

From: [Victoria Lane \(Brodies Solicitors\)](#)
To: [Hornsea Project Three](#)
Cc: [Karen Hamilton \(Brodies Solicitors\)](#)
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Please find attached Appendix T - V, X, Z - ZC - ZO

Kind regards

Victoria Lane
Senior Solicitor
Edinburgh, UK
www.brodies.com

Direct Line +44(0) 131 656 0127



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Brodies LLP (registered no SO300334), Registered Office: 15 Atholl Crescent, Edinburgh, EH3 8HA, Scotland UK.
T 0131 228 3777, F 0131 228 3878, DX Ed10 Edinburgh-1

Also at: 110 Queen Street, Glasgow G1 3BX, Scotland UK T 0141 248 4672, F 0141 221 9270, DX GW11 Glasgow-1; And: Brodies House, 31-33 Union Grove, Aberdeen AB10 6SD, Scotland UK T 01224 392 242, F 01224 392 244, DX AB10 Aberdeen; And: Dingwall Business Park, Dingwall, IV15 9XB, Scotland UK T 01349 860 111, F 01349 860 112; And: Scotland House, Rond-Point Schuman 6, 1040 Brussels, Belgium T +322 282 8301

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APPENDIX V

PLANNING INSPECTORATE, ADVICE NOTE 9: ROCHDALE ENVELOPE (JULY 2018)



Using the Rochdale Envelope

Advice Note Nine: Rochdale Envelope

This advice note explains the use of the 'Rochdale Envelope' approach under the Planning Act 2008 (PA2008). In particular the advice note addresses the use of the Rochdale Envelope applicable to the Environmental Impact Assessment (EIA) process set out in The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).

Whilst this advice note is aimed primarily at applicants, it should also be helpful for other persons involved in the PA2008 process.

The EIA Regulations include transitional provisions for certain projects. Where the transitional provisions are met The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 continue to apply.

This advice note makes reference to other advice notes which can be found at:

<http://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

1. Introduction

1.1 This advice note forms part of a suite of advice notes produced by the Planning Inspectorate. A number of applicants have sought advice on the degree of flexibility that would be considered appropriate in order to address uncertainties associated with applications for development consent through the PA2008 process. This advice note addresses the use of the 'Rochdale Envelope' approach under the Planning Act 2008 (PA2008) and provides background to the case law and its origins in UK Environmental Impact Assessment (EIA) practice.

1.2 The 'Rochdale Envelope' approach is employed where the nature of the Proposed Development means that some details of the whole project have not been confirmed (for instance the precise dimensions of structures) when the application is submitted, and flexibility is sought to address uncertainty. Such an approach has been used under other consenting regimes (the Town and Country Planning Act 1990 and the Electricity Act 1989) where an application has been made at a time when the details of a project have not been resolved.

1.3 The need for flexibility is identified in a number of National Policy Statements (NPS)¹ which suggest the Rochdale Envelope as an approach to address uncertainties inherent to the Proposed Development e.g. changing market conditions. However, Energy (EN-1), the NPS for Renewable Energy Infrastructure (EN-3) and the NPS for

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1. Available via: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/national-policy-statements/>



National Networks all stress the need to ensure that the significant effects of a Proposed Development have been properly assessed.

1.4 Applicants need to choose whether or not there is a need to incorporate flexibility (and how much) into their application for development consent to address uncertainty. If flexibility is sought then it is essential that Applicants ensure the following is achieved:

- that the approach is explained clearly for the purpose of **consultation and publicity at the Pre-application stage**;
- that the Environmental Statement (ES) explains fully how the flexibility sought has been taken into account in the assessments and why it is required; and
- that there is **consistency across the application documents** including any other relevant environmental assessments (e.g Habitats Regulations Assessment (HRA) or Water Framework Directive (WFD) assessment).

1.5 This advice note provides advice as to the main issues to be considered and suggests a way forward, in the context of the PA2008 process. This advice note does not address every situation where uncertainty exists and flexibility is required. It is likely that there are other situations at a project level that are relevant to the approach discussed in this advice note. Applicants should also have regard to the wider suite of advice notes provided by the Planning Inspectorate.

2. The Rochdale Envelope: background

2.1 The Rochdale Envelope arises from two cases: R. v Rochdale MBC ex parte Milne (No. 1) and R. v Rochdale MBC ex parte Tew [1999] and R. v Rochdale MBC ex parte Milne (No. 2) [2000]. These cases dealt with outline planning applications for a proposed business park in Rochdale.

2.2 They address:

- applications for outline planning permission under the Town and Country Planning Act 1990; and
- consideration of an EIA in the context of an outline planning consent to enable compliance with the Council Directive 85/337/EEC as transposed by The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1988.

