

**GUIDANCE ON
THE ELECTRICITY WORKS
(ENVIRONMENTAL IMPACT ASSESSMENT)
(ENGLAND AND WALES) REGULATIONS
2000**

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THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 2000

1. Introduction

1.1 This Guidance Note provides assistance on the use of the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (referred to in this Guidance Note as the “**Regulations**”). The Regulations apply to:

- ?? applications under section 36 Electricity Act 1989 (referred to in this Guidance Note as the “**Act**”) for consent to construct, extend or operate a generating station,
- ?? applications under section 37 of the Act for consent to install or keep installed an electric line above ground.

1.2 The Regulations implement European Directive 85/337/EEC as amended by Directive 97/11/EC (the “**EIA Directive**”) on assessing the effects on the environment of developments requiring section 36 or section 37 consent.

1.3 The Regulations should also be read in conjunction with sections 36 and 37 and Schedule 8 of the Act and the Electricity (Application for Consent) Regulations 1990¹, which apply to all applications for consent under the Act regardless of the need for environmental impact assessment (“**EIA**”).

1.4 This Guidance Note provides information on:

- ?? when EIA is required - if this is so, then the applicant has to produce an environmental statement and submit this with the application,
- ?? the issues which the environmental statement should deal with,
- ?? the pre-application procedures available on the need for and content of an environmental statement, and
- ?? the procedures, including consultation and publicity, necessary when making an application to the Secretary of State for Trade and Industry for section 36 or section 37 consent under the Act for any development which requires EIA (referred to in this Guidance Note as the “**Secretary of State**”).

1.5 It has been prepared for developers of power stations and installers of overhead power lines, also for local planning authorities and other interested bodies and any person who has an interest in the environmental impact of a proposed development. It is intended as a guide; it is not definitive and should be read in conjunction with the Regulations themselves.

1.6 The Regulations only apply to developments in England and Wales.

1.7 The Regulations came into force on 1st September 2000 and apply only to developments for which an application for consent under the Act is made on or after

¹ The Electricity (Applications for Consent) Regulations 1990 S.I. No 455

that date.¹ It should be noted that the Regulations do not cover authorisation under the Pipe-lines Act 1962 for which separate regulations have been issued.²

1.8 For those developments which fall outside the Act, although the Secretary of State's consent is not required, they may still be subject to The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999³ for which EIA may be required by the Local Planning Authority.

2. The EIA Directive and the Regulations

2.1 The EIA Directive

2.1.1 Directive 97/11/EC extends the range of developments to which Directive 85/337/EEC applies and makes a number of small but important changes to the EIA procedures.

2.1.2 The purpose of the EIA Directive is to ensure that the competent authority, in relation to development that is likely to have significant effects on the environment, has appropriate information to enable it to come to a decision on whether or not to grant consent. In the case of the Regulations the competent body is the Secretary of State for Trade and Industry. The EIA Directive sets out procedures that must be followed for such projects before a decision may be taken as to whether or not they can be given 'development consent'.

2.1.3 The EIA Directive is founded on three basic principles:

- ?? the developer of any development likely to have significant effects on the environment must compile detailed information about the likely main environmental effects. To help the developer, certain bodies which have relevant environmental information must make that information available to the developer.
- ?? the environmental statement (and the application for consent to which it relates) must be publicised and made available to the public. Public bodies with relevant environmental responsibilities and the public in general must be given the opportunity to give their views about the proposed development and the environmental statement to the Secretary of State. In those cases where a development may have an impact on another Member State, that Member State should also be consulted.
- ?? the environmental statement, together with any other information, comments and representations made on it, must be taken into account by the Secretary of State in deciding whether or not to give consent for the development. The public must be informed of the decision and the main reasons for it.

¹ Applications lodged under the Act before that date are subject to The Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1990 S.I. No 442 as amended by The Electricity and Pipe-line Works (Assessment of Environmental Effects) (Amendment) Regulations 1996 S.I. No 422 and The Electricity and Pipe-line Works (Assessment of Environmental Effects) (Amendment) Regulations 1997 S.I. No 629

² Pipe-line Works (Environmental Impact Assessment) Regulations 2000 [S.I. No].

³ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 SI 1999 No 293.

2.2 The Regulations: an Overview

2.2.1 The Regulations replace the Electricity and Pipe-line Works (Assessment of Environmental Effects) Regulations 1990 (together with all amending Regulations), in relation to development under section 36 and section 37 of the Act. They make a number of changes to clarify the requirements for EIA and describe the procedures to be followed when an application is made for a development, which is considered to have significant environmental effects. They are divided into five parts:

- ?? General provisions – regulations 1 to 4,
- ?? Screening – regulations 5 and 6,
- ?? Preparation of an environmental statement – regulations 7 and 8,
- ?? Publicity and procedures – regulations 9 to 14, and
- ?? Miscellaneous provisions – regulations 15 to 17

2.2.2 Under the Act, for any development that comes under sections 36 or 37, application for consent has to be made to the Secretary of State. In addition, pursuant to the Regulations, development that is considered to have significant effect on the environment must also be subject to EIA and an environmental statement submitted with the application.

