

Subsidiary Legislation made under ss.33 & 68.

Town Planning (Environmental Impact Assessment) Regulations 2019

LN.2019/195

Commencement (LN.2019/198)

26.9.2019

ARRANGEMENT OF REGULATIONS

Regulation

PART I GENERAL

1. Title and commencement.
2. Interpretation.
3. Prohibition on granting planning permission without consideration of environmental information.
4. Environmental impact assessment process.

PART II PROCEDURES CONCERNING APPLICATION FOR PLANNING PERMISSION

Screening of List 2 Developments

5. General provisions relating to screening.
6. Requests for screening opinions.

Procedures concerning applications for planning permission

7. Application made without an environmental statement.

Preparation of environmental statements

8. Requests for scoping opinions.
9. Procedure to facilitate preparation of environmental statements.
10. Environmental Statements.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

Publicity and procedure on submission of environmental statement

11. Procedure where an environmental statement is submitted.
12. Procedure where an environmental statement is submitted after the planning application.
13. Further information and evidence respecting environmental statements.
14. Consideration of whether planning permission should be granted.
15. Information to accompany decisions.
16. Coordination.

Availability of directions etc., and notification of decisions

17. Additional particulars on the register.
18. Duties to inform the public of final decisions.
19. Objectivity and bias.

PART III

DEVELOPMENTS WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

20. Development in Gibraltar likely to have significant effects in a Member State.
21. Developments in a Member State likely to have significant transboundary effects.

PART IV

MISCELLANEOUS

22. Public Development.
23. Exchange of information with the European Commission.
24. Exemptions.

SCHEDULES

- | | |
|------------|---|
| Schedule 1 | Descriptions of development for the purposes of the definition of “List 1 development”. |
| Schedule 2 | Descriptions of development for the purposes of the definition of “List 2 development”. |
| Schedule 3 | Criteria to determine whether list 2 developments should be subject to an environmental impact assessment |
| Schedule 4 | Information for inclusion in environmental statements. |

In exercise of the powers conferred on him by sections 33 and 68 of the Town Planning Act 2018 the Minister with responsibility for Town Planning has made the following Regulations-

PART I

General

Title and commencement.

1. These Regulations may be cited as the Town Planning (Environmental Impact Assessment) Regulations 2019 and shall come into operation on such day as the Minister may by notice in the Gazette appoint.

Interpretation.

2.(1) In these Regulations—

“Act” means the Town Planning Act 2018;

“any particular person” includes any non-governmental organisation promoting environmental protection;

“the Commission” means the Development and Planning Commission established under the Act;

“the consultation bodies” means—

- (a) any body which the Commission may consult on an application for planning permission;
- (b) the Environmental Agency; and
- (c) any statutory body which has a specific environmental responsibility;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, and as may be further amended from time to time;

“EIA application” means an application for planning permission for an EIA development;

“EIA development” means a development which is either –

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

(a) a List 1 development; or

(b) a List 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“environmental impact assessment” or “EIA” has the meaning given by regulation 4;

“environmental information” means—

(a) the environmental statement;

(b) any other information relating to the environmental statement;

(c) any further information provided under regulation 11; and

(d) any representations made by any body or person about the environmental effects of the development;

“environmental statement” has the meaning given by regulation 10;

“exempted development” means development in respect of which the Minister has made a direction under regulation 24;

“the land” means the land, sea or sea-bed on which the development would be carried out or, in relation to development already carried out, has been carried out;

“List 1 application” and “List 2 application” mean an application for planning permission for List 1 development and List 2 development respectively;

“List 1 development” and “List 2 development” mean development, other than exempt development, of a description mentioned in Schedule 1 and Schedule 2 respectively;

“public body” means a department of the Crown, an authority established by statute, or any servant or agent thereof;

“public development” means a proposed List 1 development or List 2 development by a public body;

“register” means the register kept under section 53 of the Act;

“scoping opinion” has the meaning given in regulation 8(1);

“screening direction” means a direction made by the Minister as to whether or not a List 2 development is EIA development;

“screening opinion” means a written statement of the opinion of the Town Planner as to whether List 2 development is EIA development;

“the public” means one or more natural or legal persons and, in accordance with any law or practice, their associations, organisations or groups;

“the public concerned” means the public affected or likely to be affected by, or having an interest in an EIA application and for the purposes of this definition, non-governmental organisations promoting environmental protection, subject to meeting any requirements under national law shall be deemed to have an interest;

(2) Subject to subregulation (3) below, expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

Prohibition on granting planning permission without consideration of environmental information.

3. Notwithstanding Part IV of the Act, the Commission shall not grant planning permission pursuant to an EIA application received by the Commission on or after the date of commencement of these Regulations, unless it has first taken the environmental information into consideration and it shall state in its decision that it has done so.

