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STATUTORY INSTRUMENTS

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**2009 No. 2263**

**INFRASTRUCTURE PLANNING**

**The Infrastructure Planning (Environmental  
Impact Assessment) Regulations 2009**

<i>Made</i>	- - - -	<i>1st September 2009</i>
<i>Laid before Parliament</i>		<i>8th September 2009</i>
<i>Coming into force</i>	- -	<i>1st October 2009</i>

The Secretary of State for Communities and Local Government being a designated <sup>M1</sup> Minister for the purposes of section 2(2) of the European Communities Act 1972 <sup>M2</sup> in relation to the environment, in exercise of the powers conferred by that section makes the following Regulations:

**Marginal Citations**

- M1** The Secretary of State is so designated by [S.I. 2008/301](#).  
**M2** [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 \(c.51\)](#).

**Citation and commencement**

1. These Regulations may be cited as the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and shall come into force on 1st October 2009.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Planning Act 2008 <sup>M3</sup>;

“any other information” means any other substantive information relating to the environmental statement or updated environmental statement and provided by the applicant;

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

“applicant” means—

- (a) an applicant for an order granting development consent or a person who proposes to apply for such an order: or

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(b) an applicant for subsequent consent or a person who proposes to make a subsequent application;

“associated development” means development for which development consent may be granted in accordance with section 115 (development for which development consent may be granted);

“the consultation bodies” means—

- (a) a body prescribed under section 42(a) (duty to consult) and listed in column 1 of the table set out at Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>M4</sup> where the circumstances set out in column 2 are satisfied in respect of that body;
- (b) each authority that is within section 43 (local authorities for purposes of section 42(b)); and
- (c) if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority;

“the Directive” means Council Directive [85/337/EEC](#)<sup>M5</sup>;

“EIA development” means development which is either—

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

“environmental information” means the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development and of any associated development;

“environmental statement” means a statement—

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

“exempt development” means development in respect of which the Secretary of State has made a direction under regulation 5(5);

“further information” means additional information which in the view of the Commission, the Examining authority, the Secretary of State or the relevant authority is required to be included in a statement in order for it to be an environmental statement or an updated environmental statement;

“preliminary environmental information” means information referred to in Part 1 of Schedule 4 which—

- (a) has been compiled by the applicant; and
- (b) is reasonably required to assess the environmental effects of the development (and of any associated development);

“register” means a register kept pursuant to section 39 (register of applications);

“relevant authority” means the body to which it falls to determine a subsequent application;

“relevant local planning authority” has the meaning given in section 173;

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

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Schedule 2;

“scoping opinion” means a written statement—

- (a) by the Commission as to the information to be provided in an environmental statement; or
- (b) by the relevant authority as to the supplementary information to be provided in an updated environmental statement;

“screening direction” means a direction made by the Secretary of State as to whether development (including any associated development) is EIA development;

“screening opinion” means a written statement of the opinion of the Commission or the Examining authority as to whether development (including any associated development) is EIA development;

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

- (a) the application is made in pursuance of a requirement imposed by an order granting development consent; and
- (b) the approval must be obtained before all or part of the development permitted by the consent may be begun;

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

“subsequent screening opinion” means a written statement of a relevant authority as to whether supplementary information is required to enable it to determine a subsequent application;

“supplementary information” means information reasonably required to assess the environmental effects of a development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile;

“updated environmental statement” means the environmental statement submitted as part of an application for an order granting development consent, updated to include any supplementary information.

(2) Any reference in these Regulations to a section is a reference to a section of the Act.

(3) Expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(4) Expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive with the exception of the expression “the Commission<sup>M6</sup>”.

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

#### Marginal Citations

**M3** 2008 c. 29.

**M4** S.I. 2009/2264.

**M5** O.J. No. L 175, 5.7.1985, p.40. Council Directive 85/337/EEC was amended by Council Directive 97/11/EC, O.J. No. L 73, 14.3.1997, p.5 and by Directive 2003/35/EC of the European Parliament and of the Council, O.J. No. L 156, 25.6.2003, p.17.

**M6** The Commission is defined for the purposes of the Act in section 235.

**Prohibition on granting consent without consideration of environmental information**

3.—(1) This regulation applies to—

- (a) every application for an order granting development consent for EIA development received by the Commission; and
- (b) every subsequent application for EIA development received by a relevant authority

on or after 1st March 2010.

(2) Where this regulation applies, by virtue of paragraph (1)(a), the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.

(3) Where this regulation applies, by virtue of paragraph (1)(b) a relevant authority must not grant subsequent consent unless either—

- (a) it has first taken the environmental information into consideration; or
- (b) it has given a subsequent screening opinion to the effect that an updated environmental statement is not required to enable it to determine the application; and

and in either case it must state in its decision that it has done so.

**When development is EIA development: general cases**

4.—(1) The occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that development is EIA development.

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

- (a) a person notifying the Commission in writing under regulation 6(1)(b) that that person proposes to provide an environmental statement in respect of proposed development; or
- (b) the adoption by the Commission or an Examining authority of a screening opinion to the effect that the development is EIA development; or
- (c) the making of a direction by the Secretary of State pursuant to regulation 5.

**When development is EIA development: directions by the Secretary of State**

5.—(1) A direction of the Secretary of State shall determine for the purpose of these Regulations whether development is or is not EIA development but may only be given if—

- (a) the Commission has accepted an application for an order granting development consent in respect of that development; and
- (b) either paragraph (3) or paragraph (4) applies.

(2) The Secretary of State may give a direction under paragraph (1)—

- (a) at any time until the decision-maker makes an order granting development consent, or as the case may be, grants a subsequent consent; and
- (b) irrespective of whether the Secretary of State has received a request to do so.

(3) This paragraph applies if—

- (a) the proposed development has not been the subject of a screening opinion; and
- (b) the application was not accompanied by a statement referred to by the applicant as an environmental statement for the purpose of these Regulations.

(4) This paragraph applies if—

- (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and

- (b) the Secretary of State considers that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.
- (5) The Secretary of State may direct that these Regulations shall not apply to a particular proposed development specified in the direction either—
  - (a) in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive), or
  - (b) if the development comprises or forms part of a project serving national defence purposes and in the opinion of the Secretary of State compliance with these Regulations would have an adverse effect on those purposes.
- (6) Where a direction is given under paragraph (5)(a) the Secretary of State must—
  - (a) make available to the public the information considered in making the direction and the reasons for making the direction;
  - (b) consider whether another form of assessment would be appropriate; and
  - (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.
- (7) The Secretary of State must send a copy of—
  - (a) any screening direction; and
  - (b) any direction given under paragraph (5),to the Commission and, if the Examining authority has been dealing with the application, to the Examining authority.

