Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 572

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

Made - - - -	*18th April 2017*
Laid before Parliament	*19th April 2017*
Coming into force - -	*16th May 2017*

The Secretary of State, having been designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to measures relating to the environment, in exercise of the powers conferred by section 2(2) of that Act and having taken into account the selection criteria in Annex III to Council Directive 2011/92/EU [F3], makes the following Regulations:

F1 S.I. 2008/301.
F2 1972 c.68. Section 2(2) was amended by section 27(1)(a) 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).
F3 OJ No. L 26, 28.1.2012, p.1.

Citation and commencement

1. These Regulations may be cited as the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and come into force on 16th May 2017.

Review

2.—(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 [F4] requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Directive are 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 a 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).

F4 2015 c.26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c.12).

Interpretation

3.—(1) In these Regulations—

"the Act" means the Planning Act 2008 [F5];

"applicant" means—

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

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

"associated development" means development for which development consent may be granted in accordance with section 115 [F6] (development for which development consent may be granted);

"the consultation bodies" means—

(a) a body prescribed under section 42(1)(a) [F7] (duty to consult) and listed in column 1 of the table set out in Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 [F8] where the circumstances set out in column 2 of that table are satisfied in respect of that body;

(b) each authority that is within section 43 [F9] (local authorities for purposes of section 42(1)(b)); and

(c) if the land to which the application, or proposed application, relates or any part of that land is in Greater London, the Greater London Authority;

"the Directive" means Council Directive 2011/92/EU [F10];

"EIA" has the meaning given by regulation 5;

"EIA development" means development which is either—

(a) Schedule 1 development; or

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

"environmental information" means the environmental statement (or in the case of a subsequent application, the updated environmental statement), including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development **[**[F11]and of any associated development**]**;

"environmental statement" has the meaning given by regulation 14;

"Examining authority" means the Panel or single appointed person appointed under section 65 (appointment of members, and lead member, of Panel) or section 79 (appointment of single appointed person) to examine an application under section 37, and may include one or more members of the Panel allocated a function of the Panel in accordance with section 76 (allocation within Panel of Panel's functions) [F12];

"EU environmental assessment" means an assessment carried out under—

(a) an obligation to which section 2(1) of the European Communities Act 1972 [F13] applies (other than the Directive); or

(b) the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the Directive,

of the effect of anything on the environment;

"exempt development" means development in respect of which the Secretary of State has made a direction under regulation 33;

"further information" means additional information which, in the view of the Examining authority, the Secretary of State or the relevant authority, is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment and which it is necessary to include in an environmental statement or updated environmental statement in order for it to satisfy the requirements of regulation 14(2);

"monitoring measure" means a provision requiring the monitoring of any significant adverse effects on the environment of proposed development, including any measures contained in a requirement imposed by an order granting development consent;

"any other information" means any other substantive information provided by the applicant in relation to the environmental statement or updated environmental statement;

"register" means a register kept pursuant to section 39 [F14] (register of applications);

"relevant authority" means the body which determines a subsequent application;

"Schedule 1 development" means development, other than exempt development, of a description mentioned in Schedule 1 to these Regulations;

"Schedule 2 development" means development, other than exempt development, of a description mentioned in Schedule 2 to these Regulations;

"scoping opinion" means a written statement—

(a) by the Secretary of State as to the information to be provided in an environmental statement as described in regulation 10(1); or

(b) by the relevant authority as to any further information to be provided in an updated environmental statement as described in regulation 10(2);

"screening direction" means a direction made by the Secretary of State as to whether or not development (including any associated development) is EIA development;

"screening opinion" means a written statement of the opinion of the Secretary of State or the Examining authority as to whether development (including any associated development) is EIA development;

"subsequent application" means an application to the relevant authority for approval of a matter where—

(a) the application is made in pursuance of a requirement imposed by an order granting development consent; and

(b) the approval must be obtained before all or part of the development permitted by the consent may begin;

"subsequent consent" means consent granted pursuant to a subsequent application;

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

"UK environmental assessment" means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;

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

(2) Except in regulation 2, any reference in these Regulations to a section is a reference to a section of the Act.

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

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

F5 2008, c. 29.

F6 Section 115 was amended by sections 128 and 237 of, paragraphs 1 and 56 of Part 1 of Schedule 13 to, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20); by section 43 of the Wales Act 2017 (c.4); and by section 160 of the Housing and Planning Act 2016 (c. 22).

F7 Section 42 was amended by section 23 of the Marine and Coastal Access Act 2009 (c. 23).

F8 S.I. 2009/2264; relevant amending instruments are S.I. 2010/439, 2012/2654, 2012/2732, 2013/522, 2013/755, 2014/469, 2015/377, 2015/1682.

F9 Section 43 was amended by section 23 of the Marine and Coastal Access Act 2009, and by section 133 of the Localism Act 2011.

F10 OJ No. L 26, 28.1.2012, p.1-21. Council Directive 2011/92/EU has been amended by Council Directive 2014/52/EU, OJ No. L 124, 25.4.2014, p. 1–18.

F11 Words in reg. 3(1) inserted (1.10.2018) by The Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018 (S.I. 2018/695), regs. 1, **6(2)**

F12 Under Part 6 of the Act the Secretary of State must decide whether an accepted application for an order granting development consent is to be handled by a Panel or by a single appointed person. The Panel or single appointed person (known as the "Examining authority") must conduct an examination of the application and make a report to the Secretary of State setting out the Examining authority's findings and conclusions in respect of the application and its recommendation as to the decision to be made by the Secretary of State on the application.

F13 1972 c. 68. Section 2(1) was amended by section 3(3), and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

F14 Section 39 was amended by section 128 of, and paragraphs 7(2) and 7(3) of Schedule 13 to, the Localism Act 2011 (c. 20).

Prohibition on granting consent without consideration of environmental information

4.—(1) This regulation applies to—

(a) applications for an order granting development consent for EIA development received by the Secretary of State; and

(b) subsequent applications for EIA development received by a relevant authority.

(2) Where this regulation applies, the Secretary of State or relevant authority (as the case may be) must not (in the case of the Secretary of State) make an order granting development consent or

(in the case of the relevant authority) grant subsequent consent unless an EIA has been carried out in respect of that application.

Environmental impact assessment process

5.—(1) The environmental impact assessment ("the EIA") is a process consisting of—

(a) the preparation of an environmental statement or updated environmental statement, as appropriate, by the applicant;

(b) the carrying out of any consultation, publication and notification as required under these Regulations or, as necessary, any other enactment in respect of EIA development; and

(c) the steps that are required to be undertaken by the Secretary of State under regulation 21 or by the relevant authority under regulation 25, as appropriate.

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

(a) population and human health;

(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC[F15] and Directive 2009/147/EC[F16];

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.

(4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

(5) The Secretary of State or relevant authority, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement or updated environmental statement, as appropriate.

F15 OJ No. L 206, 22.7.1992, p. 7.
F16 OJ No. L 20, 26.1.2010, p. 7.

When development is EIA development: general cases

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

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

(a) a person notifying the Secretary of State in writing under regulation 8(1)(b) that that person proposes to provide an environmental statement in respect of proposed development;

(b) the adoption by the Secretary of State or an Examining authority of a screening opinion to the effect that the development is EIA development; or

(c) the making of a screening direction by the Secretary of State pursuant to regulation 7 to the effect that the development is EIA development.