

**2017 No. 580**

**ELECTRICITY, ENGLAND AND WALES**

**The Electricity Works (Environmental Impact Assessment)  
(England and Wales) Regulations 2017**

<i>Made</i> - - - -	<i>21st April 2017</i>
<i>Laid before Parliament</i>	<i>24th April 2017</i>
<i>Coming into force</i> - -	<i>16th May 2017</i>

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The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the environment.

The Secretary of State has taken into account the selection criteria set out in Annex III to Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment(c).

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 36C(2) of, and paragraph 1(3) of Schedule 8 to, the Electricity Act 1989(d), makes the following Regulations:

### PART 1

#### Preliminary

##### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017.

(2) These Regulations come into force on 16th May 2017.

(3) These Regulations extend to England and Wales.

##### **Application**

2.—(1) These Regulations apply to applications for—

- (a) section 36 consents;
- (b) section 36 variations; and
- (c) section 37 consents,

for development in England or Wales or in relevant waters(e).

(2) Paragraph (1) is subject to—

- (a) regulation 38 (exemptions for defence and civil emergencies);

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(a) See article 2(a) of S.I. 2008/301.

(b) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations created or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993. Annex XX to that Agreement provides that the term “Member State” in Directive 2011/92/EU includes Iceland, Liechtenstein and Norway. Regulation 24 of these Regulations makes provision in relation to “EEA states”.

(c) O.J. L 26, 28.1.2012, p. 1. The Directive was amended by Directive 2014/52/EU of the European Parliament and of the Council of 16th April 2014, O.J. L 124, 25.4.2014, p. 1.

(d) 1989 c.29. Section 36C was inserted by section 20 of the Growth and Infrastructure Act 2013 (c.27). Section 36C was amended by section 39 of, and paragraph 48 of Schedule 6 to, the Wales Act 2017 (c.4), but these amendments are not yet in force. “Regulations” in subsection (2) of section 36C is defined in subsection (6) to include regulations made by the Secretary of State other than in the case of section 36 consents relating to generating stations (or proposed generating stations) in Scotland. Functions of the Secretary of State under Schedule 8 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland, have been transferred to the Scottish Ministers by S.I. 1999/1750.

(e) Functions of the Secretary of State under section 36 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland or in the area of the Renewable Energy Zone designated as the area in relation to which the Scottish Ministers are to have functions, have been transferred to the Scottish Ministers by S.I. 2006/1040. Functions of the Secretary of State under section 37 of the Electricity Act 1989, in so far as exercisable in or as regards Scotland, have been transferred to the Scottish Ministers by S.I. 1999/1750.

- (b) regulation 49 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required);
- (c) regulation 42 (transitional provision).

## Interpretation

### 3. In these Regulations—

- “additional environmental information” has the meaning given in regulation 27(2);
- “application website” must be interpreted in accordance with regulation 28;
- “consultation body” has the meaning given in regulation 4;
- “development” means the carrying out of building, engineering or other operations in, on, over or under land or sea;
- “EIA development” has the meaning given in regulation 5;
- “EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment;
- “EIA report” must be interpreted in accordance with regulation 17;
- “electric line” has the meaning given in section 64 of the Electricity Act 1989;
- “environmental impact assessment” must be interpreted in accordance with regulation 7;
- “further environmental information” has the meaning given in regulation 26(9);
- “generating station” must be interpreted in accordance with section 64 of the Electricity Act 1989;
- “Habitats Directive” means Council Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora(a);
- “local planning authority” has the same meaning as in the Town and Country Planning Act 1990(b);
- “planning register” means the register kept under—
  - (a) article 40(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015(c); or
  - (b) article 29(1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012(d);
- “relevant authority” means—
  - (a) the Secretary of State; or
  - (b) in relation to an application for a section 36 consent or for a section 36 variation made (or to be made) to the Marine Management Organisation, the Marine Management Organisation(e);
- “relevant waters” means—
  - (a) waters adjacent to England or Wales that are between the mean low water mark and the seaward limits of the territorial sea; and

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(a) O.J. L 206, 22.7.1992, p. 7.

(b) 1990 c.8. See section 336(1) for the definition of “local planning authority”.

(c) S.I. 2015/595.

(d) S.I. 2012/801, to which there are amendments not relevant to these Regulations.

(e) The Marine Management Organisation was established by section 1 of the Marine and Coastal Access Act 2009 (c.23). Certain functions under section 36 of the Electricity Act 1989 were transferred to the Marine Management Organisation by section 12 of that Act.

(b) waters within a Renewable Energy Zone within the meaning of section 84(4) of the Energy Act 2004(a) (other than an area in relation to which the Scottish Ministers have functions);

“screening decision”, in relation to proposed development, means a decision about whether or not the development is EIA development;

“section 36 consent” means a consent under section 36 of the Electricity Act 1989(b);

“section 36 variation” means a variation of a section 36 consent under section 36C of the Electricity Act 1989;

“section 37 consent” means a consent under section 37 of the Electricity Act 1989(c);

“Wild Birds Directive” means Directive 2009/147/EC of the European Parliament and of the Council of 30th November 2009 on the conservation of wild birds(d).

### Meaning of consultation body

4.—(1) Each of the following is a consultation body for the purposes of these Regulations—

(a) every local planning authority for the area in which the development will be carried out and every principal council for that area, if not the local planning authority;

(b) in relation to development in England or in relevant waters adjacent to England that are between the mean low water mark and the seaward limits of the territorial sea—

(i) the Environment Agency(e);

(ii) the Historic Buildings and Monuments Commission for England(f);

(iii) Natural England(g);

(c) in relation to development in Wales or in relevant waters adjacent to Wales that are between the mean low water mark and the seaward limits of the territorial sea—

(i) Cadw (that is to say, the executive agency responsible for administering the exercise of functions vested in the National Assembly for Wales relating to the historic environment);

(ii) the Natural Resources Body for Wales(h);

(d) in relation to development in relevant waters beyond the seaward limits of the territorial sea, the Joint Nature Conservation Committee(i).

(2) In this regulation, “principal council” has the meaning given in section 270(1) of the Local Government Act 1972(j).

### Meaning of EIA development

5. In these Regulations, “EIA development” means any of the following—

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(a) Section 84(4) was substituted by paragraph 4 of Schedule 4 to the Marine and Coastal Access Act 2009. S.I. 2005/3153, made in exercise of the power in section 84(5) of the Energy Act 2004, sets out the area of the Renewable Energy Zone in relation to which the Scottish Ministers have functions.

(b) Section 36 was amended by section 93 of the Energy Act 2004, Schedule 1 to S.I. 2006/1054, paragraph 32 of Schedule 2 to the Planning Act 2008 (c.29), section 12 of the Marine and Coastal Access Act 2009 and section 78 of the Energy Act 2016 (c.20). Amendments made by section 39 of, and paragraph 47 of Schedule 6 to, the Wales Act 2017 are not yet in force.

(c) Section 37 was amended by paragraph 33 of Schedule 2 to the Planning Act 2008. Amendments made by section 42 of the Wales Act 2017 are not yet in force.

(d) O.J. L 20, 26.1.2010, p. 7.

(e) The Environment Agency was established by section 1 of the Environment Act 1995 (c.25).

(f) The Historic Buildings and Monuments Commission for England was established by section 32 of the National Heritage Act 1983 (c.47).

(g) Natural England was established by section 1 of the Natural Environment and Rural Communities Act 2006 (c.16).

(h) The Natural Resources Body for Wales was established by article 3 of S.I. 2012/1903.

(i) The Joint Nature Conservation Committee was re-constituted in accordance with Schedule 4 of the Natural Environment and Rural Communities Act 2006: see section 31(b) of that Act.

(j) “Principal council” is defined by reference to “principal area”. The definition of “principal area” in section 270(1) has been amended by paragraph 8 of Schedule 16 to the Local Government Act 1985 (c.51) and section 1(8) of the Local Government (Wales) Act 1994 (c.19).

- (a) development of a description set out in Schedule 1;
- (b) development of a description set out in Schedule 2 if—
  - (i) an EIA report is provided to the relevant authority in connection with an application for a section 36 or 37 consent, or a section 36 variation, for the development; or
  - (ii) the relevant authority makes a screening decision that the development is EIA development;
- (c) development of any other description for which an application for a section 36 or 37 consent, or a section 36 variation, is made (or may be made) if the relevant authority makes a screening decision that the development is EIA development.

## PART 2

### Environmental impact assessment

#### CHAPTER 1

##### General

#### **Environmental impact assessment required for EIA development**

**6.** Where an application is made for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must not grant the application unless an environmental impact assessment has been undertaken in respect of the development.

