Circular 11/99
Welsh Office

Circular from the

Welsh Office,
Cathays Park, Cardiff, CF10 3NQ

1999

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

INTRODUCTION

1. This Circular gives guidance on the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999-SI 1999 No 293 (referred to in this Circular as 'the Regulations'). The Regulations implement Council Directive No. 85/337 EEC on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), as amended by Council Directive No. 97/11/EC, in so far as it applies to development under the Town and Country Planning Act 1990. In this Circular, references to 'the Directive' mean the Directive as amended. The functions of the Secretary of State and the Welsh Office will transfer to the National Assembly for Wales after 1 July 1999.

2. The Regulations apply to development in England and Wales:

   a. for which an application for planning permission is received by a local planning authority on or after 14 March 1999;

   b. which is carried out under permitted development rights and which were not already begun on 14 March 1999;

   c. which is the subject of a planning enforcement notice issued under section 172 of the 1990 Act (as substituted by section 5 of the Planning and Compensation Act 1991) on or after 14 March 1999; and

   d. which is carried out under permission granted by a simplified planning zone scheme or enterprise zone order and which is not already begun on 14 March 1999.

Further copies of this circular are available from:

The Stationery Office, Oriel Bookshop,
18-19 High Street, Cardiff CF10 2BZ
01222 395548 Fax 01222 384347

ISBN 07504 2335 8

First published 1999

£9.25 Net

ISBN 0-7504-2335-8
9 780750 423359 00925

3. Applications for planning permission received by a local planning authority before 14 March 1999 remain subject to the requirements of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, as amended.[1] The Town and Country Planning (Environmental Assessment and Unauthorised Development) Regulations 1995[2] continue to apply to enforcement notices served before that date.

4. The Regulations consolidate all the existing Regulations which implement the requirements of Council Directive 85/337/EEC for projects which are 'development'[3].

5. Similar provision for development subject to planning control is being made in Scotland and Northern Ireland. Procedures for projects which are granted consent under other legislation are the subject of separate legislation and guidance issued by the relevant Government departments or agencies.

6. Although the Regulations relate to England and Wales, this Circular relates only to development in Wales. Similar guidance will be issued by the Department of the Environment, Transport and the Regions in respect of development in England. The Circular is intended as a guide. It should be read in conjunction with the Regulations themselves. An authoritative statement of the law can only be made by the Courts.

7. This Circular replaces: C23/88; paragraphs 14 and 15 of Planning Guidance (Wales) Technical Advice Note (Wales) 3, Simplified Planning Zones; C20/94; C12/95; C39/95; paragraphs 15 and 16 of C32/92; paragraphs 36-40 of C39/92; paragraphs 2.78 and 2.79 of Annex 2 to C24/97; paragraph 22 of C29/95; and Planning Guidance (Wales) Technical Advice Note (Wales) 17, Environmental Assessment in relation to applications for planning permission received by a local planning authority on or after 14 March 1999.

CONTENTS

This Circular contains the following main sections:

1 SI 1988/1199, as amended by SI 1990/367, SI 1992/1494 and SI 1994/677

2 SI 1995/2258

3 SI 1988/1199, SI 1990/367, SI 1992/1494, SI 1992/2414, SI 1994/677, SI 1995/417 and SI 1995/2258

THE EIA DIRECTIVE

8. Council Directive 85/337/EEC came into force in 1988. Directive 97/11/EC, which amends Directive 85/337/EEC, came into force on 14 March 1999. It extends the range of development to which the Directive applies and makes a number of small but important changes to Environmental Impact Assessment (EIA) procedures.

9. The Directive's main aim is to ensure that the authority giving the primary consent (the 'competent authority') for a particular project makes its decision in the knowledge of any likely significant effects on the environment. The Directive, therefore, sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure - known as EIA - is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

10. Projects of the types listed in Annex I to the Directive must always be subject to EIA. Projects of the types listed in Annex II must be subject to EIA whenever they are likely to have significant effects on the environment. A determination of whether or not EIA is required must be made for all projects of a type listed in Annex II.

11. Where EIA is required, there are three broad stages to the procedure:

a. The developer must compile detailed information about the likely main environmental effects. To help the developer, public authorities must make available any relevant environmental information in their possession. The developer can also ask the 'competent authority' for their opinion on what information needs to be included. The information finally compiled by the developer is known as an 'Environmental Statement' (ES).

b. The ES (and the application to which it relates) must be publicised. Public authorities with relevant environmental responsibilities and the public must be given an opportunity to give their views about the project and ES.

c. The ES, together with any other information, comments and representations made on it, must be taken into account by the competent authority in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reason for it.

THE REGULATIONS

12. The Regulations must be interpreted in the context of the Directive itself. Neither the Directive nor the Regulations determine whether consent can or should be granted. Local planning authorities already have a well established general responsibility to consider the environmental implications of developments which are subject to planning control. The Regulations integrate the EIA procedures into this existing framework of local authority development control. These procedures provide a more systematic method of assessing the environmental implications of developments that are likely to have significant effects. While only a very small proportion of development will require EIA, it is stressed that EIA is not discretionary. If significant effects on the environment are likely, EIA is required.

13. Where the EIA procedure reveals that a project will have an adverse impact on the environment, it does not follow that planning permission must be refused. It remains the task of the local planning authority to judge each planning application on its merits within the context of the Development Plan, taking account of all material considerations, including the environmental impacts.

14. For developers, EIA can help to identify the likely effects of a particular project at an early stage. This can produce improvements in the planning and design of the development; in decision-making by both parties; and in consultation and responses thereto, particularly if combined with early consultations with the local planning authority and other interested bodies during the preparatory stages. In addition, developers may find EIA a useful tool for considering alternative approaches to a development. This can result in a final proposal that is more environmentally acceptable, and can form the basis for a more robust application for planning permission. The presentation of environmental information in a more systematic way may also simplify the local planning authority's task of appraising the application and drawing up appropriate planning conditions, enabling swifter decisions to be reached.

The legal framework

15. In this Circular, EIA refers to the whole process by which environmental information is collected, publicised and taken into account in reaching a decision on a relevant planning application. This process was formerly referred to in the UK as Environmental Assessment or EA.

16. Applications for planning permission for which EIA is required are referred to in the Regulations and the Circular as **'EIA applications'**. Subject to any direction by the Secretary of State, an application is, or would be, an EIA application if:

a. the relevant planning authority has notified the developer in writing that EIA is required; or

b. the applicant submits a statement which he refers to as an Environmental Statement for the purposes of the Regulations.

17. Development that falls within a relevant description in Schedule 1 to the Regulations always requires EIA. Such development is referred to in this Circular and the Regulations as **'Schedule 1 development'**.

18. Development of a type listed in Schedule 2 to the Regulations which:

a. meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2; or

b. is located in a 'sensitive area', as defined in regulation 2(1);

is referred to in this Circular as **'Schedule 2 development'**.

19. Regulation 3 prohibits the granting of planning permission for:

a. Schedule 1 development; or

b. Schedule 2 development which is likely to have significant environmental effects because of factors such as its nature, size or location;

unless the EIA procedures have been followed. The prohibition applies to any

development for which a planning application is received by the local planning authority on or after 14 March 1999.

20. For all Schedule 2 development (including that which would otherwise benefit from permitted development rights), the local planning authority must make its own formal determination of whether or not EIA is required (referred to in the Regulations and this Circular as a **'screening opinion'**). This may be done before any planning application has been submitted (regulation 5) or after (regulation 7). In making this determination, the local planning authority must take into account the relevant **'selection criteria'** in Schedule 3 to the Regulations (Annex B to this Circular). Developers may appeal to the Secretary of State for a **'screening direction'** where a local authority adopts a screening opinion that EIA is required (regulations 6 and 8). The local planning authority must make all screening opinions and directions available for public inspection (regulation 20).

21. Where EIA is required, information must be provided by the developer in an **ES**. This document (or series of documents) must contain the information specified by regulation 2(1) and in Schedule 4 to the Regulations. Regulation 10 allows developers to obtain a formal opinion from the relevant planning authority on what should be included in the ES (**'a scoping opinion'**). Under regulation 12, certain public bodies (defined in regulation 2(1) as **'the consultation bodies'**) must, if requested, make information in their possession available to the developer for the purposes of preparing an ES.

22. Regulation 13 sets out the procedures which must be followed by applicants in submitting a planning application with an ES, and by local planning authorities in publicising it. Similar procedures apply where an ES is submitted to the Secretary of State (regulation 16). Where the statement is not submitted until after the planning application to which it relates, the applicant is responsible for publicising it (regulation 14). In all cases, applicants must also make a reasonable number of copies of the ES available to the public (regulation 17), and may make a reasonable charge for them (regulation 18).

23. For EIA applications, the period after which an appeal against non-determination may be made is extended to 16 weeks (regulation 32).

24. Where a statement has been submitted which does not contain all the required information, the local planning authority, Secretary of State or Inspector must ask the applicant to supply further information (regulation 19). This information must be publicised in the same way as the statement itself.

25. When determining an EIA application, the local planning authority or Secretary of State must inform the public of their decision (regulation 21).

26. The Regulations also implement the EIA Directive in relation to:

- development carried out by local planning authorities (regulation 22);
- development permitted by simplified planning zone schemes and enterprise zone orders (regulations 23 and 24);

- development subject to a planning enforcement notice (regulation 25);
- development likely to have significant environmental effects in other Member States (regulations 27 and 28); and
- permitted development (regulation 35(3)).

27. Regulation 35 makes consequential and miscellaneous amendments to the provisions of:

- section 55 of the Town and Country Planning Act 1990;
- the Town and Country Planning (Use Classes) Order 1987[1];
- the Town and Country Planning (General Development Procedure) Order 1995 ('GDPO')[2]; and
- the Town and Country Planning (General Permitted Development) Order 1995 ('GPDO')[3].

ESTABLISHING WHETHER EIA IS REQUIRED

28. Generally, it will fall to local planning authorities in the first instance to consider whether a proposed development requires EIA. For this purpose, they will first need to consider whether the development is described in Schedule 1 or Schedule 2 to the Regulations (see figure 1).

Schedule I development
Development of a type listed in Schedule 1 always requires EIA.

Schedule 2 development
Development listed in Schedule 2 requires EIA if it is likely to have significant effects on the environment by virtue of factors such as its size, nature or location.