2.3 To understand the implications arising from the comprehensive consideration of the issues by the Judge² in Milne (No. 2) ('the Judgment'), it is helpful to note some of the key propositions, as follows:

- the assessment should be based on cautious 'worst case' approach:
"such an approach will then feed through into the mitigation measures envisaged [...] It is important that these should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment" (para 122 of the Judgment);
- the level of information required should be:
"sufficient information to enable 'the main,' or the 'likely significant' effects on the environment to be assessed [...] and the mitigation measures to be described" (para 104 of the Judgment);
- the need for 'flexibility' should not be abused:
"This does not give developers an excuse to provide inadequate descriptions of their projects. It will be for the authority responsible for issuing the development consent to decide whether it is satisfied, given the nature of the project in question, that it has 'full knowledge' of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent" (para 95 of the Judgment);

2.4 The Encyclopedia of Planning Law and Practice³ provides additional insight into the purpose and practical application

2. Sullivan J. (as he then was)



of the Judgment and other relevant case law. Key principles from this analysis have been considered and summarised in context of the DCO application process below and should be taken into account:

- the DCO application documents should explain the need for and the timescales associated with the flexibility sought and this should be established within clearly defined parameters;
- the clearly defined parameters established for the Proposed Development must be sufficiently detailed to enable a proper assessment of the likely significant environmental effects and to allow for the identification of necessary mitigation, if necessary within a range of possibilities;
- the assessments in the ES should be consistent with the clearly defined parameters and ensure a robust assessment of the likely significant effects;
- the DCO must not permit the Proposed Development to extend beyond the 'clearly defined parameters' which have been requested and assessed. The Secretary of State may choose to impose requirements to ensure that the Proposed Development is constrained in this way;
- the more detailed the DCO application is, the easier it will be to ensure compliance with the Regulations.

2.5 it is ultimately for the decision maker to determine what degree of flexibility can be permitted in the particular case having regard to the specific facts of an application. The Applicant should ensure they have assessed the range of possible effects implicit in the flexibility provided by the DCO. In some cases, this may well prove difficult.

3. Consultation and publicity at the Pre-application stage

3.1 The process introduced by the PA2008 places a duty upon applicants to engage meaningfully with affected communities, local authorities and other statutory consultees over their proposals at Pre-application stage. The Applicant must produce and publicise a Statement of Community Consultation (SoCC). In preparing this, they must consult with and have regard to the views of any relevant local authority on the content of the SoCC.

3.2 The PA2008 process therefore seeks to ensure there are opportunities for the public, local authorities, consultees and other interested persons to get involved and have their say during the Pre-application stage. Clearly for consultation to be effective there will need to be a genuine possibility of influencing the proposal and therefore a Proposed Development should not be so fixed as to be unable to respond to comments from consultees.

3.3 The importance of consultation during the Pre-application stage cannot be overemphasised, given the 'front loaded' approach established by the PA2008. Such consultation needs to be appropriate, proportionate (in terms of content, timing and clarity) and reported fully in the Consultation Report such that the response of the Applicant to the comments made in terms of the evolution of the Proposed Development can be clearly understood.

3.4 There is opportunity within the statutory Pre-application procedure for applicants to determine the most appropriate consultation programme for their needs and to time the consultation to appropriate stages in the evolution of the Proposed Development. However, the consultation must be undertaken on issues that have been clearly identified and on a Proposed Development that is as detailed as possible. The bodies consulted need to be able to understand the proposals. The details of the Proposed Development should therefore be described as clearly and simply as possible. Obviously fewer options and variations within a project description make it easier to understand, especially by those less familiar with the PA2008 process. Applicants may also find it helpful to use, for example, figures, cross sections, photomontages or wireframe images to illustrate their proposals. Careful consideration needs to be given on the timing of consultation. Early in the development of a project it may be difficult to provide enough detail to allow consultees

3. Encyclopedia of Planning Law and Practice ISBN: 9780421007406, General Editors: Christopher Lockhart-Mummary, QC; David Elvin, QC; Landmark Chambers Team. See in particular para 3B-949B.2373.2.10



to make meaningful comments but if the project proposals are highly developed there will be fewer opportunities for changes to respond to consultee comments⁴.

3.5 Applicants must be able to demonstrate that the statutory consultation requirements under the PA2008 (sections 42 and 47) have been complied with. It is possible to comply with these sections of the PA2008 with less than full information about the Proposed Development, but unless there is a clear iterative consultation process followed and further documentation provided to consultees during the process, the Applicant may risk being unable to demonstrate that the proposals have been considered in the light of consultation responses received. Applicants should take care to ensure that the description of the Proposed Development is clear so that it is able to demonstrate that the statutory requirements regarding consultation have been met.

4. Environmental Impact Assessment and the Environmental Statement

4.1 EIA is a process consisting of:

- the preparation of an ES or updated ES, as appropriate, by the Applicant;
- the carrying out of any consultation, publication and notification as required under the Regulations or, as necessary, any other enactment in respect of EIA development; and
- the steps that are required to be undertaken by the Secretary of State or by the relevant authority under the Regulations.

4.2 A Proposed Development that is subject to Council Directive 85/337/EEC as amended by Council Directive 97/11/EC⁵ and Directive 2014/52/EU⁶ must be accompanied by an ES describing the aspects of the environment likely to be significantly affected by the Proposed Development.

