# REASONED CONCLUSIONS ON SIGNIFICANT EFFECTS

## Introduction


## The Current Situation

Regulation 24 of the Town and County Planning (Environmental Impact Assessment) Regulations 2011 (the 2011 Regulations) requires the decision maker on an EIA Application to make available a statement that includes:

- The main reasons and considerations on which the decision is based; and
- A description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

In practice, this requirement is dealt with in a number of ways by local planning authorities. In some rare cases it is omitted (which in some cases leads to legal challenge), in other cases it is incorporated into decision notices, or alternatively it is provided as a stand-alone statement on the matter. Appeal decisions address the requirements of Regulation 24 of the 2011 Regulations within the text of the appeal decision.

## The 2017 Regulations

The UK Government has responded to the Directive in England by bringing into force the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 Regulations). These were made on the 18\(^{th}\) April 2017 and will come into force on the 16\(^{th}\) May 2017.

The 2017 Regulations cover the matter of reasoned conclusions within Regulation 26. This provides a broader 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. If imposed the decision taker must consider whether to make provision for ‘potential remedial action’, take steps to ensure that the parameter monitoring are proportionate to the proposed development and its significant effects and seek to avoid duplication with other existing monitoring regimes.

The Emerging Regulations state:

‘and a reasoned conclusion is to be taken to be up to date if, in the opinion of the relevant planning authority, the Secretary of State or the inspector, as the case may be, it addresses the significant effects of the proposed development on the environment that are likely to arise as a result of the proposed development.’
Implications for Practice

The requirements of Regulation 26 of the 2017 Regulations are more extensive than the equivalent provisions within the 2011 Regulations. The examination of the environmental information and reasoned conclusion referred to would typically be included within an officer report or appeal decision. Regulation 26 is likely to lead to a requirement for more rigorous reporting potentially including the transposition of the examination of the environmental information into a decision notice or accompanying statement.

There is a need to clearly address the point of whether the reasoned conclusion is up to date. The wording of Regulation 26 appears tautological: providing a decision taker is satisfied that the reasoned conclusion addresses the significant effects that are likely to arise, then it is in the terms of Regulation 26 ‘up to date’.

This should not obscure the need for any decision to be based on appropriately up to date environmental information as part of the EIA in line with good practice. This includes paying attention to ensuring that information is up to date where there is a delay between a resolution to grant planning permission, and the subsequent completion of a legal agreement. The potential for monitoring measures to be imposed under the 2017 attaches further weight to the need for timely updates to environmental information.

Regulation 29 of the 2017 Regulations specifies information to accompany decision notices. If the decision is to grant permission this must include the reasoned justification (taken account of the examination of environmental information), any conditions which relate to the likely significant environmental effects, a description of any features to avoid, prevent, reduce and, if possible, offset, likely significant adverse effects and any appropriate monitoring measures. If the decision is to refuse planning permission, this should include the main reasons for refusal.

Given the more detailed requirements within the 2017 Regulations, decision makers must ensure a rigorous approach to the required information. A separate specific statement based on the requirements of Regulation 26 (including consideration of the imposition of monitoring measures) and including the information in Regulation 29 would appear to be the most robust mechanism to demonstrate systematically how a decision taker has taken full account of the requirements of Regulation 26 in determining an application.


1 For example R. (Richardson) v North Yorkshire CC [2004] 1 W.L.R. 1920