#### **Procedure for establishing whether environmental impact assessment is required**

- 6.—(1) A person who proposes to make an application for an order granting development consent must, before carrying out consultation under section 42 (duty to consult) either—
- (a) request the Commission to adopt a screening opinion in respect of the development to which the application relates; or
  - (b) notify the Commission in writing that the person proposes to provide an environmental statement in respect of that development.
- (2) A person who proposes to make a subsequent application must, before submitting that application—
- (a) request the relevant authority to adopt a subsequent screening opinion in respect of the proposed development; or
  - (b) notify the relevant authority in writing that the person proposes to provide an updated environmental statement in respect of the proposed development.
- (3) A request or notification under paragraph (1) must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) a brief description of the nature and purpose of the development and of its possible effects on the environment;
  - (c) such other information or representations as the person making the request may wish to provide or make.
- (4) A request or notification under paragraph (2) must be accompanied by—
- (a) the reference number applied by the Commission to the application for an order granting development consent in respect of which the applicant proposes to make a subsequent application; and

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(b) such other information or representations as the person making the request may wish to provide or make.

(5) Where—

(a) the Commission or the relevant authority has received a request under paragraph (1)(a); or

(b) the relevant authority has received a request under paragraph(2)(a),

the Commission, or, as the case may be, the relevant authority, must, if it considers that it has not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which it requires additional information.

(6) The Commission or the relevant authority must adopt a screening opinion or a subsequent screening opinion within 21 days beginning with the date of receipt of a request made pursuant to paragraph (1) or (2), or where the Commission or, as the case may be, the relevant authority has notified the person making the request that it requires additional information, within 21 days of receiving that information.

(7) Where the Commission or the Examining authority adopts a screening opinion, or the Secretary of State makes a screening direction under regulation 5, to the effect that development is EIA development, the Commission, the Examining authority or the Secretary of State, as the case may be, must—

(a) issue with the opinion or direction a written statement giving clearly and precisely the full reasons for that conclusion;

(b) send a copy of the opinion or direction and a copy of the written statement required by sub-paragraph (a) to the applicant; and

(c) where the Commission or the Examining authority adopts the opinion, send a copy of the opinion and a copy of the written statement to the Secretary of State.

(8) Where the relevant authority adopts a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application it must—

(a) issue with the opinion a written statement giving clearly and precisely the full reasons for that conclusion;

(b) send a copy of the opinion and a copy of the written statement required by paragraph (a) to the applicant and to the Secretary of State;

### **Considerations for screening decisions**

7.—(1) Where the Commission, the Secretary of State, or the Examining authority has to decide under these Regulations whether Schedule 2 development is EIA development the Commission, the Secretary of State, or the Examining authority must take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.

(2) Where a relevant authority has to decide under these Regulations whether supplementary information is required to enable it to determine a subsequent application it must take into account in making that decision—

(a) such of the selection criteria set out in Schedule 3 as are relevant to the development;

(b) whether information that was available to the decision-maker when it decided to grant development consent for the development has changed since it made that decision;

(c) whether new information on the likely environmental effects of the development has become available since the decision-maker decided to grant development consent; and

- (d) whether the new information referred to in paragraphs (b) and (c) is material to the decision as to whether the proposed development is likely to have significant effects on the environment, or as to the particular nature or extent of those effects.

### **Application for a scoping opinion**

**8.—(1)** A person who proposes to make an application for an order granting development consent may ask the Commission to state in writing its opinion as to the information to be provided in the environmental statement.

(2) A person who proposes to make a subsequent application may ask the relevant authority to state in writing its opinion as to the supplementary information to be provided in the updated environmental statement.

(3) A request under paragraph (1) must include—

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

(4) A request under paragraph (2) must include—

- (a) the reference number of the order granting development consent in respect of which the applicant proposes to make a subsequent application; and
- (b) such other information or representations as the person making the request may wish to provide or make.

(5) When the Commission or the relevant authority, as the case may be, has received a request for a scoping opinion under paragraph (1) or (2) it must, if it considers that it has not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which it requires additional information.

(6) The Commission or the relevant authority must not adopt a scoping opinion in response to a request under paragraph (1) or (2) until it has consulted the person who made the request, and the consultation bodies, but must, subject to paragraph (7), within 42 days beginning with the date of receipt of that request, or where it has notified the person making the request that it requires additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

(7) Where a person has, at the same time as making a request for a screening opinion under regulation 6(1), asked the Commission for an opinion under paragraph (1) above, and the Commission has adopted a screening opinion to the effect that the development is EIA development, the Commission must within 42 days beginning with the date on which that screening opinion was adopted or, where it has notified the person making the request that it requires additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

(8) Where a person has, at the same time as making a request for a subsequent screening opinion under regulation 6(2), asked the relevant authority for an opinion under paragraph (2) above, and the relevant authority has adopted a subsequent screening opinion to the effect that an updated environmental statement is required to enable it to determine a subsequent application, the relevant authority must within 42 days beginning with the date on which the subsequent screening opinion was adopted or, where it has notified the person making the request that it requires additional information in order to adopt an opinion, within 42 days of receiving that information, adopt a scoping opinion and send a copy to the person who made the request.

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(9) Before adopting a scoping opinion the Commission or the relevant authority must take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned;
- (c) the environmental features likely to be affected by the development; and
- (d) in the case of a subsequent application, the environmental statement submitted with the original application.

(10) When the Commission or the relevant authority has adopted a scoping opinion in response to a request under paragraph (1) or (2) it shall not be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement or an updated environmental statement in connection with an application for an order granting development consent or a subsequent application for the same development as was referred to in the request.

(11) If a consultation body does not within 28 days of being consulted under paragraph (6) respond stating—

- (a) the information it considers should be provided in the environmental statement or the updated environmental statement; or
- (b) that it does not have any comments,

the Commission or the relevant authority is entitled to assume that the consultation body in question does not have any comments on the information to be provided in the environmental statement or the updated environmental statement.

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

9.—(1) Where paragraph (2) applies, the Commission or the relevant authority must—

- (a) notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on the consultation bodies by paragraph (3) to make information available to that person;
- (b) inform the applicant in writing of the names and addresses of the bodies so notified; and
- (c) notify the applicant in writing of any particular person whom it considers—
  - (i) to be, or to be likely to be affected, by or to have an interest in the proposed development; and
  - (ii) to be unlikely to become aware of the proposed development by means of the measures taken in compliance with Part 5 of the Act.

(2) This paragraph applies if—

- (a) a person has notified the Commission or the relevant authority under regulation 6(1)(b) or 6(2)(b); or
- (b) either—
  - (i) in the case of an application for an order granting development consent, the Commission or the Secretary of State has given a screening opinion or screening direction to the effect that the proposed development is EIA development; or
  - (ii) in the case of a subsequent application, the relevant authority has given a subsequent screening opinion to the effect that supplementary information is required to enable it to determine the application.

(3) Subject to paragraph (4), the Commission, the relevant authority and any body notified in accordance with paragraph (1), other than a person notified in accordance with paragraph (1)



(c), must, if so requested by the applicant, enter into consultation with that person to determine whether the Commission, the relevant authority or body, as the case may be, has in its possession any information which is considered relevant to the preparation of the environmental statement or the updated environmental statement; and, if that is the case, the Commission, or the relevant authority or body must make that information available to the applicant.

