

**THE GAS TRANSPORTER PIPE-  
LINE WORKS (ENVIRONMENTAL  
IMPACT ASSESSMENT)  
(AMENDMENT) REGULATIONS  
2007**

Supplementary guidance  
note

URN 07/1615

THE GAS TRANSPORTER PIPE-LINE WORKS  
(ENVIRONMENTAL IMPACT ASSESSMENT)  
(AMENDMENT) REGULATIONS 2007

1. This supplementary note to the existing EIA guidance on the BERR web site provides assistance on the use of The Gas Transporter Pipe-line Works (Environmental Impact Assessment) (Amendment) Regulations 2007 (the “2007 Regulations”), as amended to fulfil the Public Participation Directive, 2003/35/EC. The Regulations apply to:
  - gas transporter pipe-line works which benefit from permitted development rights and are considered for EIA purposes under the Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 (the “1999 Regulations”).
2. The supplementary note provides information on:
  - i) The procedural flow of the EIA process
  - ii) The form of the initial public notice
  - iii) The form of the public notice when further information is submitted
  - iv) The form of the public notice on additional information
  - v) The form of words being inserted in decision letters on the right to challenge the decision
  - vi) Some practical information on judicial review
  - vii) The form of the public notice of the decision
3. It has been prepared for gas transporters intending to lay gas pipelines, and for local planning authorities and other persons interested in the environmental consideration of a proposed gas transporter pipe-line.
4. The 2007 Regulations came into force on 20 August 2007 and apply only to developments for which an

application for consent under the Act is made on or after that date.

5. A comprehensive revision of the guidance on the EIA process will be completed in due course. In the meantime developers should discuss the procedural requirements with members of the Consents Teams at BERR.

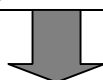
## Simple overview flowchart

### FLOW OF ACTIONS FOR A GAS PIPELINE CASE IN ENGLAND AND WALES WHICH QUALIFIES AS ENVIRONMENTAL IMPACT ASSESSMENT (EIA) DEVELOPMENT

Pre-application stage – gas transporter (“GT”) undertakes preparatory work identifying route, discussing proposal with the relevant planning authority<sup>1</sup>, statutory bodies, etc. The GT can request an EIA Screening/Scoping Opinion before undertaking the EIA. The GT undertakes an EIA and can also consult BERR for advice at any point.



Application stage – (i) application for EIA consent, together with the EIA (referred to as an Environmental Statement or “ES”) and any supporting documents volunteered by the developer, submitted to BERR (ii) copy of application, ES and any supporting documents sent to any relevant planning authority and other consultation bodies by the GT (iii) application advertised by the developer in the London Gazette and local press (for two successive weeks). Sample initial public notice attached at Annex A



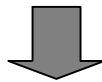
Consideration of the application stage – (i) relevant planning authority and other consultation bodies will have a minimum of 28 days from service of the application to make representations to the Secretary of State (ii) public will have a minimum of 28 days from second date public notice appears to formally register their representations. Precise date set by GT.  
NB The Secretary of State has no power to extend this public notice period.  
(iii) representations considered at any time up to moment decision made but to ensure they are made in time they should be within the notice periods.

<sup>1</sup> For the purposes of the 1999 Regulations and the 2007 Regulations, a relevant planning authority is broadly each local planning authority within whose area any of the proposed pipe-line works are to be carried out

Responses from relevant planning authority, and other consultation bodies, and public assessed. Further information on the proposal may arise. Site visit may be undertaken.

If further information formally required to supplement the ES, Consents Team issue a regulatory direction on behalf of the Secretary of State. When that further information is submitted to the Secretary of State the GT gives notice in the London Gazette and local press (for two successive weeks) and serves the information on relevant planning authority and other consultation bodies.

Sample notice for further information attached at Annex B



During the process additional information may arise. Such information, such as the full advice of consultation bodies, representations from the public, additional material from the GT, will now be formally brought into the process. On receipt of such information the Secretary of State will forward it to the relevant planning authority where it will be available for public inspection. BERR will handle any queries on the additional information. The GT will issue a notice in the London Gazette and local press (for two successive weeks) alerting the public to the fact additional information is starting to be received on his proposal. But no subsequent notices will need to be issued on additional information.

