
STATUTORY INSTRUMENTS

2009 No. 2263

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

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⁽¹⁾;

“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
- (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⁽²⁾ 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](#)⁽³⁾;

“EIA development” means development which is either—

- (a) Schedule 1 development; or

(1) [2008 c. 29](#).

(2) [S.I. 2009/2264](#).

(3) 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.

(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(4)”.

(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.

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

(4) The Commission is defined for the purposes of the Act in section 235.

- (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
- (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.

(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(5) or regulation 10(5) (as read with regulation 10(6)) of the Environmental Information (Scotland) Regulations 2004(6).
- (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).

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.

(5) S.I. 2004/3391.

(6) S.S.I. 2004/520.

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
- (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.
- (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;
 - (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
 - (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;
- (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
 - (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

1st September 2009

Bill McKenzie
Parliamentary Under Secretary of State
Department for Communities and Local
Government