2.2.3 Schedules 1 and 2 to the Regulations define those developments for which an EIA is required. Schedule 1 lists those for which an EIA is mandatory, whilst Schedule 2 describes projects for which the need for EIA is judged by the Secretary of State on a case-by-case basis. As “sensitive areas” are a key consideration in determining the need for EIA, Schedule 2 also defines these. Schedule 3 describes the criteria to be used to determine if a development is an EIA development. In particular, for those areas defined as “sensitive” in Schedule 2, the need for EIA is more likely. Where EIA is required, environmental information must be provided by the developer in an environmental statement. Schedule 4 specifies the information which must be provided in such a statement:

- ?? Part I sets out that information which can reasonably be required to compile an Environmental Statement taking into account the terms of any scoping opinion given, and
- ?? Part II describes the minimum information that is always required.

2.2.4 Regulations 3 and 4 prohibit the Secretary of State from granting consent for an EIA development without taking into account an environmental statement together with any associated environmental information. In particular, they set out the following procedures:

- ?? the application must be accompanied by an environmental statement,
- ?? the environmental statement must contain all the relevant information and be in accordance with Schedule 4, and
- ?? the Secretary of State must take into account all the environmental information including any representations from the public and consultees.

2.2.5 Under regulation 5, for those developments which come under Schedule 2 of the Regulations (i.e. the requirement for EIA is to be determined on a case-by-case basis), a developer may ask the Secretary of State for a determination on whether or not EIA is required (known as “screening”). This should be undertaken before any formal application for consent has been submitted. For an application submitted without an environmental statement but for which the Secretary of State is of the opinion that it is an EIA development, regulation 6 covers the procedures to be followed when such circumstances arise.

2.2.6 Regulation 7 allows developers to obtain a scoping opinion from the Secretary of State on what should be included in an environmental statement and the consultation procedures required. Under regulation 8 the developer may give prior notice that he intends to submit an environmental statement. Regulation 8 also states that “the consultative bodies” (defined in regulation 2) must, if requested, make information in their possession available to the developer to facilitate its preparation. Regulation 15 places an obligation on the consultative bodies to provide this information and allows for the non-disclosure of confidential information.

2.2.7 The applicant is responsible for publicising any application that is accompanied by an environmental statement. This enables the public to provide their views on the development to the Secretary of State. Regulation 9 explains the procedures for publicising the development. In all cases, developers must make copies of the environmental statement available to the public for which a reasonable charge can be made (regulation 9(4)).

2.2.8 When the Secretary of State receives an application with an environmental statement, regulation 11 covers the procedures to be followed to ensure copies of it are sent to the consultative bodies (defined in regulation 2). The Secretary of State must make available to the public his decision as whether or not a development requires EIA and his decisions on whether to grant or refuse consent for any EIA development. This is covered in regulation 10.

2.2.9 Regulation 12 covers the obligation of the Secretary of State to consult with European Economic Area (“**EEA**”) States when it appears that a project is likely to have a significant effect on their environment.

2.2.10 Where an environmental statement has been submitted and publicised but does not contain sufficient information, regulation 13 allows the Secretary of State to ask the developer to supply further information. Under regulation 14 this further information must then be publicised in the same way as the environmental statement itself.

2.2.11 Regulation 16 deals with the formalities of service of notices under the Regulations.

3. Determining if development requires Environmental Impact Assessment

3.1 Developments requiring EIA

3.1.1 Figure 3.1 distinguishes between those developments for which an EIA is mandatory and those for which the need for EIA is judged on a case-by-case basis.

Figure 3.1 - Schedule 1 and Schedule 2 Thresholds for Environmental Impact Assessment

	Environmental Impact Assessment Is Mandatory	Need for Environmental Impact Assessment to be judged on a case-by- case basis
	Schedule 1 developments	Schedule 2 development
Power Stations (Section 36)	<ul style="list-style-type: none"> - Development of thermal power station of 300MWth or more. - Any development of nuclear power stations. 	<ul style="list-style-type: none"> - Development of power stations (other than nuclear power stations) less than 300MWth. - Extensions to power stations
Overhead power lines (Section 37)	<ul style="list-style-type: none"> - Construction of an overhead line of 220kV or more and more than 15 km in length. 	<ul style="list-style-type: none"> - Construction of an overhead power line in a sensitive area.¹ - Construction of an overhead power line with a voltage of 132kV or more.

¹ See Schedule 2 of the Regulations for the definition of "Sensitive Areas".

3.1.2 Since EIA is mandatory, for Schedule 1 developments the Secretary of State will always need to consider an environmental statement and other environmental information as part of granting consent under the Act. In considering the effects he will take into account any comments made by the consultative bodies and any representations from the public on the development.

3.1.3 For those applications, which fall into Schedule 2 the process of determining if EIA is needed is commonly known as “screening”. It does not necessarily mean that those developments will always require an environmental statement. The screening process exists to determine if one is required at all.

