliament</i>	<i>28th November 2006</i>
<i>Coming into force</i> - -	<i>31st December 2006</i>

The Secretary of State has been designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) 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.

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by that section:

Citation and commencement Water Resources (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2

1. These Regulations may be cited as the 2006 and come into force on 31st December 2006.

Amendment to the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

2.—(1) The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003^(c) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of “consultation bodies”—

(i) at the end of paragraph (b), omit “and”;

(ii) at the end of paragraph (c), add “and”; and

(iii) after paragraph (c), add—

“(d) other bodies designated by statutory provision as having specific environmental responsibilities which the Agency or the appropriate Minister, as the case may be, considers likely to have an interest in the application;”;

(b) in the definition of “the EIA Directive”, after “97/11/EC”, insert “and Directive 2003/35/EC of the European Parliament and the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the

(a) The Secretary of State is so designated by virtue of S.I. 1988/785.
(b) 1972 c. 68.
(c) S.I. 2003/164.

environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC(a);”;

- (c) at the end of the definition of “EIA Directive”, omit “and”;
- (d) at the end of the definition of “relevant project”, insert “and”; and
- (e) after the definition of “relevant project” add—

““the restriction on abstraction” means the restriction imposed by section 24(1) of the 1991 Act(b).”.

(3) In regulation 3 (requirement for an environmental impact assessment), in paragraph (2)(b), for “the amounts abstracted exceed 20 cubic metres in any period of 24 hours”, substitute “the abstraction is one which does not fall within the exception provided in section 27(1)(c) of the 1991 Act in relation to the restriction on abstraction”.

(4) In regulation 6 (environmental statement, and opinions of the Agency on the contents of an environmental statement), in paragraph (5), for “regulation 4 of the Environmental Information Regulations 1992”, substitute “regulations 12(1) or 13(1) of the Environmental Information Regulations 2004(d)”.

(5) For regulation 7 (publicity for environmental statement) substitute—

“Publicity for environmental statement and related information

7.—(1) Where an environmental statement is provided in accordance with regulation 5 including where any further information is provided in accordance with regulation 6(7), the Agency shall publish, on its website and in at least one newspaper circulating in the locality of the relevant project, a notice—

- (a) stating—
 - (i) the applicant’s name;
 - (ii) that he has made an application to which these Regulations apply; and
 - (iii) that he has provided the Agency with an environmental statement in accordance with regulation 5 and, where it is the case, that he has provided further information in accordance with regulation 6(7);
- (b) stating a place and times where, during a period of twenty-eight days beginning on the date on which the notice is published, copies of the application, the environmental statement, any information provided to EA in response to its consultation under regulation 6(2), and any further information provided in accordance with regulation 6(7) may be inspected, and that such inspection is free of charge;
- (c) specifying an address from which copies of the application, the environmental statement, any information provided to EA in response to its consultation under regulation 6(2), and any further information provided in accordance with regulation 6(7) may be obtained from the Agency and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge;
- (d) specifying the other arrangements, if any, that have been made by the Agency for informing the public of the application and for consulting them in relation to it; and
- (e) stating that any person wishing to make representations in relation to the application should make them in writing addressed to the Agency at an address

(a) OJ No L 156, 25.6.2003, p.17.

(b) The Water Resources Act 1991 (c.57). Section 24(1) was amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996 (S.I. 1996/593), regulation 3 and Schedule 2, paragraph 8, and the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 128.

(c) Section 27(1) was substituted by the Water Act 2003 (c. 37), section 6(1).

(d) S.I. 2004/3391.

specified in the notice within a period of twenty-eight days beginning on the date on which the notice is published in accordance with this paragraph.

(2) The Agency shall make available to the public as indicated in paragraphs (1)(b) and (c)—

- (a) the application and the environmental statement provided in accordance with regulation 5; and
- (b) any information provided to EA in response to its consultation under regulation 6(2), or any further information provided in accordance with regulation 6(7), which was in the possession of the Agency on the date on which the notice was published in accordance with paragraph (1).

(3) In relation to information which is relevant to the determination under regulation 8 and which becomes available to the Agency, whether as a result of a request by the Agency or otherwise, after the date on which the notice was published in accordance with paragraph (1), the Agency shall, on its website—

- (a) state a place and times where, during a period of twenty-eight days beginning on the day fourteen days after which the information becomes available to the Agency, a copy of the information may be inspected, and that inspection is free of charge; and
- (b) specify an address from which a copy of the information may be obtained from the Agency and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge.