Changes or extensions to Schedule I or Schedule 2 development

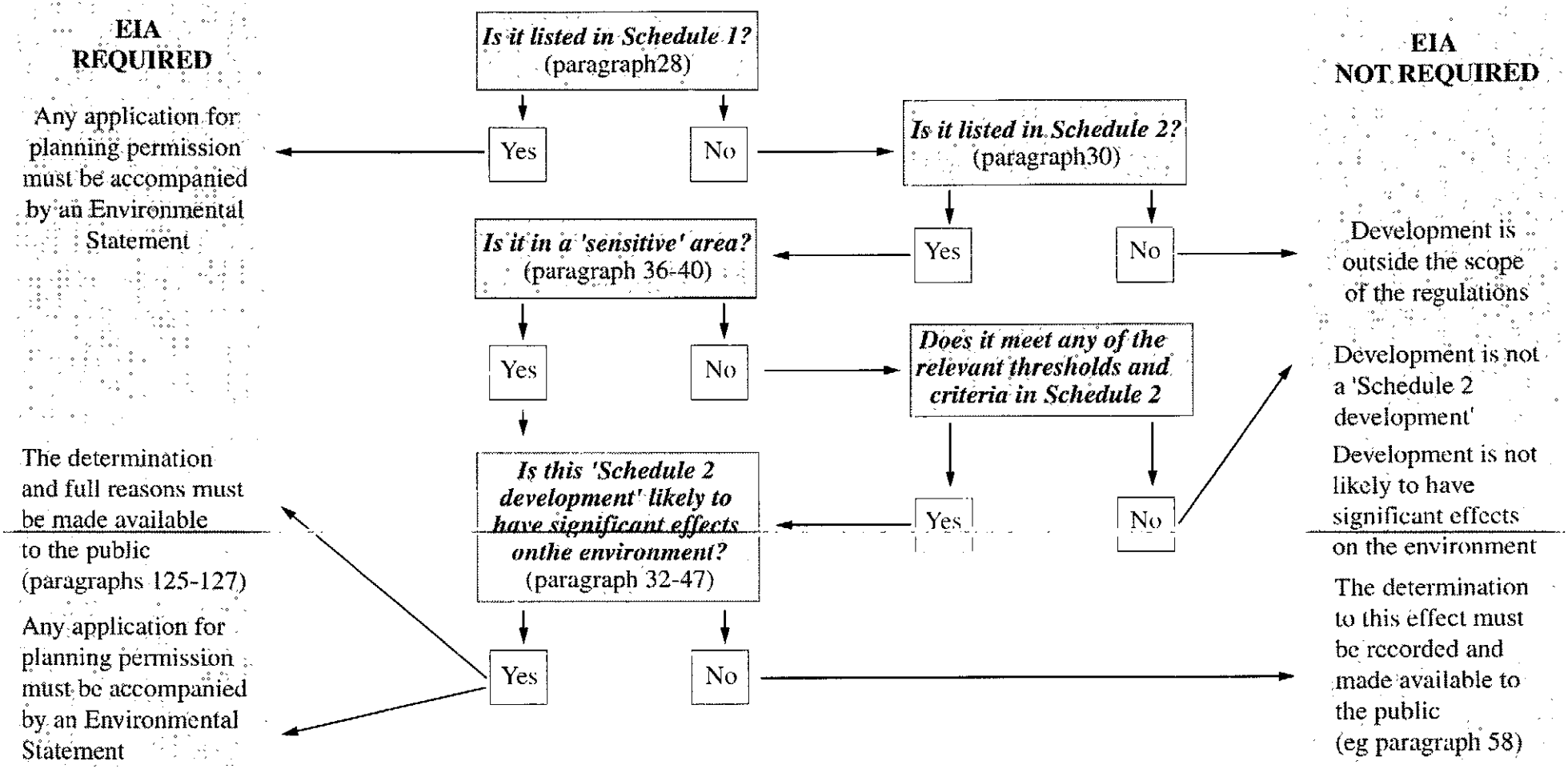
Changes or extensions to Schedule 1 or Schedule 2 development which may have significant adverse effects on the environment also fall within the scope of the Regulations. Where the change or extension itself would fall within one of the descriptions in Schedule 1, it constitutes a Schedule 1 development and EIA is always required[4]. Otherwise, and if the change or extension may have significant adverse effects on the environment, it is considered to be a Schedule 2 development. A screening opinion or direction is then required on whether the development is likely to have significant effects on the environment.

---

1 *SI 1987/764, relevant amending instruments are SI 1991/1567, SI 1992/610, and SI 1994/724*
2 *SI 1995/419*
3 *SI 1995/418*
4 *Commission v Germany (1955) ECR 1 - 2189 in particular paragraph 36*

Establishing whether a development requires EIA

Figure 1



Identifying Schedule 2 development

29 Schedule 2 development is development of a type listed in Schedule 2 which:

a. is located wholly or in part in a 'sensitive area' as defined in regulation 2(1) (paragraph 36); or

b meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2.

30. It is stressed that development in a sensitive area should only be considered to be Schedule 2 development if it falls within a description in Schedule 2. Most of the types of development listed in Schedule 2 have an inherent scale as emphasised by the headings (e.g. 'energy industry') contained in the Annexes to the Directive and included in Schedule 2. It follows that the majority of development proposals such as householder or small business developments will not fall within any of the descriptions. The criteria and thresholds in the second column of the table apply equally to changes or extensions to relevant development as they do to new development. Paragraph 13(a) of Schedule 2 provides that, in such cases, the thresholds and criteria are to be applied to the change or extension itself, not to the development as changed or extended.

31. Development falling below the thresholds or meeting none of the criteria in the second column of the table in Schedule 2 does not require EIA. However, there may be circumstances in which such small developments might give rise to significant environmental effects. In those exceptional cases, the Secretary of State can use his powers under regulation 4(8) (paragraph 77) to direct that EIA is required.

The need for EIA for Schedule 2 development

General considerations

32. The local planning authority must screen every application for Schedule 2 development in order to determine whether or not EIA is required. This determination is referred to as a 'screening opinion'. In each case, the basic question to be asked is 'Would this particular development be likely to have significant effects on the environment?'. The following paragraphs indicate the considerations which should be taken into account in making that determination.

33. As a starting point, authorities should study Schedule 3 to the Regulations (reproduced at Annex B to this Circular) which sets out the 'selection criteria' which must be taken into account in determining whether a development is likely to have significant effects on the environment. Not all of the criteria will be relevant in every case. It identifies three broad criteria which should be considered: the characteristics of the development (e.g. its size, use of natural resources, quantities of pollution and waste generated); the environmental sensitivity of the location; and the characteristics of the potential impact (e.g. its magnitude and duration). In the light of these, the Secretary of State's view is that, in general, EIA will be needed for Schedule 2 developments in three main types of case:-

a. for major developments which are of more than local importance (paragraph 35);

b. for developments which are proposed for particularly environmentally sensitive or vulnerable locations (paragraphs 36-40); and

c. for developments with unusually complex and potentially hazardous environmental effects (paragraphs 41-42).

34. The number of cases of such development will be a very small proportion of the total number of Schedule 2 developments. It is emphasised that the basic test of the need for EIA in a particular case is the likelihood of significant effects on the environment. It should not be assumed, for example, that conformity with a development plan rules out the need for EIA. Nor is the amount of opposition or controversy to which a development gives rise relevant to this determination, unless the substance of opponents' arguments reveals that there are likely to be significant effects on the environment.

Major development of more than local importance

35. In some cases, the scale of a development can be sufficient for it to have wide ranging environmental effects that would justify EIA. There will be some overlap between the circumstances in which EIA is required because of the scale of the development proposed and those in which the Secretary of State may wish to exercise his power to 'call in' an application for his own determination[1]. However, there is no presumption that all called-in applications require EIA, nor that all EIA applications will be called in.

Development in environmentally sensitive locations

36. The relationship between a proposed development and its location is a crucial consideration. For any given development proposal, the more environmentally sensitive the location, the more likely it is that the effects will be significant and will require EIA. Certain designated sites are defined in regulation 2(1) as 'sensitive areas' and the thresholds/criteria in the second column of Schedule 2 do not apply there. All developments must be screened for the need for EIA. These are:

a. Sites of Special Scientific Interest, any consultation areas around them (where these have been notified to the local planning authority under article 10(u)(ii) of the GDPO), land to which Nature Conservation Orders apply and international conservation sites; and

b. National Parks, Areas of Outstanding Natural Beauty, World Heritage Sites and Scheduled Ancient Monuments.

37. Special considerations apply to Sites of Special Scientific Interest (SSSIs), especially those which are also international conservation sites. In practice, the likely environmental effects of Schedule 2 development will often

---

1 Under section 77 of the 1990 Act, as amended by paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991

be such as to require EIA if it is to be located in or close to such sites, including classified and potential Special Protection Areas (SPAs) under the Wild Birds Directive (79/404/EEC); designated and candidate Special Areas of Conservation (SACs) under the Habitats Directive (92/43/EEC); and Ramsar sites (wetlands of international importance). Whenever local planning authorities are uncertain about the significance of a development's likely effects on an SSSI, they should consult the Countryside Council for Wales. Other non-statutory bodies may have relevant information and can also be consulted. Where development is proposed within two kilometres of an SSSI, the developer should consult the local planning authority to discover whether the site of the proposed development falls within a consultation area as a result of a notification to the authority by a nature conservation body under article 10(u) (ii) of the GDPO.

38. For any Schedule 2 development, EIA is more likely to be required if it would be likely to have significant effects on the special character of any of the other types of 'sensitive area'. However, it does not follow that every Schedule 2 development in (or affecting) these areas will automatically require EIA. In each case, it will be necessary to judge whether the likely effects on the environment of that particular development will be significant in that particular location. Any views expressed by the consultation bodies (paragraph 98) should be taken into account, and authorities should consult them in the cases where there is a doubt about the significance of a development's likely effects on a sensitive area.

39. In certain cases other statutory and non-statutory designations which are not included in the definition of 'sensitive areas', but which are nonetheless environmentally sensitive, may also be relevant in determining whether EIA is required. Where relevant, Local Biodiversity Action Plans will be of assistance in determining the sensitivity of a location. Urban locations may also be considered sensitive as a result of their heavier concentrations of population.

40. In considering the sensitivity of a particular location, regard should also be had to whether any national or internationally agreed environmental standards are already being approached or exceeded. An example is where a proposed development might affect air quality in a designated Air Quality Management Area[1]. Where there are local standards (for bathing water for example) consideration should be given to whether the proposed development would affect the standards or levels in those plans.

Development with particularly complex and potentially hazardous effects

41. A small number of developments may be likely to have significant effects on the environment because of the particular nature of their impact. Consideration should be given to development which could have complex, long-term or irreversible impacts, and where expert and detailed analysis of those impacts would be desirable and would be relevant to the issue of whether or not the development should be allowed. Industrial development involving emissions which are potentially hazardous to humans and nature may fall into this category. So, occasionally, may other types of development

1 *Air Quality and Land Use Planning, DETR/WO, December 1997*

which are proposed for severely contaminated land and where the development might lead to more hazardous contaminants escaping from the site than would otherwise be the case if the development did not take place.

42. The Regulations do not alter the relationship between authorities' planning responsibilities and the separate statutory responsibilities exercised by local authorities and other pollution control bodies under pollution control legislation. However, they do strengthen the need for appropriate consultations with the relevant bodies at the planning application stage. Guidance on the relevance of pollution controls to the exercise of planning functions is set out in Planning Guidance (Wales) Planning Policy.

Indicative criteria and thresholds

43. Given the range of Schedule 2 development, and the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate criteria or thresholds which will provide a universal test of whether or not EIA is required. The question must be considered on a case-by-case basis. However, it is possible to offer a broad indication of the type or scale of development which is likely to be a candidate for EIA and, conversely, an indication of the sort of development for which EIA is unlikely to be necessary.

44. For each category of Schedule 2 development, Annex A to this Circular lists criteria and/or thresholds which indicate the types of case in which, in the Secretary of State's view, EIA is more likely to be required. Annex A also gives an indication of the types of impact that are most likely to be significant for particular types of development. It should not be presumed that developments falling below these thresholds could never give rise to significant effects, especially where the development is in an environmentally sensitive location. Equally, developments which exceed the thresholds will not in every case require assessment. The fundamental test to be applied in each case is whether that particular type of development and its specific impacts are likely, in that particular location, to result in significant effects on the environment. It follows that the thresholds should only be used in conjunction with the general guidance, and particularly that relating to environmentally sensitive locations (paragraphs 36-40).