3.1.4 For a small number of developments which fall outside the criteria defined in Schedules 1 and 2, the need for EIA may have to be determined if the Secretary of State considers that specific, local circumstances need to be taken into account. Such developments can only be judged for EIA as and when they arise but they would for example include: overhead power lines passing through heavily populated areas, proposed development being in an area of land which, although not in a sensitive area, already has a number of other developments affecting it (e.g. it is already crossed many times by other lines), a development that is sufficiently close to a ‘sensitive area’ to have an effect on it, or areas protected by Bio-diversity Action Plans and other areas which, although they are not within the definition are thought to be “sensitive”. To develop knowledge of when such cases are likely to occur the DTI will develop and maintain a database.

3.1.5 In the case of power stations falling into Schedule 2, because of their potential impact on the environment, all applications will be assessed on a case-by-case basis to determine if EIA is required.

3.1.6 For overhead power lines however, most applications will fall outside both Schedule 1 and Schedule 2 and will not require EIA. This is because most such developments are for non-controversial changes or modifications to existing lines, which are considered not to have significant effects on the environment.

3.1.7 Given the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate a simple universal test of whether or not EIA is required. The question that must be asked is: “can this particular development be considered to be likely to have significant effects on the environment?”. Each development therefore has to be assessed separately because the characteristics of the impact will vary from case to case. Schedule 3 lists the ‘selection criteria’ which must be taken into account in determining whether a development is likely to have significant effects on the environment and if the application will require EIA. From past experience it is possible to offer a broad indication of the Secretary of State’s views on development that is likely to be a candidate for EIA and Section 3.2 below provides a guide on the procedures for reaching such a determination.

3.2 Identifying EIA development

3.2.1 Generating Stations

3.2.1.1 Generating Stations with an electrical output of more than 50MW requiring section 36 consent, by their nature, potentially have a significant impact on

the local landscape in visual terms as well as on local air quality, on noise levels for the surrounding local community and local traffic. This impact can not only last during the construction phase but afterwards during the operation of the station (for example through the transport of fuel). The impact therefore has to be viewed as essentially long term since a generating station can be expected to have a working life of some 30 years. In these circumstances so that the environmental effects have been properly considered, the Secretary of State will normally require an EIA.

3.2.1.2 With extensions or modifications to existing power stations the likelihood is that EIA will be required since such changes will often be to increase the capacity of the station or alter its operational profile all of which can have impacts visually or on local air quality, noise levels and traffic.

3.2.1.3 Because of the complex nature of such developments the environmental impact of offshore windfarms of more than 50MW will give rise to slightly different concerns. Besides the obvious effect of their visual impact from the shore line, the marine environment means that other impacts such as those on bird flight paths, feeding grounds for birds offshore, fishing grounds (including fish spawning grounds and nurseries offshore), navigation and possible archaeological sites (e.g. ship wrecks) will all need to be taken into account. There are also the consequential terrestrial effects of such developments where the services from the windfarms come ashore. On the basis of the sites presently identified at the date of this Guidance Note, the likelihood is that most section 36 applications in territorial waters that come under Schedule 2 will require EIA. Because of their special nature, it is expected that specialist advice will be required in assessing the environmental impact of such developments.

3.2.2 Overhead Lines

3.2.2.1 New lines with a voltage of 132kV or more fall into Schedule 2 of the Regulations and the need for EIA will have to be determined. It is the Department's view that lines are more likely to require EIA if they are of this voltage or higher and they have a length of more than 2 km – in the past 85 per cent of such lines have needed EIA. The 2 km threshold is consistent with the Government's view on other linear developments such as waterways, roads and railways.

3.2.2.2 Other considerations have to be taken into account when determining the need for EIA: these include visual impact, local disturbance as a result of the construction of poles or towers and locality. In the past new installations using wooden poles have not normally required EIA whereas the construction of steel towers is more likely to because of their visual impact. There can also be disturbances that need to be accounted for where poles or steel towers are affixed to the ground. Obviously the locality will be a particular factor in reaching a judgement and Schedule 2 of the Regulations details the 'sensitive' areas that will have a bearing on that. The list of impacts to consider is not exhaustive and other factors will also be considered which can influence the decision on whether EIA is required.

3.2.2.3 Another factor will be if the overhead line represents part of a wider scheme of development, which for example, included the development of a power station. As indicated in the Government's response to the UK Round Table on

Sustainable Development¹, whilst applications for power stations, requiring consent under section 36 of the Act, and overhead lines should continue to be kept as separate procedures, it would expect that where both projects were related, a concurrent decision would be taken on them. Account will be taken of the fact that some aspect of the combined development may not be complete. For example, the detailed route of the power line may not have been settled or the timing of the application for the line may not coincide with that for the power station. To assist in this the Secretary of State is likely to require an EIA on the overhead line if the power station itself is subject to an EIA, to ensure the full environmental effect of the development is understood.

3.3 Procedures for establishing whether EIA is required (“Screening”)

3.3.1 Options for determining if EIA is required

3.3.1.1 For those applications listed in Schedule 2 the Secretary of State must consider if EIA is required. Figure 3.2 below describes the processes to determine if an environmental statement should accompany the application for consent.