(4) Paragraph (3) shall not require the disclosure of information which is excepted from the duty to disclose environmental information under the Environmental Information Regulations 2004<sup>M7</sup> or regulation 10(5) (as read with regulation 10(6)) of the Environmental Information (Scotland) Regulations 2004<sup>M8</sup>.

(5) A reasonable charge reflecting the cost of making the relevant information available may be made by the Commission, relevant authority or body making information available in accordance with paragraph (3).

#### Marginal Citations

M7 S.I. 2004/3391.

M8 S.S.I. 2004/520.

### Consultation statement requirements

10. The consultation statement prepared under section 47 (duty to consult local community) must set out —

- (a) whether the development for which the applicant proposes to make an application for an order granting development consent is EIA development; and
- (b) if that development is EIA development, how the applicant intends to publicise and consult on the preliminary environmental information.

### Pre-application publicity under section 48 (duty to publicise)

11. Where the proposed application for an order granting development consent is an application for EIA development, the applicant must, at the same time as publishing notice of the proposed application under section 48(1), send a copy of that notice to the consultation bodies and to any person notified to the applicant in accordance with regulation 9(1)(c).

### Obligations of Commission on receipt of application

12.—(1) Where—

- (a) an application has been made for an order granting development consent that is EIA development but is not accompanied by an environmental statement; and
- (b) either paragraph (3) or (4) applies,

paragraphs (5), (6) and (7) of regulation 6 shall apply as if the receipt of the application were a request made under regulation 6(1)(a).

(2) Where pursuant to paragraph (1), the Commission has adopted a screening opinion to the effect that proposed development is EIA development and complies with regulation 6(7)(a) and (b), the Commission must suspend consideration of the application until the applicant has provided an environmental statement.

(3) This paragraph applies if—

- (a) the proposed development has not been the subject of a screening opinion; and

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- (b) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purpose of these Regulations.
- (4) This paragraph applies if—
  - (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and
  - (b) the Commission is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.
- (5) Where paragraph (6) applies, the Commission must—
  - (a) issue a written statement giving clearly and precisely the full reasons for its conclusion;
  - (b) send a copy of that written statement to the applicant; and
  - (c) suspend consideration of the application until the applicant has provided further information.
- (6) This paragraph applies if—
  - (a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and
  - (b) the Commission is of the view that the statement should contain further information in order to be an environmental statement.
- (7) Regulations 8 (application for scoping opinion) and 9 (procedure to facilitate preparation of environmental statements) apply to an application for an order granting development consent for EIA development which has been suspended under paragraph (2) as if, in regulation 8(1), “A person who proposes to make an application” there were substituted “ An applicant ”.

#### **Accepted application - publicity and consultation for EIA development**

- 13.**—(1) This regulation applies where an application for an order for development consent is accepted by the Commission.
- (2) Where this regulation applies, the applicant must at the same time as it gives the notice required to be given under section 56 (notifying persons of accepted application)—
- (a) send a copy of that notice to any person notified to the applicant under regulation 9(1) (c); and
  - (b) send to the consultation bodies—
    - (i) a copy of the accepted application and a map showing where the proposed development is to be sited; and
    - (ii) a copy of the environmental statement.

#### **Certifying compliance with regulation 13**

- 14.**—(1) Where regulation 13 applies, the applicant must send to the Commission a certificate of compliance with that regulation—
- (a) in the form set out in certificate 1 in Schedule 5; and
  - (b) at the same time as complying with regulation 10 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- (2) If any person issues a certificate which purports to certify compliance with the requirements of regulation 13 and which contains a statement which that person knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to do so and which contains

a statement which is false or misleading in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Effect of failure to comply with regulation 13**

15.—(1) Where—

- (a) an Examining authority or the Secretary of State is examining an application for an order granting development consent; and
- (b) the applicant has not complied with regulation 13,

the Examining authority or the Secretary of State must suspend consideration of the application until the applicant has certified to the Examining authority or the Secretary of State that the requirements of regulation 13 have been complied with, in the form set out in certificate 1 in Schedule 5.

### **Accepted application - effect of screening opinion not taking account of all relevant information**

16.—(1) Where—

- (a) an Examining authority or the Secretary of State is examining an application for an order granting development consent; and
- (b) paragraph (2) applies,

the Examining authority or the Secretary of State must comply with the requirements in paragraph (3).

(2) This paragraph applies if—

- (a) the proposed development has been the subject of a screening opinion to the effect that it is not EIA development; and
- (b) the Examining authority or the Secretary of State is of the view that the screening opinion did not take into account information that is material to the decision as to whether the proposed development is EIA development.

(3) The requirements mentioned in paragraph (1) are that—

- (a) the Examining authority or the Secretary of State must suspend examination of the application until it has adopted a further screening opinion or direction;
- (b) if the Examining authority or the Secretary of State considers that there is insufficient information with which to adopt an opinion or direction, the Examining authority or the Secretary of State must request the applicant to provide additional information;
- (c) the Examining authority or Secretary of State must adopt an opinion or direction provided there is sufficient information with which to do so.

(4) Where pursuant to paragraph (3), the Examining authority or the Secretary of State adopts a screening opinion or direction to the effect that the proposed development is EIA development the Examining authority or the Secretary of State must—

- (a) issue with the opinion or direction a written statement giving clearly and precisely the full reasons for that conclusion and requesting the provision of an environmental statement;
- (b) send to the applicant a copy of the opinion or direction and a copy of the written statement mentioned in sub-paragraph (a);
- (c) where the Examining authority adopts the opinion, send a copy of the opinion and a copy of the written statement to the Secretary of State; and
- (d) suspend examination of the application until the requirements of paragraph (5) are satisfied.

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- (5) The requirements mentioned in paragraph (4)(d) are that the applicant must—
- (a) provide the Examining authority or the Secretary of State with a copy of the environmental statement;
  - (b) publish a notice (in accordance with paragraph (c)) which sets out the following information—
    - (i) the name and address of the applicant;
    - (ii) that the applicant has made an application to the Commission for an order granting development consent for EIA development;
    - (iii) that the Commission has accepted the application and the reference number of the application;
    - (iv) that examination by the Examining authority or the Secretary of State has been suspended until an environmental statement has been provided and publicised;
    - (v) a summary of the main proposals, specifying the location or route of the proposed development;
    - (vi) that the environmental statement are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
    - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the date referred to in sub-paragraph (b)(x));
    - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
    - (ix) details of how to respond to the publicity;
    - (x) a deadline for receipt of responses being not less than 28 days following the date on which the notice is last published;
  - (c) publish the notice—
    - (i) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the development is situated;
    - (ii) once in a national newspaper;
    - (iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and
    - (iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal;
  - (d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
  - (e) where the proposed development consists of, or includes, a linear scheme exceeding five kilometres in length, display the notice at intervals of not more than five kilometres along the whole proposed route of the works, except where this is impracticable due to the land being covered in water;
  - (f) serve on any person of whom the applicant has been notified under regulation 9(1)(c) a notice containing the information specified in sub-paragraph (b), except that the date specified as the latest date on which the documents will be available for inspection must not be less than 28 days later than the date on which the notice is first served;
  - (g) send to the consultation bodies a copy of the environmental statement and a notice setting out the information specified in sub-paragraph (b)(i) to (v);
  - (h) inform those bodies—