#### **Environmental impact assessment**

**7.—(1)** An environmental impact assessment means a process consisting of—

- (a) the preparation of an EIA report in accordance with regulation 17 by a person (the “developer”) applying for a section 36 or 37 consent, or a section 36 variation, for EIA development and the provision by the developer to the relevant authority of the EIA report and any further environmental information;
- (b) the compliance with the obligations under regulations 22 to 31 that apply in each individual case by the developer and the other persons on whom those obligations are imposed;
- (c) the examination by the relevant authority of—
  - (i) the EIA report;
  - (ii) any further environmental information; and
  - (iii) any additional environmental information;
- (d) the reasoned conclusion by the relevant authority on the significant effects of the development on the environment, taking into account the results of—
  - (i) the examination referred to in sub-paragraph (c); and
  - (ii) where appropriate, the relevant authority’s own supplementary examination; and
- (e) the inclusion of the relevant authority’s reasoned conclusion in the decision notice required by regulation 33.

**(2)** The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the development on the following factors—

- (a) population and human health;
- (b) biodiversity (for example, fauna and flora), with particular attention to habitats and species protected under the Habitats Directive or the Wild Birds Directive;

- (c) land (for example, land take), soil (for example, organic matter, erosion, compaction, sealing), water (for example, hydromorphological changes, quantity and quality), air and climate (for example, greenhouse gas emissions, impacts relevant to adaptation);
  - (d) material assets, cultural heritage (including architectural and archaeological aspect) and the landscape;
  - (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).
- (3) The effects to be identified, described and assessed under paragraph (2) must include—
- (a) the operational effects of the development, where the development will have operational effects;
  - (b) the expected effects arising from the vulnerability of the development to the risks of major accidents and disasters that are relevant to the development.
- (4) The relevant authority must ensure that it has, or has access to, sufficient expertise for the purpose of conducting the examination referred to in paragraph (1)(c) or any supplementary examination.
- (5) When granting an application referred to in paragraph (1)(a), the relevant authority must be satisfied that the reasoned conclusion referred to in paragraph (1)(d) is up to date.

**Co-ordination of environmental impact assessment with Habitats Regulations assessment**

**8.**—(1) Where in relation to EIA development there is, in addition to the requirement to undertake an environmental impact assessment under these Regulations, also a requirement to undertake a Habitats Regulations assessment, the relevant authority must, where appropriate, ensure that the environmental impact assessment and the Habitats Regulations assessment are co-ordinated.

(2) In this regulation, “Habitats Regulations assessment” means an assessment under regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(a) or regulation 61 of the Conservation of Habitats and Species Regulations 2010(b).

**Procedure when application for Schedule 1 development, etc. not accompanied by EIA report or request for scoping opinion**

**9.**—(1) This regulation applies where an application for a section 36 or 37 consent, or a section 36 variation, for—

- (a) development of a description set out in Schedule 1; or
- (b) development in respect of which the relevant authority has made a screening decision that the development is EIA development,

is not accompanied by an EIA report or a request for a scoping opinion under regulation 18.

(2) As soon as reasonably practicable after receiving the application, the relevant authority must notify the person (the “developer”) making the application in writing that, unless the developer within 21 days after receiving the notification either informs the relevant authority in writing that the developer intends to provide an EIA report or requests a scoping opinion under regulation 18, the application will be refused.

(3) If the developer does not so inform the relevant authority or make such a request within that period, the relevant authority must refuse the application.

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(a) S.I. 2007/1842. Regulation 25 was amended by paragraph 7(4) of Schedule 6 to S.I. 2010/490; article 4(2) of S.I. 2010/1513; paragraph 278 of Schedule 4 to S.I. 2013/755; and regulation 12 of S.I. 2016/912.  
 (b) S.I. 2010/490. Regulation 61 was amended by regulation 20 of S.I. 2012/1927.

CHAPTER 2  
Screening decisions

**Developer may request screening decision before making application**

**10.**—(1) A person (the “developer”) who intends to make an application for a section 36 or 37 consent, or a section 36 variation, for development may request the relevant authority to make a screening decision.

(2) A request under paragraph (1) must be accompanied by—

- (a) the information referred to in regulation 12; and
- (b) a plan of the site of the development.

(3) On receiving a request under paragraph (1), the relevant authority must make a screening decision in respect of the development.

(4) But if the request is not accompanied by all the information referred to in regulation 12 or a plan of the site of the development, the relevant authority must, within 21 days after the date on which the relevant authority receives the request, notify the developer in writing of the omission (and paragraph (3) does not apply until the omitted material is provided).

**When relevant authority must or may make screening decision after application made**

**11.**—(1) This regulation applies where a person (the “developer”) makes an application for a section 36 or 37 consent, or a section 36 variation, for the following development (other than development in respect of which the relevant authority has made a screening decision that the development is EIA development)—

- (a) development of a description set out in Schedule 2;
- (b) other development (but not development of a description set out in Schedule 1).

(2) If the application is for development referred to in paragraph (1)(a) and is not accompanied by an EIA report, the relevant authority must make a screening decision in respect of the development before dealing further with the application.

(3) But the relevant authority is not required to make a screening decision if, before the screening decision is made, the developer provides an EIA report to the relevant authority.

(4) If the application is for development referred to in paragraph (1)(b), the relevant authority may decide, having regard to the criteria set out in Schedule 3, to make a screening decision in respect of the development before determining the application.

(5) Where the relevant authority is required, or decides, to make a screening decision under this regulation, the relevant authority must—

- (a) notify the developer in writing that the relevant authority will make a screening decision; and
- (b) unless the developer has already done so, request the developer to provide the information referred to in regulation 12.

(6) If the relevant authority makes a screening decision under this regulation that the development for which the application is made is EIA development—

- (a) when sending the screening decision to the developer, the relevant authority must notify the developer in writing that, unless the developer within 21 days after receiving the notification either informs the relevant authority in writing that the developer intends to provide an EIA report or requests a scoping opinion under regulation 18, the application will be refused;
- (b) if the developer does not so inform the relevant authority or make such a request within that period, the relevant authority must refuse the application.



### **Screening decisions: information to be provided by developer**

**12.**—(1) The information to be provided by the developer is—

- (a) a description of the development, including in particular—
  - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
  - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (b) a description of the aspects of the environment likely to be significantly affected by the development;
- (c) a description of any likely significant effects, to the extent of the information available on such effects, of the development resulting from—
  - (i) the expected residues and emissions and the production of waste, where relevant;
  - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(2) The developer must take into account the criteria set out in Schedule 3, where relevant, when compiling the information referred to in paragraph (1).

(3) When providing information under paragraph (1)—

- (a) the developer must take into account, where relevant, the available results of other relevant assessments of the effects on the environment undertaken under requirements imposed in accordance with European Union legislation other than the EIA Directive;
- (b) the developer may also provide a description of any features of the development and measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment.

### **Screening decisions: consultation with local planning authority**

**13.**—(1) This regulation and regulations 14 to 16 apply where the relevant authority—

- (a) is required to make a screening decision following a request under regulation 10; or
- (b) is required, or decides, to make a screening decision under regulation 11 on receipt of an application for a section 36 or 37 consent or a section 36 variation.

(2) The relevant authority must within 14 days after the date on which the relevant authority receives the information referred to in regulation 12 (and, where paragraph (1)(a) applies, a plan of the site of the development) consult—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate,

as to its views on whether or not an environmental impact assessment should be undertaken in respect of the development.

(3) Paragraph (2) does not apply in relation to a local planning authority if the developer has already provided that local planning authority's views to the relevant authority.

(4) The local planning authority must give its views (if any) to the relevant authority within—

- (a) 21 days after the date on which the local planning authority receives a request under paragraph (2); or
- (b) any longer period notified in writing by the relevant authority, which must not end more than 28 days after the date on which the 21-day period referred to in sub-paragraph (a) ends.

### **Screening decisions: timing**

**14.**—(1) The relevant authority must make a screening decision within—

- (a) 21 days after the later of the following dates—
  - (i) the date on which the relevant authority receives the information referred to in regulation 12 (and, where relevant, a plan of the site of the development); and
  - (ii) the latest date by which a local planning authority is required to give its views under regulation 13 or, if earlier, the date on which the relevant authority receives the last of those views; or
- (b) any longer period that may be agreed in writing with the developer.

(2) But in an exceptional case (for example, relating to the nature, complexity, location or size of the development), the relevant authority may extend the date by which it is required to make a screening decision by notifying the developer in writing of the new date and the reason for the extension.

### **Screening decisions: general**

**15.**—(1) The relevant authority must make a screening decision on the basis of the information provided by the developer, taking account, where relevant, of—

- (a) the criteria set out in Schedule 3;
- (b) the results of assessments of the effects of the environment of the development undertaken under requirements imposed in accordance with European Union legislation other than the EIA Directive; and
- (c) the views (if any) of every local planning authority consulted.