3.3.1.2 Determining if EIA is required can take place at a number of different stages:

- ?? the developer may, before submitting an application, request a screening opinion from the Secretary of State (regulation 5).
- ?? the developer may decide that EIA will be required and voluntarily submit an environmental statement with the application to the Secretary of State.
- ?? the Secretary of State may determine that EIA is required for an application that has been submitted:
 - i) without an environmental statement, or
 - ii) with a document which contains environmental information but is not described as an environmental statement for the purposes of the Regulations.

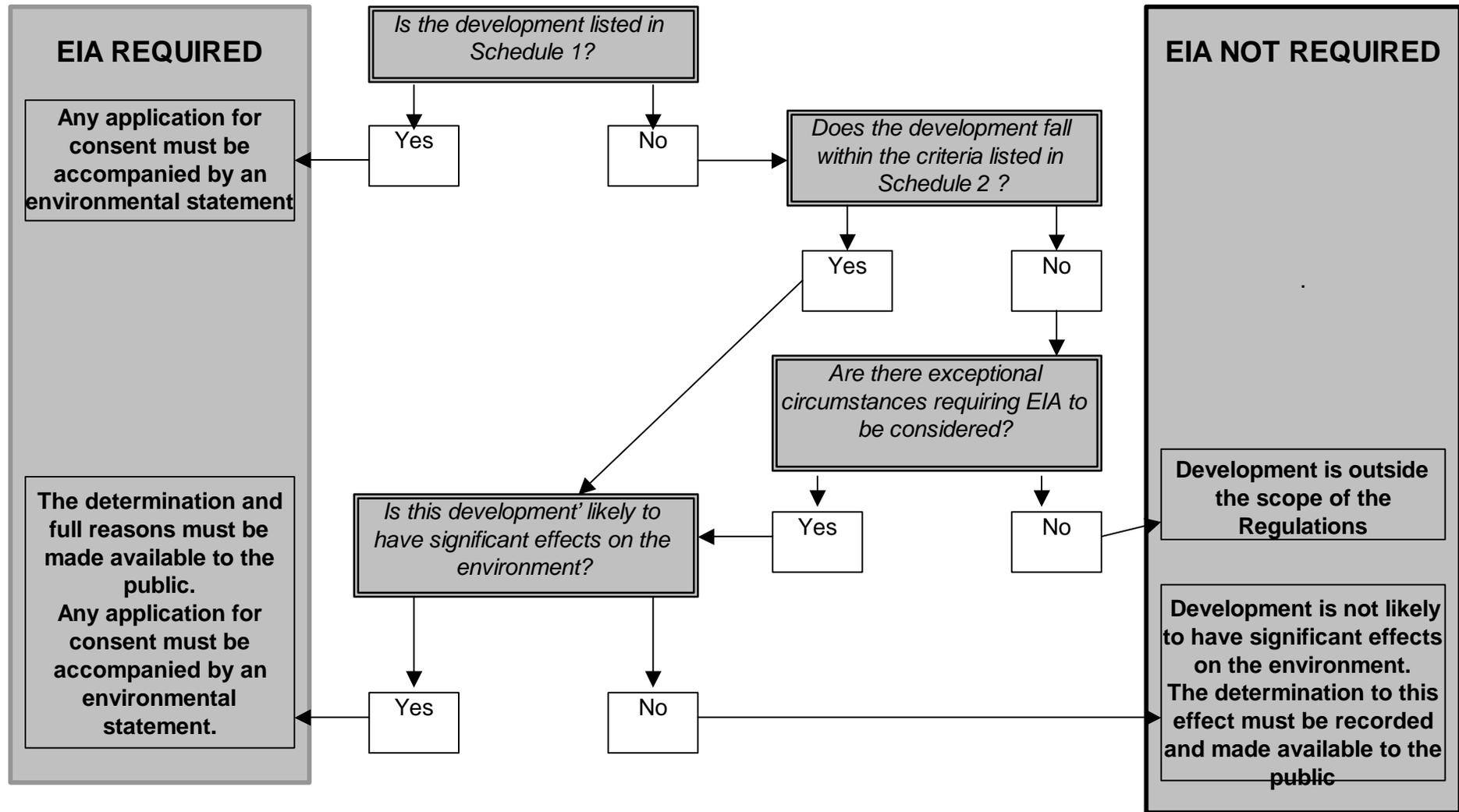
3.3.2 Obtaining a screening opinion from the Secretary of State (regulation 5)

3.3.2.1 Before submitting an application for development under the Act, a developer who is in doubt as to whether EIA would be required, may request a screening opinion from the Secretary of State. The request should include the basic information on the proposed development as set out in regulation 5(2). If insufficient information has been provided then there will be a delay whilst the developer gathers and provides the further information required.

¹ Ref: Government Response to the Second Annual Report of The UK Round Table on Sustainable Development, March 1997. Published by Department of the Environment, Transport and the Regions.