Environmental impact assessment process.

4.(1) The EIA is a process consisting of-

- (a) the preparation of an environmental statement by the applicant;
- (b) any consultation, publication and notification required by, or by virtue of, these Regulations or any other enactment in respect of EIA development; and
- (c) the steps required under regulation 14.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

(2) The EIA shall identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors-

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected as a result of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in subparagraphs (a) to (d).

(3) The effects referred to in subregulation (2) on the factors set out in that subregulation shall include the expected effects of the proposed development, arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development.

(4) The Commission shall ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.

PART II

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

Screening of List 2 Developments

General provisions relating to screening.

5.(1) Subject to regulation 24-

- (a) the submission by an applicant of a statement referred to by the applicant as an environmental statement; or
- (b) the issuing of a screening direction by the Minister,

shall determine for the purpose of these Regulations whether a List 2 development is EIA development.

(2) Where the Town Planner or the Minister is considering whether a List 2 development is EIA development, he shall take into account in making that decision-

- (a) any information provided by the applicant;
- (b) the available results of any other environmental assessments carried out pursuant to European Union legislation other than the Directive; and
- (c) such of the selection criteria set out in Schedule 3 as are relevant to the development.

(3) Where the Town Planner issues a screening opinion, or the Minister makes a screening direction, the Town Planner or the Minister, as the case may be, shall-

- (a) state the main reasons for the conclusion with reference to the relevant criteria listed in Schedule 3;
- (b) if it is determined that the proposed development is not EIA development, state any features of the proposed development and measures envisaged to avoid, or prevent what might otherwise have been, significant adverse effects on the environment; and
- (c) send a copy of the screening opinion to the person who proposes to carry out, or who has carried out, the development in question.

(4) The Town Planner may give a screening opinion irrespective of whether he has received a request to do so.

(5) Where the Town Planner issues a screening opinion he shall send a copy of the opinion and the written statement to the Minister with a request that the Minister make a screening direction under subregulation (6).

(6) Pursuant to a request made under subregulation (5), the Minister shall make a screening direction within-

- (a) 6 weeks beginning with the date on which the Minister obtains sufficient information to inform a screening direction; or
- (b) such longer period, not exceeding 90 days, as may reasonably be required, beginning with the date on which the Minister obtains sufficient information to inform a screening direction, but this is subject to subregulation (7).

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

(7) Where the Minister considers that due to exceptional circumstances relating to the proposed development it is not practicable to issue a screening direction within the period specified in subregulation (6), the Minister may extend that period by notice in writing given to the person bringing forward the development which is the subject of the proposed screening direction.

(8) The Minister shall state in any notice given under subregulation (7) the reasons justifying the extension and the date when the determination is expected, which should be as soon as reasonably possible.

(9) The Minister shall-

- (a) publish a copy of any screening direction in the Gazette; and
- (b) send a copy of such screening direction to the Town Planner,

as soon as practicable after it has been made.

(10) The Minister on receiving a request for a screening direction shall, if he considers that he has not been provided with sufficient information to give a screening direction, notify in writing-

- (a) the person that made the original request for the screening opinion; and
- (b) the Town Planner,

of the points on which he requires additional information.

Requests for screening opinions.

6.(1) A person who is minded to carry out development may request a screening opinion from the Town Planner.

(2) A person making a request for a screening opinion must provide the following-

- (a) a plan sufficient to identify the land;
- (b) a description of the development, including in particular-
 - (i) a description of the physical characteristics of the development and, where relevant, of demolition works;

- (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
 - (c) a description of the aspects of the environment likely to be significantly affected by the development;
 - (d) to the extent the information is available, a description of any likely significant effects of the proposed development on the environment resulting from-
 - (i) the expected residues and emissions and the production of waste, where relevant; and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity; and
 - (e) such other information or representations as the person making the request may wish to provide or make, including any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- (3) A person making a request for a screening opinion shall, where relevant, take into account-
- (a) the criteria of Schedule 3; and
 - (b) the available results of any other European Union environmental assessments of the effects on the environment.
- (4) The Town Planner on receiving a request under subregulation (1) shall, if he considers that he has not been provided with sufficient information to give a screening opinion, notify in writing the person making the request of the points on which he requires additional information.
- (5) The Town Planner shall issue a screening opinion, and provide a copy of said screening opinion to the Minister, within-
- (a) 6 weeks beginning with the date of receipt of a request made pursuant to subregulation (1); or
 - (b) such longer period, not exceeding 90 days from the date on which the person making the request submits the information required under subregulation (2) as may be agreed in writing with the person making the request.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

(6) Where the Town Planner considers that due to exceptional circumstances relating to the circumstances of the proposed development it is not practicable for him to issue a screening opinion within the relevant period specified in subregulation (5), the Town Planner may extend the period by notice in writing given to the person who made the request for a screening opinion.