Applying the guidance to individual development

45. In general, each application (or request for an opinion) should be considered for EIA on its own merits. The development should be judged on the basis of what is proposed by the developer.

46. However, in judging whether the effects of a development are likely to be significant, local planning authorities should always have regard to the possible cumulative effects with any existing or approved development. There are occasions where the existence of other development may be particularly relevant in determining whether significant effects are likely, or even where more than one application for development should be considered together to determine whether or not EIA is required.

Multiple applications

For the purposes of determining whether EIA is required, a particular planning application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development[1]. In such cases, the need for EIA (including the applicability of any indicative thresholds) must be considered in respect of the total development. This is not to say that all applications which form part of some wider scheme must be considered together. In this context, it will be important to establish whether each of the proposed developments could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple planning applications.

Changes or extensions to existing or approved development

Development which comprises a change or extension requires EIA only if the change or extension is likely to have significant environmental effects. This should be considered in the light of the general guidance in this Circular and the indicative thresholds in Annex A. However, the significance of any effects must be considered in the context of the existing development. For example, even a small extension to an airport runway might have the effect of allowing larger aircraft to land, thus significantly increasing the level of noise and emissions. In some cases, repeated small extensions may be made to development. Quantified thresholds cannot easily deal with this kind of 'incremental' development. In such instances, it should be borne in mind that the thresholds in Annex A are indicative only. An expansion of the same size as a previous expansion will not automatically lead to the same determination on the need for EIA because the environment may have altered since the question was last addressed.

47. It should be noted that a developer can be asked to provide an ES only in respect of the specific development he has proposed, though the statement will need to address not only direct, but also indirect effects of the development. Any wider implications would be for the local planning authority to consider, although it is open to developers to assist the local planning authority by supplying any additional information relevant to this consideration. Further guidance on the content of ESs is given in paragraphs 81-85.

Outline planning applications

48. Where EIA is required for a planning application made in outline, the requirements of the Regulations must be fully met at the outline stage since reserved matters cannot be subject to EIA. When any planning application is made in outline, the local planning authority will need to satisfy themselves that they have sufficient information available on the environmental effects of the proposal to enable them to determine whether or not planning permission

---

1 *Judgement in the case of R v Swale BC ex parte RSPB [1991] IPLR 6*

should be granted in principle. In cases where the Regulations require more information on the environmental effects for the ES than has been provided in an outline application, for instance, on visual effects of a development in a National Park, authorities should request further information under regulation 19. This may also constitute a request under article 3 (2) of the GDPO.

Procedures for establishing whether or not EIA is required ('screening')

49. The determination of whether or not EIA is required for a particular development proposal can take place at a number of different stages.

a. The developer may decide that EIA will be required and submit a statement which he refers to as an ES for the purpose of the Regulations with the planning application (paragraphs 52-54).

b. The developer may, before submitting any planning application, request a screening opinion from the local planning authority (paragraphs 55-58). If the developer disputes the need for EIA (or a screening opinion is not adopted within the required period), the developer may apply to the Secretary of State for a screening direction (paragraphs 59-60). Similar procedures apply to permitted development (paragraphs 61 -65) .

c. The local planning authority may determine that EIA is required following receipt of a planning application (paragraphs 67-70). Again, if the developer disputes the need for EIA, the applicant may apply to the Secretary of State for a screening direction (paragraph 71).

d. The Secretary of State may determine that EIA is required for an application that has been called in for his determination or is before him on appeal (paragraphs 72-76).

e. The Secretary of State may direct that EIA is required at any stage prior to the granting of consent for particular development (paragraph 77).

50. Applicants should bear in mind that if the need for EIA only arises after the planning application has been submitted, consideration of the application will be suspended pending submission of an ES (regulation 32(2)(b)).

Procedures prior to submission of a planning application

51. Developers are advised to consult planning authorities at as early a stage as possible in cases where there is any question of EIA being required, particularly where the proposed development would otherwise benefit from permitted development rights. It will generally be helpful for developers to be aware of the concerns of local planning authorities and pollution control bodies well before a planning application is submitted. To provide some certainty for developers, they can obtain a screening opinion from the local planning authority before making a planning application (regulation 5). A valid planning application may be made without prior recourse to this procedure, but developers should bear in mind that any informal view from an authority has no legally-binding effect.

Environmental Statement submitted 'voluntarily' by a developer

52. Developers may decide for themselves (in the light of the Regulations, the guidance in this Circular and any discussions with the planning authority) that EIA will be required for their proposed development. A developer may, therefore, submit a statement with a planning application without having obtained a screening opinion to the effect that one is required.

53. If an applicant expressly states that they are submitting a statement which they refer to as an ES for the purposes of the Regulations, the application is an EIA application and must be treated as such by the local planning authority (regulation 4(2) (a)). Exceptionally, where an authority is of the view that the application, to which the statement relates, is clearly not one which they would have determined to be an EIA application, they may request the Secretary of State for a direction on the matter.

54. Occasionally, the applicant may not have made it clear that the information submitted is intended to constitute an ES for the purposes of the Regulations. In such cases, the local planning authority should adopt a screening opinion (if they have not already done so), in accordance with the procedures in regulation 7 (paragraphs 67-70). If the local planning authority determine that it is an EIA application, it is open to the applicant to ask for the information already submitted to be treated as the ES for the purposes of the Regulations, or to submit the specified information in a new statement. If the authority's opinion is that EIA is not required, the information provided by the applicant should still be taken into account in determining the application if it is material to the decision.

Obtaining a screening opinion from the local planning authority (regulation 5)

55. Before submitting an application for planning permission, developers who are in doubt whether EIA would be required, may request a screening opinion from the local planning authority (regulation 5(1)). The request should include a plan indicating the proposed location of the development, a brief description of the nature and purpose of the proposal and its possible environmental effects, giving a broad indication of their likely scale.

56. On receipt of a request, the authority should consider whether the proposed development is either Schedule 1 development or Schedule 2 development that is likely to have significant effects on the environment by virtue of factors such as its nature, size or location, taking into account the selection criteria in Schedule 3 (Annex B) (regulation 4(5)). The developer should normally be able to supply sufficient information about the development to enable the local planning authority to form a judgement and give a ruling on the need for EIA. However, where the authority considers that it needs further information, the developer should be asked to provide it (regulation 5(3)). Authorities should bear in mind that what is in question at this stage is the broad significance of the likely environmental effects of the proposal. This should not require as much information as would be expected to support a planning application. Very exceptionally, authorities may also wish to seek advice from one or more of the consultation bodies or non-statutory bodies.

57. The local planning authority must adopt its screening opinion within three weeks of receiving a request. This period may be extended if the

authority and developer so agree in writing. When adopting an opinion that EIA is required, the authority must state the full reasons for their conclusion clearly and precisely (regulation 4(6)). A copy must be sent to the developer (regulations 5(5) and 4(6)). This will help him to prepare the ES by indicating those aspects of the proposed development's environmental effects which the authority considers to be likely to be significant (see also paragraphs 86-92).

58. Where a local planning authority adopts a screening opinion, a copy of the relevant documents must be made available for public inspection for two years at the place where the planning register is kept. If a planning application is subsequently made for the development, the opinion and related documents should be transferred to Part I of the register with the application (regulation 20).

Applying to the Secretary of State for a screening direction (regulation 6)

59. Where the local planning authority's opinion is that EIA is required and the developer disagrees, or where an authority fails to adopt any opinion within three weeks (or any agreed extension), the developer may request the Secretary of State to make a screening direction[1] (regulation 5(6)). The request must be accompanied by all the previous documents relating to the request for a screening opinion, together with any additional representations that the developer wishes to make. The developer should also send a copy of the request and any representations to the local planning authority, which is free to make its own further representations.

60. The Secretary of State should make a screening direction within three weeks from the date of receipt of the request, or such longer period as he may reasonably require. Where he directs that EIA is required, the direction must be accompanied by a clear and precise statement of his full reasons (regulation 4(6)). He must send copies of the direction to the developer and to the local planning authority (regulations 6(5) and 4(9)), which must ensure that a copy of the direction is made available for inspection with the other documents referred to in paragraph 59 (regulation 20).

Permitted development

61. The Town and Country Planning (General Permitted Development) Order 1995 ('GPDO')[2] grants general permission (usually referred to as permitted development rights - PDRs) for various specified types of development. The purpose and function of the Order is explained in Circular 29/95, although paragraph 22 of that Circular is superseded by the provisions set out below in paragraphs 62-65.

62. Permitted development rights largely concern development of a minor, non-contentious nature. The majority of permitted developments, such as development within the curtilage of a dwelling house, minor operations, temporary buildings and uses, and small business development are very unlikely to fall within any of the descriptions in Schedules 1 or 2.

63. The provisions of the GPDO (insofar as they relate to Schedule 1 or Schedule 2 development) are amended (regulation 35(3)) as follows:

---

1 *Such requests should be sent to the Planning Division, Welsh Office, Cathays Park, Cardiff, CF10 3NQ*

2 *SI 1995/418*

a. Schedule 1 development is not permitted development. Such developments always require the submission of a planning application and an ES.

b. Schedule 2 development does not constitute permitted development unless the local planning authority has adopted a screening opinion to the effect that EIA is not required. Where the authority's opinion is that EIA is required, permitted development rights are withdrawn and a planning application must be submitted and accompanied by an ES.

These requirements do not apply to certain types of permitted development, described in paragraphs 151-156.

64. A request for a screening opinion in relation to permitted development should be made in accordance with the provisions which apply to requests for a pre-application screening opinion set out in regulation 5 (paragraphs 55-58). There are similar rights to request the Secretary of State to make a screening direction if a developer disagrees with an opinion that EIA is required, or where the local planning authority fails to adopt any opinion within three weeks (or such longer period as is agreed in writing). Such requests should be made in accordance with the procedures in regulation 6 (paragraphs 59-60). Requests can be made at the same time as any prior notification required by a condition in the GPDO (but in many cases a screening opinion will be required by the Regulations even though no prior notification is required by the GPDO). The existing non-statutory consultation arrangements for statutory undertakers in relation to Article 4 Directions set out in Circular 29/95 are not affected by these arrangements.

65. Local planning authorities are reminded that, in exercising their functions under the Regulations, they are to determine the significance or otherwise of the likely environmental effects of the proposed development, rather than to judge its planning merits. They should, therefore, make every effort to minimise disruption and delay, particularly where urgent development is required, for example for safety or security purposes or for essential improvements to public water and sewage treatment systems, or in any other case where improvements to public utilities are proposed.

Effect of screening opinions and screening directions

66. A screening opinion that development is EIA development determines, for the purposes of the Regulations, that it is EIA development, unless it is overridden by a direction from the Secretary of State. It is possible for the Secretary of State to cancel or vary an earlier direction if he has grounds for doing so. The local planning authority must observe any such direction, although they may in exceptional circumstances ask the Secretary of State to cancel or vary it if they consider that there is good reason to do so. However, a screening opinion can only be adopted on the basis of the information provided at the time it was given. There may, exceptionally, be cases where an opinion has been given that EIA is not required for a proposed development, but it subsequently becomes evident (for example, from further information submitted in support of a planning application) that it is nevertheless an EIA application. In such cases, the procedures described in paragraphs 67-70

below will apply as they apply in cases where no prior screening opinion has been adopted.