3.3.2.2 Once he has all the information he requires, under regulations 5(4) and 5(5) the Secretary of State is required to consult and obtain the views of the local planning authority (“**LPA**”) of the area in which the development is planned. In the

Figure 3.2 Establishing whether a development requires EIA



case of overhead power lines two or more LPAs might need to be consulted. He must complete this consultation before he can provide an opinion on the need for an environmental statement. The LPA is allowed 3 weeks to respond with its views and within 3 weeks of their response, the Secretary of State will issue a screening opinion.

3.3.2.3 Whenever LPAs are uncertain about the significance of a development's likely effects on a sensitive area they should consult English Nature. If there is a possible impact on an archaeological site then English Heritage should also be consulted. Other non-statutory bodies may also have relevant information and should also be approached. It may also be necessary to consult with these bodies for developments which are close to a sensitive area.

3.3.2.4 It is important to note that the developer himself can approach the LPA and obtain its views on the need for EIA before he asks the Secretary of State for an opinion. Submitting the LPA's views with the request for an opinion has the advantage of saving time: provided the Secretary of State has all the information he needs (together with the views of the LPA) he can give an opinion within 3 weeks. This compares with a minimum of 9 weeks for those situations in which the applicant has not provided all the information needed and has not previously consulted the LPA.

3.3.2.5 In the case of offshore windfarms it is less clear which LPAs should be involved in the consultation. The Secretary of State will decide which he considers to have an interest in the development. This will in general be those whose border runs along the coastline nearest to the development. In determining which LPAs the developer should approach for a view on a screening opinion it would be advisable to consult the Secretary of State beforehand. For windfarms off the Welsh coast the National Assembly for Wales will need to be involved in the consultation process.

3.3.3 Applications with an environmental statement “voluntarily” submitted by the applicant

3.3.3.1 Developers may decide themselves - in the light of this Guidance Note and any discussions with the Secretary of State - that EIA will be required for the proposed development. If an applicant expressly states that they are submitting an environmental statement for the purposes of the Regulations, the application will be treated as an application for EIA development. The Secretary of State will then satisfy himself that all the information required is contained in the environmental statement. Should this not be the case then under regulation 13 he will ask the applicant to provide further information.

3.3.4 Applications submitted without an environmental statement which is required for the purpose of the Regulations (regulation 6)

3.3.4.1 The Secretary of State will need to come to an opinion as to whether or not EIA is required where the application is not accompanied by an environmental statement for the purpose of these Regulations. This can arise when an application is submitted without an environmental statement, or where it is accompanied by a document which, although it contains environmental information, is not clearly stated to be an environmental statement.

3.3.4.2 If an application is submitted without an environmental statement the Secretary of State may still consider whether EIA is required under regulation 6. If

sufficient information has not been submitted with the application for the Secretary of State to make a decision then, under regulation 5(3) (as applied by regulation 6(2)), the applicant may be asked to provide further information to enable the Secretary of State to make a decision. The Secretary of State may also consult with the local planning authority, if he so wishes. Once the Secretary of State has the relevant information and/or has consulted with the local planning authority, he will come to an opinion within 3 weeks and notify the applicant of this. If the decision is that the development is an EIA development then the applicant must reply within 3 weeks indicating his intention to abide by the result of the assessment and produce an environmental statement. If the applicant does not reply within this time, the application will be deemed to have been refused – he has no appeal against this. If the applicant agrees to submit an environmental statement the Secretary of State will suspend consideration of the application until this has been received. In those cases where he is already minded to refuse the application he will do so as quickly as possible to avoid the applicant having to consume resources in its production to no avail.

3.3.4.3 In those cases where a document providing environmental information accompanies an application that is a Schedule 2 development, but it is not an environmental statement for the purposes of the Regulations, the Secretary of State will, in accordance with the procedures of regulation 6 determine if one is required and issue an opinion as if the application has been submitted without an environmental statement.

3.3.4.4 In a few number of exceptional cases in which a development falls outside the criteria of Schedule 2 (see paragraph 3.1.4 above) but for which it is considered that the development could have an adverse impact on the environment the need for EIA will be determined.

3.3.5 Making screening opinions available to the public

3.3.5.1 The EIA Directive requires the Secretary of State to make available to the public his determination on whether or not EIA is required. Consequently for all cases in which the need for EIA has been considered he will under regulation 10(1) send a copy of his decision to the Local Planning Authority for them to lodge in a place where the Planning Register is kept. This will be available for inspection by the public. If an application is subsequently made for the development, the opinion and related documents should be transferred to Part I of the Planning Register with the application. This procedure will also apply to those developments falling outside Schedule 2 for which, exceptionally, the need for EIA had to be determined.

3.3.6 Supplementary provisions

3.3.6.1 Developers should note that the Regulations also provide for a scoping opinion from the Secretary of State on what information he expects the environmental statement to contain; this process is described further in section 4.3. A request for both a screening and scoping opinion may be made at the same time to the Secretary of State. If the development is held to be an EIA development then the procedures for scoping will run from the announcement of the Secretary of State's determination.