- (i) how and to whom they may make representations;
  - (ii) of the deadline for making representations which must be not less than 28 days later than the last date on which the additional information was sent in accordance with sub-paragraph (g);
  - (i) certify to the Examining authority or the Secretary of State in the form set out in certificate 2 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (h).
- (6) Regulation 9 (procedure to facilitate preparation of environmental statements) applies to an application for an order granting development consent for EIA development that has been suspended under paragraph (4), subject to the following modifications—
- (a) in paragraphs (1), (3) and (5) of regulation 9, for “the Commission”, in each place, substitute “ the Examining authority, the Secretary of State ”;
  - (b) in regulation 9(2)—
    - (i) sub-paragraph (a) shall not apply;
    - (ii) in sub-paragraph (b) for “the Commission” substitute “ the Examining authority ”.
- (7) If any person issues a certificate under paragraph (5)(i) which purports to certify compliance with the requirements of paragraph (5)(b) to (h), and which contains a statement which that person knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to do so and which contains a statement which is false or misleading in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Accepted application - effect of environmental statement being inadequate**

17.—(1) Where an Examining authority or the Secretary of State is examining an application for an order granting development consent; and paragraph (2) applies, the Examining authority or the Secretary of State must—

- (a) issue a written statement giving clearly and precisely the full reasons for its conclusion;
- (b) send a copy of that written statement to the applicant; and
- (c) suspend consideration of the application until the applicant has provided further information.

the Examining authority or the Secretary of State must suspend consideration of the application until the requirements of paragraph (3) are satisfied.

- (2) This paragraph applies if—
  - (a) the applicant has submitted a statement that the applicant refers to as an environmental statement; and
  - (b) the Examining authority or the Secretary of State is of the view that the statement should contain further information.
- (3) The requirements mentioned in paragraph (1) are that the applicant must—
  - (a) provide the Examining authority or the Secretary of State (as the case may be) with the further information;
  - (b) publish a notice (in accordance with paragraph (c)) which sets out the following information—
    - (i) the name and address of the applicant;
    - (ii) that the applicant has made an application to the Commission for an order granting development consent for EIA development;

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- (iii) that the Commission has accepted the application and the reference number of the application;
  - (iv) that examination by the Examining authority or the Secretary of State has been suspended until additional information required for the environmental statement has been provided and publicised;
  - (v) a summary of the main proposals, specifying the location or route of the proposed development;
  - (vi) that the environmental statement and the additional information are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
  - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the date referred to in sub-paragraph (b)(x));
  - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
  - (ix) details of how to respond to the publicity;
  - (x) a deadline for receipt of responses being not less than 28 days following the date on which the notice is last published.
- (c) publish the notice—
- (i) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the development is situated;
  - (ii) once in a national newspaper;
  - (iii) once in the London Gazette and if land in Scotland is affected, the Edinburgh Gazette; and
  - (iv) in the case of offshore development, once in Lloyds List and once in an appropriate fishing trade journal;
- (d) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
- (e) where the proposed development consists of, or includes, a linear scheme exceeding five kilometres in length, display the notice at intervals of not more than five kilometres along the whole proposed route of the works, except where this is impracticable due to the land being covered in water;
- (f) serve on any person of whom the applicant has been notified under regulation 9(1)(c) a notice containing the information specified in sub-paragraph (b), except that the date specified as the latest date on which the documents will be available for inspection must not be less than 28 days later than the date on which the notice is first served;
- (g) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v);
- (h) inform those bodies—
- (i) how and to whom they may make representations;
  - (ii) of the deadline for making representations which must be not less than 28 days later than the last date on which the additional information was sent in accordance with sub-paragraph (g); and
- (i) certify to the Examining authority or the Secretary of State in the form set out in certificate 3 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (h).

(4) If any person issues a certificate under paragraph (3)(i) which purports to certify compliance with the requirements of paragraph (3)(b) to (h), and which contains a statement which that person knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to do so and which contains a statement which is false or misleading in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Subsequent application for EIA development**

- 18.**—(1) This regulation applies in relation to a subsequent application if either—
- (a) the applicant has notified the relevant authority under regulation 6(2)(b); or
  - (b) the relevant authority has given a screening opinion to the effect that supplementary information is required to enable it to determine a subsequent application.
- (2) Where this regulation applies, the applicant must—
- (a) submit an updated environmental statement with the subsequent application;
  - (b) comply with the requirements of paragraph (3); and
  - (c) certify to the relevant authority in the form set out in certificate 4 in Schedule 5 that the applicant has complied with the requirements of paragraph (3).
- (3) The requirements mentioned in paragraph (2)(b) are that the applicant must—
- (a) publish a notice of the subsequent application (in accordance with paragraph (b)) which sets out the following information—
    - (i) the name and address of the applicant;
    - (ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent;
    - (iii) the reference number of the order granting development consent;
    - (iv) that the order granting development consent is for EIA development;
    - (v) a summary of the main proposals, specifying the location or route of the proposed development;
    - (vi) that the updated environmental statement and supporting documents are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
    - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the date referred to in sub-paragraph (x));
    - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
    - (ix) details of how to respond to the publicity; and
    - (x) a deadline for receipt of responses being not less than 28 days following the date when the notice is last published;
  - (b) publish the notice—
    - (i) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the development is situated;
    - (ii) once in a national newspaper;
    - (iii) once in the London Gazette and if land in Scotland is affected the Edinburgh Gazette;and

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- (iv) in the case of offshore development, once in Lloyds List; and once in an appropriate fishing trade journal;
- (c) display the notice at, or as close as reasonably practicable to, the site of the proposed development at a place accessible to the public;
- (d) where the proposed development consists of, or includes, a linear scheme exceeding five kilometres in length, display the notice at intervals of not more than five kilometres along the whole proposed route of the works, except where this is impracticable due to the land being covered in water;
- (e) where a person has been notified to the applicant under regulation 9(1)(c), serve on that person a copy of that notice, as the same time as the notice is published;
- (f) send to the consultation bodies—
  - (i) a notice setting out the details listed at sub-paragraph (a)(i) to (v);
  - (ii) details of how to respond to the consultation;
  - (iii) a deadline for receipt of responses being not less than 28 days following the date when the body receives the notice;
  - (iv) a map showing where the proposed development is to be sited; and
  - (v) a copy of the updated environmental statement and of any supporting documents.

(4) If any person issues a certificate which purports to certify compliance with the requirements of paragraph (3) and which contains a statement which that person knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to do so and which contains a statement which is false or misleading in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Subsequent application not complying with EIA requirements**

19.—(1) Where—

- (a) a relevant authority is dealing with a subsequent application;
- (b) the proposed development has not been the subject of a subsequent screening opinion; and
- (c) the application is not accompanied by a statement referred to by the applicant as an updated environmental statement for the purpose of these Regulations,

the provisions of regulation 6(5) to (8) shall apply as if the making of the application were a request made pursuant to regulation 6(2)(a).