(7) The Town Planner shall state in any notice given under subregulation (6) the reasons justifying the extension of time and the date when the determination is expected, which should be as soon as reasonably possible.

Procedures concerning applications for planning permission

Application without an environmental statement.

7.(1) Where an EIA application for planning permission under sections 18 or 19 of the Act which is before them for determination is not accompanied by an environmental statement, the Commission shall notify the applicant in writing—

- (a) that the submission of an environmental statement is required;
- (b) where appropriate, the details of any particular person who is or is likely to be affected by or has an interest in the application.

(2) The Commission shall notify the applicant in accordance with subregulation (1) above within 21 days beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(3) An applicant receiving a notification pursuant to subregulation (2) above may, within 21 days of the date of receipt of the notification, write to the Commission stating that he accepts its view and is providing an environmental statement.

(4) If the applicant does not write to the Commission in accordance with subregulation (3) above or does not submit an environmental statement, the planning permission sought, shall be deemed to be refused at the end of the 21 days period and the deemed refusal –

- (a) shall be treated as a decision of the Commission; but
- (b) shall not give rise to an appeal to the Tribunal under section 40 of the Act.

Preparation of environmental statements

Requests for scoping opinions.

8.(1) A person who is minded to make an EIA application may ask the Town Planner to state in writing his opinion as to the information to be provided in the environmental statement (a “scoping opinion”).

(2) A request for a scoping opinion shall be accompanied by–

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) The Town Planner on receiving a request under subregulation (1) above shall, if he considers that he has not been provided with sufficient information to give a scoping opinion, notify the person making the request of the points on which he requires additional information.

(4) The Town Planner shall not give a scoping opinion in response to a request under subregulation (1) until he has consulted the consultation bodies, but shall provide a scoping opinion to the person making the request within–

- (a) 6 weeks beginning with the date of receipt of a request made under subregulation (1); or
- (b) such longer period, not exceeding 90 days from the date on which the person making the request submits the information required under subregulation (3) as may be agreed in writing with the person making the request.

(5) Before giving a scoping opinion the Town Planner shall take into account–

- (a) any information provided by the person making the request;
- (b) the available results of any other environmental assessments carried out pursuant to European Union legislation other than the Directive; and
- (c) such of the selection criteria set out in Schedule 3 as are relevant to the development.

(6) The Town Planner on giving a scoping opinion in response to a request under subregulation (1) above shall not be precluded from requiring of the person who made the

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

request additional information in connection with any environmental statement that may be submitted by that person in connection with an application for planning permission for the same development as was referred to in the request.

Procedure to facilitate preparation of environmental statement.

9.(1) Any person who intends to submit an environmental statement to the Commission may give notice in writing which shall include the location, nature and purpose of the development and its main environmental consequences.

(2) The Commission on receipt of—

- (a) such a notice as is mentioned in subregulation (1) above; or
- (b) a written statement made pursuant to regulation 7(3) shall—
 - (i) notify the consultation bodies in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies by subregulation (3) below to make information available to that person; and
 - (ii) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified.

(3) Subject to subregulation (4) below; the Commission and any body notified in accordance with subregulation (2) above shall, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the body has in its possession any information which it or they consider relevant to the preparation of the environmental statement and, if they have, the body shall make that information available to that person.

(4) subregulation (3) above shall not require the disclosure of information which is capable of being treated as confidential by reason of any commercial, industrial or intellectual property interest or because its disclosure would be against the public interest or which must be treated as confidential under regulations 12 and 13 of the Freedom of Access to information on the Environment Regulations 2005.

(5) A reasonable charge reflecting the cost of making the relevant information available may be made by a consultation body which makes information available in accordance with subregulation (3) above.

Environmental Statements.

10.(1) An EIA application shall be accompanied by an environmental statement for the purposes of these Regulations.

(2) An environmental statement is a statement which includes at least-

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;
- (c) a description of the features of the proposed development, and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the development on the environment;
- (e) a non-technical summary of the information referred to in subparagraphs (a) to (d); and
- (f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular proposed development or type of development and to the environmental features likely to be affected.

(3) An environmental statement shall-

- (a) where a scoping opinion has been issued in accordance with regulation 8, be based on the most recent scoping opinion issued (so far as the proposed development remains materially the same as the proposed development which was subject to that scoping opinion);
- (b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
- (c) be prepared, taking into account any other relevant environmental assessments required under European Union legislation or some other provision of domestic legislation, with a view to avoiding duplication of assessment.

(4) In order to ensure the completeness and quality of the environmental statement-

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

- (a) the developer must ensure that the environmental statement is prepared by competent experts; and
- (b) the environmental statement must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.

(5) Where necessary, the Commission shall seek from the applicant supplementary information, in accordance with Schedule 4, which is directly relevant to reaching the reasoned conclusion on the significant effects of the development on the environment.