3.3.6.2 Where a screening opinion has been given the attention of developers is drawn to regulation 8, which is aimed to facilitate preparation of the environmental statement.

3.3.6.3 It is advisable that before submitting an application the developer should contact the DTI's Consents Team to discuss the application. This will clarify early on if the need for EIA has to be considered. A list of consultative bodies (with names and addresses) can be agreed who can co-operate on the scoping procedures and who would also be in a position to provide relevant information to facilitate the preparation of the environmental statement. This would also facilitate the process for gathering the views of the consultees and making available the information for preparing the environmental statement.

4. Preparation and Content of an environmental statement

4.1 General Requirements

4.1.1 It is the applicant's responsibility to prepare the environmental statement. There is no statutory provision as to its form (which may consist of one or more documents) but it must contain, as a minimum, the information specified in Part II of Schedule 4 to the Regulations, and the relevant information in Part I.

4.1.2 Whilst every environmental statement should provide a full factual description of the development, the emphasis of Schedule 4 is on the 'significant' environmental effects to which a development is likely to give rise. Some impacts may be of little value or of no significance for the particular development in question. They will therefore need only very brief treatment to indicate that their possible relevance has been considered. While each environmental statement must comply with the requirements of the Regulations, it is important that it should be prepared on a realistic basis, without unnecessary elaboration and based on the relevant techniques and knowledge available at the time. Hence the value to a developer of seeking a scoping opinion from the Secretary of State under regulation 7.

4.1.3 Paragraph 4 of Part II of Schedule 4 requires developers to include in the environmental statement an outline of the main alternatives to the proposed development they have studied and the main reasons for their choice. Within the context of the Regulations this is likely to mean considering alternative sites for generating stations, whilst for overhead lines it would be likely to mean looking at alternative routes and undergrounding. In all such cases, the environmental statement must consider the alternatives.

4.1.4 A list of features of the environment that might be significantly affected by a development should be described using those topics set out in paragraph 3 of Part I of Schedule 4. Attention is drawn to the fact that in addition to the direct effects of a development, the environmental statement should also cover any secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects. A comprehensive survey of the environment is therefore required.

4.1.5 The information in the environmental statement must be summarised in a non-technical summary (paragraph 6 of Part I and 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 environmental statement. Where the environmental statement 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 environmental statement in plain English.

4.1.6 Given how comprehensive a survey an environmental statement has to be, it is obviously beneficial to the developer to engage in discussions at an early stage with relevant consultative bodies. As well as the statutory bodies, environmental organisations and non-statutory bodies, for example the RSPB, local nature trusts, local archaeological societies and group, and other local conservation organisations can provide useful local and specialised information.

4.1.7 If the Secretary of State decides that EIA is required this will automatically trigger the procedures to facilitate the preparation of the environmental statement (regulation 8). He will therefore serve notice on the consultative bodies telling them that EIA is required for the development and that they have an obligation to provide information to the developer.

4.2 Provision to seek a formal opinion from the Secretary of State on the content of an environmental statement – “scoping” (regulation 7)

4.2.1 Before making an application, or where the Secretary of State has already determined that EIA is required (regulation 5), a developer may ask the Secretary of State for his formal opinion on the information to be supplied in the environmental statement (i.e. to provide a “scoping opinion”). This provision allows the developer to be clear about what the Secretary of State considers the main effects of the development are likely to be and therefore the topics on which the environmental statement should focus.

4.2.2 The developer must (under regulation 7(2)) include the same information as would be required to accompany a request for a screening opinion. Developers should also submit a draft outline of the environmental statement, giving an indication of what they consider to be the main issues, to provide a focus for the Secretary of State’s considerations. If the Secretary of State considers that he needs further information he will, within 3 weeks of the receipt of the request, ask the developer in writing to provide more information on those points which he has identified as needing more detail.

4.2.3 When the Secretary of State has sufficient information he will consult on the content of the environmental statement with the consultative bodies defined in regulation 2 as well as with the applicant. He will give all organisations 3 weeks (or such longer period as may be agreed with that organisation) to provide their views on this. Within 3 weeks of receipt of these views he will issue a scoping opinion to the applicant stating what information should be included in the environmental statement giving his reasons why. Under regulation 7(6) this period can be extended if he agrees with the applicant in writing. The consultative bodies will also be informed of his decision. The Local Planning Authority should place their copy of the opinion at the place where the Planning Register is kept. If an application has been made or is subsequently made the opinion and related documents should be transferred to Part I of the Register together with the application.

4.2.4 The fact that the Secretary of State has given a scoping opinion does not prevent him from requesting further information at a later stage under regulation 13.

4.3 Provision of information by consultative bodies (regulation 8)

4.3.1 Under the Environmental Information Regulations 1992, public bodies must make environmental information available to any person who requests it. These regulations are pertinent where a developer is preparing an environmental statement. Regulation 8 therefore provides for the developer to acquire from public bodies any environmental information which they hold which will assist him in the preparation of the environmental statement.