Planning application not accompanied by an Environmental Statement

Initial consideration by local planning authority (regulation 7)

67. When a local planning authority receives a planning application without an accompanying ES, if there appears any possibility that it is for Schedule 1 or Schedule 2 development, they should check their records for any screening direction, or any pre-application screening opinion they may have adopted. Where no screening opinion or direction exists, the local planning authority must adopt such an opinion. If the authority needs further information to be able to adopt an opinion, the applicant should be asked to provide it.

68. Where the local planning authority's opinion is that EIA is not required, a screening opinion to that effect should be adopted and placed on Part I of the planning register with the planning application within three weeks of the receipt of the application (regulations 7 (1) and 20(1)). The application should then be determined in the normal way.

69. However, where the authority's opinion is that EIA is required, they must notify the applicant within three weeks of the date of receipt of the application, giving full reasons for their view clearly and precisely (regulations 7(2) and (3) and 4(6)). The three week period may be extended if the applicant and the authority so agree in writing. A copy of the notification should be placed on Part I of the planning register with the application (regulation 20(1)(e)). For monitoring purposes, authorities are also asked to send a copy to the Secretary of State[1].

70. An applicant who still wishes to continue with the application must reply within three weeks of the date of such a notification. The reply should indicate the applicant's intention either to provide an ES or to ask the Secretary of State for a screening direction. If the applicant does not reply within the three weeks, the application will be deemed to have been refused. No appeal to the Secretary of State is possible against such a deemed refusal. If the applicant does reply to the notification, the authority should suspend consideration of the planning application (unless they are already minded to refuse planning permission because of other material considerations, in which case they should proceed to do so as quickly as possible). The 16 week period after which the applicant may appeal against non-determination of the planning application does not begin until an ES and the documents required by regulation 14(5) have been submitted. If the Secretary of State directs that no such Statement is required the normal 8 week period applies, but the period begins to run at the date of the direction.

Application to Secretary of State for a screening direction (regulations 7(4) and 7(7))

71. An applicant requesting the Secretary of State for a screening direction (paragraph 70), must include a copy of the planning application together with all supporting documents and correspondence with the local planning authority concerning the proposed development. The same procedures apply to such requests as apply to requests for a screening direction prior to the submission of a planning application (paragraphs 59-60).

---

1 The copy should be sent to Planning Division, Welsh Office, Cathays Park, Cardiff, CF10 3NQ

Called-in application not accompanied by an Environmental Statement (regulation 8)

72. When an application for planning permission is called in for determination by the Secretary of State (under section 77 of the Town and Country Planning Act 1990) and it is not accompanied by an ES, the Secretary of State will consider whether it is for permission for Schedule 1 development or for Schedule 2 development for which EIA is required. Where necessary he will make a screening direction.

73. If the Secretary of State directs that EIA is required, the applicant and the local planning authority will be notified accordingly. There is no appeal against such a notification. An applicant who wishes to continue with the application must reply within three weeks of such a notification, stating that an ES will be provided. Otherwise, at the end of the three week period, the Secretary of State will inform the applicant that no further action will be taken on the application. Where the applicant indicates that an ES will be provided, the Secretary of State will notify the consultation bodies (paragraph 98) accordingly.

74. If the Secretary of State concludes that EIA is not required, and there has been no previous screening opinion to that effect, he shall make a screening direction to that effect and send a copy to the local planning authority. They must ensure that the direction is placed on the planning register (regulation 20(1)(b)).

Appeal not accompanied by an Environmental Statement (regulation 9)

75. On receipt of an appeal made under section 78 of the 1990 Act which is not accompanied by an ES, the Secretary of State will consider whether the proposed development is a Schedule 1 development or a Schedule 2 development for which EIA is required. Where necessary, he will make a screening direction. Where a Planning Inspector is dealing with an appeal, if the Inspector considers that EIA might be required, that question must be referred to the Secretary of State. The Inspector is then precluded from determining the appeal (except by refusing planning permission) until he receives a screening direction from the Secretary of State. If the Secretary of State directs that EIA is required, the Inspector may not determine the appeal (except by refusing permission) until the appellant submits an ES. The Secretary of State may direct that EIA is required at any time before an appeal is determined.

76. The procedures set out in paragraphs 73-74 above apply to appeals as they apply to called-in applications.

Secretary of State's general power to make directions

77. The Secretary of State is empowered to make directions in relation to the need for EIA (regulations 4(7), 4(8) and article 14(2) of the GDPO). Such directions will normally be made in response to an application from a developer who is in dispute with the local planning authority about whether EIA is required (paragraphs 59-60). However, the Secretary of State also has a number of wider powers.

a. The Secretary of State may make a screening direction for any particular development of a type listed in Schedule 1 or Schedule 2 to the Regulations at any time prior to consent being granted, even where no application for a direction has been made to him. He may also make a screening direction in relation to development permitted under the GPDO (regulation 4(7)). There may be cases where information submitted to the Secretary of State by other bodies or persons suggests the need for EIA. In such cases it will be open to the Secretary of State to issue a direction.

b. Local planning authorities may, exceptionally, draw the Secretary of State's attention to a particular development which, although listed in Schedule 2 does not constitute a Schedule 2 development for the purposes of the Regulations. The Secretary of State has powers to direct that such development is EIA development (regulation 4(8)).

c. The Secretary of State may direct that EIA is always required for particular classes of development (article 14(2) of the GDPO). Any such general directions will be notified to all local planning authorities.

d. The Secretary of State may direct that particular proposed Schedule 1 or Schedule 2 development is exempt from the application of the Regulations, even though it is likely to have significant effects on the environment (regulation 4(4)). While the Directive specifically provides such a power, the Secretary of State does not foresee any circumstances in which it would be used, although such circumstances may arise.

78. Before making a direction, the Secretary of State will normally give the local planning authority and applicant the opportunity to make representations. Any direction will be copied to the applicant (where known) and the local planning authority, which must make a copy of any direction available for public inspection. Where the Secretary of State has used any of these powers to direct that EIA is required for an application which is before a local planning authority, the authority must write to the applicant within seven days of receiving the copy of the screening direction to tell him that an ES is required (regulation 7(3)). The procedures of regulation 7(4)-(6) then apply (paragraphs 67-70).

EIA and other types of environmental assessment

79. There are a number of other European Community Directives which require the assessment of effects on the environment. For example:

a. developments which will affect a Special Protection Area designated under the Wild Birds Directive[1] or Special Area of Conservation designated under the Habitats Directive[2] must be subject to an assessment of those effects in accordance with the Conservation (Natural Habitats &c.) Regulations 1994 (SI 1994/2716);

[1] *Directive 79/409 EEC* [2] *Directive 92/43 EEC*

b. from October 1999, certain industrial developments will require a permit under the IPPC Directive[1] (similar arrangements apply at present under the IPC regime (Environmental Protection Act 1990)); and

c. from April 1999, certain establishments which have the potential to cause a major accident hazard will require a consent under the Control of Major Accident Hazards Directive[2].

80. These requirements and EIA are all independent of each other in that the requirement for one does not mean another automatically applies. The individual tests set out in each system still apply. However, there are clearly some links between them and developers will benefit from identifying the different assessments required at an early stage and co-ordinating them to minimise undesirable duplication where more than one regime applies. Advice on the links between the EIA system and the requirements of the Habitats Regulations is offered in Planning Guidance (Wales) Planning Policy; and on the links between the Town and Country Planning system and the current IPC authorisation system in Planning Guidance (Wales) Planning Policy and Planning Guidance (Wales) Technical Advice Note (Wales) 5 "Nature Conservation and Planning".

PROCEDURES WHEN EIA IS REQUIRED

Preparation and content of an Environmental Statement

General requirements

81. It is the applicant's responsibility to prepare the ES. There is no statutory provision as to the form of an ES (which may consist of one or more documents). However, it must contain the information specified in Part II, and such of the relevant information in Part I of Schedule 4 to the Regulations (reproduced in Annex C to this Circular) as is reasonably required to assess the effects of the project and which the developer can reasonably be required to compile (see the definition of "environmental statement" in regulation 2(1)).

82. Whilst every ES should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'main' or 'significant' environmental effects to which a development is likely to give rise. In many cases, only a few of the effects will be significant and will need to be discussed in the ES in any great depth. Other impacts may be of little or no significance for the particular development in question and will need only very brief treatment to indicate that their possible relevance has been considered. While each ES must comply with the requirements of the Regulations, it is important that they should be prepared on a realistic basis and without unnecessary elaboration.

83. Where alternative approaches to development have been considered, paragraph 2 of Part II of Schedule 4 now requires the developer to include in the ES an outline of the main ones, and the main reasons for his choice. Although the Directive and the Regulations do not expressly require the developer to study alternatives, the nature of certain developments and their

[1] *Directive 96/61 EC* [2] *Directive 96/82/ EC*

location may make the consideration of alternative sites a material consideration. In such cases, the ES must record this consideration of alternative sites. More generally, consideration of alternatives (including alternative sites, choice of process, and the phasing of construction) is widely regarded as good practice, and resulting in a more robust application for planning permission. Ideally, EIA should start at the stage of site and process selection, so that the environmental merits of practicable alternatives can be properly considered. Where this is undertaken, the main alternatives considered must be outlined in the ES.

84. The list of aspects of the environment which might be significantly affected by a project is set out in paragraph 3 of Part I of Schedule 4, and includes human beings; flora; fauna; soil; water; air; climate; landscape; material assets, including architectural and archaeological heritage; and the interaction between any of the foregoing. Paragraph 4 of Part I of Schedule 4 indicates, among other things, that consideration should also be given to the likely significant effects resulting from use of natural resources, the emission of pollutants, the creation of nuisances and the elimination of waste. In addition to the direct effects of a development, the ES should also cover indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects. These are comprehensive lists, and a particular project may of course give rise to significant effects, and require full and detailed assessment, in only one or two respects.

85. The information in the ES must be summarised in a non-technical summary (paragraph 5 of Part II of Schedule 4). The non-technical summary is particularly important for ensuring that the public can comment fully on the ES. The ES may, of necessity, contain complex scientific data and analysis in a form which is not readily understandable by the lay person. The non-technical summary should set out the main findings of the ES in accessible plain English.

Compiling an Environmental Statement

86. It is the developer's responsibility to prepare the ES. As a starting point, developers may like to study the then Department of the Environment's good practice guide[1].

87. There is no obligation on the developer to consult anyone about the information to be included in a particular ES. However, there are good practical reasons to do so. Local planning authorities will often possess useful local and specialised information and may be able to give preliminary advice on those aspects of the proposal that are likely to be of particular concern to the authority. The timing of such informal consultations is at the developer's discretion. It will generally be advantageous for them to take place as soon as the developer is in a position to provide enough information to form a basis for discussion. The developer can ask that any information provided at this preliminary stage be treated in confidence by the planning authority and any other consultees.