(2) If the relevant authority thinks that the development is likely to have significant effects on the environment, the relevant authority must make a screening decision that the development is EIA development.

(3) The relevant authority must send the screening decision to the developer as soon as reasonably practicable after it is made.

(4) If the screening decision is that the development is EIA development, the screening decision must state the main reasons for the decision by reference to the criteria set out in Schedule 3.

(5) If the screening decision is that the development is not EIA development, the screening decision must state—

- (a) the main reasons for the decision by reference to the criteria set out in Schedule 3; and
- (b) any features of the development and measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment.

### **Screening decisions: publicity**

**16.**—(1) As soon as reasonably practicable after sending the screening decision to the developer, the relevant authority must send a copy to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) Where a local planning authority that keeps the planning register receives a copy of the screening decision, the local planning authority must ensure that a copy is available for public inspection at all reasonable hours at the place where the planning register is kept for at least 2 years after the date on which the screening decision is made.

(3) The relevant authority must ensure that a copy of the screening decision is able to be accessed by the public free of charge at a website maintained by or on behalf of the relevant authority for at least 2 years after the date on which the screening decision is made.

## CHAPTER 3

### EIA reports

#### **EIA report: requirements**

17.—(1) For the purposes of these Regulations, an EIA report is a report prepared by the person (the “developer”) applying for a section 36 or 37 consent, or a section 36 variation, for development that includes at least the following information—

- (a) a description of the development comprising information on the location, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the development on the environment;
- (c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the developer that are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) where the application is for a section 36 variation, the main respects in which the developer thinks that the likely significant effects on the environment of the development, as varied, will differ from those set out in—
  - (i) any EIA report or environmental statement prepared in connection with the application for the section 36 consent that it is proposed be varied; and
  - (ii) if the section 36 consent has previously been varied by a section 36 variation, any EIA report or environmental statement prepared in connection with the application for that variation;
- (f) a non-technical summary of the information referred to in sub-paragraphs (a) to (e); and
- (g) any other information set out in Schedule 4 relevant to the specific characteristics of the development and the environmental features likely to be affected.

(2) If the relevant authority has given a scoping opinion under regulation 18 in respect of the development, the EIA report must be based on the most recent scoping opinion (so far as the development remains materially the same as the development in respect of which the scoping opinion was given).

(3) The EIA report must include any information that may reasonably be required to reach a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

(4) In preparing the EIA report, the developer must, with a view to avoiding duplication of assessments, take into account any available results of other relevant assessments undertaken under requirements imposed in accordance with European Union legislation or under domestic legislation.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the developer must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of the experts.

(6) In paragraph (1)(e), “environmental statement” means an environmental statement under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000<sup>(a)</sup>.

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(a) S.I. 2000/1927, amended by S.I. 2007/1977. Section 12(5) of the Marine and Coastal Access Act 2009 provides that any reference in S.I. 2000/1927 to the Secretary of State is to be read, so far as relating to the exercise of an electricity consent function (as defined in section 12(2)) of the Secretary of State, as a reference to the Marine Management Organisation.

### **Developer may request scoping opinion**

**18.**—(1) A person (the “developer”) who makes (or intends to make) an application for a section 36 or 37 consent or a section 36 variation may request the relevant authority to give an opinion in writing (a “scoping opinion”) as to the scope and level of detail of the information to be included in the EIA report in respect of the development to which the application relates.

(2) A request for a scoping opinion must be accompanied by the following—

- (a) a brief description of the nature and purpose of the development, including its specific characteristics, location and technical capacity;
- (b) an explanation of the likely impact on the environment of the development;
- (c) a plan of the site of the development.

(3) The relevant authority must within 21 days after the date on which the relevant authority receives the request consult the following about the scoping opinion—

- (a) every consultation body; and
- (b) any other public authority that, by reason of its specific environmental responsibilities or local or regional competences, the relevant authority thinks is likely to have an interest in the development.

(4) But if the relevant authority thinks that the developer has not provided sufficient information to enable a scoping opinion to be given, the relevant authority must, within 21 days after the date on which the relevant authority receives the request, notify the developer in writing of the further information required (and paragraph (3) does not apply until that further information is provided).

(5) A consultation body or public authority consulted under paragraph (3) must make its representations (if any) within—

- (a) 21 days after the date on which the consultation body or public authority is consulted; or
- (b) any longer period notified in writing by the relevant authority.

(6) Before giving a scoping opinion, the relevant authority must take into account—

- (a) the information provided by the developer;
- (b) any representations received from the consultation bodies and public authorities consulted under paragraph (3);
- (c) the specific characteristics of the development;
- (d) the specific characteristics of that type of development;
- (e) the environmental features likely to be affected by the development.

(7) The relevant authority must give a scoping opinion to the developer within—

- (a) 21 days after the latest date by which a consultation body or public authority consulted under paragraph (3) is required to make representations or, if earlier, the date on which the relevant authority receives the last of those representations; or
- (b) any longer period that may be agreed in writing with the developer.

(8) Where the developer makes a request for a screening decision under regulation 10 and a request for a scoping opinion under this regulation in respect of the same development—

- (a) the relevant authority must make a screening decision before giving a scoping opinion;
- (b) if the screening decision is that the development is not EIA development, for the purposes of this regulation, the request for the scoping opinion must be treated as never having been made;
- (c) if the screening decision is that the development is EIA development, for the purposes of this regulation, the request for the scoping opinion must be treated as having been received on the same day that the screening decision is made.

(9) The fact that a relevant authority gives a scoping opinion under this regulation does not prevent the relevant authority from requiring information or evidence to be provided under

regulation 25(1) in connection with an environmental impact assessment undertaken in respect of the development.

### **Scoping opinions: publicity**

**19.**—(1) As soon as reasonably practicable after sending the scoping opinion to the developer, the relevant authority must send a copy to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be in carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) Where a local planning authority that keeps the planning register receives a copy of the scoping opinion, the local planning authority must ensure that a copy is available for public inspection at all reasonable hours at the place where the planning register is kept for at least 2 years after the date on which the scoping opinion is given.

(3) The relevant authority must ensure that a copy of the scoping opinion is able to be accessed by the public free of charge at a website maintained by or on behalf of the relevant authority for at least 2 years after the date on which the screening opinion is given.

### **Procedure to facilitate preparation of EIA report**

**20.**—(1) Where a person (the “developer”) intends to make an application for a section 36 or 37 consent, or a section 36 variation, for development and to provide an EIA report in connection with the application, the developer may in writing request the relevant authority to comply with paragraph (4).

(2) A request under paragraph (1) must be accompanied by information about the location and the nature and purpose of the development and the main environmental consequences to which the developer proposes to refer in the EIA report.

(3) Where a person (the “developer”) makes an application for a section 36 or 37 consent, or a section 36 variation, for development that is not accompanied by an EIA report and either—

- (a) the relevant authority makes a screening decision that the development is EIA development; or
- (b) the developer informs the relevant authority in writing that the developer intends to provide an EIA report in connection with the application,

the developer may in writing request the relevant authority to comply with paragraph (4).

(4) Where the relevant authority receives a request under paragraph (1) or (3), the relevant authority must, in writing—

- (a) notify every consultation body and any other public authority that, by reason of its specific environmental responsibilities or local or regional competences, the relevant authority thinks is likely to have an interest in the development, of the name and address of the developer and the duty imposed by regulation 35 (provision of information by consultation bodies, etc.); and
- (b) notify the developer of the name and address of every consultation body and any other public authority notified under sub-paragraph (a).

## **CHAPTER 4**

### **Procedure**

#### **Application of Chapter**

**21.** This Chapter applies where a person (the “developer”)—

- (a) makes an application (the “application”) for a section 36 or 37 consent, or a section 36 variation, for EIA development (the “development”); and
- (b) provides the relevant authority with an EIA report (the “EIA report”).

**EIA report: publicity**

**22.**—(1) Subject to paragraphs (2) and (3), after providing the relevant authority with the EIA report, the developer must publish a notice in accordance with paragraphs (4) and (5).

(2) If the relevant authority informs the developer that—

- (a) the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state<sup>(a)</sup> (other than the United Kingdom); or
- (b) an EEA state (other than the United Kingdom) has made a request under paragraph (1) of regulation 24 (development affecting other EEA states),

the developer must not publish the notice until after the relevant authority notifies the developer in writing that the relevant authority has sent the EEA state the information referred to in that paragraph.

(3) Where the application is for a section 36 variation, the developer must not publish the notice until after the developer is notified under regulation 4(6) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013<sup>(b)</sup> that the application is suitable for publication.