4.3.2 When the developer notifies the Secretary of State that he intends to prepare an environmental statement the relevant consultative bodies will be notified and asked to make the information available. The developer will be told who these are together with their addresses. If he has not already done so under the scoping procedures, when making the request, the developer should provide the Secretary of State with the minimum information described in regulation 5.

4.3.3 The consultative bodies are only required to provide information already in their possession. There is no obligation on them 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 that is capable of being treated as confidential under the Environmental Information Regulations 1992¹. Public bodies may make a reasonable charge reflecting the cost of making available the information requested by a developer. Further information on the application of the Environmental Information Regulations is contained in a Guidance Note prepared by the Department of the Environment².

5. Submission and Consideration of EIA Applications; consultation and publicity procedures

5.1 Applications made with an environmental statement

5.1.1 The procedures for an application under the Act are set out in the Electricity (Application for Consent) Regulations 1990. When submitting an application accompanied by an environmental statement, there are a number of additional requirements which applicants need to bear in mind. These are covered in regulations 9 and 11:

- ?? Regulation 9 specifies publicity requirements that ensure the environmental statement is drawn to the public's attention.
- ?? Regulation 11 ensures the relevant consultative bodies are consulted by providing for the developer to serve on them a copy of the application, any plan and the environmental statement. The Secretary of State has to ensure that all such bodies have been properly advised and informed of their right to make representations to him. The Regulations allows him 2 weeks in which to ensure that these bodies have received copies.

¹ The Environmental Information Regulations 1992, SI 3240

² "Freedom of Access to Information on the Environment – Guidance on the Implementation of the Environmental Information Regulations 1992 in Great Britain". Published by the Department of the Environment.

5.1.2 The Local Planning Authority will place the environmental statement on Part I of the Planning Register together with any related documents including screening and/or scoping opinions given under the pre-application procedures.

5.1.3 Regulation 16 specifies what is meant by serving a notice or documents such as the environmental statement.

5.2 Initial Publicity

5.2.1 Where an application for development under the Act is accompanied by an environmental statement, regulation 9 specifies that the applicant must publicise it by placing a notice in those newspapers available in the locality of the development. The regulation specifies the requirement and form of the notice. It ensures that the public is made aware of the development and is informed where they may obtain information on its environmental effects.

5.2.2 Notice under these Regulations can, for convenience, be combined with the notices required under the Electricity (Applications for Consents) Regulations 1990. Where an application has already been submitted and the Secretary of State, under the regulation 6, requires EIA the developer has to issue a further notice in compliance with the Regulations.

5.2.3 The non-technical summary (which must be included in every environmental statement) should be published as a separate document, with copies available to the public so as to facilitate as wide a consultation as is reasonable. Developers may also wish to make further arrangements to publicise the development. The applicant is also expected to ensure copies of the environmental statement are available for the public at a reasonable price which reflects printing and distribution costs.

5.2.4 Regulation 9 also allows for the public to make representations to the Secretary of State on the application within 28 days from the date the notice last appeared in the newspapers. The applicant has to provide in the notice the address to which these can be sent.

5.3 Adequacy of the environmental statement and the provision of further information (regulations 13 and 14)

5.3.1 The Secretary of State will satisfy himself in every case that adequate information has been included in the environmental statement. It must contain at least the information specified in Part II of Schedule 4 as well as all the relevant information that the developer can reasonably be required to compile in Part I. To avoid delays in determining the application, consideration of the need for further information, and any necessary request for such information, will take place as early as possible.

5.3.2 Where the specified information has not been provided, or the information provided is not sufficient to enable the Secretary of State to determine the application, he will use his powers under regulation 13 to require the applicant to provide any further information to ensure the environmental statement conforms to Schedule 4. Any information provided in response to such a written request must, in accordance with regulation 14, be publicised and consulted on, in a similar way to the document

submitted as an environmental statement. This involves sending copies of the further information to those who received copies of the environmental statement.

5.3.3 The Secretary of State will only use his powers under regulation 13 when he considers that further information is necessary to complete the environmental statement and thus enable him to give proper consideration to the likely environmental effects of the proposed development. He will also consider the extent to which the developer could reasonably be expected to provide such information. The additional delay and costs imposed on developers by the requirement to provide further information about environmental effects will be kept to a minimum consistent with compliance with the Regulations.

5.3.4 Where further information has been requested the Secretary of State will not determine the application until 14 days after the last date that a copy of the further information was served.

5.4 Secretary of State's determination of EIA development (regulation 4)

5.4.1 Determining the Application

5.4.1.1 Once the Secretary of State has all the representations and views of the Local Planning Authority, the consultative bodies and the public, taking these together with the contents of the environmental statement he will come to a decision on whether or not to give consent to the proposed development.

5.4.1.2 In granting consent the Secretary of State will often include planning conditions to mitigate the environmental effects of the development. In doing so, he will take into consideration a wide range of factors to mitigate the impact on the environment. Such conditions need to meet the six tests set out in paragraph 14 of DoE Circular 11/95 – The Use of Conditions in Planning Permissions¹

- a) necessary,
- b) relevant to planning,
- c) relevant to the development to be permitted,
- d) enforceable,
- e) precise, and
- f) reasonable in all other respects.