---

1 *Preparation of Environmental Statements for Planning Projects that Require Environmental Assessment - A Good Practice Guide, 1995.* Available from the Stationery Office

88. It will normally also be helpful to a developer preparing an ES to obtain information from the consultation bodies. Where a developer has formally notified the planning authority that an ES is being prepared (paragraphs 97-99), the local planning authority will inform each of the consultation bodies of the details of the proposed development and that they may be requested to provide relevant, non-confidential, information. Non-statutory bodies also have a wide range of information and may be consulted by the developer.

Provision to seek a formal opinion from the local planning authority on the scope of an Environmental Statement ('scoping')(regulation 10)

89. Before making a planning application, a developer may ask the local planning authority for their formal opinion on the information to be supplied in the ES (a 'scoping opinion'). This provision allows the developer to be clear about what the local planning authority considers the main effects of the development are likely to be and, therefore, the topics on which the ES should focus.

90. The developer must include the same information as would be required to accompany a request for a screening opinion (paragraph 55), and both requests may be made at the same time (regulations 10(2) and 10(5)). A developer may also wish to submit a draft outline of the ES, giving an indication of what he considers to be the main issues, to provide a focus for the local planning authority's considerations. If the authority considers that it needs further information to be able to adopt a scoping opinion, the developer should be asked to provide it. The authority must consult the consultation bodies and the developer before adopting its scoping opinion.

91. The local planning authority must adopt a scoping opinion within five weeks of receiving a request (or, where relevant, of adopting a screening opinion - regulation 10(5)). This period may be extended if the authority and developer so agree in writing. As a starting point, authorities should study the definition of ES in regulation 2(1) and Schedule 4 to the Regulations (Annex C) and the guidance elsewhere in this Circular (paragraphs 81-85 and Annex A). In addition, authorities may find it useful to consult other published guidance, such as the European Commission's 'Guidance on Scoping', which was sent to all local planning authorities in late 1996[1].

92. The scoping opinion must be kept available for public inspection for two years (with the request including documents submitted by the developer as part of that request) at the place where the planning register is kept. If a planning application is subsequently made for development to which the scoping opinion relates, the opinion and related documents should be transferred to Part I of the register with the application (regulation 20).

Request to the Secretary of State for a scoping direction (regulation 11)

93. There is no provision for any disagreement between the developer and the local planning authority over the content of an ES to be referred to the

1 *Environmental Impact Assessment - Guidance on Scoping*, May 1996. Available from Mrs M-C Beeckmans, European Commission, DG XI.B.2 Fax No. 00 322 2969561

Secretary of State. However, on call-in or appeal the Secretary of State will need to form his own opinion on the matter. Where a local planning authority fails to adopt a scoping opinion within five weeks (or any agreed extension), the developer may apply to the Secretary of State for a scoping direction (regulation 10(7)). This application must be accompanied by all the previous documents relating to the request for a scoping opinion, together with any additional representations that the developer wishes to make. The developer should also send a copy of the request and any representations to the local planning authority, who are free to make their own additional representations.

94. The Secretary of State must make a scoping direction within five weeks from the date of receipt of a request, or such longer period as he may reasonably require. He must consult the consultation bodies and the developer beforehand. Copies of the scoping direction will be sent to the developer and to the local planning authority, which must ensure that a copy is made available for inspection with the other documents referred to in paragraph 93 above.

Effect of a scoping opinion or direction

95. An ES is not necessarily invalid if it does not fully comply with the scoping opinion or direction. However, as these documents represent the considered view of the local planning authority or the Secretary of State, a statement which does not cover all the matters specified in the scoping opinion or direction will probably be subject to calls for further information under regulation 19 (paragraphs 109-112).

96. The fact that a local planning authority or the Secretary of State has given a scoping opinion or scoping direction does not prevent them from requesting further information at a later stage under regulation 19. Where the Secretary of State has made a scoping direction in default of the local planning authority, the authority must still take into account all the information they consider relevant. In practice, there should rarely be any difference between the relevant information and that specified by the Secretary of State.

Provision of information by the consultation bodies (regulation 12)

97. Under the Environmental Information Regulations 1992[1], public bodies must make environmental information available to any person who requests it. The Regulations supplement these provisions in cases where a developer is preparing an ES. Once a developer has given the local planning authority notice in writing that he intends to submit an ES, the authority must inform the consultation bodies, and remind them of their obligation to make available, if requested, any relevant information in their possession (regulation 12). The local planning authority must also notify the developer of the names and addresses of the bodies to whom they have sent such a notice. The notification to the local planning authority must include similar information to that which would be submitted if the developer were seeking a screening opinion under regulation 5 (paragraph 55).

---

1 *SI 1992/3240, as amended by SI 1998/1447*

98. The consultation bodies are -

a. the bodies who would be statutory consultees under article 10 of the GDPO for any planning application for the proposed development; and (if not already included)

b. any principal council for the area in which the land is situated (other than the local planning authority);

c. the Countryside Council for Wales;

d. the Secretary of State for Wales (Cadw); and

e. the Environment Agency.

99. The consultation bodies are only required to provide information already in their possession. There is no obligation on public bodies to undertake research or otherwise to take steps to obtain information which they do not already have. Nor is there any obligation to make available information which is capable of being treated as confidential under the Environmental Information Regulations 1992. Public bodies may make a reasonable charge reflecting the cost of making available information requested by a developer. Further information on the application of the Environmental Information Regulations is contained in a guidance note prepared by the then Department of the Environment[1].

Submission of EIA applications and initial publicity procedures

Environmental Statement submitted with planning application (regulation 13)

100. When submitting with a planning application a statement which he refers to as an ES, the applicant should send to the local planning authority all the documents which must normally accompany a planning application, together with the requisite fee (which is not affected by the fact that an ES is required). In addition, the applicant must submit:-

a. four copies of the statement (three will be for onward transmission to the Secretary of State);

b. a note of the name of every body to whom the applicant has already sent or intends to send a copy of the statement under the procedures described in paragraph 102; and

c. such further copies of the statement as are needed to allow the local planning authority to send one to the other consultation bodies (paragraph 103).

101. Applicants must also make a reasonable number of copies of the ES available to the public, either free of charge or at a reasonable cost reflecting printing and distribution costs (regulations 17 and 18). Local planning authorities and applicants may wish to consider whether these copies should be held at the authority's offices, and whether the authority's staff should collect any charges for those copies on behalf of the applicant.

---

1 *Freedom of Access to Information on the Environment, 1992*

102. On receipt, the local planning authority is required to treat a planning application submitted with a statement referred to by the applicant as an ES in the same way as any other planning application, with the following additional requirements.

a. The application and the statement must be publicised in accordance with the procedures set out in article 8 of the GDPO. Schedule 3 to the GDPO contains the appropriate form for the notices to be published in the local press and posted on site, which must:

   i. state that a copy of the statement is included in the documents which will be open to inspection by the public and give the address where the documents can be inspected free of charge;

   ii. give an address in the locality where copies of the statement may be obtained;

   iii. state that a copy may be obtained there while stocks last and the amount of any charge to be made for supplying a copy; and

   iv. state the date (which must be at least 21 days after the date on which the notice was published) by which any written representations about the application should be made to the local planning authority.

b. Copies of the statement and application must be sent to those of the consultation bodies that have not received one direct from the developer.

c. Three copies of the statement and a copy of the application must be sent to the Secretary of State within 14 days of receipt[1].

d. The statement must be placed on Part I of the planning register. Any related screening or scoping direction or opinion given under the pre-application procedures should also be placed on the register.

Copies of Environmental Statement for the consultation bodies

103. The local planning authority must consult the consultation bodies (paragraph 98). The applicant must provide one copy of the statement for each of the consultation bodies without charge. The applicant may either send a copy of the statement, together with a copy of the related planning application, and any relevant plan, direct to the bodies concerned, or may send copies of the statement to the local planning authority for onward transmission (paragraph 102(b)). In practice, it will be sensible for the applicant and local planning authority to agree prior to submission of the application how the copies of the statement will be distributed.

104. A charge may be made for any extra copies of the statement requested by any of these bodies.

Additional publicity

105. Applicants, are encouraged to publish the non-technical summary (which **must** be included in every ES) as a separate document, and to make copies available free of charge so as to facilitate wider public consultation. Applicants and local planning authorities may also wish to make further arrangements to make details of the development available to the public.

---

1 *Copies should be sent to Planning Division, Welsh Office, Cathays Park, Cardiff, CF10 3NQ*

Environmental Statement submitted after a planning application (regulation 14)

106. Where an applicant is submitting an ES which relates to a planning application that has already been submitted, the procedures are the same as described in paragraphs 100-103 above, except that the applicant is responsible for publicising the statement. The applicant must publish notices in the local press and post them on site before the statement is submitted (regulation 14). When the copies of the statement are submitted to the local planning authority, they must be accompanied by a certificate stating that the publicity arrangements have been met (regulation 14(5)). Submission of false certificates is a criminal offence.

Consideration of EIA applications

107. The local planning authority should determine the application within 16 weeks from the date of receipt of the statement, instead of the normal 8 weeks from the receipt of the planning application (regulation 32). The period may be extended by written agreement between the authority and the applicant. Where the local planning authority has not determined the application after 16 weeks or any agreed extension, the applicant may appeal to the Secretary of State against non-determination.

108. The planning application may not be determined until at least 14 days after the last date on which a consultation body was served with a copy of the statement (regulation 13(4)). Where an EIA application is not submitted with an ES and the applicant indicates he proposes to provide one, consideration of the application is suspended until the statement is received. The application shall not be determined until at least 21 days after the receipt of the statement (regulation 14(6)).

Adequacy of the Environmental Statement

109. Local planning authorities should satisfy themselves in every case that submitted statements contain the information specified in Part II of Schedule 4 to the Regulations and the relevant information set out in Part I of that Schedule that the developer can reasonably be required to compile. To avoid delays in determining EIA applications, consideration of the need for further information and any necessary request for such information should take place as early as possible in the scrutiny of the planning application.

Provision of further information (regulation 19)

110. Where the required information has not been provided, the authority must use its powers under regulation 19 to require the applicant to provide further information concerning the relevant matters set out in Schedule 4. Any information provided in response to such a written request must be publicised, and consulted on, in a similar way to the document submitted as an ES (regulation 19(3)-(9)).

111. Authorities should use their powers under regulation 19 only when they consider that further information is necessary to complete the ES and thus enable them to give proper consideration to the likely environmental effects of the proposed development. The additional delay and costs imposed on applicants by the requirement to provide further information about environmental effects should be kept to the minimum consistent with

compliance with the Regulations. Authorities should not use regulation 19 simply to obtain clarification or non-substantial information. However, where an applicant voluntarily submits additional information of a substantive nature, local planning authorities should consider advertising that information and sending it to the consultation bodies as if it had been provided in response to a formal request under regulation 19(1).

112. The period of 16 weeks referred to in paragraph 107 continues to run while any correspondence about the adequacy of the information in an ES is taking place. The applicant's right of appeal against non-determination at the end of that period (or any agreed extension) is not affected. A planning application is not invalid purely because an inadequate ES has been supplied nor because the applicant has failed to provide further information when required to do so under regulation 19. However, if a developer fails to provide enough information to complete the ES, the application can be determined only by refusal (regulation 3).

Further information provided for a public inquiry

113. The Secretary of State may use regulation 19 to request further information for the purposes of a local inquiry under the 1990 Act[1]. By virtue of regulation 19(2), if the request specifically states that the information is to be provided for such purposes, the publicity procedures set out in regulation 19(3)-(9) do not apply. Rather, such information will be regulated by the Rules relating to the submission of evidence to local planning inquiries[2]. These Rules already require material provided by the applicant to be publicised appropriately. Further details of procedures relating to public inquiries are contained in Circular 7/97.

