

**1999 No. 369**

**HIGHWAYS, ENGLAND AND WALES**

**The Highways (Assessment of Environmental Effects)  
Regulations 1999**

*Made* - - - - - *17th February 1999*  
*Laid before Parliament* *18th February 1999*  
*Coming into force* *13th March 1999*

The Secretary of State for the Environment, Transport and the Regions as respects England and the Secretary of State for Wales as respects Wales, being Ministers designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> 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, in exercise of the powers conferred upon them by that section and having taken into account the selection criteria specified in Annex III to Council Directive 85/337/EEC (on the assessment of the effects of certain public projects on the environment)<sup>(c)</sup>, as inserted by Council Directive 97/11/EC (amending Council Directive 85/337/EEC)<sup>(d)</sup> hereby make the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Highways (Assessment of Environmental Effects) Regulations 1999 and shall come into force on 13th March 1999.

**Amendment of the Highways Act 1980**

2. For Part VA of the Highways Act 1980<sup>(e)</sup> there shall be substituted the following:—

**“PART VA**

**ENVIRONMENTAL IMPACT ASSESSMENTS**

Environ-  
mental impact  
assessments.

**105A.—**(1) In this Part—

“the Directive” means Council Directive No. 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive No. 97/11/EC;

“Annex” means an Annex to the Directive; and

“relevant project” means a project for constructing or improving a highway where the area of the completed works together with any area occupied during the period of construction or improvement by requisite apparatus, equipment, machinery, materials, plant, spoil heaps or other such facilities exceeds 1 hectare or where any such area is situated in whole or in part in a sensitive area.

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(a) S.I. 1988/785. *See also* the Secretary of State for the Environment, Transport and the Regions Order 1997 (S.I. 1997/2971).  
(b) 1972 c. 68.  
(c) O.J. No. L175, 5.7.1985, p.40.  
(d) O.J. No. L73, 14.3.1997, p.5.  
(e) 1980 c. 66; Part VA was inserted by the Highways (Assessment of Environmental Effects) Regulations 1988 (S.I. 1988/1241).

(2) If the Secretary of State is considering a project for constructing or improving a highway for which he is the highway authority he must, before details of the project are published, determine whether or not it falls within Annex I or II.

(3) If the Secretary of State—

- (a) considers that the project falls within Annex I, or
- (b) considers that it is a relevant project falling within Annex II and determines, having regard to the selection criteria contained in Annex III, that it should be made subject to an environmental impact assessment in accordance with the Directive,

he must, not later than the date when details of the project are published, publish an environmental statement.

(4) To the extent to which the Secretary of State considers—

- (a) that it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it, and
- (b) that the information may reasonably be gathered (having regard among other matters to current knowledge and methods of assessment),

the environmental statement must contain the information referred to in Annex IV.

(5) That information must include at least—

- (a) a description of the project (comprising information on the site, design and size of the project);
- (b) a description of the measures envisaged in order to avoid, reduce, and, if possible, remedy significant adverse effects;
- (c) the data required to identify and assess the main effects which the project is likely to have on the environment;
- (d) an outline of the main alternatives studied by the Secretary of State and an indication of the main reasons for his choice (taking into account the environmental effects);
- (e) a non-technical summary of the information mentioned in paragraphs (a) to (d).

(6) “Sensitive area” means any of the following:—

1981 c. 69.

- (a) land notified under section 28(1) (areas of special scientific interest) of the Wildlife and Countryside Act 1981**(a)**;
- (b) land adjacent to such an area that is notified to the local planning authority in accordance with paragraph (u)(ii) in the table in article 10 of the Town and Country Planning (General Development Procedure) Order 1995**(b)**;
- (c) land to which section 29(3) (nature conservation orders) of the Wildlife and Countryside Act 1981 applies;

1949 c. 97.

- (d) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949**(c)**;
- (e) an area of outstanding natural beauty designated as such by an order made by the Countryside Commission, as respects England, or the Countryside Council for Wales, as respects Wales, under section 87**(d)** (designation of areas of outstanding natural beauty)

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**(a)** 1981 c. 69, amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).

**(b)** S.I. 1995/419.

**(c)** 1949 c. 97.

**(d)** Section 87 was amended by paragraph 1(12) of Schedule 8 to the Environmental Protection Act 1990 (c. 43).

of the National Parks and Access to the Countryside Act 1949 as confirmed by the Secretary of State.

- 1988 c. 4. (f) the Broads as defined in the Norfolk and Suffolk Broads Act 1988(a);
- (g) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(b);
- 1979 c. 46. (h) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(c);
- (i) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc.) Regulations 1994(d).

Procedure. **105B.**—(1) The Secretary of State must ensure that any determination made by him as to whether or not a relevant project should be made subject to an environmental impact assessment in accordance with the Directive is published.

(2) Any project for the construction or improvement of a special road which falls within Annex II is to be treated as having characteristics that require it to be made subject to an environmental impact assessment.

(3) An environmental statement must be published so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express their opinion before the Secretary of State decides whether to proceed with the construction or improvement to which the assessment relates.

(4) The Secretary of State must ensure that the consultation bodies are given an opportunity to express an opinion on the published details of the project and the environmental statement before he decides whether to proceed with the construction or improvement to which the assessment relates.

(5) Before deciding whether to proceed with the construction or improvement in relation to which an environmental impact assessment has been made, the Secretary of State must take into consideration—

- (a) the environmental statement; and
- (b) any opinion on that statement expressed by a member of the public, by any of the consultation bodies or by any Member State consulted under section 105C.