Publicity and procedures on submission of environmental statement

Procedure where an environmental statement is submitted.

11.(1) When an applicant making an EIA application submits to the Commission an environmental statement, he shall serve a copy of the statement on the consultation bodies specified by the Commission, and he shall—

- (a) serve with it a copy of the application and any plan submitted with the application (unless he has already served these documents on the body in question);
- (b) inform the body that representations may be made to the Commission;
- (c) inform the Commission of the name of everybody whom he has so served and of the date of service; and
- (d) inform any particular person who he considers is likely to be affected by, or has an interest in, the application, by sending him a notice that contains the details set out in subregulation (2)(b) to (f).

(2) The applicant shall publish in the Gazette and two newspapers published in Gibraltar a notice stating—

- (a) his name and that he is the applicant for planning permission for EIA development;
- (b) the date on which the application was made;
- (c) the address or location and the nature of the proposed development;

- (d) that a copy of the application and of any plan and other documents submitted with it together with a copy of the environmental statement may be inspected by the public during working hours;
- (e) the address of the secretary of the Commission where those documents may be inspected and the latest date on which they will be available for inspection (being a date not less than 30 days later than the date on which the notice is published);
- (f) that any person wishing to make representations for or against the grant of planning permission should make them in writing, before the date named in accordance with paragraph (e) above, to the Commission.

(3) The applicant shall, unless he has not, and was not reasonably able to acquire such rights as would enable him to do so, post on the land a notice containing the information specified in subregulation (2) above, except that the date named as the latest date on which the documents will be available for inspection shall be not less than 30 days later than the date on which the notice is first posted.

(4) The notice mentioned in subregulation (3) above must comply with the requirements of section 23(4) of the Act.

(5) The environmental statement submitted under subregulation (1) above shall be accompanied by—

- (a) a copies of the notice mentioned in subregulation (2) published in the Gazette and in the newspapers; and
- (b) a certificate by or on behalf of the applicant which complies with the requirements of section 23(2)(b) of the Act.

(6) The Commission shall not determine the application before the end of the period of 30 days beginning with the date of receipt of the statement.

Procedure where an environmental statement is submitted after the planning application.

12.(1) Where an application for planning permission has been made without an environmental statement and the applicant proposes to submit such a statement, he shall, before submitting it, comply with subregulations (2) to (4) of regulation 11.

(2) Where the applicant has been notified under regulation 7(1)(b), he shall serve a notice on every person of whom he has been so notified; and the notice shall contain the information specified in regulation 9(2), except that the date named as the latest date on

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

which the documents will be available for inspection shall not be less than 30 days later than the date on which the notice is first served.

(3) Where an applicant indicates that he proposes to provide such a statement and in such circumstances as are mentioned in subregulation (1) above, the Commission, shall (unless disposed to refuse the planning permission sought) suspend consideration of the application until receipt of the statement and the other documents mentioned in regulation 11(5); and shall not determine it during the period of 30 days beginning with the date of receipt of the statement and the other documents so mentioned.

Further information and evidence respecting environmental statements.

13.(1) Where the Commission is dealing with an application for planning permission in relation to which the applicant has submitted an environmental statement, and it is of the opinion that the statement should contain further information, it shall notify the applicant in writing accordingly.

(2) The provider of further information pursuant to sub-regulation (1) shall publish in the Gazette and two newspapers published in Gibraltar a notice stating—

- (a) the matters referred to in paragraphs (a) to (c) of regulation 11(2);
- (b) that further information is available in relation to an environmental statement which has already been provided;
- (c) that a copy of the further information may be inspected by members of the public during working hours;
- (d) the address of the secretary of the Commission where the further information may be inspected and the latest date on which it will be available for inspection (being a date not less than 30 days later than the date on which the notice is published);
- (e) that any person wishing to make representations about the further information should make them in writing, before the date specified in accordance with paragraph (d) above, to the Commission.

(3) The applicant shall send a copy of the further information to each consultation body to whom, in accordance with these Regulations, the statement to which it relates was sent.

(4) Where information is requested under sub-regulation (1) above, the Commission shall suspend determination of the application, and shall not determine it before the expiry of 14

days after the date on which the additional information was sent to all persons to whom the statement to which it relates was sent or the expiry of 30 days after the date that notice of it was published in the Gazette and in the newspapers published in Gibraltar, whichever is the later.

(5) The Commission may in writing require an applicant to produce such evidence as they may reasonably call for to verify any information in his environmental statement.

Consideration of whether planning permission should be granted.

14.(1) When determining an EIA application in relation to which an environmental statement has been submitted, the Commission shall-

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in subparagraph (a) and, where appropriate, their own supplementary examination;
- (c) integrate that conclusion into the decision as to whether planning permission is to be granted; and
- (d) if planning permission is to be granted, consider whether it is appropriate to impose monitoring measures.

