Introduction


The 2017 Regulations

Regulation 26 of the 2017 Regulations provides a requirement for a decision maker to reach a reasoned conclusion based on the examination of the environmental information and where appropriate their own supplementary information. That reasoned conclusion must be ‘up to date’. If permission is to be granted, the decision taker must consider whether it is appropriate to impose monitoring measures.

“Monitoring Measure” means ‘a provision requiring the monitoring of any significant adverse effects on the environment of proposed development including any measures contained in— (a) a condition imposed on the grant of planning permission; or (b) a planning obligation.’

If monitoring measures are to be imposed the decision taker must consider whether to make provision for ‘potential remedial action’ (this is not further defined), and take steps to ensure that the type of parameters to be monitored are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment. Further, decisions takers should seek to avoid duplication with other existing monitoring regimes and should consider whether these would be more appropriate than a monitoring condition.

Regulation 29 of the 2017 Regulations specifies information to accompany decision notices. If the decision is to grant permission, this must include amongst other things any appropriate monitoring measures.

Schedule 4 Information for Inclusion in Environmental Statements also notes that an Environmental Statement should include a description of any proposed monitoring arrangements (for example the preparation of a post-project analysis).

Implications for Practice

The introduction of monitoring measures raises new questions for practitioners, developers and decision takers.

There are clear overlaps between the emerging monitoring provisions and established mechanisms within the planning system for planning conditions and planning obligations. The wording of the 2017 Regulations offers the opportunity to create direct linkages between those mechanisms where they relate to monitoring of any significant adverse effects on the environment. This would offer the opportunity to address the topic of EIA monitoring by using existing tried and tested processes with established processes.
However, there is a need to consider whether such monitoring measures including the scope for remedial action can sit comfortably alongside existing tests for planning conditions and planning obligations.

The definition of monitoring measure is however open-ended and offers opportunities for new or supplementary processes to be created to monitor any significant adverse effects. The identification of monitoring arrangements can be volunteered by the developer by including any proposed monitoring arrangements in the Environmental Statement. Given the obligations that Regulation 26 and 29 of the 2017 Regulations put on the decision taker, where there are significant adverse effects identified the imposition of monitoring measures will be actively considered by the decision taker. Where new processes are created, there will be a need for detail on who will be responsible for undertaking, enforcing and reviewing the effectiveness of monitoring measures are to be determined.

Further, where monitoring measures are imposed there is no specific mechanism through which the proportionality of the parameters to be monitored and the duration of monitoring can be challenged, although this could be picked up in existing rights of appeal and challenge.

Where a decision taker is considering the avoidance of duplication with other monitoring regimes there is the risk that it may be seen as less risky to insist on monitoring measures that are bespoke to a proposed development.

This highlights the need for collaborative working between an applicant and a decision taker on monitoring measures to seek an agreed approach to monitoring measures.

It is hoped that further guidance on this matter will be forthcoming once the 2017 Regulations come into force, potentially as an update to Planning Practice Guidance.

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