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STATUTORY INSTRUMENTS

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**2012 No. 787**

**INFRASTRUCTURE PLANNING**

**The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>12th March 2012</i>
<i>Laid before Parliament</i>		<i>15th March 2012</i>
<i>Coming into force</i>	- -	<i>13th April 2012</i>

The Secretary of State for Communities and Local Government, being a designated<sup>(1)</sup> Minister for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the environment, in exercise of the powers conferred by that section, makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 and shall come into force on 13th April 2012.

**Amendment of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009**

2. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(3)</sup> are amended in accordance with the following regulations.

**Amendment to regulation 3 – prohibition on granting consent without consideration of environmental information**

3. For regulation 3(2) and (3), substitute—

“(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or (in the case of the relevant authority) grant subsequent consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.”

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(1) The Secretary of State is so designated by [S.I. 2008/301](#).

(2) [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.

(3) [S.I. 2009/2263](#), amended by [S.I. 2011/2741](#).

**Amendment to regulation 5 – when development is EIA development: directions by the Secretary of State**

4. For regulation 5(2)(b), substitute—
  - “(b) either—
    - (i) of the Secretary of State’s own volition; or
    - (ii) if requested to do so in writing by any person.”

**Amendment to regulation 6 – procedure for establishing whether environmental impact assessment is required**

- 5.—(1) In regulation 6(2), for “must” substitute “may”.
- (2) After regulation 6(3)(b), insert “and”.
- (3) After regulation 6(4)(a), insert—
  - “(aa) an explanation of the likely effects on the environment which were not identified at the time the order granting development consent was made; and”.
- (4) In regulation 6(7), omit “to the effect that development is EIA development.”.

**Amendment to regulation 8 – application for a scoping opinion**

6. After regulation 8(4)(a), insert—
  - “(aa) an explanation of the likely effects on the environment which were not identified at the time the order granting development consent was made; and”.

**Amendment to regulation 14 –certifying compliance with regulation 13**

7. Omit regulation 14(2).

**Amendment to regulation 16 – accepted application – effect of screening opinion not taking account of all relevant information**

8. In regulation 16—
  - (a) in paragraph (5)(b)(vii), for “the date referred to” substitute “the deadline referred to”.
  - (b) omit paragraph (7).

**Amendment to regulation 17 – accepted application – effect of environmental statement being inadequate**

9. In regulation 17—
  - (a) in paragraph (3)(b)(vii), for “the date referred to” substitute “the deadline referred to”.
  - (b) omit paragraph (4).

**Amendment to regulation 18 – subsequent application for EIA development**

10. In regulation 18—
  - (a) in paragraph (3)(a)(vii), for “the date referred to” substitute “the deadline referred to”.
  - (b) omit paragraph (4).

## **Substitution of regulation 19 – subsequent application not complying with EIA requirements**

### **11. For regulation 19, substitute—**

#### **“Subsequent application where environmental information previously provided**

##### **18A.—(1) This regulation applies where—**

- (a) a relevant authority is dealing with a subsequent application;
- (b) the applicant has not notified the relevant authority in accordance with regulation 6(2)(b); and
- (c) the application is not accompanied by a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations.

(2) Where it appears to the relevant authority that the environmental information already before it is adequate to assess the environmental effects of the development, it must take that information into consideration in its decision as to subsequent consent.

(3) Where it appears to the relevant authority that the environmental information already before it is not adequate to assess the environmental effects of the development—

- (a) the relevant authority must issue a written statement giving clearly and precisely the full reasons for that conclusion;
- (b) the applicant must comply with the requirements of regulation 18(2); and
- (c) the relevant authority must suspend consideration of the application until the requirements of regulation 18(2) are complied with.

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

##### **19.—(1) This regulation applies where—**

- (a) the relevant authority is dealing with a subsequent application;
- (b) the applicant has submitted a statement referred to by the applicant as an updated environmental statement for the purposes of these Regulations; and
- (c) the relevant authority is of the opinion that the statement should contain further information.

(2) Where paragraph (1) applies, the relevant authority must—

- (a) issue a written statement giving clearly and precisely the full reasons for the conclusion in paragraph (1)(c); and
- (b) suspend consideration of the application until the requirements of paragraph (3) are met.

(3) Where paragraph (1) applies, 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 further 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 deadline 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 following 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).

### **Substitution of regulation 20 – availability of copies of environmental statements**

**12.** For regulation 20, substitute—

“**20.** An applicant who submits in connection with an application 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.”

### **Amendment to Schedule 5 – certificates**

**13.** In Certificate 5—

- (a) for “regulation 19(5)(b) and (c)” substitute “regulation 19(3)(b) and (c)”; and
- (b) for “regulations 19(5)(e) and (f)” substitute “regulation 19(3)(e) and (f)”.

Signed on behalf of the Secretary of State for Communities and Local Government

12th March 2012

*Bob Neill*  
Parliamentary Under Secretary of State  
Department for Communities and Local  
Government

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## EXPLANATORY NOTE

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

These Regulations amend the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009<sup>(4)</sup> (“the 2009 Regulations”). The 2009 Regulations implemented, in relation to nationally significant infrastructure projects, the Directive on the assessment of the effects of certain public and private projects on the environment.<sup>(5)</sup>

The main changes to the 2009 Regulations are—

- an amendment to clarify that any person may ask the Secretary of State to exercise the power of direction (regulation 4);
- an amendment so that a person who proposes to make a subsequent application is no longer required to provide an updated environmental statement (regulation 5(1)). However, the relevant authority may require an updated environmental statement, if the environmental information already before them is not adequate to assess the environmental effects of the subsequent application (new regulation 18A(3), inserted by regulation 11);
- a requirement for the reasons for the negative screening decisions to be provided in writing (regulation 5(4));
- the removal of unnecessary criminal offences (regulations 7, 8(b), 9(b), 10(b) and 11).

An impact assessment has been prepared in relation to these Regulations. The assessment has been placed in the library of each House of Parliament and can be found on the Department for Communities and Local Government website <http://www.communities.gov.uk/corporate/publications/impact-assessments/>.

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<sup>(4)</sup> S.I. 2009/2263, , amended by S.I. 2011/2741.

<sup>(5)</sup> This Directive has recently been codified and is now 2011/92/EU, O.J. L26/1, 28.1.2012.