(2) The reasoned conclusion referred to in subregulation (1) shall be up to date at the time that the decision as to whether planning permission for EIA development is to be granted;

(3) A reasoned conclusion shall be considered up to date for the purpose of subregulation (2) if in the opinion of the Commission it addresses the significant effects that are likely to arise as a result of the development proposed.

(4) In cases where no statutory timescale is in place the decision of the Commission shall be taken within a reasonable period of time, taking into account the nature and complexity of the proposed development, from the date on which the Commission has been provided with the environmental information.

Information to accompany decisions.

15. Where an EIA application in relation to which an environmental statement has been submitted is determined, the Commission when making the determination shall provide the applicant with the following information-

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

- (a) if the decision is to grant planning permission-
 - (i) the reasoned conclusion referred to in regulation 14(1)(b);
 - (ii) any environmental conditions attached to the decision;
 - (iii) a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset likely significant adverse effects on the environment; and
 - (iv) any monitoring measures that may be considered appropriate; or
- (b) if the decision is to refuse planning permission, the main reasons for the refusal.

Coordination.

16.(1) Where in relation to EIA development there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out an assessment under the Habitats Directive, the Commission shall, where appropriate, ensure that the assessment and the EIA are coordinated.

(2) In this regulation, the “Habitats Directive” means an assessment under Directive 92/43/EEC or Directive 2009/147/EC-

- (a) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; and
- (b) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

Availability of directions etc., and notification of decisions

Additional particulars on the register.

17. Where particulars of an application for planning permission are placed on the register, they shall include any relevant—

- (a) screening direction;
- (b) screening opinion;
- (c) scoping opinion;

| | |
|---|-----------------|
| Town Planning | 2018-19 |
| Town Planning (Environmental Impact Assessment) Regulations 2019 | 2019/195 |

This version is out of date

- (d) notification given under regulation 7(2);
- (e) environmental statement, including any further information provided under regulation 13 or any other information relating to the environmental statement;
- (f) statement of reasons accompanying any of the above;
- (g) the decision and any conditions attached to the planning permission, if granted;
- (h) the main reasons and considerations on which the decision is based; and
- (i) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Duty to inform the public of final decisions.

18.(1) Where an EIA application is determined by the Commission it shall inform the public, by publishing a notice in the Gazette and by such other means as are reasonable in the circumstances, that the Commission's decision is available for inspection at the office of the secretary of the Commission during working hours and, if also available electronically, the web address.

(2) A notice issued under subregulation (1) must include a statement as to the appeals procedure available.

(3) The information made available to the public shall include-

- (a) the content of the decision and any conditions attached thereto;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a summary of the results of the consultations undertaken and the information gathered pursuant to Articles 5 to 7 of the Directive, and how these results have been incorporated or otherwise addressed.

Objectivity and bias.

19.(1) Where the Town Planner or the Minister has a duty under these Regulations, he shall perform that duty in an objective manner so as not to find himself in a situation giving rise to a conflict of interest.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

(2) Where the Town Planner or the Minister, is bringing forward a proposal for development and is also responsible for determining the proposal, he shall make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the person bringing forward a proposal for development and the person responsible for determining that proposal.

(3) Where the Minister is making an application as a developer and this conflicts with his responsibility to issue a screening direction, the Town Planner's screening opinion will determine whether or not the development is EIA development, and regulations 5(1)(b), 5(5) and 6(5) shall not apply.

PART III

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

Development in Gibraltar likely to have significant effects in a Member State.

20.(1) Where it comes to the attention of the Commission that development to be carried out in Gibraltar is the subject of an EIA application and is likely to have significant effects on the environment in a Member State; or a Member State, likely to be significantly affected by such a development, requests by notice delivered to the Minister, the Minister shall—

- (a) send to the Member State the particulars mentioned in subregulation (2) below as soon as possible and no later than the date of their publication in the Gazette referred to in paragraph (b) below, and, if it thinks fit, the information referred to in subregulation (3) below; and
- (b) publish the information in paragraph (a) above in the Gazette indicating the address where additional information is available; and
- (c) give the Member State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in subregulation (1)(a) above are—

- (a) a description of the development together with any available information on its possible significant effect on the environment in a Member State; and
- (b) information on the nature of the decision which may be taken.

(3) Where a Member State indicates in accordance with subregulation (1)(c) above that it wishes to participate in the procedure for which these Regulations provide, the Minister shall as soon as possible send to that Member State the following information—

- (a) a copy of the application concerned;
- (b) a copy of the environmental statement in respect of the development to which that application relates; and
- (c) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the Member State earlier in accordance with subregulation (1)(a) above.