(6) When the Secretary of State has decided whether to proceed with the construction or improvement for which an environmental impact assessment has been made, he must publish his decision together with a statement confirming that he has complied with subsection (5) and must make available to the public documents containing—

- (a) the content of the decision and any conditions attached thereto;
- (b) the main reasons and considerations on which the decision is based; and
- (c) where his decision is to proceed with the construction or improvement, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

(7) Publication by the Secretary of State in accordance with subsections (1), (3) and (6) shall be in the London Gazette and in at least one local newspaper circulating in the area in which the project for the construction or improvement of the highway is situated.

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(a) 1988 (c. 4).

(b) See Command Paper 9424.

(c) 1979 c. 46. See the definition in section 1(11).

(d) S.I. 1994/2716.

(8) In this section—

“the consultation bodies” means—

1972 c. 70.

- (a) any principal council as defined in subsection (1) of section 270 of the Local Government Act 1972<sup>(a)</sup> for the area where the land is situated;
- (b) where the land is situated in England, the Countryside Commission, English Heritage and the Nature Conservancy Council for England;
- (c) where the land is situated in Wales, Cadw and the Countryside Council for Wales; and
- (d) the Environment Agency.

Other Member States.

**105C.**—(1) This section applies if—

- (a) it appears to the Secretary of State that a project to which section 105A(3) applies is likely to have a significant effect on the environment in another Member State; or
- (b) a Member State the environment of which is likely to be significantly affected by such a project asks the Secretary of State for information about it.

(2) The Secretary of State must give the Member State—

- (a) a description of the project, together with any information available to him which suggests that it may have a significant effect on the environment in the Member State;
- (b) any information which he has on the nature of the decision which may be taken on the project;
- (c) information about the environmental impact assessment procedure (if he considers it appropriate); and
- (d) a reasonable period within which to indicate whether it wishes to participate in that procedure.

(3) Subsection (2)(a) and (b) must be complied with no later than the date of publication of the determination referred to in Section 105B(1).

(4) If the Member State indicates that it wishes to participate in the environmental impact assessment procedure, the Secretary of State must give it—

- (a) a copy of the environmental statement for the project (if he has not already done so); and
- (b) any information about the environmental impact assessment procedure which he considers it appropriate to give and which has not already been given to the Member State.

(5) The Secretary of State, so far as he is concerned, must also—

- (a) arrange for the information which he has given to the Member State to be made available, within a reasonable time, to—
  - (i) the authorities referred to in Article 6(1) of the Directive; and
  - (ii) members of the public in the Member State who are likely to be concerned; and

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<sup>(a)</sup> 1972 c. 70.

- (b) ensure that those authorities and the public concerned are given a reasonable opportunity to give him their views before he decides whether to proceed with the project to which the environmental impact assessment relates.
- (6) The Secretary of State must, in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the Member State concerned regarding, among other matters, the potential significant effects of the project on the environment of that Member State and the measures envisaged to reduce or eliminate those effects; and
  - (b) agree with that Member State a reasonable period for those consultations.
- (7) Where a Member State has been consulted in accordance with subsection (4), on the determination of the application concerned the Secretary of State must inform the Member State of the decision and must give it documents containing the matters referred to in section 105B(6).
- (8) In this section “Member State” has the same meaning as in the Directive.”

### **Application**

3. These Regulations do not apply—
- (a) to a project for which the Secretary of State had published an environmental statement before the date on which they came into force (“the commencement date”) but for which no draft order or scheme was published; or
  - (b) to a project in relation to which a draft order or scheme was published before the commencement date; or
  - (c) to a project where a draft order or scheme was not required and for which the works contract had been let before the commencement date.

Signed by authority of the Secretary of State  
for the Environment, Transport and the Regions.

16th February 1999

*Larry Whitty*  
Parliamentary Under Secretary of State,  
Department of the Environment, Transport and the Regions

Signed by authority of the Secretary of State for Wales.

17th February 1999

*Peter Hain*  
Parliamentary Under Secretary of State,  
Welsh Office

## EXPLANATORY NOTE

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

These Regulations implement for England and Wales Council Directive 97/11/EC of the 3rd March 1997 (OJ No. L73, 14.3.97, p.5) on the assessment of the effects of certain public and private projects on the environment, in respect of those proposals to construct new highways and to improve highways to which the Directive applies in so far as those proposals are those of the Secretary of State. The Directive amends Council Directive 85/337/EEC of the 27th June (OJ No. L17, 5.7.85, p.40) on the same subject.

Regulation 2 amends Part VA of the Highways Act 1980 to effect the required changes. The principal changes made in new section 105A of the Act are first that the Secretary of State is required to determine the need to carry out an environmental impact assessment in respect of projects falling within Annex II of the amended Directive in accordance with a case-by-case examination and/or thresholds or criteria set by him taking account in any event of the relevant selection criteria set out in Annex III of the amended Directive. Further, the Secretary of State shall include in his environmental statement an outline of the main alternatives studied by him and an indication of the main reason for his choice, taking into account the environmental effects.

Section 105B of the Act contains some procedural changes. The Secretary of State is required to publish his determination as to whether an environmental impact assessment should be made. In the event that one is made, the Secretary of State shall publish the environmental statement within a reasonable time to ensure that the public concerned is given an opportunity to express an opinion before he decides whether to proceed with the project.

Section 105C of the Act reflects the new requirements for consultation between Member States where the project is likely to have a significant effect on the environment in another Member State.

Regulation 3 imports transitional arrangements.

**£2.00**

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WO 4132 2/99 ON (MFK)