(2) Where—

- (a) a relevant authority is dealing with a subsequent application;
- (b) regulations 16 or 17 apply; and
- (c) the applicant has not complied with regulation 18(2),

the relevant authority must request the provision of an updated environmental statement and suspend consideration of the application until the applicant has submitted an updated environmental statement and has certified to the relevant authority in the form set out in certificate 4 in Schedule 5 that the applicant has complied with regulation 18(3).

(3) Where, pursuant to paragraph (1), the relevant authority has adopted a subsequent screening opinion to the effect that supplementary information is required to enable it to determine the application, the relevant authority must—

- (a) issue with the opinion a written statement giving clearly and precisely the full reasons for that conclusion;



- (b) send a copy of the opinion and a copy of the written statement required by sub-paragraph (a) to the applicant; and
  - (c) suspend consideration of the application until the applicant has provided an updated environmental statement and has certified to the relevant authority in the form set out at Schedule 5 to these Regulations that the applicant has complied with the requirements of regulation 18(3).
- (4) Where—
- (a) the relevant authority is dealing with a subsequent application;
  - (b) the applicant has submitted a statement which the applicant refers to as an updated environmental statement for the purpose of these Regulations; and
  - (c) the relevant authority is of the opinion that the statement should contain further information,

the relevant authority must suspend consideration of the application until the requirements of paragraph (5) are satisfied.

- (5) The requirements mentioned in paragraph (4) are that the applicant must—
- (a) provide the relevant authority with the further information;
  - (b) publish (in accordance with sub-paragraph (c)) a notice which sets out the following information—
    - (i) the name and address of the applicant;
    - (ii) that the applicant is making an application for approval of a matter in pursuance of a requirement imposed by an order granting development consent for EIA development;
    - (iii) the reference number of the order granting development consent;
    - (iv) a summary of the main proposals, specifying the location or route of the proposed development;
    - (v) that consideration of the application has been suspended until additional information required for the updated environmental statement has been provided and publicised;
    - (vi) that the additional information, the updated environmental statement and supporting documents are available for inspection free of charge at the places (including at least one address in the vicinity of the proposed development) and times set out in the notice;
    - (vii) the latest date on which those documents will be available for inspection (being a date not earlier than the date referred to in sub-paragraph (x) below);
    - (viii) whether a charge will be made for copies of any of those documents and the amount of any charge;
    - (ix) details of how to respond to the publicity; and
    - (x) a deadline for receipt of responses being not less than 28 days following the date when the notice is last published;
  - (c) publish, post and serve the notice in the same manner as prescribed in regulation 17(3) (c) to (e);
  - (d) serve on any person of whom the applicant has been notified under regulation 9(1)(c) a notice containing the information specified in sub-paragraph (b), except that the date specified as the latest date on which the documents will be available for inspection must not be less than 28 days later than the date on which the notice is first served;

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- (e) send to the consultation bodies the further information and a notice setting out the information specified in sub-paragraph (b)(i) to (v);
- (f) inform those bodies—
  - (i) how and to whom they may make representations;
  - (ii) of the deadline for making representations which must be not less than 28 days later than the last date on which the further information was sent in accordance with sub-paragraph (e); and
- (g) certify to the relevant authority in the form set out in certificate 5 in Schedule 5 that the applicant has complied with the requirements of sub-paragraphs (b) to (f).

(6) If any person issues a certificate which purports to certify compliance with the requirements of paragraph (5) and which contains a statement which that person knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to do so and which contains a statement which is false or misleading in a material particular, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**20.** An applicant who, submits in connection with an application, submits a statement which the applicant refers to as an environmental statement or an updated environmental statement must ensure that a reasonable number of copies of the statement are available at the address set out in the notices published or posted pursuant to these Regulations as the address at which copies may be obtained.

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

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

#### **Availability of directions etc and notification of decisions**

**22.—(1)** Where particulars of an application for an order granting development consent are placed on the register, the Commission must take steps to secure that there is also placed on the register a copy of any relevant—

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) statement given under regulation 12(5), 16(4) or 17(1);
- (e) direction under regulation 5(5);
- (f) environmental statement, including any further information and any other information;
- (g) statement of reasons accompanying any of the above.

(2) Where a relevant authority receives an application for subsequent consent, it must take steps to cause details of the application to be entered in the register and to secure that there is also placed on the register a copy of any relevant—

- (a) subsequent screening opinion;
- (b) screening direction;
- (c) scoping opinion that it has adopted;
- (d) statement given under regulation 16(4) or 17(1);

- (e) updated environmental statement, including any further information and any other information;
  - (f) statement of reasons accompanying any of the above.
- (3) Where the Commission or an Examining authority—
- (a) adopts a screening opinion or scoping opinion; or
  - (b) receives a request under regulation 6(1); or
  - (c) receives a copy of a screening direction, or direction under regulation 5(5),
- the Commission must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the register is kept.

- (4) Where the relevant authority—
- (a) adopts a subsequent screening opinion or scoping opinion; or
  - (b) receives a request under regulation 6(2);
- it must take steps to secure that a copy of the opinion or request and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the register is kept.

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

- 23.**—(1) Paragraph (2) applies where—
- (a) the Commission determines an application for an order granting development consent that is EIA development; or
  - (b) the relevant authority determines a subsequent application to which regulation 18 applies.
- (2) Where this paragraph applies, the Commission or, as the case may be, the relevant authority must—
- (a) in writing, inform the Secretary of State and the consultation bodies of the decision;
  - (b) where the decision has been made by a relevant authority which is not the Commission, in writing inform the Commission of the decision;
  - (c) inform the public of the decision by publication of a notice of the decision in the manner prescribed in paragraph (3) and by—
    - (i) where the decision has been made by the Panel or the Council, publication of a notice of the decision on the website of the Commission;
    - (ii) where the decision has been made by a relevant authority which is not the Commission and where that authority maintains a website for the purpose of advertisement of applications, publication of a notice of the decision on the website of that authority;
  - (d) make available for public inspection at the place where the register is kept a statement containing—
    - (i) the content of the decision and, in the case of an order granting development consent, any requirements imposed in connection with the development for which consent is granted;
    - (ii) the main reasons and considerations on which the decision is based including relevant information about the participation of the public;
    - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and

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- (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.
- (3) Notice of the decision must be published—
  - (a) for at least two successive weeks in one or more local newspapers circulating in the vicinity in which the proposed development would be situated;
  - (b) once in a national newspaper;
  - (c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and
  - (d) in the case of offshore development, once in Lloyd's List; and once in an appropriate fishing trade journal.
- (4) Where the Secretary of State determines an application for an order granting development consent, the Secretary of State must—
  - (a) notify the Commission of the decision; and
  - (b) provide the Commission with such a statement as is mentioned in paragraph (2)(d).
- (5) The Commission must, as soon as reasonably practicable after receipt of a notification under paragraph (4)(a), comply with sub-paragraphs (c) and (d) of paragraph (2) in relation to the decision so notified as if it were a decision of the Commission.