114. The Secretary of State or an Inspector may, in writing, require an applicant or appellant to produce such evidence as they may reasonably call for to verify any information in the ES.

Secretary of State's consideration of effects on other countries (regulations 27 and 28)

115. Local planning authorities are required to send copies of ESs and related planning applications to the Secretary of State within two weeks of receipt. This will enable him to consider whether the proposed development is likely to have significant effects on the environment of any other EC Member State or any other country that has ratified the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention)[3]. This will also enable the Secretary of State to respond promptly if a country asks for information about a particular development.

---

1 *Including local inquiries held into planning appeals arising under section 78 of that Act and into planning applications referred to the Secretary of State under section 77 of the Act*

2 *Rule 6 (service of statements of case etc.) and rule 13 (proofs of evidence) of the Town and Country Planning (Inquiries Procedure) Rules 1992 SI 1992/2038. Similar provisions are also included in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) Rules 1992 SI 1992/2039*

3 *CM 1645*

116. Developments that are likely to have significant effects on the environment of another country will be rare in Wales. However, should they occur, the Secretary of State must send information about the development to the government of the affected country, and invite them to participate in the consultation procedures. At the same time, the Secretary of State will publish a notice in the London Gazette giving details of the development and any available information on its possible transboundary impact. In any such case, the Secretary of State will direct (under article 14(1) of the GDPO) that planning permission may not be granted until the end of such time as may be necessary for consultations with that government.

117. In the Department's view, a decision by the Secretary of State to call in an application involving a development proposal that is likely to have significant effects on the environment of another Member State would be consistent with published policy guidelines for exercising this power.

118. Where the environment in Wales is likely to be significantly affected by a project in another country, the Secretary of State will agree with that country how the UK and its public are to be consulted so that they may participate fully in that country's EIA procedure.

Determining the planning application

119. Before determining any EIA application, the local planning authority, the Secretary of State or an Inspector as the case may be, must take into consideration the information contained in the ES (including any further information), any comments made by the consultation bodies, and any representations from members of the public about environmental issues.

Securing mitigation measures

120. Mitigation measures proposed in an ES are designed to limit the environmental effects of the development. Planning authorities will need to consider carefully how such measures are secured, particularly in relation to the main mitigation measures specified in the decision (paragraph 125).

121. Conditions attached to a planning permission may include mitigation measures. However, a condition requiring the development to be "in accordance with the Environmental Statement" is unlikely to be valid unless the ES was exceptional in the precision with which it specified the mitigation measures to be undertaken. Even then, the condition would need to refer to the specific part of the ES rather than the whole document.

122. A planning condition may require a scheme of mitigation for more minor measures to be submitted to the local planning authority and approved in writing before any development is undertaken. However, planning conditions should not duplicate other legislative controls. In particular, planning authorities should not seek to substitute their own judgement on pollution control issues for that of the bodies with the relevant expertise and the statutory responsibility for that control. Advice on planning conditions is contained in Circular 35/95.

123. Another possible method of securing mitigation measures is through planning obligations[1], which are enforceable by the local planning authority. Planning obligations may be entered into unilaterally by a developer or by agreement between a developer and the local planning authority. Detailed guidance on the use of such agreements is contained in Circular 13/97.

124. In addition, developers may adopt environmental management systems such as the Eco-Management and Audit Scheme (EMAS) to demonstrate implementation of mitigation measures and to monitor their effectiveness.

Publicising determinations of EIA applications (regulation 21)

125. When the local authority has determined an EIA application, they must, in addition to the normal requirement to notify the applicant, notify the Secretary of State. The authority must also publish a notice in the local press, giving the content of the determination and stating that the documents relating to the determination will be open to inspection by the public. They must give the address where the documents can be inspected free of charge (paragraph 126). Where either the Secretary of State or an Inspector has determined an EIA application, he will send a copy of his determination to the local authority for them to publicise.

126 A copy of the decision, including any conditions imposed, should be kept in the same place as the register with such other documents as contain:

a. the main reasons and considerations on which the decision is based; and

b. a description, where permission has been granted, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

127. The requirement to make available the main reasons and considerations on which the decision is based now applies equally to cases where planning permission is granted and where it is refused. In practice, when the Planning Committee agree with the recommendation contained in the planning officer's report, authorities may find that this requirement is met by the relevant planning officer's report to the Planning Committee. When the Planning Committee disagree with the planning officer's recommendation, their minutes, which should be kept in the same place as the planning register, must clearly record why they have come to a different conclusion.

SPECIAL CASES

Local authorities' own development (regulation 22)

128. Where a local authority lodges an application for planning permission, the procedures for EIA set out in the Regulations apply to the applicant authority (subject to necessary modifications set out in regulation 22) as they apply to any other applicant.

---

1 *Made under section 106 of the Town and Country Planning Act 1990*

129. The authority is required to adopt a screening opinion for any Schedule 2 development in accordance with the relevant procedures in regulation 7(1). Where the development requires EIA, the authority is required to prepare an ES; place the ES on the planning register; and publish and consult on the ES in the same way as any other EIA application. The ES, any comments made by the consultation bodies, and any representations from members of the public must be taken into consideration before planning permission can be granted.

130. The procedures and considerations to be taken into account in deciding whether Schedule 2 development requires EIA, apply to proposals for development by local authorities whether on their own land or other land. The Secretary of State's power to make a screening direction applies to local authority development as it does to any other development.

131. The procedures for permitted development apply to local planning authorities' own development as they do to any other developer's use of such rights (paragraphs 61-65).

Simplified Planning Zones (SPZs) and Enterprise Zones (EZs) (regulations 23 and 24)

132. No EIA development can be granted planning permission by the adoption or approval of an SPZ or through the designation or modification of an EZ. This applies equally to permission granted under existing and new schemes.

133. Schedule 2 development may be included in SPZs and EZs. It can be granted permission by them providing the particular development has been the subject of a screening opinion or direction that it is not EIA development.

Development which is the subject of a planning enforcement notice (regulations 25 and 26)

134. The Regulations provide for EIA of development which is the subject of a planning enforcement notice[1] (regulation 25). Where such development requires EIA, it is referred to in this Circular and the Regulations as 'unauthorised EIA development'.

135. An appeal against a planning enforcement notice[2] ('an enforcement appeal') could, if successful, result in the grant of planning permission[3]. All enforcement appeals which involve unauthorised EIA development will be determined by the Secretary of State[4]. The Secretary of State is prohibited from granting planning permission for unauthorised EIA development unless EIA has first been carried out (regulation 25(1)).

---

1 *Issued under section 172 of the 1990 Act, as substituted by section 5 of the Planning and Compensation Act 1991*

2 *Under section 174 of the 1990 Act*

3 *Under section 177(1) of the 1990 Act*

4 *By virtue of the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) Regulations 1995*

136. Neither the need to provide an ES nor the facility to seek a direction from the Secretary of State (paragraph 139) should be allowed to delay the enforcement appeal process. If the recipient of an enforcement notice wishes to appeal against it, any appeal must be received by the Secretary of State before the effective date specified in the notice.

Determining whether EIA is needed

Determinations by the local planning authority

137. When deciding to take enforcement action, the local planning authority must consider whether the particular development is either Schedule 1 development or Schedule 2 development and, if so, adopt a screening opinion.

138. Where the local planning authority determines that EIA is required, they must serve a 'regulation 25 notice' with the enforcement notice. The regulation 25 notice must include the authority's full reasons for their screening opinion. A model regulation 25 notice is attached to this Circular at Annex D. The local planning authority are required to send a copy of the regulation 25 notice to the Secretary of State[1] and to the consultation bodies.

Directions by the Secretary of State

139. A recipient of a regulation 25 notice may apply to the Secretary of State for a screening direction. The application must be accompanied by a copy of the notice, a copy of the enforcement notice and any additional representations the applicant wishes to make. A copy of the application and the additional representations (if any) should be sent to the local planning authority. If the Secretary of State considers that further information is needed before a screening direction can be made, the applicant must provide it within a specified time period (regulation 25 (6) (c)). No screening direction will be made until the information is provided. However, any delay in providing additional information will not affect the period for compliance with the enforcement notice or extend the period for submitting an enforcement notice appeal.

140. The Secretary of State will notify the applicant and the local planning authority of the screening direction (regulations 25(6)(d) and 4(9)). If he directs that EIA is required, the screening direction must be accompanied by a clear and precise statement of his full reasons (regulation 4(6)). If he directs that EIA is not required, he will also send a copy of his direction to every recipient of the regulation 25 notice.

Enforcement appeal not accompanied by an Environmental Statement

141. On receipt of an enforcement appeal without a statement referred to by the appellant as an ES, the Secretary of State will consider whether the appeal relates to unauthorised EIA development. If he determines that it does, he will send a copy of his screening direction to the appellant and local planning authority within 21 days of receiving the appeal (or such longer period as he may reasonably require), giving the full reasons for his conclusion. The appellant will be required to submit four copies of an ES within a period

[1] *Send the copy to The Planning Inspectorate, Welsh Office, Cathays Park, Cardiff, CF10 3NQ*

specified by the Secretary of State. If the appellant fails to do so by the due date, both the application deemed to be made by section 174 of the 1990 Act and any appeal under ground (a) in section 174(2) of the Act will lapse. The Secretary of State will then notify the appellant and local planning authority in writing accordingly.

142. If the appellant has already submitted an ES for the purpose of an appeal under section 78 of the 1990 Act which relates to the same development as the enforcement appeal, and the two appeals are to be determined at the same time, the ES already provided will be regarded as supporting both appeals.

Provision of information

143. The local planning authority and the consultation bodies are required, if requested, to provide to the person who has been served with a regulation 25 notice any information (other than 'confidential' information under the Environmental Information Regulations 1992) which is relevant to the preparation of an ES (paragraphs 97-99).

Procedure where the Secretary of State receives an Environmental Statement

144. On receipt of an ES, the Secretary of State will send a copy to the local planning authority, and advise them that the statement will be taken into consideration in determining the deemed planning application and ground (a) appeal, if any. Any persons who received a copy of the regulation 25 notice will also be similarly notified and may obtain a copy of the statement if they notify the Secretary of State within 7 days of receipt of notification. They may also put forward their views.

Publicity for Environmental Statements

145. When the local planning authority receive a copy of an ES from the Secretary of State, they are required by regulation 25(16) to publish a notice in a local newspaper. This must state the name of the appellant and the address or location of the land; and advise members of the public where and when the ES may be inspected, and the closing date for inspection. The authority must also send a certified copy of the newspaper notice to the Secretary of State as soon as practicable after publication (regulation 25(17)).

146. Anyone wishing to comment should do so in writing to the Secretary of State within 14 days of the closing date for public inspection of the ES. The deemed application or ground (a) appeal will not be determined by the Secretary of State until the period has elapsed.

147. The local planning authority are required to make every regulation 25 notice; any screening direction received from the Secretary of State; every notice received by the authority from the Secretary of State under regulation 25(12)(d); and every ES received by the authority under regulation 25 (13) (a) available for public inspection for two years or until particulars of the notice or direction are entered into Part II of the appropriate register.