(4) The Minister, insofar as he is concerned, shall also—

- (a) arrange for the particulars and information referred to in subregulations (2) and (3) above to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the Member State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before the application is determined, to forward to the Commission, within a reasonable time, their opinion on the information supplied.

(5) The Minister shall in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with the Member State concerned regarding, inter alia, the potential significant effects of the development on the environment of that Member State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that Member State a reasonable period of time for the duration of the consultation period.

(6) Where a Member State has been consulted in accordance with subregulation (5) on the determination of the application concerned the Minister shall inform the Member State of the decision and shall cause a statement to be forwarded to it with the information referred to in regulation 15.

Developments in a Member State likely to have significant transboundary effects.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

21.(1) Where the Minister receives from a Member State pursuant to Article 7(2) of the Directive information which that Member State has gathered from the applicant of a proposed development in that Member State which is likely to have significant effects on the environment in Gibraltar, the Minister shall in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that Member State regarding, inter alia, the potential significant effects of the proposed development on the environment in Gibraltar and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with that Member State a reasonable period, before the application for the project is determined, during which members of the public in Gibraltar may submit to the competent authority in that Member State representations pursuant to Article 7(3)(b) of the Directive.

(2) The Minister, insofar as it is concerned, shall also—

- (a) arrange for the information referred to in subregulation (1) above to be made available within a reasonable time both to the authorities in Gibraltar which it considers are likely to be concerned by the development by reason of their specific environmental responsibilities and to the public in Gibraltar; and
- (b) ensure that those authorities and the public in Gibraltar are given an opportunity before the application is determined, to forward to the competent authority in the relevant Member State within a reasonable time their opinion on the information supplied.

PART IV

MISCELLANEOUS

Public development.

22.(1) For the purposes of this regulation an “EIA certificate” means a certificate by the Commission that a proposed public development—

- (a) has been environmentally assessed; and
- (b) will not have significant adverse effects on the environment or will embody the best practicable means to prevent or limit such effects.

(2) Where a public body proposes to initiate List 1 development or List 2 development (whether alone or jointly with any other person), the development shall be subjected to an

| | |
|---|-----------------------------------|
| Town Planning Town Planning (Environmental Impact Assessment) Regulations 2019 | 2018-19 2019/195 |
|---|-----------------------------------|

This version is out of date

assessment of the environmental effects of the development as provided for under these Regulations.

(3) These Regulations shall apply to a public body as they apply to a person proposing to make a List 1 application or List 2 application (or proposed application) subject to the following modifications—

- (a) these Regulations shall be read as if references to—
 - (i) List 1 applications and List 2 applications;
 - (ii) EIA applications;
 - (iii) applications for planning permission;

were a reference to an application for an EIA certificate;

- (b) regulation 3 shall apply as if for that regulation there were substituted:

“3. The Commission shall not grant an EIA certificate unless it has first taken the environmental information into consideration and it shall state in its decision that it has done so.”;

- (c) regulations 7, 12 and 13 shall not apply.

Exchange of information with the European Commission.

23. Every 6 years as from the 16 May 2017 the Commission shall ensure that the European Commission is informed, where such data is available, of the following—

- (a) the number of List 1 and List 2 developments made subject to an environmental impact assessment in accordance with these Regulations;
- (b) the breakdown of environmental impact assessments according to the development categories set out in Schedules 1 and 2;
- (c) the number of List 2 developments made subject to a determination in accordance with these Regulations;
- (d) the average duration of the environmental impact assessment process;
- (e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

Exemptions.

24.(1) The Minister may direct that a proposed development is exempt from the requirements of these Regulations where-

- (a) the circumstances are exceptional and the Minister considers that-
 - (i) compliance with these Regulations in respect of the development would have an adverse effect on the fulfilment of the development's purpose; and
 - (ii) despite an EIA not being carried out, the objectives of the Directive will be met; or
- (b) the development comprises or forms part of a development having national defence as its sole purpose, or comprises a development having the response to civil emergencies as its sole purpose, and in the opinion of the Minister compliance with these Regulations would have an adverse effect on those purposes.

(2) The Minister shall not make a direction under subregulation (1)(a) that a development is exempt unless-

- (a) the Minister has considered whether another form of assessment is appropriate; and
- (b) where the Minister considers that the development is likely to have significant effects on the environment in a Member State, or where a Member State is likely to be significantly affected so requests, the Minister has carried out a form of consultation with that Member State broadly equivalent to the form described in regulation 20 or 21, as appropriate, or is satisfied that such an equivalent consultation has been carried out, before planning permission is granted in respect of the development.

(3) Where a direction is given under this regulation the Minister shall-

- (a) send a copy of any such direction to the Commission;
- (b) make available the information considered in making the direction and his reasons for doing so;
- (c) consider whether another form of assessment would be appropriate; and

Town Planning

2018-19

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

2019/195

This version is out of date

- (d) take such steps as he considers appropriate to bring the information obtained under the other form of assessment to the attention of the public.