(4) The notice must be published—

- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002<sup>(c)</sup>, in the Belfast Gazette; and
- (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
  - (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
  - (ii) in a national newspaper or newspapers;
  - (iii) in Lloyd’s List; and
  - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(5) The notice must—

- (a) describe the application;
- (b) state that an environmental impact assessment will be undertaken in respect of the development and, where the relevant authority so informs the developer, that the development is likely to have significant effects on the environment in an EEA state (other than the United Kingdom);
- (c) state the nature of the possible decisions that may be taken in relation to the application;
- (d) state that a copy of the EIA report may be accessed at the application website free of charge and give the address of the application website;
- (e) state that a copy of the EIA report may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development will be carried out or, if the development will be carried out in

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(a) “EEA state” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).  
 (b) S.I. 2013/1570. Schedule 5 to these Regulations amends S.I. 2013/1570.  
 (c) S.I. 2002/791.

relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);

- (f) state how a copy of the EIA report may be obtained and the amount of any payment required;
- (g) state that representations about the EIA report and the application may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published);
- (h) set out how any further environmental information subsequently provided by the developer will be made available to the public and the procedures for making representations about the further environmental information (see regulations 26, 28, 29 and 30);
- (i) set out how any additional environmental information provided to the relevant authority will be made available to the public (see regulations 28, 29 and 31);
- (j) set out the circumstances in which a public inquiry into the application may be held under the Electricity Act 1989.

(6) The notice may be combined with any other notice that the developer is required to publish in connection with the application.

(7) The developer must send a copy of each notice published under paragraph (4) to the relevant authority together with evidence of the date and place of publication.

(8) As soon as reasonably practicable after receiving a copy of the notice, the relevant authority must send a copy to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(9) The developer must make a copy of the EIA report available for inspection free of charge at the address and times referred to in paragraph (5)(e).

#### **EIA report: provision to consultation bodies, etc.**

**23.—**(1) As soon as reasonably practicable after receiving the EIA report, the relevant authority must notify the developer in writing of any public authority (other than a consultation body) that, by reason of its specific environmental responsibilities or local or regional competences, the relevant authority thinks is likely to have an interest in the development.

(2) The developer must—

- (a) send a copy of the EIA report (and a copy of the application and any plan submitted with the application, unless the developer has already done so) to every consultation body and every other public authority notified under paragraph (1); and
- (b) give notice in writing to every consultation body and every other public authority notified under paragraph (1) that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the EIA report and the application before—
  - (i) the date stated in the notice published under regulation 22 as the date by which representations about the EIA report may be made; or
  - (ii) if later, 30 days after the date on which the consultation body or public authority receives a copy of the EIA report (and, where relevant, a copy of the application and any plan submitted with the application).

(3) After complying with paragraph (2), the developer must inform the relevant authority in writing of the date on which the last consultation body or public authority to receive a copy of the EIA report (and, where relevant, a copy of the application and any plan submitted with the application) and the notice referred to in paragraph (2)(b) does so.

### **Development affecting other EEA states**

**24.**—(1) Where the relevant authority thinks that the development is likely to have significant effects on the environment in an EEA state (other than the United Kingdom), or where an EEA state (other than the United Kingdom) so requests, the relevant authority must, as soon as reasonably practicable, send to the EEA state—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in EEA states other than the United Kingdom;
- (b) a notice explaining the nature of the possible decisions that may be taken in relation to the application and informing the EEA state that it may, within such reasonable period as may be specified in the notice, inform the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(2) Paragraphs (3) to (5) apply where an EEA state informs the relevant authority in writing that the EEA state wishes to invoke the procedure provided by this regulation.

(3) As soon as reasonably practicable after being so informed, the relevant authority must send to the EEA state (to the extent that the relevant authority has not already done so)—

- (a) a copy of the notice published by the developer under regulation 22;
- (b) a copy of the EIA report; and
- (c) any other available information that is relevant to the development.

(4) The relevant authority must ensure that a reasonable period of time is given for the authorities of the EEA state referred to in Article 6(1) of the EIA Directive and the public concerned in the EEA state to make representations about the information sent under paragraphs (1) and (3) to the relevant authority before the application is determined.

(5) The relevant authority must enter into consultations with the EEA state, for a reasonable period of time agreed with the EEA state, regarding, amongst other things, the likely significant effect of the development on the environment of the EEA state and the measures envisaged to reduce or eliminate those effects.

(6) This regulation is subject to regulation 36 (confidential information, etc.).

### **When relevant authority must request further environmental information**

**25.**—(1) Where at any time before the application is determined the relevant authority thinks that it is necessary, for the purpose of reaching the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d), for—

- (a) the information in the EIA report to be supplemented by any other information that is required to be or may be included in the EIA report; or
- (b) the information in the EIA report, or any information that the developer provides to the relevant authority to supplement that information, to be verified by such evidence as the relevant authority may reasonably call for,

the relevant authority must, by notice in writing, require the developer to provide the information or evidence.

(2) If the developer fails to provide the information or evidence required under paragraph (1) within such reasonable period or periods as the relevant authority may notify in writing, the relevant authority may treat the application as having been withdrawn; and, if so, the relevant authority must notify the developer of that fact in writing.

### **Further environmental information: publicity and provision to consultation bodies, etc.**

**26.**—(1) Where the developer provides any further environmental information to the relevant authority, the developer must publish a notice in accordance with paragraphs (2) and (3).

(2) The notice must be published—



- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, in the Belfast Gazette; and
  - (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
    - (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
    - (ii) in a national newspaper or newspapers;
    - (iii) in Lloyd's List; and
    - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).
- (3) The notice must—
- (a) describe the application;
  - (b) state that the developer has provided the further environmental information in connection with the environmental impact assessment that must be undertaken in respect of the development;
  - (c) state that a copy of the further environmental information may be accessed at the application website free of charge and give the address of the application website;
  - (d) state that a copy of the further environmental information may be inspected free of charge and give an address at which and the times at which it may be inspected (and the address must be in the locality in which the development will be carried out or, if the development will be carried out in relevant waters, an address in England or Wales that is reasonably accessible to persons likely to be affected by the development);
  - (e) state how a copy of the further environmental information may be obtained and the amount of any payment required;
  - (f) state that representations about the further environmental information may be made to the relevant authority and give the address to which and the date by which they must be sent (which must not be earlier than 30 days after the date on which the last notice is published).
- (4) The developer must send a copy of each notice published under paragraph (2) to the relevant authority together with evidence of the date and place of publication.
- (5) As soon as reasonably practicable after receiving a copy of the notice, the relevant authority must send a copy to—
- (a) every local planning authority for the area in which the development will be carried out; or
  - (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.
- (6) The developer must make a copy of the further environmental information available for inspection free of charge at the address and times referred to in paragraph (3)(d).
- (7) The developer must—
- (a) send a copy of the further environmental information to every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23(2); and
  - (b) give notice in writing to every such consultation body or public authority that an environmental impact assessment will be undertaken in respect of the development and that the consultation body or public authority may make representations to the relevant authority about the further environmental information before—

- (i) the date stated in the notice published under paragraph (2) as the date by which representations about the further environmental information may be made; or
- (ii) if later, 30 days after the date on which the consultation body or public authority receives a copy of the further environmental information.

(8) After complying with paragraph (7), the developer must inform the relevant authority in writing of the date on which the last consultation body or public authority to receive a copy of the further environmental information and the notice referred to in paragraph (7)(b) does so.

(9) In this regulation, “further environmental information” means any information or evidence that the developer—

- (a) is required to provide to the relevant authority under regulation 25(1); or
- (b) otherwise provides to the relevant authority to supplement the information in the EIA report.

**Additional environmental information**

27.—(1) Where any additional environmental information is received by the relevant authority, the relevant authority must send a copy of the additional environmental information to the developer and to—

- (a) every local planning authority for the area in which the development will be carried out; or
- (b) if the development will be carried out in relevant waters, any local planning authority that the relevant authority thinks appropriate.

(2) In paragraph (1), “additional environmental information” means any information and representations (other than further environmental information) received by the relevant authority under the procedures provided by this Chapter after the date on which the EIA report is provided to the relevant authority and before the relevant authority determines the application that the relevant authority thinks is of material relevance to the matters set out in Schedule 4.

**Application website**

28.—(1) The developer or, where paragraph (2) applies, the relevant authority must ensure that a copy of each item set out in an entry in column 1 of the table is able to be accessed by the public at a website (the “application website”) free of charge from the date set out in the corresponding entry in column 2 until the date on which the application is determined.