#### **Development with significant transboundary effects**

- 24.**—(1) This regulation applies where—
- (a) one of the events mentioned in regulation 4(2) occurs; or
  - (b) it otherwise comes to the attention of the Commission that development proposed to be carried out in England, Wales or Scotland is the subject of an EIA application, and the Commission is of the view that the development is likely to have significant effects on the environment in another EEA State; or
  - (c) another EEA State likely to be significantly affected by such development so requests.
- (2) Where this regulation applies, the Commission must—
- (a) send to the EEA State as soon as possible and no later than their date of publication in The London Gazette referred to in sub-paragraph (b), the particulars required by paragraph (3) and, if it thinks fit, the information referred to in paragraph (4);
  - (b) publish the information in sub-paragraph (a) in a notice placed in—
    - (i) the London Gazette, in relation to all proposed development; and
    - (ii) the Edinburgh Gazette, in relation to development proposed to be carried out in Scotland,
 indicating the address where additional information is available; and
  - (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.
- (3) The particulars mentioned in paragraph (2)(a) are—
- (a) a description of the development, together with any available information on its possible significant effect 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 Commission must as soon as possible send to that EEA State the following information—

- (a) a copy of the application concerned;
- (b) a copy of any environmental statement in respect of the development to which that application relates; 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)(a).

(5) The Commission must also ensure that the EEA State concerned is given an opportunity, before development consent for the development is granted, to forward to the Commission, within a reasonable time, the opinions of its public and of the authorities referred to in Article 6(1) of the Directive on the information supplied.

(6) The Commission must in accordance with Article 7(4) of the Directive—

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

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

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

### **Service of notices etc**

**25.** Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in sections 229 to 231 (service of notices).

Signed by authority of the Secretary of State

Department for Communities and Local  
Government

*Bill McKenzie*  
Parliamentary Under Secretary of State

**Status:** Point in time view as at 29/03/2011.

**Changes to legislation:** There are currently no known outstanding effects for the The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (revoked). (See end of Document for details)

## SCHEDULE 1

Regulation 2(1)

Descriptions of development and criteria for the purposes of the definition of “Schedule 1 development”

### Interpretation

In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14) <sup>M9</sup>;

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975 <sup>M10</sup>;

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor shall not be treated as development of the description mentioned in paragraph 2(b) of this Schedule.

#### Marginal Citations

**M9** See Command Paper 6614.

**M10** See Command Paper 6993.

#### Marginal Citations

**M9** See Command Paper 6614.

**M10** See Command Paper 6993.

### Descriptions of development

The carrying out of development to provide any of the following—

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

- (a) (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and
- (b) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
- (a) (a) Installations for the reprocessing of irradiated nuclear fuel.
- (b) Installations designed—
  - (i) for the production or enrichment of nuclear fuel,
  - (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste,
  - (iii) for the final disposal of irradiated nuclear fuel,
  - (iv) solely for the final disposal of radioactive waste,
  - (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

- (a) (a) Integrated works for the initial smelting of cast-iron and steel;
  - (b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—
- (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;
  - (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
  - (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.
6. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—
- (a) for the production of basic organic chemicals;
  - (b) for the production of basic inorganic chemicals;
  - (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
  - (d) for the production of basic plant health products and of biocides;
  - (e) for the production of basic pharmaceutical products using a chemical or biological process;
  - (f) for the production of explosives.
- (a) (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more;
  - (b) Construction of motorways and express roads;
  - (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length.
- (a) (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes;
  - (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
9. Waste disposal installations for the incineration, chemical treatment (as defined in [F1 Annex I to Directive 2008/98/EC] under heading D9), or landfill of hazardous waste as defined in regulation 6 of the Hazardous Waste (England and Wales) Regulations 2005 M11.

**Textual Amendments**

**F1** Words in Sch. 1 para. 9 substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), Sch. 4 para. 31 (with regs. 2, 47(2))

**Marginal Citations**

**M11** S.I. 2005/894.

*Status: Point in time view as at 29/03/2011.*

*Changes to legislation: There are currently no known outstanding effects for the The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (revoked). (See end of Document for details)*

**10.** Waste disposal installations for the incineration or chemical treatment (as defined in [F2 Annex I to Directive 2008/98/EC] under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

#### Textual Amendments

**F2** Words in Sch. 1 para. 10 substituted (29.3.2011) by The Waste (England and Wales) Regulations 2011 (S.I. 2011/988), reg. 1(2), Sch. 4 para. 31 (with regs. 2, 47(2))

**11.** Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

- (a) (a) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year;
- (b) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

**13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Council Directive 91/271/EEC<sup>M12</sup>.

#### Marginal Citations

**M12** O.J. No. L 135, 30.5.1991, p. 40.

**14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

**15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

**16.** Pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres.

**17.** Installations for the intensive rearing of poultry or pigs with more than—

- (a) 85,000 places for broilers or 60,000 places for hens;
- (b) 3,000 places for production pigs (over 30 kg); or
- (c) 900 places for sows.

**18.** Industrial plants for—

- (a) the production of pulp from timber or similar fibrous materials;
- (b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

**19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

**20.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

**21.** Any change to or extension of development listed in this Schedule where such a change or extension itself meets the thresholds, if any, or description of development set out in this Schedule.



## SCHEDULE 2

Regulation 2(1)

Descriptions of development for the purposes of the definition of “Schedule 2 development”

1. Agriculture, silviculture and aquaculture
  - (a) Projects for the restructuring of rural land holdings;
  - (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
  - (c) Water management projects for agriculture, including irrigation and land drainage projects;
  - (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
  - (e) Intensive livestock installation (where not included in Schedule 1);
  - (f) Intensive fish farming;
  - (g) Reclamation of land from the sea.
2. Extractive industry
  - (a) Quarries, open-cast mining and peat extraction (where not included in Schedule 1);
  - (b) Underground mining;
  - (c) Extraction of minerals by marine or fluvial dredging;
  - (d) Deep drillings, in particular—
    - (i) geothermal drilling; and
    - (ii) drilling for the storage of nuclear waste material, with the exception of drillings for investigating the stability of the soil,
  - (e) surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.
3. Energy industry
  - (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Schedule I);
  - (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Schedule 1);
  - (c) Surface storage of natural gas;
  - (d) Underground storage of combustible gases;
  - (e) Surface storage of fossil fuels;
  - (f) Industrial briquetting of coal and lignite;
  - (g) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);
  - (h) Installations for hydroelectric energy production;
  - (i) installations for the harnessing of wind power for energy production (wind farms).
4. Production and processing of metals
  - (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
  - (b) Installations for the processing of ferrous metals:
    - (i) hot-rolling mills;