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

SCHEDULE 1

Regulation 2

**DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE
DEFINITION OF “LIST 1 DEVELOPMENT”**

Interpretation.

1. In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14);

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975;

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor shall not be treated as development of the description mentioned in paragraph 2(2)(b) of this Schedule.

Descriptions of development.

2. The carrying out of development to provide any of the following—

(1) Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day;

(2)

(a) thermal power stations and other combustion installations with a heat output of 300 megawatts or more;

(b) nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load);

(3)

(a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed—

- (i) for the production or enrichment of nuclear fuel,
 - (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste,
 - (iii) for the final disposal of irradiated nuclear fuel,
 - (iv) solely for the final disposal of radioactive waste,
 - (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site;
- (4)
 - (a) integrated works for the initial smelting of cast-iron and steel;
 - (b) installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
- (5) installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—
 - (i) for asbestos-cement products. with an annual production of more than 20,000 tonnes of finished products;
 - (ii) for friction material, with an annual production of more than 50 tonnes of finished products; and
 - (iii) for other uses of asbestos, utilisation of more than 200 tonnes per year;
- (6) integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes in which several units are juxtaposed and are functionally linked to one another and which are—
 - (i) for the production of basic organic chemicals,
 - (ii) for the production of basic inorganic chemicals,
 - (iii) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers),

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

- (iv) for the production of basic plant health products and of biocides,
 - (v) for the production of basic pharmaceutical products using a chemical or biological process,
 - (vi) for the production of explosives;
- (7)
- (a) construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more;
 - (b) construction of motorways and express roads;
 - (c) construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length;
- (8) trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes;
- (9) waste disposal installations for the incineration, chemical treatment (as defined in Annex IIA to Council Directive 75/442/EEC under heading D9), or landfill of hazardous waste (that is to say, waste to which Council Directive 91/689/EEC applies);
- (10) waste disposal installations for the incineration or chemical treatment (as defined in Annex IIA to Council Directive 75/442/EEC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day;
- (11) groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
- (12)
- (a) Works for the transfer of water resources, other than piped drinking water, between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year;
 - (b) in all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow;

(13) waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Council Directive 91/271/EEC;

(14) extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas;

(15) installations designed for the permanent storage of water, where a new or additional amount of water stored exceeds 10 million cubic metres;

(16) pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres;

(17) installations for the intensive rearing of poultry or pigs with more than—

(i) 85,000 places for broilers or 60,000 places for hens;

(ii) 3,000 places for production pigs (over 30 kg); or

(iii) 900 places for sows;

(18) Industrial plants for—

(i) the production of pulp from timber or similar fibrous materials,

(ii) the production of paper and board with a production capacity exceeding 200 tonnes per day;

(19) quarries and open-cast mining where the surface of the site exceeds 25 hectares;

(20) construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.;

(21) installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

(22) Any change to or extension of projects listed in this Schedule where such a change or extension in itself meets the thresholds, if any, set out in this Schedule.

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

SCHEDULE 2

Regulation 2

**DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE
DEFINITION OF "LIST 2 DEVELOPMENT"**

Description of development.

1. The carrying out of development to provide any of the following—

(1) Agriculture and aquaculture.

- (a) Water management projects for agriculture, including irrigation and land drainage projects;
- (b) initial afforestation for the purposes of conversion to another land use;
- (c) intensive livestock installations (unless included in Schedule 1);
- (d) intensive fish farming;
- (e) reclamation of land from the sea.

(2) Extractive industry.

- (a) Quarries and open-cast mining (unless included in Schedule 1);
- (b) underground mining;
- (c) extraction of minerals by marine dredging;
- (d) deep drillings. in particular—
 - (i) geothermal drilling;
 - (ii) drilling for the storage of nuclear waste material;
 - (iii) drilling for water supplies;

with the exception of drillings for investigating the stability of the soil.

- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

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|--|----------|
| Town Planning | 2018-19 |
| Town Planning (Environmental Impact Assessment) Regulations 2019 | 2019/195 |

This version is out of date

(3) Energy industry.

- (a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);
- (b) industrial installations for carrying gas, steam and hot water;
- (c) transmission of electrical energy by overhead cables (unless included in Schedule 1);
- (d) surface storage of natural gas;
- (e) underground storage of combustible gases;
- (f) surface storage of fossil fuels;
- (g) industrial briquetting of coal and lignite;
- (h) installations for the processing and storage of radioactive waste (unless included in Schedule 1);
- (i) installations for hydroelectric energy production;
- (j) installations for the harnessing of wind power for energy production (wind farms).

(4) Production and processing of metals.

- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) installations for the processing of ferrous metals-
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats.
- (c) Ferrous metal foundries;

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

- (d) installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc);
- (e) installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) shipyards;
- (h) installations for the construction and repair of aircraft;
- (i) manufacture of railway equipment;
- (j) swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

(5) Mineral industry.

- (a) Coke ovens (dry coal distillation);
- (b) installations for the manufacture of cement;
- (c) installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1);
- (d) Installations for the manufacture of glass including glass fibre;
- (e) Installations for smelting mineral substances including the production of mineral fibres;
- (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

(6) Chemical industry unless included in Schedule 1.

- (a) Treatment of intermediate products and production of chemicals;
- (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

- (c) Storage facilities for petroleum, petrochemical and chemical products.

(7) Food industry.

- (a) Manufacture of vegetable and animal oils and fats;
- (b) Packing and canning of animal and vegetable products;
- (c) Manufacture of dairy products;
- (d) Brewing and malting;
- (e) Confectionery and syrup manufacture;
- (f) Installations for the slaughter of animals;
- (g) Industrial starch manufacturing installations;
- (h) Fish-meal and fish-oil factories;
- (i) Sugar factories.

(8) Textiles, leather, wood and paper industries.

- (a) Industrial plants for the production of paper and board (unless included in Schedule 1);
- (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- (c) Plants for the tanning of hides and skins;
- (d) Cellulose-processing and production installations.

(9) Rubber industry.

Manufacture and treatment of elastomer-based products.

(10) Infrastructure projects.

- (a) Industrial estate development projects;

2018-19

Town Planning

2019/195

Town Planning (Environmental Impact Assessment) Regulations 2019

This version is out of date

- (b) Urban development projects, including the construction of shopping centres and car parks;
 - (c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);
 - (d) Construction of railways (unless included in Schedule 1);
 - (e) Construction of airfields (unless included in Schedule 1);
 - (f) Construction of roads (unless included in Schedule 1);
 - (g) Construction of harbours and port installations including fishing harbours (unless included in Schedule 1);
 - (h) Canalisation and flood-relief works;
 - (i) Installations designed to store water on a long-term basis (unless included in Schedule 1);
 - (j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
 - (k) Oil and gas pipeline installations (unless included in Schedule 1);
 - (l) Installations of long-distance aqueducts;
 - (m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
 - (n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1;
 - (o) Works for the transfer of water resources between river basins not included in Schedule 1;
- (11) Other projects.**
- (a) Permanent racing and test tracks for motorised vehicles;
 - (b) Installations for the disposal of waste (unless included in Schedule 1);

- (c) Waste-water treatment plants (unless included in Schedule 1);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.

(12) Tourism and leisure.

- (a) Cable-cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Theme parks;
- (e) Permanent camp sites and caravan sites;

(13) Changes to or extensions of development.

- (a) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 22 of that Schedule) or in paragraphs 1 to 12 of this Schedule, where that development is already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment;
- (b) Development of a description mentioned in Schedule 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

SCHEDULE 3

**CRITERIA TO DETERMINE WHETHER LIST 2 DEVELOPMENTS SHOULD BE
SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT**

1. Characteristics of developments

The characteristics of developments shall be considered, with particular regard to-

- (a) the size and design of the whole development;
- (b) cumulation with other existing and/or approved developments;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents and/or disasters which are relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

2. Location of developments

The environmental sensitivity of geographical areas likely to be affected by developments shall be considered, with particular regard to-

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas-
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;

| | |
|--|-----------------|
| Town Planning | 2018-19 |
| Town Planning (Environmental Impact Assessment) | 2019/195 |
| Regulations 2019 | |

This version is out of date

- (iii) mountain and forest areas;
- (iv) nature reserves and parks;
- (v) areas classified or protected under national legislation; Natura 2000 areas designated under Directive 92/43/EEC and Directive 2009/147/EC;
- (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in European Union legislation and relevant to the development, or in which it is considered that there is such a failure;
- (vii) densely populated areas;
- (viii) landscapes and sites of historical, cultural or archaeological significance.

3. Type and characteristics of the potential impact

The likely significant effects of developments on the environment shall be considered in relation to criteria set out in paragraphs 1 and 2 of this Schedule, with regard to the impact of the development on the factors specified in regulation 4(2), taking into account-

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved developments;
- (h) the possibility of effectively reducing the impact.

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

SCHEDULE 4

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENT

1. Description of the development, including in particular-
 - (a) a description of the location of the development;
 - (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the development on the environment resulting from, inter alia-

This version is out of date

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved developments, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at European Union or national level which are relevant to the development.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-development analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

2018-19

Town Planning

2019/195

**Town Planning (Environmental Impact Assessment)
Regulations 2019**

This version is out of date

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the development concerned. Relevant information available and obtained through risk assessments pursuant to European Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.