

2007 No. 1062

HIGHWAYS, ENGLAND AND WALES

**The Highways (Environmental Impact Assessment) Regulations
2007**

<i>Made</i> - - - -	<i>20th March 2007</i>
<i>Laid before Parliament</i>	<i>30th March 2007</i>
<i>Coming into force</i> - -	<i>26th April 2007</i>

The Secretary of State for Transport in relation to England and the National Assembly for Wales in relation to Wales make the following Regulations in exercise of the powers conferred by—

- (a) section 2(2) of the European Communities Act 1972(a); and
- (b) section 56(1) of the Finance Act 1973(b).

The Secretary of State and the National Assembly have been designated (c) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment and to which these regulations relate.

By section 29(4) of the Government of Wales Act 1998(d) the power conferred upon Ministers by section 56(1) of the Finance Act 1973 may also be exercised by the National Assembly in relation to any services etc to which section 56(1) relates which are provided by the National Assembly.

The Secretary of State and the National Assembly have received the consent of the Treasury to the making of these Regulations as required by section 56(1) of the Finance Act 1973 and section 29(4) of the Government of Wales Act 1998.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Highways (Environmental Impact Assessment) Regulations 2007 and shall come into force on 26th April 2007.

(2) In these Regulations “the 1980 Act” means the Highways Act 1980 (e).

(a) 1972 c.68. The enabling powers of section 2(2) were extended by the amendment of section 1(2) of the Act by section 1 of the European Economic Area Act 1993 (c.51).
(b) 1973 c.51.
(c) The Secretary of State is so designated by S.I. 1988/785. The National Assembly is so designated by S.I. 2000/2812.
(d) 1998 c.38. Section 29(4) is repealed by the Government of Wales Act 2006 (c.32), section 163 and Schedule 12, with effect from after the ordinary election to be held on the 3rd May 2007 under section 3 of the Government of Wales Act 1998.
(e) 1980 c.66.

Environmental impact assessments

2.—(1) Section 105A of the 1980 Act (a) (environmental impact assessments) is amended as follows.

(2) In subsection (1)—

(a) omit the definition of “the Directive”; and

(b) omit “and” at the end of the definition of “Annex” and after this definition insert—

““the Directive” means Council Directive No. 85/337/EEC(b) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive No. 97/11/EC(c) and Directive No. 2003/35/EC(d) of the European Parliament and Council;

“member of the public” includes any body of persons corporate or unincorporate;

“public authority” means any authority or other body on which functions are conferred by or under an enactment, including an enactment comprised in, or an instrument made under, an Act of the Scottish Parliament; and”.

(3) In subsection (3) for “publish an environmental statement” substitute “prepare an environmental statement and publish notice of it in accordance with subsections (3), (3A) and (7) of section 105B”.

Procedure

3.—(1) Section 105B of the 1980 Act (e) (procedure) is amended as follows.

(2) Omit subsection (2).

(3) In subsection (3) for “An” substitute “Notice of the”.

(4) After subsection (3) insert—

“(3A) The notice must state—

(a) that the Secretary of State, as the relevant highway authority, is considering implementing the project;

(b) the proposed location and nature of the project;

(c) that the project is subject to the environmental impact assessment procedure required by this Part of this Act and, where relevant, that section 105C applies;

(d) that a copy of the environmental statement may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);

(e) the times at which the copy of the environmental statement may be so inspected;

(f) an address from which copies of the environmental statement may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);

(g) if a charge is to be made for a copy of the environmental statement, the amount of the charge;

(h) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, that a

(a) Section 105A was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

(b) OJ No L 175, 5.7.85, p 40.

(c) OJ No L 73, 14.3.97, p 5.

(d) OJ No L 156, 25.6.03, p 17.

(e) Section 105B was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369). Subsection (8) (b) was amended by the Natural Environment and Rural Communities Act 2006 (c.16), Schedule 11, Part 1 paragraph 63.

copy of the environmental statement may be inspected on the website during the period specified under paragraph (i);

- (i) that any person wishing to make any representations about the project and the environmental statement may do so in writing to the Secretary of State at a specified address within a specified period, being not less than 6 weeks from the date of publication of the notice and
- (j) that the Secretary of State will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(3B) The Secretary of State shall ensure that during the period specified under subsection (3A) (i)—

- (a) copies of the environmental statement are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (3A) (d);
- (b) copies of the environmental statement are available to be obtained by any person from the address specified under subsection (3A) (f); and
- (c) where under subsection (3A) (h) the notice states the address of a website, that a copy of the environmental statement is available for inspection by any person on that website.

(3C) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Secretary of State for the supply of a copy of the environmental statement—

- (a) to a person other than a consultation body, or
- (b) to a consultation body to which one copy has already been supplied free of charge.”.

(5) In subsection (4) omit “published details of the”.