Further guidance can be found in Planning Policy Guidance PPG1 - Planning Policy and Principles². The aim is to provide conditions which are fair, reasonable and practicable. It is not intended that a planning condition should seek to duplicate other legislative controls such as air pollution control, albeit that the issue may well have been identified in the environmental statement.

5.4.2 Timing of the determination

¹ Department of the Environment, Transport and the Regions – The Use of Conditions in Planning Permissions, 20th July 1995, published by HMSO.

² Department of the Environment, Transport and the Regions – PPG1 Planning Policy Guidance: General Policy and Principles, published by HMSO.

5.4.2.1 Under the Act there is no time limit for the Secretary of State to determine an application. However, he recognises an administrative responsibility to deal with matters as expeditiously as possible. The role of the local planning authority is crucial here as it has the power to register with the Secretary of State an objection to an application. This must be done within a maximum of 4 months of the date of an application for a generating station or 2 months for an overhead line application, except in cases where a longer period is agreed with the applicant's consent]. If the LPA does not object it may propose that clearance be given subject to specified conditions which can include mitigation measures. Once he has all the information necessary to form a judgement the Secretary of State would aim to make a determination as soon as possible. This would either be to call a public inquiry or to determine the application himself.

5.4.2.2 It should be noted however that at the very least in relation to EIA development under regulation 11(4) the Secretary of State is not permitted to determine the application until after 14 days from the date on which the public and the consultative bodies are required to have submitted their representations.

5.4.3 Making public final determination of the application

5.4.3.1 When the Secretary of State has determined an application for EIA development, he must ensure his decision is made available to the public.

5.4.3.2 A copy of the Secretary of State's decision letter to the developer will be sent to the local planning authority who will place this on Part I of the planning register alongside other documentation on the application. The decision letter will contain:

- ?? the main reasons and considerations on which the decision is based;
- ?? a description, where consent has been granted, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Copies of this letter are also sent to those statutory and non-statutory bodies who were involved in the consultation process. Also, public copies of the letter are available from the Consents Team at the Department of Trade and Industry.

5.4.3.3 Additionally, for all proposed EIA developments, a Departmental Press Notice will be issued announcing whether consent is granted and, if so, providing the information at 5.4.3.2 above.

5.5 Secretary of State's consideration of effects on other countries (regulation 12)

5.5.1 Under the EIA Directive the Secretary of State has to consider if any proposed development is likely to have significant effects on the environment of any other EEA State. These countries, along with the UK, have ratified the UN Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention).

5.5.2 Normally, projects in England and Wales covering developments under the Act are considered unlikely to have significant effects on the environment of another country. Those countries most likely to be affected by any development will be those

neighbouring countries such as France and the Republic of Ireland. The projects more likely to require notification are larger power stations and offshore windfarms. Should it be likely that such developments are considered to have a significant on a neighbouring state then 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. The Secretary of State will not give consent to a development until the end of such time as that government has had a reasonable opportunity to give its views and for consultation with the government of the affected country.

5.5.3 Any EEA State, which has been consulted on the application, will be informed of the Secretary of State's decision and they will be provided with the information described in 5.4 above.

6. Financial and Manpower implications

6.1 Every application for consent under section 36 and 37 that requires EIA will result in a cost for the developer. It is generally estimated that for each EIA development the investigation work and the production of an environmental statement cost from £20,000 to over £200,000. The size of this figure depends very much on the nature of the development, its location and the impact on the environment. The cost of EIA for power stations is generally more expensive than that for overhead power lines because they would have a more complicated impact.

6.2 The effect of the amending Directive, as implemented in these Regulations, has been mostly to clarify definitions and tighten up procedures. It is possible that these changes could increase the number of developments requiring EIA and involve additional work by the electricity companies on assessing the environmental impact of such developments. However, it is felt that the extent of these changes is not sufficiently far reaching so as to result in a significant increase in the industry's costs.

6.3 Regarding the effect on the number of developments requiring EIA, in the case of power stations this will be negligible because they already require an assessment of the environmental effects in nearly every case. For overhead lines, the clarification of "sensitive areas" could result in marginally more overhead line developments requiring environmental assessment. This could have a greater impact on those electricity distribution companies which have a higher than average number of "sensitive areas" in their region of operation.

6.4 The possible additional work required for EIA developments arises mainly from two changes:

- ?? the mandatory requirement to assess alternatives to the proposed development, and
- ?? the request for a scoping opinion from the Secretary of State and the requirement to consult on this.

6.5 Both of these formalise work which should already be undertaken by the industry. In the case of considering alternatives, it is expected that this analysis should be undertaken regardless of the need for EIA and should be seen as good business practice particularly in the instance of major projects. The request for a scoping opinion and the consideration of the contents of an environmental statement is part of the process of preparing this document and the government has always encouraged developers to discuss this with local planning authorities and the environmental bodies. The introduction of these procedures should not therefore add significantly to the cost of preparing the environmental statement.

6.6 Consequently it is thought that overall the impact of the Regulations on developers' costs will not be significant.