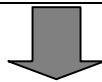
Sample notice for additional information is attached at Annex C



Determination of the application stage – Ministers proceed to determine application and decision announced.

Decision letters now required to identify right to challenge (see Annex D) and some practical information on that is attached at Annex E  
Developer gives notice of the decision in London Gazette and local press (for two successive weeks)

Sample notice of decision attached at Annex F



Post-decision stage – GT has to comply with consent conditions in order to proceed. If applicable, Secretary of State rules on consent conditions and defends his decision against legal challenge.



## **Annex A**

### **SAMPLE – INITIAL PUBLIC NOTICE**

#### **Acme Gas Limited**

#### **Notice of an application for consent to construct a natural gas pipeline from..... to.....**

Notice is hereby given that .....Ltd (“the Company”) has applied under the Gas Transporter Pipeline Works (Environmental Impact Assessment) Regulations 1999, as amended, for consent of the Secretary of State for Business, Enterprise and Regulatory Reform to construct a natural gas pipeline from ..... to .....

A copy of the application, with a plan showing the land to which it relates, together with a copy of the Environmental Statement, explaining the company’s proposals in more detail and presenting an analysis of the environmental implications, and a non-technical summary thereof, may be inspected, during normal office hours, at the following addresses: Acme County Council, library, etc.

Copies of the application for consent, the Environmental Statement, at a price of £...for the printed document and £...for a CD-Rom, and of the Non-Technical Summary, which is free of charge, may be obtained, while stocks last, from (company address & website)

Any representations on the proposal, stating the name of the pipeline should be made in writing to the Secretary of State for Business, Enterprise and Regulatory Reforms c/o Bay 2121, 1 Victoria Street, London SW1H OTET, or by email to:- .....@berr.gov.gsi.uk not later than [fix date – minimum 28 days from date of 2<sup>nd</sup> ad – so all ads show

same closing date]. Unless otherwise indicated, copies of any representations received will be regarded as public documents.

During the consideration of the proposal the Secretary of State may formally request further information from the developer to supplement the Environmental Statement, and materially relevant additional information may be generated. If that happens further public notices will give advice on representations to the Secretary of State on this material. The information will be forwarded to [name of relevant planning authority] and made available for public inspection. Any representations on it should be made in writing or by email to the previously indicated addresses for representations on the proposal.

Following receipt of all view and representations the Secretary of State will either grant or refuse consent for the proposal (with or without conditions).



## **Annex B**

SAMPLE – FURTHER INFORMATION SUBMITTED

### **Acme Gas Limited**

**Further to the Notice of an application for EIA consent to construct a natural gas pipeline from ..... to..... of.....**

Notice is hereby given that .....Ltd (“the Company”) has submitted further information supplementing the Environmental Statement previously submitted in relation to this application which was the subject of a Notice given by the Company on [date].

A copy of the further information has been made available to [name of the relevant planning authority] for public inspection.

Copies of the further information, at a price of £.. for the printed document and £.. for a CD-Rom, may be obtained, while stocks last, from...(company address & website)

Any representations about the further information should be made in writing to the Secretary of State for Business Enterprise and Regulatory Reform, c/o Bay 2121, 1 Victoria Street, London SW1H OET, or by email to:- ...@berr.gsi.gov.uk not later than [fix date- minimum 28 days from date of 2<sup>nd</sup> ad – so all ads show same closing date]. Unless otherwise indicated, copies of any representations received will be regarded as public documents.

## **Annex C**

### **SAMPLE – ADDITIONAL INFORMATION RECEIVED**

#### **Acme Gas Limited**

#### **Further to the Notice of an application for EIA consent to construct a natural gas pipeline from ..... to..... of.....**

Notice is hereby given that additional information has been received by the Secretary of State for Business, Enterprise and Regulatory Reform on this application. Copies of this information have been forwarded to [name of relevant planning authority] to be made available for public inspection.

Any request for copies of the additional information should be directed to the Department at the address that follows.

Any representations about this additional information should be made in writing to the Secretary of State for Business Enterprise and Regulatory Reform, c/o Bay 2121, 1 Victoria Street, London SW1H OET, or by email to:- ...@berr.gsi.gov.uk not later than [fix date- minimum 28 days from date of 2<sup>nd</sup> ad – so all ads show same closing date]. Unless otherwise indicated, copies of any representations received will be regarded as public documents.