(6) In subsection (5) omit “and” at the end of paragraph (a) and for paragraph (b) substitute—

“(b) any opinion on that statement or the project which is expressed in writing by—

- (i) any of the consultation bodies; or
- (ii) any other person;

and is received by the Secretary of State within any period specified for the purpose by him; and

- (c) where section 105C applies, and the EEA State has indicated in accordance with subsection (4) of that section that it wishes to participate in the procedure required by this Part of this Act, any opinion on that statement or the project which is expressed in writing by—

- (i) the EEA State;
- (ii) a member of the public in the EEA State; or
- (iii) an authority having environmental responsibilities designated by the EEA State to be consulted about the project under Article 6 (1) of the Directive;

and is received by the Secretary of State within any period specified for the purpose by him.”.

(7) After subsection (5) insert—

“(5A) Where in order to proceed with the construction or improvement in relation to which an environmental statement has been made it is necessary for the Secretary of State to make—

- (a) an order or scheme to which Schedule 1 to this Act applies; or
- (b) a compulsory purchase order in the exercise of highway land acquisition powers;

the Secretary of State shall, so far as it is practicable to do so, take the steps required of him by this Part of this Act concurrently with the corresponding steps required of him by

Schedule 1 to this Act or, as the case may be, the Acquisition of Land Act 1981(a) in connection with the making of the related instruments.”.

(8) In subsection (6)—

- (a) after “subsection (5)” insert “, and describing the right under section 105D (1) to challenge the validity of the decision,”;
- (b) at the end of paragraph (b) omit “and”;
- (c) at the end of paragraph (c), insert “and”; and
- (d) after paragraph (c) insert—
 - “(d) information about the consultation carried out in compliance with this section and section 105C, the representations received on consultation, and any changes made as a result of those representations.”.

(9) In subsection (7) for the words from “shall be” to the end substitute—

“shall be—

- (a) in the London Gazette;
- (b) in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is proposed to be situated; and
- (c) if the Secretary of State uses a website for the publication of information about projects that are subject to the procedure required by this Part of this Act, on that website.”.

(10) For subsection (8) substitute—

“(8) In this section “the consultation bodies” means—

- (a) any principal council as defined in subsection (1) of section 270 of the Local Government Act 1972(b) for the area where the land is situated;
- (b) where the land is situated in England—
 - (i) English Heritage and Natural England; and
 - (ii) the Countryside Council for Wales and the National Assembly for Wales where, in the opinion of the Secretary of State, the land is sufficiently near to Wales to be of interest to them;
- (c) where the land is situated in Wales—
 - (i) the Countryside Council for Wales; and
 - (ii) any organisation referred to in paragraph (b) (i) where, in the opinion of the National Assembly for Wales, the land is sufficiently near to England to be of interest to the organisation;
- (d) the Environment Agency; and
- (e) any other public authority which has environmental responsibilities and which the Secretary of State or the National Assembly for Wales considers to be likely to have an interest in the project.”.

Other EEA States

4.—(1) Section 105C of the 1980 Act (c) (other Member States) is amended as follows.

(2) In subsections (1) to (6) for each reference to “Member State” or “a Member State” substitute “EEA State” or “an EEA State” as appropriate.

(3) In subsection (2) for paragraph (c) substitute—

(a) 1981 c.67. This Act was amended by the Planning and Compulsory Purchase Act 2004 (c.5).

(b) 1972 c.70.

(c) Section 105C was inserted by regulation 2 of the Highways (Assessment of Environmental Effects) Regulations 1999 (S.I. 1999/369).

“(c) such information about the procedure required by this Part of this Act as he considers appropriate; and”.

(4) In subsection (4)—

- (a) for “in the environmental impact assessment procedure” substitute “in the procedure required by this Part of this Act”;
- (b) omit “and” at the end of paragraph (a); and
- (c) for paragraph (b) substitute—
 - “(b) the information required by subsection (3A) of section 105B to be included in the notice under subsection (3) of that section; and
 - (c) any information about the procedure required by this Part of this Act which he considers it appropriate to give and which has not already been given to the EEA State.”.

(5) For subsection (7) substitute—

“(7) Where an EEA State has been consulted in accordance with subsection (4) the Secretary of State must, after deciding whether to proceed with the project to which the environmental statement relates, inform the EEA State of the decision and give it documents containing the matters referred to in section 105B (6).”.

(6) Omit subsection (8).

(7) In the heading to the section, for “Member” substitute “EEA”.

Validity of decisions

5. After section 105C of the 1980 Act insert the following section—

“Validity of decisions

105D.—(1) If a person aggrieved by a decision of the Secretary of State to proceed with the construction or improvement for which an environmental statement has been made desires to question the validity of the decision on the ground that—

- (a) it is not within the powers of this Act; or
- (b) any requirement of this Part of this Act has not been complied with in relation to the decision;

he may, within 6 weeks from the date on which the decision is first published under section 105B (6), make an application for the purpose to the High Court.

(2) On any such application, the Court—

- (a) may by interim order suspend the operation of the decision, or any aspect of it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the decision is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any requirement of this Part of this Act, may quash the decision or any aspect of it, either generally or in so far as it affects any property of the applicant.