<i>(1) Item</i>	<i>(2) Date from which item must be accessible at application website</i>
Notice published under regulation 22	The date on which the first notice is published under regulation 22(4)
EIA report	The date on which the first notice is published under regulation 22(4)
Notice published under regulation 26	The date on which the first notice is published under regulation 26(2)
Further environmental information	The date on which the first notice is published under regulation 26(2)
Additional environmental information	As soon as reasonably practicable after the date on which the additional environmental information is received by the developer or, where paragraph (2) applies, the relevant authority

(2) This paragraph applies where the relevant authority notifies the developer in writing that the relevant authority will comply with the obligations in paragraph (1).

(3) Where the relevant authority notifies the developer under regulation 5(2A) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013<sup>(a)</sup> that the relevant authority will, instead of the developer, comply with the obligations in paragraph (2) of that regulation to publish material on a website, the relevant authority must also notify the developer under paragraph (2) of this regulation that the relevant authority will comply with the obligations in paragraph (1) of this regulation.

(4) The application website must be the same website on which information is published under regulation 5(2) of the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013.

#### **Local planning authority must place copy of EIA report, etc. on Part 1 of planning register**

**29.**—(1) Where a local planning authority that keeps the planning register receives a copy of—

- (a) a notice under regulation 22(8) or 26(5);
- (b) the EIA report under regulation 23(2);
- (c) further environmental information under regulation 26(7); or
- (d) additional environmental information under regulation 27(1),

the local planning authority must place a copy of the document on Part 1 of the planning register as soon as reasonably practicable after receipt.

(2) Where a local planning authority that keeps the planning register receives a copy of—

- (a) a screening decision in respect of the development under regulation 16(1);
- (b) a scoping opinion in relation to the EIA report under regulation 19(1),

the local planning authority must place a copy of the decision or opinion on Part 1 of the planning register as soon as reasonably practicable after receipt of any of the documents referred to in paragraph (1).

(3) The documents referred to in paragraphs (1) and (2) must be kept on Part 1 of the planning register until the application is determined.

#### **Developer must provide copy of EIA report, etc. to public**

**30.**—(1) Where before the application is determined a person requests the developer to provide a copy of any of the following, the developer must do so as soon as reasonably practicable after receiving the request—

- (a) the EIA report;
- (b) any further environmental information.

(2) The developer may make a reasonable charge reflecting printing and distribution costs in relation to the provision of a copy of the EIA report or any further environmental information (but any copy that the developer is required to send under regulation 23(2) or regulation 26(7) must be provided free of charge).

#### **Relevant authority must provide copy of additional environmental information to public**

**31.**—(1) Where before the application is determined a person requests the relevant authority to provide a copy of any additional environmental information, the relevant authority must do so as soon as reasonably practicable after receiving the request.

(2) The relevant authority may make a reasonable charge reflecting printing and distribution costs in relation to the provision of a copy of the additional environmental information (but any copy that the relevant authority is required to send under regulation 27(1) must be provided free of charge).

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(a) Regulation 5(2A) is inserted by paragraph 8 of Schedule 5 to these Regulations. Regulation 5(2) is substituted by that paragraph.

### **Determination of application: timing**

**32.**—(1) The relevant authority must determine the application within a reasonable time after the relevant authority has all the information and evidence necessary to reach the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d) and to determine the application (including, where a public inquiry under the Electricity Act 1989 is held in relation to the application, the inspector’s report).

(2) But the relevant authority must not determine the application before the latest of the following dates—

- (a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act or regulations 22 or 26 of these Regulations, as the date by which objections or representations may be made in relation to the application;
- (b) 30 days after the date on which every person to whom the developer is required to send a copy of the following documents receives a copy—
  - (i) the EIA report (see regulation 23(2)(a));
  - (ii) any further environmental information (see regulation 26(7)(a));
- (c) the date on which any reasonable period for the authorities and public of an EEA state to make representations referred to in regulation 24(4) ends or, if later, the date on which any consultations with an EEA state referred to in regulation 24(5) end.

### **Decision notice: content**

**33.**—(1) On determining the application, the relevant authority must give notice in writing of the decision (the “decision notice”) to the developer.

(2) The decision notice must include the following information—

- (a) the terms of the decision;
- (b) information about the participation of the public, including a summary of the results of the consultations undertaken and information gathered under regulations 22 to 26 and how these results have been incorporated or otherwise addressed, in particular the comments received from every EEA state that invoked the procedure provided by regulation 24;
- (c) if the decision is to grant the application—
  - (i) the reasoned conclusion on the significant effects of the development on the environment referred to in regulation 7(1)(d);
  - (ii) any environmental conditions to which the decision is subject;
  - (iii) a description of any features or measures to be implemented by the developer that it is envisaged will avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment; and
  - (iv) a description of any measures to monitor significant adverse effects on the environment that the relevant authority thinks are appropriate;
- (d) if the decision is to refuse the application, the main reasons for the refusal; and
- (e) information about how the validity of the decision can be challenged and the procedures for doing so.

(3) Where the relevant authority thinks it is appropriate to include any monitoring measures referred to in paragraph (2)(c)(iv)—

- (a) the type of parameters to be monitored and the duration of the monitoring must be proportionate to the nature, location and size of the development and the significance of its effects on the environment; and
- (b) existing monitoring measures under other legislation may be used, if appropriate, with a view to avoiding duplication of monitoring.

### **Decision notice: publicity**

**34.**—(1) As soon as reasonably practicable after determining the application, the relevant authority must send a copy of the decision notice to—

- (a) every consultation body and other public authority to which the developer is required to send a copy of the EIA report under regulation 23(2);
- (b) every EEA state that invoked the procedure provided by regulation 24.

(2) Where a local planning authority that keeps the planning register receives a copy of the decision notice, the local planning authority must place a copy on Part 2 of the planning register as soon as reasonably practicable after receipt.

(3) As soon as reasonably practicable after receiving a copy of the decision notice, the developer must publish a notice in accordance with paragraphs (4) and (5).

(4) The notice must be published—

- (a) in the London Gazette or, if the development will be carried out in relevant waters that are to be treated as adjacent to Northern Ireland for the purposes referred to in article 3(1) of the Adjacent Waters Boundaries (Northern Ireland) Order 2002, in the Belfast Gazette; and
- (b) in 2 successive weeks in a local newspaper or newspapers circulating in the locality in which the development will be carried out or, if the development will be carried out in relevant waters—
  - (i) in 2 successive weeks in a local newspaper or newspapers likely to come to the attention of persons likely to be affected by the development;
  - (ii) in a national newspaper or newspapers;
  - (iii) in Lloyd's List; and
  - (iv) in an appropriate fishing trade journal that is published at intervals not exceeding 1 month (if such a journal is in circulation).

(5) The notice must state—

- (a) that the application has been determined;
- (b) that a section 36 or 37 consent has been granted or refused or that a section 36 variation has been made or not, as the case may be;
- (c) where a copy of the decision notice is sent to a local planning authority that keeps the planning register, that a copy of the decision notice is available for public inspection on the planning register and give the address where the planning register may be inspected;
- (d) that a copy of the decision notice may be accessed at the website referred to in paragraph (6) and give the address of the website.

(6) As soon as reasonably practicable after determining the application, the relevant authority must ensure that a copy of the decision notice is able to be accessed by the public free of charge at a website maintained by or on behalf of the relevant authority.

## **PART 3**

### **Miscellaneous**

#### **Provision of information by consultation bodies, etc.**

**35.**—(1) A relevant body—

- (a) must, if requested by a person (the “developer”) who has made (or intends to make) an application for a section 36 or 37 consent, or a section 36 variation, for development, or may without such a request, enter into consultation with the developer to determine whether the relevant body has in its possession any information that either it or the

developer thinks is relevant to the preparation of an EIA report or the undertaking of an environmental impact assessment in respect of the development; and

(b) if it has such information, must make it available to the developer.

(2) In paragraph (1), “relevant body” means—

(a) a consultation body;

(b) any other public authority notified under regulation 20(4)(a).

(3) This regulation is subject to regulation 36 (confidential information, etc.)

### **Confidential information, etc.**

**36.** Nothing in these Regulations requires the disclosure of—

(a) information that is subject to a duty of confidentiality under the law of England and Wales;

(b) information that must not be disclosed, or in respect of which disclosure may be refused, under regulation 12 of the Environmental Information Regulations 2004<sup>(a)</sup> (exceptions to the duty to disclose environmental information).

### **Applications made by relevant authority: separation of functions**

**37.** Where the relevant authority is also the person making an application for a section 36 or 37 consent, or a section 36 variation, for EIA development, the relevant authority must ensure that, in order to avoid any conflict of interest, employees who take part in making the application do not also—

(a) advise on the exercise of the relevant authority’s functions under these Regulations or the Electricity Act 1989 in relation to the application; or

(b) exercise those functions on behalf of the relevant authority in relation to the application.