Further information and evidence respecting Environmental Statements

148. The Secretary of State may require an appellant who has submitted a statement which he refers to as an ES to provide more information, within a specified period. The information provided will be copied to the local planning authority and to those persons who received a copy of the regulation 25 notice. If the appellant fails to provide the information required within the time specified, the deemed application and ground (a) appeal, if any, shall lapse. The Secretary of State will then notify the appellant and the local planning authority in writing.

149. The arrangements for publicity for additional information are the same as those for the statements by virtue of regulations 25(13) and (15) (paragraphs 145-147).

150. The procedures for development which is likely to have significant effects on the environment of another Member State (paragraphs 115-118) apply, with necessary modifications, to unauthorised EIA development (regulation 26).

Permitted development (regulation 35(3))

151. The provisions described in paragraphs 61-65 do not apply to development within the following classes in Schedule 2 to the General Permitted Development Order ('GPDO'):

a. Part 7 (forestry buildings and operations);

b. Class D of Part 8 (development comprising deposit of waste material resulting from an industrial process);

c. Part 11 (development under local or private acts or orders);

d. Class B of Part 12 (development comprising deposit of waste material by a local authority);

e. Class F(a) of Part 17 (development by public gas suppliers);

f. Class A of Part 20 (development by licensees of the Coal Authority);

g. Class B of Part 20 (development by licensees of the British Coal Corporation); and

h. Class B of Part 21 (deposit of mining waste).

Development is also excluded if it consists of the carrying out by a drainage body[1] of improvement works within the meaning of the Land Drainage Improvement Works (Assessment of Environmental Effects) Regulations 1988[2].

152. Development permitted under Class A(a) and (b) of Part 11 is excluded by virtue of Article 1.5 of the Directive, which states that the Directive shall not apply to projects the details of which are adopted by a specific act of national legislation. As an exemption, this is, under Community law, to be

---

1 *Section 72(1) of the Land Drainage Act 1991*

2 *SI 1988/1217*

construed narrowly. Accordingly, development of a nature or in a location that was not specifically designated in the relevant Act or order (see Part 11, Class A) are subject to the procedures in paragraphs 61-65. New Private Acts of Parliament which would benefit from Part 11 permitted development rights are subject to EIA procedures by Parliamentary Standing Order 27A.

153. Development permitted under Part 7, Class A(c) of Part 11, Part 14 and Class F(a) of Part 17 is the subject of alternative consent procedures to which separate Regulations apply. Development permitted under Class D of Part 8, Class B of Part 12, Classes A and B of Part 20 and Class B of Part 21 is excluded as it concerns projects begun on or before 1 July 1948, before the date on which the Directive came into operation.

154. Projects begun before 14 March 1999 are also excluded, if they comprise development:

a. under Class C or Class D of Part 20 on the same authorised site as development begun under the same Class before that date;

b. under Class A of Part 21 on the same premises or the same ancillary mining land as the premises or land on which development under the same Class was begun before that date; and

c. under Class B of Part 22 on the same land or on land adjoining land on which development under the same Class was begun before that date.

155. Development which comprises or forms part of a project serving national defence purposes is excluded by virtue of Article 1.4 of the Directive (see the definition of "exempt development" in regulation 2(1)).

156 For all other Parts not covered by specific exclusions, the provisions of paragraph (10) of article 3 of the GPDO will not apply to the completion of development begun before 14 March 1999. Development carried out under permitted development rights and consisting of building operations or engineering operations will be excluded from the new provisions where such operations are already under way under permitted development rights at the time of these Regulations coming into force.

Crown development

157. Like the Town and Country Planning Act, the Regulations do not bind the Crown. Developments by Crown bodies which would require planning permission if they were proposed by any other person and which require EIA under the terms of the Regulations are likely to be uncommon in Wales. When any such development is proposed, the Crown body concerned will submit an ES to the local planning authority when consulting them under the arrangements set out in Part IV of the Memorandum to Circular 37/84. In addition, the Ministry of Defence will, in appropriate circumstances and subject to considerations affecting national security, provide ESs in respect of major defence projects. Proposals have been published for the removal of Crown exemption in planning matters. Pending the necessary legislation, the arrangements in Circular 37/84 continue to apply.

FINANCIAL AND MANPOWER IMPLICATIONS

158. Developers who are required to prepare ESs will incur some additional costs in doing so. However, in most cases, much of the information in the Statement would be likely to be provided in support of the planning application, particularly if the proposal is one, which under existing planning procedures, would go to public inquiry. In deciding on the extent of the information required to be submitted, planning authorities' aim should be to keep the costs imposed on developers to the minimum consistent with compliance with the Regulations.

159. The implications for local planning authorities will vary from authority to authority according to the incidence of environmentally significant development projects. There will be a small amount of additional work involved in deciding on the need for EIA particularly in Schedule 2 cases. However, in general it is expected that this will form part of normal pre-application consultations between the developer and the authority. Where an ES is submitted, the systematic analysis of the project's effects should result in administrative savings in considering the application, and the possibility of an earlier decision. There may be additional costs for planning authorities where consultants have to be engaged to advise on the appraisal of highly technical or specialist evidence. Such cases should be exceptional.

INDICATIVE THRESHOLDS AND CRITERIA FOR IDENTIFICATION OF SCHEDULE 2 DEVELOPMENT REQUIRING EIA

The criteria and thresholds in this Annex (referred to in paragraphs 43-44) are only indicative. In determining whether significant effects are likely, the location of a development is of crucial importance. The more environmentally sensitive the location, the lower will be the threshold at which significant effects will be likely.

It follows, therefore, that the thresholds below should only be used in conjunction with the more general guidance in this Circular on "Establishing whether EIA is required" and, in particular, the guidance on environmentally sensitive locations (paragraphs 36-40).

Agricultural development

A1. In general, agricultural operations fall outside the scope of the Town and Country Planning system and, where relevant, will be regulated under other consent procedures. The descriptions below apply only to projects that are considered to be 'development' for the purposes of the Town and Country Planning Act 1990.

Use of uncultivated or semi-natural land for intensive agricultural purposes

A2. Development (such as greenhouses, farm buildings etc.) on previously uncultivated land is unlikely to require EIA unless it covers more than five hectares. In considering whether particular development is likely to have significant effects, consideration should be given to impacts on the surrounding ecology, hydrology and landscape.

Water management for agriculture, including irrigation and land drainage works

A3. EIA is more likely to be required if the development would result in permanent changes to the character of more than five hectares of land. In assessing the significance of any likely effects, particular regard should be had to whether the development would have damaging wider impacts on hydrology and surrounding ecosystems. It follows that EIA will not normally be required for routine water management projects undertaken by farmers.

Intensive livestock installations

A4. The significance or otherwise of the impacts of intensive livestock installations will often depend upon the level of odours, increased traffic and the arrangements for waste handling. EIA is more likely to be required for intensive livestock installations if they are designed to house more than 750 sows, 2,000 fattening pigs, 60,000 broilers or 50,000 layers, turkeys or other poultry.

Intensive fish farming

A5. Apart from the physical scale of any development, the likelihood of significant effects will generally depend on the extent of any likely wider impacts on the hydrology and ecology of the surrounding area. Developments designed to produce more than 100 tonnes (dead weight) of fish per year will be more likely to require EIA.

Reclamation of land from the sea

A6. In assessing the significance of any development, regard should be had to the likely wider impacts on natural coastal processes beyond the site itself, as well as to the scale of reclamation works themselves. EIA is more likely to be required where work is proposed on a site which exceeds one hectare.

Extractive industry

Surface and underground mineral working

A7. The likelihood of significant effects will tend to depend on the scale and duration of the works, and the likely consequent impact of noise, dust, discharges to water and visual intrusion. All new open cast mines and underground mines will generally require EIA. For clay, sand and gravel workings, quarries and peat extraction sites, EIA is more likely to be required if they would cover more than 15 hectares or involve the extraction of more than 30,000 tonnes of mineral per year.

Extraction of minerals by dredging in fluvial waters

A8. Particular consideration should be given to noise, and any wider impacts on the surrounding hydrology and ecology. EIA is more likely to be required where it is expected that more than 100,000 tonnes of mineral will be extracted per year.

Deep drilling

A9. EIA is more likely to be required where the scale of the drilling operations involves development of a surface site of more than five hectares. Regard should be had to the likely wider impacts on surrounding hydrology and ecology. On its own, exploratory deep drilling is unlikely to require EIA. It would not be appropriate to require EIA for exploratory activity simply because it might eventually lead to some form of permanent activity.

Surface industrial installations for the extraction of coal, petroleum, natural gas, ores, or bituminous shale

A10. The main considerations are likely to be the scale of development, emissions to air, discharges to water, the risk of accident and the arrangements for transporting the fuel. EIA is more likely to be required if the development is on a major scale (site of 10 hectares or more) or where production is expected to be substantial (e.g. more than 100,000 tonnes of petroleum per year).

Energy industry

Power stations

A11. EIA will normally be required for power stations which require approval from the Secretary of State at the Department of Trade and Industry (i.e. those with a thermal output of more than 50 MW). EIA is unlikely to be required for smaller new conventional power stations. Small stations using novel forms of generation should be considered carefully in line with the guidance in Planning Guidance (Wales) Planning Policy and Planning Guidance (Wales) Technical Advice Note (Wales) 8, Renewable Energy. The main considerations are likely to be the level of emissions to air, arrangements for the transport of fuel and any visual impact.

Surface storage of fossil fuel and natural gas, underground storage of combustible gases, storage facilities for petroleum, petrochemical and chemical products

A12. In addition to the scale of the development, significant effects are likely to depend on discharges to water, emissions to air and risk of accidents. EIA is more likely to be required where it is proposed to store more than 100,000 tonnes of fuel. Smaller installations are unlikely to require EIA unless hazardous chemicals are stored.

Installations for the processing and storage of radioactive waste

A13. EIA will normally be required for new installations whose primary purpose is to process and store radioactive waste, and which are located on sites not previously authorised for such use. In addition to the scale of any development, significant effects are likely to depend on the extent of routine discharges of radiation to the environment. In this context EIA is unlikely to be required for installations where the processing or storage of radioactive waste is incidental to the main purpose of the development (e.g. installations at hospitals or research facilities).

Installations for hydroelectric energy production

A14. In addition to the physical scale of the development, particular regard should be had to the potential wider impacts on hydrology and ecology. EIA is more likely to be required for new hydroelectric developments which have more than five MW of generating capacity.

Wind farms

A15. The likelihood of significant effects will generally depend upon the scale of the development, and its visual impact, as well as potential noise impacts. EIA is more likely to be required for commercial developments of five or more turbines, or more than five MW of new generating capacity.

Industrial and manufacturing development

A16. New manufacturing or industrial plants of the types listed in the Regulations, may well require EIA if the operational development covers a site of more than 10 hectares. Smaller developments are more likely to require EIA if they are expected to give rise to significant discharges of waste, emission of pollutants or operational noise. Among the factors to be taken into account in assessing the significance of such effects are:

whether the development involves a process designated as a 'scheduled process' for the purpose of air pollution control;

whether the process involves discharges to water which require the consent of the Environment Agency;

whether the installation would give rise to the presence of environmentally significant quantities of potentially hazardous or polluting substances; whether the process would give rise to radioactive or other hazardous waste;

whether the development would fall under Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances (COMAH).