(3) Subject to subsection (2), a decision to which subsection (1) applies shall not be questioned in any legal proceedings whatever.”.

Wales

6. In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999(a), the reference to the 1980 Act is to be read as a reference to the 1980 Act as amended by these Regulations.

Application

7.—(1) These Regulations do not apply to a project in relation to which—

- (a) the Secretary of State or the National Assembly for Wales has before the commencement date given public notice of an environmental statement prepared under section 105A of the 1980 Act; or
- (b) a draft order or scheme has been published before the commencement date; or
- (c) the works contract has been let before the commencement date.

(2) In this regulation—

“commencement date” means the day on which these Regulations come into force;

“draft order or scheme” means any draft order or scheme to which Schedule 1 of the 1980 Act applies or any draft compulsory purchase order prepared in the exercise of any land acquisition powers of the Secretary of State or of the National Assembly for Wales, as the case may be, under sections 239, 240, 242 to 246(b) and 250(2) of the 1980 Act; and

“works contract” means a contract for the construction of a new highway or the improvement of an existing highway.

Signed by authority of the Secretary of State for Transport

28th February 2007

S.J.Ladyman
Minister of State
Department for Transport

Signed on behalf of the National Assembly for Wales

20th March 2007

D.Elis-Thomas
The Presiding Officer of the National Assembly for Wales

We consent to the making of these Regulations

5th March 2007

Alan Campbell
Dave Watts
Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 1999/672.

(b) Section 245A was inserted by the Traffic Management Act 2004 (c.18), section 13 and has been brought into force in relation to England, but not in relation to Wales.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the procedures contained in Part VA of the Highways Act 1980, (“the Act”), for the environmental impact assessment of projects for the construction or improvement of highways for which in England the Secretary of State and in Wales the National Assembly for Wales (“the authorities”) are respectively the highway authority, (i.e. these highways are for the most part trunk roads).

Part VA was incorporated into the Act by the Highways (Assessment of Environmental Effects) Regulations 1999, (S.I.1999/369), in order to implement, in relation to such projects, the amendments made to Council Directive 85/337/EEC (“the Directive”) (OJ No L175, 5.7.85, p 40), on the assessment of the effects of certain public and private projects on the environment, by Council Directive 97/11/EC (OJ No L73, 14.3.97, p 5).

The Regulations transpose article 3 of Directive 2003/35/EC (“the Public Participation Directive”) of the European Parliament and Council, (OJ No L 156, 25.6.03, p 17), which amends the Directive with regard to public participation and access to justice. In particular the Regulations provide that the words “the Directive” as used in Part VA means the Directive as amended by the Public Participation Directive (*regulation 2(2) (a) and (b)*). They specify requirements for public notice of environmental statements and the procedure for members of the public, and certain consultation bodies, to make representations in relation to such environmental statements and the projects to which they relate (*regulations 2(3), 3(3) – (6) and (9)*). When decisions on projects are published additional information is to be included with the publication (*regulation 3(8)*). Express provision is inserted into Part VA for challenge, by way of application to the High Court, of decisions to proceed with projects for which environmental statements have been made (*regulation 5*). Equivalent amendments are also made to the provisions in Part VA which relate to EEA States, (see below), (*regulations 3(6) (c) and 4(3) to (5)*).

Where environmental statements are produced in connection with projects for which orders or schemes under Schedule 1 of the Act or compulsory purchase orders under the Acquisition of Land Act 1981 are required, the authorities are placed under a duty, so far as it is practicable to do so, to take the steps required by Part VA concurrently with the corresponding steps required in relation to such orders or schemes (*regulation 3(7)*).

In addition to transposing article 3 of the Public Participation Directive, together with some minor and associated amendments, the Regulations make other amendments to Part VA. They substitute references to Member States of the European Economic Area, (“EEA States”), for references to Member States of the European Community (*regulations 3(6), and 4(2), (4)(c), (5), (6) and (7)*). The effect is to extend the application of Part VA to enable EEA States which are not also EC Member States, (currently Iceland, Liechtenstein and Norway), to participate in addition to EC Member States in the procedures in Part VA for notification and consultation on such projects if they are likely to have a significant environmental effect on those States.

The effect of *regulation 3(2)* is to apply section 105A (3) (b), (which provides for the criteria for determining if projects within Annex II of the Directive should be made subject to an environmental impact assessment), to “special road” projects of the authorities which are within Annex II in the same way as it applies to their other highway projects within Annex II. (“Special roads” are highways reserved for particular classes of traffic and are defined in section 16 of the Act. They are mostly motorways.)

The definition of “consultation bodies” in section 105B (8) is widened, (*regulation 3(10) and definition of “public authority” in regulation 2(2) (b)*).

Regulation 6 provides that the reference to the Act in the National Assembly for Wales (Transfer of Functions) Order 1999 shall be read as a reference to the Act as amended by these Regulations.

Regulation 7 makes transitional provisions.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

£3.00

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E0569 4/2007 170569T 19585