### **Exemptions for defence and civil emergencies**

**38.—**(1) The Secretary of State may direct in writing that Part 2 of these Regulations or, in the case of a transitional application, the requirements of the 2000 Regulations cease to have effect in relation to an application or a proposed application for a section 36 or 37 consent, or a section 36 variation, for development where—

(a) the sole purpose of the development is defence or the response to civil emergencies (or both); and

(b) the Secretary of State thinks that the application of the procedures in these Regulations or, as the case may be, the 2000 Regulations would have an adverse effect on that purpose or those purposes.

(2) In this regulation—

“2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

“transitional application” means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 43 (transitional provision)).

### **Exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required**

**39.—**(1) This regulation applies where—

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(a) S.I. 2004/3391.

- (a) a person (the “developer”) makes an application for a section 36 consent, or a section 36 variation, for development that is EIA development (or, in the case of a transitional application, EIA development within the meaning of the 2000 Regulations); and
- (b) a marine licence or a variation of a marine licence is also required (in addition to the section 36 consent or the section 36 variation) for the development.

(2) If the relevant authority is satisfied that—

- (a) the licensing authority has undertaken (or will undertake) under the Marine Works (Environmental Impact Assessment) Regulations 2007<sup>(a)</sup> an assessment (the “marine works assessment”) of any significant effects on the environment of the development in connection with deciding whether or not to grant or vary the marine licence;
- (b) the marine works assessment is (or will be) sufficient to meet the requirements of the EIA Directive; and
- (c) except where the relevant authority is also the licensing authority, the licensing authority has made (or will make) available to the relevant authority, for the purposes of determining the application, the results of the marine works assessment and any information relating to the marine works assessment that the relevant authority may reasonably require,

the relevant authority may decide that an environmental impact assessment under these Regulations does not need to be undertaken in respect of the development (or, in the case of a transitional application, that there is no need to assess the environmental effects of the development under the 2000 Regulations); and, if the relevant authority so decides, paragraphs (3) to (10) apply.

(3) The relevant authority must in writing notify the developer and, except where the relevant authority is also the licensing authority, the licensing authority of the decision.

(4) Subject to paragraphs (8) to (10), Part 2 of these Regulations (or, in the case of a transitional application, the requirements of the 2000 Regulations) cease to have effect in relation to the application.

(5) Except where the relevant authority is also the licensing authority, the relevant authority must consult the licensing authority before determining the application and must not grant the application unless it is satisfied that to do so would be compatible with the licensing authority’s measures to comply with the EIA Directive.

(6) The relevant authority must determine the application within a reasonable time after the date on which the relevant authority has all the information and evidence necessary to determine the application (including, where a public inquiry under the Electricity Act 1989 is held in relation to the application, the inspector’s report).

(7) But the relevant authority must not determine the application before the later of the following dates—

- (a) the latest date given under the Electricity Act 1989, or stated in any notice published under that Act, as the date by which objections or representations may be made in relation to the application; and
- (b) the date on which the marine works assessment is concluded.

(8) Except where the application is a transitional application, regulation 33 (decision notice: content) has effect in relation to the application as though that regulation had been amended—

- (a) by omitting paragraph (2)(b) and substituting the following—

“(b) information about the participation of the public in the marine works assessment, including a summary of the results of the consultations undertaken and the information gathered during the marine works assessment and how these results have been incorporated or otherwise addressed in the relevant authority’s decision, in particular any comments received from an EEA state;”;

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(a) S.I. 2007/1518, amended by S.I. 2011/735, 2011/1043, 2013/755 and 2015/446.

(b) by omitting paragraph (2)(c)(i) and substituting the following—

“(i) a summary of the licensing authority’s reasoned conclusion, after completing the marine works assessment, on the significant effects of the development on the environment;”.

(9) Except where the application is a transitional application, regulation 34 (decision notice: publicity) has effect in relation to the application as though that regulation had been amended by omitting paragraph (1) and substituting the following—

“(1) The relevant authority must send a copy of the decision notice to every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.”.

(10) Where the application is a transitional application, the relevant authority must on determining the application send a statement containing the information referred to in regulation 10(3A) of the 2000 Regulations<sup>(a)</sup> (publicity of determinations and provision of information to the local planning authority) to—

(a) the developer; and

(b) every person to whom written confirmation of the EIA consent decision (within the meaning of the Marine Works (Environmental Impact Assessment) Regulations 2007) is required to be sent under regulation 23(1) of those Regulations.

(11) In this regulation—

“2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;

“licensing authority”, in relation a marine licence, means the person to whom an application to grant or vary the licence has been or will be made;

“marine licence” means a marine licence under Part 4 of the Marine and Coastal Access Act 2009;

“transitional application” means an application for a section 36 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 42 (transitional provision)).

### **Service of notices, etc.**

**40.**—(1) Any notice or other document that is required to be given, provided or sent to a person under these Regulations may be given, provided or sent—

(a) in a manner specified in section 109 of the Electricity Act 1989; or

(b) in a case where an address for correspondence using electronic communications is given by the person, by sending it using electronic communications to the person at that address, provided that the condition referred to in paragraph (2) is satisfied.

(2) The condition is that the notice or other document is—

(a) capable of being accessed by the person;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference.

(3) Paragraph (1)(b) does not apply if the person indicates that the person does not wish the notice or other document to be sent using electronic communications.

(4) In this regulation—

“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

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(a) Regulation 10(3A) was inserted by S.I. 2007/1977.



“electronic communication” has the same meaning as in the Electronic Communications Act 2000<sup>(a)</sup>;

“legible in all material respects”, in relation to a notice or other document, means that the information contained in the notice or document is available to the person to whom it is sent to no lesser extent than it would be if given, provided or sent by means of a notice or document in printed form.

### **Revocation and savings**

**41.**—(1) The following Regulations are revoked—

- (a) the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000;
- (b) the Electricity Works (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2007<sup>(b)</sup>.

(2) Despite paragraph (1), the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 continue to have effect as set out in regulation 42 (transitional provision).

### **Transitional provision**

**42.**—(1) The following applications for a section 36 or 37 consent or a section 36 variation must be dealt with under the 2000 Regulations as if they had not been revoked (and not under these Regulations)—

- (a) an application received by a relevant authority before 16th May 2017 if an environmental statement (within the meaning of the 2000 Regulations) is also received by the relevant authority before that date;
- (b) an application for development in respect of which the relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May 2017.

(2) Where a relevant authority receives a request for a screening opinion under regulation 5 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(3) Where, before 16th May 2017, a relevant authority receives an application for a section 36 or 37 consent or a section 36 variation and the question of whether or not the application is for EIA development (within the meaning of the 2000 Regulations) falls to be determined under regulation 6 of those Regulations, that question must be determined under those Regulations as if they had not been revoked.

(4) Where a relevant authority receives a request for a scoping opinion under regulation 7 of the 2000 Regulations before 16th May 2017, the request must be dealt with under those Regulations as if they had not been revoked.

(5) For the purposes of these Regulations, a determination under regulation 5 or 6 of the 2000 Regulations that an application for a section 36 or 37 consent, or a section 36 variation, is for EIA development (within the meaning of the 2000 Regulations) must be treated as a screening decision under these Regulations that the application is for EIA development (within the meaning of these Regulations).

(6) In this regulation, “2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000.

(7) This regulation is subject to—

- (a) regulation 38 (exemptions for defence and civil emergencies);

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<sup>(a)</sup> 2000 c.7. The definition of “electronic communication” is in section 15(1). The definition was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

<sup>(b)</sup> S.I. 2007/1977.

- (b) regulation 39 (exemptions where EIA development requires marine licence, etc. for which environmental impact assessment is also required).

### **Amendments to other Regulations**

**43.**—(1) The Electricity (Applications for Consent) Regulations 1990(a) and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (the “2013 Regulations”) are amended in accordance with Schedule 5 (amendments to other Regulations).

(2) Despite paragraph (1), the 2013 Regulations continue to apply to a transitional application as if the amendments made by Schedule 5 had not been made.

(3) In this regulation, “transitional application” means an application for a section 36 or 37 consent, or a section 36 variation, that must be dealt with under the 2000 Regulations (see regulation 42 (transitional provision)).

### **Review**

**44.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 16th May 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(b) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EIA Directive is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

*Nick Hurd*  
Minister of State

21st April 2017

Department for Business, Energy and Industrial Strategy

## **SCHEDULE 1**

Regulations 5, 9 and 11

### **Development requiring environmental impact assessment in any event**

**1.** Development to provide any of the following—

- (a) a nuclear generating station;
- (b) a thermal generating station with a heat output of 300 megawatts or more;

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(a) S.I. 1990/455, amended by S.I. 2013/495; there are other amending instruments but none is relevant.