(4) Not later than the date on which the notice in paragraph (1) is published, the Agency shall send a copy of it and the environmental statement and any further information provided in accordance with regulation 6(7), to—

- (a) the consultation bodies,
- (b) the appropriate Minister, and
- (c) such other persons as the appropriate Minister may direct,

under cover of a letter stating that any representations in relation to the application should be made in writing to the Agency within a period of twenty-eight days beginning on the date of the letter.

(5) A notice of an environmental statement under paragraph (1) may be combined with any notice required under any other enactment for the purpose of publicising the application in question.”.

(6) In regulation 8 (determination of application and notice of determination), for paragraph (3), substitute—

“(3) Within twenty-eight days of the decision on the application, the Agency shall publish on its website and in the newspaper or newspapers in which the notice was published under regulation 7 a notice stating that the Agency has granted or refused the application and stating a place and times where any person may inspect—

- (a) any relevant authorisation or variation;
- (b) a document containing the relevant decision and the main reasons and considerations on which it is based, and information about the public participation process that has taken place;
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project; and
- (d) information regarding any right to challenge the validity of the decision and the procedures for doing so.”.

(7) In regulation 11 (appeals in relation to consents), in paragraph (4), for “regulation 7(1)(d)”, substitute “regulation 7(1)(e)”.

(8) In regulation 15 (modifications where regulation 14 applies)—

(a) after paragraph (4) insert—

“(4A) Where a notice is published in accordance with section 52(4)(a) of the 1991 Act in respect of proposals in relation to which this regulation applies, the notice shall specify any other arrangements that have been made for informing the public of the proposals and for consulting them in relation to them.”; and

(b) in paragraph (8)—

(i) in sub-paragraph (b), for “; and where necessary” substitute “, and information about the public participation process that has taken place;”;

(ii) in sub-paragraph (c), at the beginning, insert “where necessary,” and at the end insert “; and”; and

(iii) after sub-paragraph (c) add—

“(d) information regarding any right to challenge the validity of the decision and the procedures for doing so.”.

(9) In regulation 16 (Register of environmental statements and further information), for sub-paragraphs (a) and (b) substitute—

“(a) any determination under regulation 4 or 14;

(b) any environmental statement or further information furnished under regulation 6;

(c) any documents, other than the environmental statement prepared in accordance with regulations 5 and 6, which have been provided to the Agency and are relevant to the determination under regulation 14; and

(d) any further information which is relevant to the determination under regulation 14 and which becomes available to the Agency after the time that the public was given notice in accordance with section 52(4) of the 1991 Act.”.

Ian Pearson

Minister of State

Department for Environment, Food and Rural Affairs

21st November 2006

(a) Section 52(4) was amended by the Water Act 2003 (c.37), section 22(1) and (3).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (S.I. 2003/164) (“the principal Regulations”), which extend to England and Wales.

These Regulations implement the amendments to Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No L175, 5.7.1985, p.40) made by Article 3 of Directive 2003/35/EC of the European Parliament and the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ No L156, 25.6.2003, p.17). The principal Regulations implement Council Directive 85/337/EEC in relation to water management projects for agriculture in England and Wales. Water-management projects for agriculture are projects listed in Annex II to Council Directive 85/337/EC as projects to be made subject to an assessment where Member States consider that their characteristics so require: see Article 5 of that Directive.

Regulation 2(3) amends regulation 3 of the principal Regulations so as to provide that projects involving abstraction of water will only fall within the scope of the Regulations where the abstraction is one which requires a licence under the Water Resources Act 1991 (c. 57). This is currently where the amount abstracted in any 24 hours in aggregate exceeds 20 cubic metres.

Notices publicising an environmental statement and further information must be published by the Environment Agency on its website. Publication in the London Gazette is no longer required. The notice must specify any other arrangements that have been made for informing the public of an application under the principal Regulations; and the Environment Agency must also make available to the public other information which only becomes available to it after it has published the notice (regulation 2(5), which substitutes a new regulation 7 into the principal Regulations).

The Environment Agency is required to publish, with a notice of its decision on the application, information regarding the public participation process that has taken place, any right to challenge the decision and the procedures for doing so (regulation 2(6)).

A full Regulatory Impact Assessment and a Transposition Note have been prepared in connection with the amendments made by these Regulations and placed in the library of each House of Parliament. Copies can be obtained from the Water Supply and Regulation Division, Department for Environment, Food and Rural Affairs, 55 Whitehall, c/o 3-8 Whitehall Place, London SW1A 2HH.

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