Any subsequent additional information will be similarly forwarded to [name of relevant planning authority] to be made available for public inspection, with any requests for copies dealt with by the Department.

## Annex D

Proposed insertion in decision letters

Appeals

The Secretary of State's decision is final unless it is successfully challenged in the High Court (or the Court of Session if the proposed pipe-line works are in Scotland). Under Regulation 16 of the Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999, as amended, a person aggrieved by the grant of consent or the attaching of a condition to the consent, may apply to the Court for the grant of consent or condition to be quashed. Such application should be made no later than 6 weeks after the date of last publication by the gas transporter of notice of the decision. Further information on this is contained in the supplementary note to the existing guidance on the 1999 Regulations, available on BERR's website.

For challenges which do not fall within the scope of regulation 16, application may be made to the Court for permission to proceed with a claim for judicial review. Further information on judicial review is also available in the supplementary note to the existing guidance on the 1999 Regulations, available on BERR's website.

## Regulation 16

1. Regulation 16 of the Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, provides that a person aggrieved by the grant of consent or the attaching of a condition to the consent may apply to the High Court (or the Court of Session where the proposed pipe-line works are in Scotland) for an Order quashing the grant of consent or the attaching of the condition. The Court may also make an interim order.
2. Where the proposed pipe-line works are in England or Wales applications under Regulation 16 are made to the High Court; where the proposed pipe-line works are in England or Wales as well as Scotland, applications under Regulation 16 are made to the High Court or the Court of Session. Such applications have to be made expeditiously and no later than 6 weeks after the last publication by the gas transporter of notice of the decision complained of. Such cases could take 6 months to a year to be concluded.
3. The procedure is concerned with the improper exercise of power and is not a process to re-evaluate the merits of the proposed development. Thus the Court will not form a different view on the development but in a successful legal challenge the decision will usually be quashed and the Secretary of State will be required to remedy the essentially 'procedural' deficiency found by the Court, and then retake the decision. As long as it is taken lawfully, that decision could, of course, be the same decision, for example to grant consent. In the case of a condition it would be to reconsider the condition, and either drop it or reframe it taking account of the deficiency found by the Court.
4. For challenges which do not fall within the scope of regulation 16, you may be able to apply to the Court for permission to proceed with a claim for judicial review.
5. You should seek your own legal advice before considering a legal challenge. There are cost and legal requirements to be understood.

# Judicial Review

6. The procedure by which legal challenges are made in this area of Government administration is known as “judicial review”. It is the mechanism by which the High Court in England and Wales supervises the proper exercise of administrative law under which this Department carries out its statutory function to grant or refuse Section 36 or section 37 consent.

7. The procedure is concerned with the improper exercise of power and is not a process to re-evaluate the merits of the proposed development. Thus the court will not form a different view on the development but in a successful judicial review the decision will usually be quashed and the Secretary of State will be required to remedy the essentially ‘procedural’ deficiency found by the Court, and then retake the decision. As long as it is taken in a lawful way, that decision could, of course, be the same decision, for example to grant or to refuse consent.

8. There is a procedure to follow, whereby an application is made to the High Court for permission to proceed with the claim for judicial review. The Court will only grant permission if it considers that there is an arguable case. Such applications have to be made promptly and in any event not later than three months of the decision complained of. Judicial review cases could take 6 months to a year to be concluded.

9. You should, though, seek your own legal advice before considering a judicial review challenge. There are cost and legal requirements to be understood.

## Annex F

### SAMPLE – NOTICE OF DECISION

#### **Acme Gas Limited**

Further to the Notice of an application for EIA consent to construct a natural gas pipeline from..... to..... of.....

Notice is hereby given that .....Ltd (“the Company”) has been granted consent by the Secretary of State to construct the pipeline. [The consent is granted subject to the following conditions— ...]

Copies of the decision statement and consent documentation can be obtained from the Company at [address] until [insert a date not less than 8 weeks after the date of last publication of this notice].

Copies of the decision statement and consent documentation have also been made available to [name of relevant planning authority] for public inspection.