(b) 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).

- (c) an electric line installed above ground with—
  - (i) a voltage of 220 kilovolts or more; and
  - (ii) a length of more than 15 kilometres.

**2.** Development to provide a change to or extension of a generating station, or an electric line, of a description set out in paragraph 1 where the change or extension in itself meets the thresholds, if any, or description set out in that paragraph.

## SCHEDULE 2

Regulations 5 and 11

### Development requiring screening if no EIA report provided

**1.** Development to provide a generating station (other than a generating station of a description set out in paragraph 1 of Schedule 1).

**2.** Development to provide either of the following electric lines (other than an electric line of a description set out in paragraph 1 of Schedule 1)—

- (a) an electric line installed above ground with a voltage of 132 kilovolts or more;
- (b) an electric line installed above ground in a sensitive area.

**3.** Development to provide a change to or extension of—

- (a) a generating station (other than a change or extension set out in paragraph 2 of Schedule 1); or
- (b) an electric line of a description set out—
  - (i) in paragraph 1 of Schedule 1 (other than a change or extension set out in paragraph 2 of that Schedule); or
  - (ii) in paragraph 2 of this Schedule,

where the generating station or electric line is already authorised, executed or in the process of being executed and the change or extension may have significant adverse effects on the environment.

**4.** In this Schedule, “sensitive area” means any of the following—

- (a) a site of special scientific interest within the meaning of Part 2 of the Wildlife and Countryside Act 1981(a);
- (b) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(b);
- (c) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988(c);
- (d) a site or other place or other thing which is cultural heritage or natural heritage within the meaning of the Convention concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at Paris on 16th November 1972(d) and is included in the World Heritage List mentioned in Article 11 of that Convention;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(e);
- (f) an area of outstanding natural beauty within the meaning of Part 4 of the Countryside and Rights of Way Act 2000(f);

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(a) 1981 c.69. “Site of special scientific interest” is defined in section 52(1).  
 (b) 1949 c.97. See the definition in section 5(3).  
 (c) 1988 c.4. “The Broads” is defined in section 2(3).  
 (d) See Command Paper 9424.  
 (e) 1979 c.46. “Scheduled monument” is defined in section 1(11).  
 (f) 2000 c.37. “Area of outstanding natural beauty” is defined in section 82(3).

- (g) a European site as defined in regulation 8(1) of the Conservation of Habitats and Species Regulations 2010;
- (h) a Ramsar site (that is to say, a wetland designated under paragraph 1 of Article 2 of the Ramsar Convention (as defined in section 37A of the Wildlife and Countryside Act 1981<sup>(a)</sup>) for inclusion in the list of wetlands of international importance referred to in that Article).

## SCHEDULE 3

Regulations 11, 12 and 15

### Selection criteria for screening development

#### Characteristics of development

1. The characteristics of the development must be considered, having regard in particular to—
  - (a) the size and design of the whole development;
  - (b) cumulation with other existing and approved developments;
  - (c) the use of natural resources, in particular land, soil, water and biodiversity;
  - (d) the production of waste;
  - (e) pollution and nuisances;
  - (f) the risk of major accidents and disasters that are relevant to the development, including those caused by climate change, in accordance with scientific knowledge;
  - (g) the risks to human health (for example, due to water contamination or air pollution).

#### Location of development

2. The environmental sensitivity of geographical areas likely to be affected by the development must be considered, having regard in particular to—
  - (a) the existing and approved land use;
  - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
  - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
    - (i) wetlands, riparian areas and river mouths;
    - (ii) coastal zones and the marine environment;
    - (iii) mountain and forest areas;
    - (iv) nature reserves and parks;
    - (v) areas classified or protected under domestic legislation or legislation of other EEA states;
    - (vi) European sites (as defined in regulation 8(1) of the Conservation of Habitats and Species Regulations 2010);
    - (vii) areas in which there has already been a failure to meet environmental quality standards that are set out in European Union legislation and are relevant to the development, or in which it is thought that there is such a failure;
    - (viii) densely-populated areas;
    - (ix) landscapes and sites of historical, cultural or archaeological significance.

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<sup>(a)</sup> Section 37A was inserted by paragraph 84 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16) and was subsequently amended by paragraph 175 of Schedule 2 to S.I. 2013/755.

### **Type and characteristics of potential impact**

**3.** The likely significant effect of the development on the environment must be considered in relation to the criteria set out in paragraphs 1 and 2, with regard to the impact of the development on the factors set out in regulation 7(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example, geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and approved developments;
- (h) the possibility of effectively reducing the impact.

## **SCHEDULE 4**

Regulations 17 and 27

### **Information for EIA reports**

**1.** A description of the development, including in particular—

- (a) a description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including where relevant, requisite demolition works and the land use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular, any production process), for example, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operational phases.

**2.** A description of the reasonable alternatives (for example, in terms of development design, technology, location, size and scale) studied by the developer that are relevant to the development and its specific characteristics and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

**3.** A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution of the environment without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

**4.** A description of the factors set out in regulation 7(2) likely to be significantly affected by the development.

**5.—(1)** A description of the likely significant effects of the development on the environment resulting from, amongst other things—

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources, in particular, land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example, due to accidents and disasters);
- (e) the cumulation of effects with other existing and approved developments, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected and the use of natural resources;
- (f) the impact of the development on climate (for example, the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
- (g) the technologies and the substances used.

(2) The description of the likely significant effects on the factors set out in regulation 7(2) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development, taking account of the environmental protection objectives established at European Union or domestic level that are relevant to the development, including in particular those established under the Habitats Directive or the Wild Birds Directive.

**6.** A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of difficulties (for example, technical difficulties or lack of knowledge) encountered in compiling the required information and the main uncertainties involved.

**7.—(1)** A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example, the preparation of a post-development analysis).

(2) The description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset and must cover both the construction and operational phases.

**8.—(1)** A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and disasters that are relevant to the development.

(2) Relevant information available and obtained through risk assessments under requirements imposed in accordance with European Union legislation such as the Seveso III Directive or the Nuclear Safety Directive and relevant assessments undertaken under domestic legislation may be used for this purpose provided that the requirements of the EIA Directive are met.

(3) Where appropriate, the description must include measures envisaged to prevent or mitigate the significant adverse effects of accidents and disasters referred to in sub-paragraph (1) on the environment and details of the preparedness for and proposed response to such emergencies.

(4) In this paragraph—

“Nuclear Safety Directive” means Council Directive 2009/71/Euratom of 25th June 2009 establishing a Community framework for the nuclear safety of nuclear installations<sup>(a)</sup>;

“Seveso III Directive” means Directive 2012/18/EU of the European Parliament and of the Council of 4th July 2012 on the control of major-accident hazards involving dangerous substances<sup>(b)</sup>.

**9.** A non-technical summary of the information provided under paragraphs 1 to 8.

**10.** A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

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(a) O.J. L 172, 2.7.2009, p. 18.

(b) O.J. L 197, 24.7.2012, p. 1.

## Amendments to other Regulations

**Amendments to the Electricity (Applications for Consent) Regulations 1990**

1. The Electricity (Applications for Consent) Regulations 1990 are amended in accordance with paragraphs 2 and 3.

2.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of “EIA development”, for “regulation 2(1) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000” substitute “regulation 5 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017”;

(b) for the definition of “screening opinion” substitute—

““screening decision” has the meaning given in regulation 3 of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017;”.

3.—(1) Regulation 11A (fees payable on request for screening decision) is amended as follows.

(2) In the heading, for “screening opinion” substitute “screening decision”.

(3) In the text of the regulation, for “screening opinion” substitute “screening decision”.

**Amendments to the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013**

4. The Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 are amended in accordance with paragraphs 5 to 10.

5.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) in the definition of “the EIA Regulations”, for “the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000” substitute “the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017”;

(b) for the definition of “environmental statement” substitute—

““EIA report” has the meaning given in the EIA Regulations;”.

6.—(1) Regulation 3 (content of variation applications) is amended as follows.

(2) Omit paragraph (4).

7.—(1) Regulation 4 (assessment of suitability for publication) is amended as follows.