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- (ii) smitheries with hammers;
  - (iii) application of protective fused metal coats;
  - (c) Ferrous metal foundries;
  - (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting etc.);
  - (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
  - (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
  - (g) Shipyards;
  - (h) Installations for the construction and repair of aircraft;
  - (i) Manufacture of railway equipment;
  - (j) Swaging by explosives;
  - (k) Installations for the roasting and sintering of metallic ores.
- 5. Mineral industry**
- (a) Coke ovens (dry coal distillation);
  - (b) Installations for the manufacture of cement;
  - (c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Schedule 1);
  - (d) Installations for the manufacture of glass including glass fibre;
  - (e) Installations for smelting mineral substances including the production of mineral fibres;
  - (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.
- 6. Chemical industry (Projects not included in Schedule 1)**
- (a) Treatment of intermediate products and production of chemicals;
  - (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;
  - (c) Storage facilities for petroleum, petrochemical and chemical products.
- 7. Food industry**
- (a) Manufacture of vegetable and animal oils and fats;
  - (b) Packing and canning of animal and vegetable products;
  - (c) Manufacture of dairy products;
  - (d) Brewing and malting;
  - (e) Confectionery and syrup manufacture;
  - (f) Installations for the slaughter of animals;
  - (g) Industrial starch manufacturing installations;
  - (h) Fish-meal and fish-oil factories;
  - (i) Sugar factories
- 8. Textile, leather, wood and paper industries**
- (a) Industrial plants for the production of paper and board (unless included in Schedule 1);

- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

**9. Rubber industry**

Manufacture and treatment of elastomer-based products.

**10. Infrastructure projects**

- (a) Industrial estate development projects;
- (b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;
- (c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);
- (d) Construction of railways (unless included in Schedule 1);
- (e) Construction of airfields (unless included in Schedule 1);
- (f) Construction of roads (unless included in Schedule 1);
- (g) Construction of harbours and port installations including fishing harbours (unless included in Schedule 1);
- (h) Inland-waterway construction not included in Schedule 1, canalisation and flood-relief works;
- (i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);
- (j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
- (k) Oil and gas pipeline installations (unless included in Schedule 1);
- (l) Installations of long-distance aqueducts;
- (m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- (n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1;
- (o) Works for the transfer of water resources between river basins not included in Schedule 1;
- (p) Motorway service areas.

**11. Other projects**

- (a) Permanent racing and test tracks for motorised vehicles;
- (b) Installations for the disposal of waste (unless included in Schedule 1);
- (c) Waste-water treatment plants (unless included in Schedule 1);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

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## 12. Tourism and leisure

- (a) Ski-runs, ski-lifts and cable-cars and associated developments;
  - (b) Marinas;
  - (c) Holiday villages and hotel complexes outside urban areas and associated developments;
  - (d) Theme parks;
  - (e) Permanent camp sites and caravan sites;
  - (f) Golf courses and associated developments.
- (a) (a) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 21 of that Schedule) or in paragraphs 1 to 12 of this Schedule, where that development is already authorised, executed or in the process of being executed, and the change or extension may have significant adverse effects on the environment;
- (b) Development of a description mentioned in Schedule 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

## SCHEDULE 3

Regulation 7

### Selection criteria for screening Schedule 2 development

**14. Characteristics of development** The characteristics of development must be considered having regard, in particular, to—

- (a) the size of the development;
- (b) the cumulation with other development;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of accidents, having regard in particular to substances or technologies used.

### 15. Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
  - (i) wetlands;
  - (ii) coastal zones;
  - (iii) mountain and forest areas;
  - (iv) nature reserves and parks;
  - (v) areas classified or protected under Member States' legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC<sup>M13</sup> on the conservation of wild birds and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>M14</sup>;

- (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
- (vii) densely populated areas;
- (viii) landscapes of historical, cultural or archaeological significance.

**Marginal Citations**

- M13** O.J. No. L 103,25.4.1979, p.1.
- M14** O.J. No. L 206, 22.7.1992, p.7.

**16. Characteristics of the potential impact**

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to—

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact;
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 4

Regulation 2(1)

Information for inclusion in environmental statements

**PART 1**

**17. Description of the development, including in particular—**

- (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development.

**18.** An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.

**19.** A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

**20.** A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from:

- (a) the existence of the development;

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(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.

**21.** A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

**22.** A non-technical summary of the information provided under paragraphs 1 to 5 of this Part.

**23.** An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

## PART 2

**24.** A description of the development comprising information on the site, design and size of the development.

**25.** A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

**26.** The data required to identify and assess the main effects which the development is likely to have on the environment.

**27.** An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects.

**28.** A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

## SCHEDULE 5

Regulations 14 to 19

Certificate 1  
Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment)  
Regulations 2009

Certificate of compliance with regulation 13

I hereby certify that, in compliance with the requirements under regulation 13 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 –

(a) notice of the application was given to the persons identified under regulation 9; and  
(b) a copy of the accepted application, including the environmental statement and a map was given to the consultation bodies in accordance with regulation 13.

- in relation to the application for an order to grant development consent  
for .....  
..... at the location of  
(or along the route of) .....

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) and (b) above)

IPC Case Reference No.: .....

Applicant: .....

Signed: .....

Name in capitals: .....

Date: .....

**Status:** Point in time view as at 29/03/2011.

**Changes to legislation:** There are currently no known outstanding effects for the The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (revoked). (See end of Document for details)

Certificate 2  
Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment)  
Regulations 2009

Certificate of compliance with regulation 16

I hereby certify that, in compliance with the requirements under regulation 16 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 –

- (a) the notice required under regulation 16(5) was published, posted and served in the manner required by regulation 16(5)(c) to (e);
- (b) the notice was served on the persons identified under regulation 9; and
- (c) the information required under regulations 16(3)(g) was given to the consultation bodies

- in relation to the application for an order to grant development consent  
for .....  
..... at the location of  
(or along the route of) .....

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) and (b) above)

IPC Case Reference No.: .....

Applicant: .....

Signed: .....

Name in capitals: .....

Date: .....

Certificate 3  
Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment)  
Regulations 2009

Certificate of compliance with regulation 17(3)(a) to (h)

I hereby certify that, in compliance with the requirements under regulation 17(3)(a) to (h) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 –

- (a) the notice required under regulation 17(3) was published, posted and served in the manner required by regulation 17(3)(c) to (e);
- (b) the notice was served on the persons identified under regulation 9; and
- (c) the information required under regulations 17(3)(g) was given to the consultation bodies

- in relation to the application for an order to grant development consent  
for .....  
..... at the location of  
(or along the route of) .....

The deadline date for all representations to be received by the Commission under regulation 17(3) was .....

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) to (c) )

IPC Case Reference No.: .....

Applicant: .....

Signed: .....

Name in capitals: .....

Date: .....

Certificate 4  
Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment)  
Regulations 2009

Certificate of compliance with regulation 18

I hereby certify that, in compliance with the requirements under regulation 18(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 –

- (a) notice of the subsequent application was published in the manner required under regulation 18(3); and
- (b) the notice was displayed in accordance with regulation 18(3); and
- (c) the notice was served on the persons identified under regulation 9; and
- (d) the information required under regulations 18(3) was given to the consultation bodies

- in relation to the application for an order to grant development consent  
for .....  
..... at the location of  
(or along the route of) .....

The deadline date for all representations to be received by the Commission under regulation 16 was .....