However, the need for a consent under other legislation is not itself a justification for EIA.

Infrastructure developments

Industrial estates

A17. EIA is more likely to be required if the site area of the new development is more than 20 hectares. In determining whether significant effects are likely, particular consideration should be given to the potential increase in traffic, emissions and noise.

Urban development projects (including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas)

A18. In addition to the physical scale of such developments, particular consideration should be given to the potential increase in traffic, emissions and noise. EIA is unlikely to be required for the redevelopment of land unless the new development is on a significantly greater scale than the previous use, or the types of impact are of a markedly different nature or there is a high level of contamination (paragraph 41).

A19. Development proposed for sites which have not previously been intensively developed are more likely to require EIA if:

the site area of the scheme is more than five hectares; or

it would provide a total of more than 10,000m³ of new commercial floorspace; or the development would have significant urbanising effects in a previously non-urbanised area (e.g. a new development of more than 1,000 dwellings).

Intermodal transshipment facilities and intermodal terminals

A20. In addition to the physical scale of the development, particular impacts for consideration are increased traffic, noise, emissions to air and water. Developments of more than five hectares are more likely to require EIA.

Motorway service areas

A21. Impacts likely to be significant are traffic, noise, air quality, ecology and visual impact. EIA is more likely to be required for new motorway service areas which are proposed for previously undeveloped sites and if the proposed development would cover an area of more than five hectares.

Construction of roads, railways (including elevated and underground) and tramways

A22. For linear transport schemes, the likelihood of significant effects will generally depend on the estimated emissions, traffic, noise and vibration and degree of visual intrusion and impact on the surrounding ecology. EIA is more likely to be required for new development over two km in length.

Construction of inland waterways and canalisation

A23. The likelihood of significant impacts is likely to depend primarily on the potential wider impacts on the surrounding hydrology and ecology. EIA is more likely to be required for development of over two km of canal.

Flood relief works

A24. The impact of flood relief works is especially dependent upon the nature of the location and the potential effects on the surrounding ecology and hydrology. Schemes for which the area of the works would exceed five hectares or which are more than two km in length would normally require EIA.

Construction of airfields

A25. The main impacts to be considered in judging significance are noise, traffic generation and emissions. New permanent airfields will normally require EIA, as will major works (such as new runways or terminals with a site area of more than 10 hectares) at existing airports. Smaller scale development at existing airports is unlikely to require EIA unless it would lead to significant increases in air or road traffic.

Construction of harbours and port installations, including fishing harbours

A26. Primary impacts for consideration are those on hydrology, ecology, noise and increased traffic. EIA is more likely to be required if the development is on a major scale (e.g. would cover a site of more than 10 hectares). Smaller developments may also have significant effects where they include a quay or pier which would extend beyond the high water mark or would affect wider coastal processes.

Dams and other installations designed to hold water or store it on a long-term basis

A27. In considering such developments, particular regard should be had to the potential wider impacts to the hydrology and ecology, as well as to the physical scale of the development. EIA is likely to be required for any major new dam (e.g. where the construction site exceeds 20 hectares).

Installation of oil pipelines, gas pipelines and long-distance aqueducts (including water and sewerage pipelines)

A28. For underground pipelines, the major impact to be considered will generally be the disruption to the surrounding ecosystems during construction, while for overground pipelines visual impact will be a key consideration. EIA is more likely to be required for any pipeline over five km long. EIA is unlikely to be required for pipelines laid underneath a road, or for those installed entirely by means of tunnelling.

Coastal works to combat erosion and maritime works capable of altering the coast

A29. The impact of such works will depend largely on the nature of the particular site and the likely wider impacts on natural coastal processes outside of the site. EIA will be more likely where the area of the works would exceed one hectare.

Groundwater abstraction and artificial groundwater recharge schemes, works for the transfer of water resources between river basins

A30. Impacts likely to be significant are those on hydrology and ecology. Developments of this sort can have significant effects on environments some kilometres distant. This is particularly important for wetland and other sites where the habitat and species are particularly dependent on an aquatic environment. EIA is likely to be required for developments where the area of the works exceeds one hectare.

Tourism and leisure

Ski-runs, ski-lifts and cable-cars and associated developments

A31. EIA is more likely to be required if the development is over 500 metres in length or if it requires a site of more than five hectares. In addition to any visual or ecological impacts, particular regard should also be had to the potential traffic generation.

Marinas

A32. In assessing whether significant effects are likely, particular regard should be had to any wider impacts on natural coastal processes outside the site, as well as the potential noise and traffic generation. EIA is more likely to be required for large new marinas, for example where the proposal is for more than 300 berths (seawater site) or 100 berths (freshwater site). EIA is unlikely to be required where the development is located solely within an existing dock or basin.

Holiday villages and hotel complexes outside urban areas and associated developments, permanent camp sites and caravan sites, and theme parks

A33. In assessing the significance of tourism development, visual impacts, impacts on ecosystems and traffic generation will be key considerations. The effects of new theme parks are more likely to be significant if it is expected that they will generate more than 250,000 visitors per year. EIA is likely to be required for major new tourism and leisure developments which require a site of more than 10 hectares. In particular, EIA is more likely to be required for holiday villages or hotel complexes with more than 300 bed spaces, or for permanent camp sites or caravan sites with more than 200 pitches.

Golf courses

A34. New 18 hole golf courses are likely to require EIA. The main impacts are likely to be those on the surrounding hydrology, ecosystems and landscape, as well as those from traffic generation. Developments at existing golf courses are unlikely to require EIA.

Other projects

Permanent racing and test tracks for motorised vehicles

A35. Particular consideration should be given to the size, noise impacts, emissions and the potential traffic generation. EIA is more likely to be required for developments with a site area of 20 hectares or more.

Installations for the disposal of non-hazardous waste

A36. The likelihood of significant effects will generally depend on the scale of the development and the nature of the potential impact in terms of discharges, emissions or odour. For installations (including landfill sites) for the deposit, recovery and/or disposal of household, industrial and/or commercial wastes (as defined by the Controlled Waste Regulations 1992) EIA is more likely to be required where new capacity is created to hold more than 50,000 tonnes per year, or to hold waste on a site of 10 hectares or more. Sites taking smaller quantities of these wastes, sites seeking only to accept inert wastes (demolition rubble etc.) or Civic Amenity sites, are unlikely to require EIA.

Sludge-deposition sites (sewage sludge lagoons)

A37. Similar considerations will apply for sewage sludge lagoons as for waste disposal installations. EIA is more likely to be required where the site is intended to hold more than 5,000m³ of sewage sludge.

Storage of scrap iron, including scrap vehicles

A38. Major impacts are likely to be discharges to soil, site noise and traffic generation. EIA is more likely to be required where it is proposed to store scrap on an area of 10 hectares or more.

Waste-water treatment plants

A39. Particular consideration should be given to the size, treatment process, pollution and nuisance potential, topography, proximity of dwellings and the potential impact of traffic movements. EIA is more likely to be required if the development would be on a substantial scale (e.g. site area of more than 1 0 hectares) or if it would lead to significant discharges (e.g. capacity exceeding 100,000 population equivalent). EIA should not be required simply because a plant is on a scale which requires compliance with the Urban Waste Water Treatment Directive (91/271/EEC).

SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT

This is a reproduction of Schedule 3 of the Regulations (paragraphs 20 and 33)

1. Characteristics of development

The characteristics of development must be considered having regard, in particular, to -

(a) the size of the development;

(b) the cumulation with other development;

(c) the use of natural resources;

(d) the production of waste;

(e) pollution and nuisances;

(f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of development

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

(a) the existing land use;

(b) the relative abundance, quality and regenerative capacity of natural resources in the area;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas -
(i) wetlands;
(ii) coastal zones;
(iii) mountain and forest areas;
(iv) nature reserves and parks;
(v) areas classified or protected under Member States' legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds[1] and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora[2];

---

1 *O.J. No. L 103, 25.4.1979, p.1*

2 *O.J. No. L 206, 22.7.1992, p.7*

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

3. Characteristics of the potential impact

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

(a) the extent of the impact (geographical area and size of the affected population);

(b) the transfrontier nature of the impact;

(c) the magnitude and complexity of the impact;

(d) the probability of the impact;

(e) the duration, frequency and reversibility of the impact.

INFORMATION TO BE INCLUDED IN AN ENVIRONMENTAL STATEMENT

This is a reproduction of Schedule 4 of the Regulations (paragraphs 81-85 and 91).

PART I

1. Description of the development, including in particular -

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

2. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.

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

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

(a) the existence of the development;
(b) the use of natural resources;
(c) the emission of pollutants, the creation of nuisances and the elimination of waste,

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

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

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

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

PART II

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

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

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

4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.

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

Annex D

MODEL REGULATION 25 NOTICE

Important: This communication affects your property

Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293)

REGULATION 25 NOTICE

1. This notice is served by [*name of Council*] ("the Council") under regulation 25 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293) in connection with the Council's enforcement notice, dated [*date of enforcement notice*], issued in respect of -

.....[*insert description of alleged unauthorised development*]

at .....[*insert address*]

2. It is the Council's opinion that development to which the enforcement notice relates is

either: 'Schedule 1 development' within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293) (i.e. [*set out the description within Schedule 1 in which the unauthorised EIA development is deemed to fall]).*

or: 'Schedule 2 development' within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293)(i.e. [*set out the description within Column 1 of the table in Schedule 2 in which the unauthorised EIA development is deemed to fall and the relevant threshold or criterion in Column 2 of the table in Schedule 2 which is exceeded or met]*) which is considered likely to have significant effects on the environment for the following reasons:

a. ..... [*complete as appropriate*
b. ..... *setting out clearly and*
c.etc. *precisely the full reasons why the development is considered likely to have significant effects on the environment*]

3. Accordingly, subject to any direction of the Secretary of State to the contrary, any appeal under section 174 against the enforcement notice must be accompanied by four copies of an Environmental Statement. Please read the notes below for information about appeals, directions and Environmental Statements.

Dated: [*insert date of issue*]

Signed: [*signature of officer authorised to issue regulation 25 notices*]

NOTES

Appeals

If you wish to appeal against the enforcement notice, you must follow the instructions provided with that notice. Please remember that the Secretary of State cannot consider your arguments against the enforcement notice if you fail to observe the time limit for appeal specified in that notice.

Directions

You may apply to the Secretary of State[1] for a direction as to whether the development requires the submission of an Environmental Statement.

The Secretary of State will give his direction in writing and will send a copy of it to the Council.

Environmental Statements

An Environmental Statement is a document or series of documents prepared for the purpose of enabling the Secretary of State to assess the likely impact on the environment of the development to which this notice relates.

For guidance on Environmental Statements generally, please see Welsh Office Circular 11/99. General guidance about preparing environmental statements can be found in the HMSO publication "Preparation of Environmental Statements for Planning Projects that Require Environmental Assessment: A Good Practice Guide" (ISBN 0-11-753207-X) although it should be read in conjunction with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293) themselves since the guidance pre-dates these revised requirements.

IMPORTANT: Please remember that an application for a direction in connection with this regulation 25 notice does not affect the time limit for appeal specified in the enforcement notice. Any appeal against that notice must be received by the Secretary of State before the date specified in the enforcement notice as the date on which it takes effect.

---

1 *Apply to The Planning Inspectorate, Welsh Office, Cathays Park, Cardiff, CF10 3NQ*