(2) For paragraph (8) substitute—

“(8) For the purposes of this regulation, a variation application is suitable for publication in accordance with regulation 5 if—

(a) in a case where an EIA report is required to be prepared in connection with the variation application under the EIA Regulations (because the application is for EIA development within the meaning of those Regulations), an EIA report has been provided to the appropriate authority; and

(b) it appears to the appropriate authority that—

(i) the applicant wishes to construct, operate or extend a generating station in a way which the relevant section 36 consent does not authorise it to do;

(ii) the proposed development does not differ from the generating station to which the relevant section 36 consent refers to such an extent (in its construction,

extension, operation or likely environmental effects) that it requires authorisation by—

- (aa) an order granting development consent within the meaning of section 31 of the Planning Act 2008; or
  - (bb) where the appropriate authority is the MMO, a new section 36 consent (rather than a variation to the relevant section 36 consent); and
- (iii) there is sufficient information in the application to enable the appropriate authority to determine the application.”.

**8.**—(1) Regulation 5 (publication) is amended as follows.

(2) For paragraph (2) substitute—

“(2) The applicant or, where paragraph (2A) applies, the appropriate authority must publish on a website (the “application website”)—

- (a) a summary of the variation application;
- (b) the application;
- (c) a link to the relevant section 36 consent, any section 90 direction given on granting the relevant section 36 consent and any statement (in the form of a decision letter, decision notice or otherwise) given by the appropriate authority under regulation 9(3) of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 or regulation 33 of the EIA Regulations on granting the relevant section 36 consent.

(2A) This paragraph applies where the appropriate authority notifies the developer in writing that the appropriate authority will comply with the obligations in paragraph (2).

(2B) The applicant must serve a copy of the application on the relevant planning authority (if any).”.

(3) In paragraph (5)(a), for “paragraph (2)” substitute “paragraphs (2) and (2B) or, where paragraph (2A) applies, the appropriate authority has complied with paragraph (2) and the applicant has complied with paragraph (2B)”.

(4) In paragraph (5)(c), omit “and any environmental statement prepared in connection with the application”.

**9.** Regulation 7 (application of the EIA Regulations with modifications) is revoked.

**10.**—(1) Regulation 9 (withdrawal of variation applications) is amended as follows.

(2) In paragraph (2), for “consultative bodies” substitute “consultation bodies”.

## **EXPLANATORY NOTE**

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

These Regulations make continuing provision for environmental impact assessments (“EIAs”) to be undertaken in relation to applications for consents for—

- new offshore generating stations under section 36 of the Electricity Act 1989 (c.29) (applications are made to the Marine Management Organisation (the “MMO”));
- variations of existing section 36 consents under section 36C of that Act (applications are made either to the Secretary of State or the MMO, depending on who granted the original consent); and
- consents for overhead electric lines under section 37 of that Act (applications are made to the Secretary of State).

These Regulations implement Directive 2011/92/EU of the European Parliament and of the Council of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament



and of the Council of 16th April 2014. These Regulations also make other changes to the existing regime for EIAs which do not arise from Directive 2014/52/EU.

An EIA must be undertaken before an application for “EIA development” can be granted (see regulation 6). The EIA process, which is set out in regulation 7, begins with the developer providing an “EIA report” to the person to whom the application is made (referred to in these Regulations as the “relevant authority”).

Regulation 5 sets out what constitutes EIA development. An application for development of a description set out in Schedule 1 is always EIA development, and an EIA must always be undertaken. Where an application is for development of a description set out in Schedule 2 and the developer provides an EIA report, an EIA will be undertaken. But if such an application is made without an EIA report, the relevant authority must first make a “screening decision” to decide whether or not the development is EIA development (see regulation 11(2)). Where an application is for development of a description other than a description set out in Schedule 2, although the relevant authority is not required to do so, it may nevertheless make a screening decision (see regulation 11(4)). If the screening decision is that the application is for EIA development, an EIA must be undertaken and an EIA report provided.

A developer may apply for a screening decision before making an application (see regulation 10). Chapter 2 of Part 2 sets out the procedure for making screening decisions.

The requirements of an EIA report are set out in regulation 17. Before preparing an EIA report, a developer may request the relevant authority to give a “scoping opinion” as to the scope and level of detail of the information to be included (see regulation 18).

The main changes made by these Regulations to the existing regime for EIAs are as follows—

- there is a change of terminology: for example, “EIA report” replaces “environmental statement” and “screening decision” replaces “screening opinion”;
- the definition of “consultation body” is updated to include the Historic Buildings and Monuments Commission for England, Cadw and the Joint Nature Conservation Committee (see regulation 4);
- the EIA must assess the effects of the development on a number of new factors such as human health and the effects arising from the risks of major accidents and disasters (see regulation 7(2) and (3));
- where appropriate, the relevant authority must co-ordinate the EIA with any assessment required in relation to “European sites” under regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (S.I. 2007/1842) or regulation 61 of the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (see regulation 8);
- there are new requirements relating to expertise in the EIA process: the developer must ensure that the EIA report is prepared by competent experts (see regulation 17(5)), and the relevant authority must ensure that it has, or has access to, sufficient expertise (see regulation 7(4));
- after examining the EIA report and other environmental information, the relevant authority must reach a “reasoned conclusion” on the significant effects of the development on the environment, which must be included in its decision (see regulation 7(1)). If the relevant authority thinks information to supplement the EIA report is necessary to reach its reasoned conclusion, it must require the information to be provided (see regulation 25(1));
- to enable the relevant authority to make a screening decision, the developer must provide the information set out in regulation 12. The relevant authority must give reasons for its screening decision by reference to the criteria set out in Schedule 3 (see regulation 15(4) and (5)). If the relevant authority decides that an EIA is not required, the decision must also state any measures envisaged to avoid what might otherwise be significant adverse effect on the environment (see regulation 15(5)). In an exceptional case, the relevant

authority may unilaterally extend the time in which a screening decision is otherwise required to be made (see regulation 14(2));

- the EIA report must include a number of new categories of information set out in Schedule 4, such as the baseline scenario and a list of references. The EIA report must be based on the most recent scoping opinion (if any) given by the relevant authority (see regulation 17(2));
- a decision to grant an application must include a description of any measures to monitor significant adverse effects on the environment that the relevant authority thinks appropriate (see regulation 33(2)(c)(iv));
- the developer is no longer required to publish a notice in newspapers when “additional environmental information” (as defined in regulation 27(2)) is provided;
- screening decisions, scoping opinions, the EIA report and other environmental information and decisions on applications must be published on a website in all cases (see regulations 16(3), 19(3), 28 and 34(6)). Copies of decisions must be sent to all consultation bodies and other public authorities to which the developer is required to send a copy of the EIA report (see regulation 34(1));
- where the relevant authority itself makes an application for a consent, employees that take part in making the application must not advise on or exercise the relevant authority’s functions relating to the determination of the application (see regulation 37);
- the Secretary of State may in certain circumstances exempt projects whose sole purpose is defence or the response to civil emergencies from the need for an EIA to be undertaken (see regulation 38);
- where both a marine licence under the Marine and Coastal Access Act 2009 (c.23) and a section 36 consent are required in relation to a generating station, the relevant authority may decide that an EIA under these Regulations is not required if an EIA is undertaken under the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) (see regulation 39);
- an application for an overhead electric line in a Ramsar site requires a screening decision to determine whether or not it is EIA development if not accompanied by an EIA report (see the definition of “sensitive area” in paragraph 4 of Schedule 2).

The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (S.I. 2000/1927) (the “2000 Regulations”), which provide for the existing regime for EIAs, are revoked, subject to transitional provision (see regulations 41 and 42). The 2000 Regulations continue to apply to—

- applications received before 16th May 2017 where an environmental statement is also received before that date;
- applications (whenever received) in respect of which the relevant authority gives a scoping opinion pursuant to a request received before 16th May 2017;
- requests for screening opinions and scoping opinions received before 16th May 2017;
- determinations under regulation 6 of the 2000 Regulations as to whether or not an application is for EIA development where the application is received before 16th May 2017 but no environmental statement is received before that date.

The Electricity (Applications for Consent) Regulations 1990 (S.I. 1990/455) (the “1990 Regulations”), the Electricity (Offshore Generating Stations) (Applications for Consent) Regulations 2006 (S.I. 2006/2064) and the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (S.I. 2013/1570) (the “2013 Regulations”) also regulate applications under sections 36, 36C and 37 of the Electricity Act 1989. Schedule 5 to these Regulations amends the 1990 Regulations and the 2013 Regulations in a number of respects, many of which are consequential amendments. Regulations 3 and 4 of the 2013 Regulations are amended to make it clear that, although an EIA report is not required to accompany an application to vary a section 36 consent, if the application is for EIA development, the EIA report must be

provided before the application is suitable for publication in accordance with regulation 5 of those Regulations.

The Secretary of State must from time to time carry out a review of these Regulations (see regulation 44).

An impact assessment has not been produced for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen.

An Explanatory Memorandum and a transposition note are available with these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies have also been placed in the Libraries of both Houses of Parliament.

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