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a), (b), (c) and (d) above)

IPC Case Reference No.: .....

Applicant: .....

Signed: .....

Name in capitals: .....

Date: .....

**Status:** Point in time view as at 29/03/2011.

**Changes to legislation:** There are currently no known outstanding effects for the The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (revoked). (See end of Document for details)

Certificate 5  
Planning Act 2008

The Infrastructure Planning (Environmental Impact Assessment)  
Regulations 2009

Certificate of compliance with regulation 19

I hereby certify that, in compliance with the requirements under regulation 19 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 --

(a) the notice was published in accordance with regulation 19(5)(b) and (c), and  
(b) the notice was served on the persons identified under regulation 9, and  
(c) the information required under regulations 19(3)(c) and (f) was given to the consultation bodies

- in relation to the application for an order to grant development consent  
for .....  
..... at the location of  
(or along the route of) .....

The deadline date for all representations to be received by the Commission under regulation 19 was .....

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a) to (c) above)

IPC Case Reference No: .....

Applicant: .....

Signed: .....

Name in capitals: .....

Date: .....

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Planning Act 2008 (c. 29) provides for the grant of development consent for development which is, or forms part of, a nationally significant infrastructure project. These Regulations implement, in relation to such projects, Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 175, 5.7.1985, p. 40), as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.1997, p.5).

The Regulations impose procedural requirements, in particular, the carrying out of environmental impact assessment (EIA) in relation to applications for development consent and in relation to applications for subsequent consent, which are applications for the approval of requirements imposed by orders granting development consent (subsequent applications). All development in Schedule 1 (Schedule 1 development) requires EIA. Development in Schedule 2 (Schedule 2 development) requires EIA if it is likely to have significant effects on the environment.

Development which requires EIA prior to the grant of development consent is referred to in these Regulations as EIA development (*regulation 2(1) and Schedules 1 to 3*). EIA is a procedure that comprises the preparation of an environmental statement, the carrying out of consultation and publicity on that statement and its submission to the authority to which it falls to determine the application in question.

Regulation 3 prohibits the grant of development consent for EIA development unless the authority taking the decision has first taken account of the environmental information. By virtue of regulation 4, development is categorised as EIA development if either an applicant notifies the IPC that an environmental statement will be submitted, or the Commission or Examining authority adopts a screening opinion to that effect (see commentary on regulation 4 in respect of screening). In the case of a subsequent application, the authority must take account of the environmental information before determining the application unless it has issued a screening opinion to the effect that an updated environmental statement is not required.. The environmental information is comprised of the environmental statement (or in the case of a subsequent application, the updated environmental statement), any representations made as part of the consultation and publicity on



the statement and any other information that has been provided by the applicant during the EIA process.

Regulations 5, 6 and 7 set out procedures for determining whether development is EIA development or whether an updated environmental statement is required for determining a subsequent application. This procedure is known as screening. Regulation 6 sets out what must be taken into account when taking screening decisions. An opinion must be made by reference to the criteria in Schedule 3 and in the case of screening on a subsequent application, the considerations set out in regulation 6. Where the Commission or Secretary of State determines that development is EIA development, or the relevant authority determines that it requires an updated environmental statement to decide the application, it must notify the applicant and give a statement of reasons. Regulation 8 enables a person to seek an opinion from the Commission or the relevant authority (a scoping opinion) on the information to be included in an environmental statement (or updated environmental statement). The types of information which may be required are set out in Schedule 4. The Commission or relevant authority must consult bodies with environmental responsibilities (the consultation bodies defined in regulation 2(1)) before adopting a scoping opinion.

Regulation 9 requires the Commission or the relevant authority to notify the consultation bodies of an application that requires an environmental statement (or an updated environmental statement). This is to enable those bodies to assist in the preparation of the statement by making information available to the applicant.

Regulations 10 to 11 contain provisions for consultation on and publicity of proposed applications for development consent which arise from the requirements of sections 42, 47 and 48 of the Planning Act 2008. Separate regulations (the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, S.I. 2009/2264) deal generally with how proposed applications are to be publicised and consulted upon. Regulations 10 and 11 of these Regulations deal specifically with how sections 42, 47 and 48 relate to proposed applications for EIA development.

Regulation 12 applies at the stage of the application process at which the Commission decides whether to accept an application. If no environmental statement has been provided by the applicant in circumstances where there has either been no screening or (in the Commission's view) defective screening, the Commission must issue a further screening opinion. If it considers that the proposed development is EIA development it must give a written statement of reasons and must suspend consideration of the application until the applicant has provided an environmental statement.

If the applicant has provided with the application a statement that the Commission considers does not satisfy the requirements of these regulations, it must give a statement of reasons for that decision, request the missing information and suspend consideration of the application until the applicant has provided it.

Regulation 13 applies where the Commission has accepted an application. It relates specifically to applications for development consent for EIA development and applies in parallel with the equivalent provisions in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 which specify how to comply with the requirements of section 56 of the Planning Act. It provides for publicity and consultation to be carried out in compliance with the requirements of the EIA Directive. Regulation 14 provides for certification of compliance with regulation 13.

Regulations 15 to 17 provides for where publicity and consultation of an accepted application have not been carried out properly or at all. It also provides for the procedure to be followed where there has been a defective screening opinion, or the environmental statement submitted with the application is incomplete. In each case, the examination procedure must be suspended until the applicant has provided the missing document or information, has publicised and consulted upon them and provided certification to the authority or Secretary of State. Where the screening has been defective, the Examining authority or the Secretary of State must first adopt a further screening opinion, giving written reasons where it decides that EIA is required and must send a

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copy of the opinion and reasons to the applicant. Where the screening has been carried out by an Examining authority it must send a copy of the opinion and reasons to the Secretary of State. Regulation 18 provides for the documents that must be submitted with a subsequent application where the relevant authority requires an updated environmental statement or the applicant has notified the relevant authority that it will provide one. It sets out the publicity, consultation and certification requirements

Regulation 19 deals with situations in which the applicant has not submitted an updated environmental statement where one is required, where such a statement is defective or the requisite publicity or consultation procedures have not been complied with properly or at all. It provides for suspension of the consideration of the subsequent application whilst a screening opinion is adopted and where relevant, the necessary documents and information are provided, publicised and consulted upon and certification carried out.

Regulations 20 and 21 provide that a reasonable number of copies of environmental statements must be made available and only reasonable charges may be made.

Regulation 22 provides that copies of any screening opinion, screening direction, scoping opinion and environmental statement must be placed on the register of applications and publicity given to the determination of the application.

Regulation 23 provides for consultation bodies, the public and the Secretary of State to be informed of decisions on applications.

Regulation 24 provides for the notification of other Member States where proposed development is likely to have significant effects on the environment of the other state.

Regulation 25 provides for the service of notices.

An impact assessment has not been prepared for these Regulations as the policy options do not have an impact on business, charities or the public sector beyond what was examined in the impact assessment that accompanied the Planning Bill when it was introduced in Parliament on 27th November 2007. That impact assessment can be found on the Communities and Local Government website (<http://www.communities.gov.uk>).

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