4.3 It is likely that most applications for a Development Consent Order (DCO) made under the PA2008 will be EIA development.

4.4 It is typical that the request for a Scoping Opinion (as part of the preparation for the ES⁷) represents the first formal procedural step in the DCO process. The majority of applicants choose to combine this process with the notification confirming that the Proposed Development is EIA development⁸.

4.5 At the time of the Scoping Request, it may be necessary to leave certain matters open. For example, details of the Proposed Development may not have been finalised and, indeed, may not be finalised for some time. For example, in relation to offshore wind farms, detailed information that may not be available at the time of making the request for a Scoping Opinion could include:

- type and number of turbines;
- foundation type (this may depend upon the height and type of turbine and the seabed conditions);
- location of the export cable route (whether this is buried or on the seabed);
- location of the landfall point;
- the definitive location of any onshore substation;

4. More information on the Pre-application stage can be found in the Planning Inspectorate's Advice Note 8.1 (available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>); Community Consultation FAQ (available here: <https://infrastructure.planninginspectorate.gov.uk/application-process/frequently-asked-questions/>); and in government guidance on Pre-application consultation (available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/guidance/>)

5. As transposed in relation to the PA2008 process by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

6. As transposed in relation to the PA2008 process by The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

7. Regulation 10 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

8. Regulation 8 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017



- location of the grid connection point;
- construction methods and timing; or
- re-powering.

4.6 The Planning Inspectorate considers that there is an opportunity as part of the consultation process and within the ES to explain how the Proposed Development's design has evolved over time. The application should explain the key changes that have occurred as the Proposed Development's design progressed towards submission of the application.

4.7 The EIA Regulations require that where a Scoping Opinion has been adopted the ES must be based on the most recent Scoping Opinion adopted (so far as the Proposed Development remains materially the same as the Proposed Development which was subject to that opinion⁹). Applicants should take this into consideration in determining when to request a Scoping Opinion from the Planning Inspectorate.

The Environmental Statement and establishing the worst case scenario

4.8 The ES should include the information specified in the EIA Regulations 2017¹⁰ and support the Proposed Development as described by the DCO application.

4.9 If, in the course of preparing an ES, it becomes clear that it will not be possible to specify all the details of the Proposed Development, the ES must explain why and how this has been addressed. The ES will need to establish the relevant parameters for the purposes of the assessment. Where this approach is adopted the assessments in the ES should be undertaken on the basis of the relevant design parameters applicable to the characteristics of the Proposed Development included within the DCO. The assessment should establish those parameters likely to result in the maximum adverse effect (the worst case scenario) and be undertaken accordingly to determine significance.

4.10 The ES should support the application for a DCO and must contain clear information presenting the significant effects applicable to the Proposed Development. If flexibility is sought it will be necessary for the ES to include information taking into account the variations applicable to the Proposed Development.

4.11 The ES should explain the reasons that lead to the uncertainty to characteristics of the Proposed Development in order to justify the flexibility sought. Applicants should take care to ensure that the approach taken in the assessment is not overly complex, as this may impede the understanding of the assessment and the finding of likely significant effects.

4.12 Establishing a robust worst case scenario(s) for the purposes of assessment is a particular challenge where there is a large degree of uncertainty and extensive flexibility in the DCO is sought. Applicants should carefully consider the approach to assessing uncertainty and understand how this will influence the complexity of their assessment in the ES. The characteristics of the Proposed Development that are yet to be finalised should be clearly identified in the description of the development in the ES. The Applicant should consider whether it is possible to robustly assess a range of impacts resulting from a large number of undecided parameters. The description of the development in the ES must not be so wide that it is insufficiently certain to comply with requirements of the EIA Regulations.

4.13 Where the Applicant chooses to follow a parameters-led assessment to establish the worst case scenario for the ES, they should ensure that the applicable parameters are explained and clearly set out in order to;

- ensure that interactions¹¹ between aspect¹² assessments are taken into account relevant to the worst case scenario(s) established and that careful consideration is given to how these are assessed; and
- ensure that the assessment of the worst case scenario(s) addresses impacts which may not be significant on their own but could become significant when they inter-relate with other impacts alone or cumulatively with impacts from other

9. Regulation 14 (3)(a) of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

10. Regulation 14 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

11. Interactions between aspect assessments includes where a number of separate impacts, eg noise and air quality, affect a single receptor such as fauna

12. The Planning Inspectorate refers to 'aspects' as meaning the relevant descriptions of the environment identified in accordance with the EIA Regulations



development (including those identified in other aspect assessments).

4.14 The potential cumulative impacts with other developments will also need to be carefully identified such that the likely significant effects can be shown to have been identified and assessed against the baseline position (which would include built and operational development). In assessing cumulative impacts, other development should be identified through consultation with the local planning authorities and other relevant authorities. Applicants should have regard to the staged approach to cumulative effects assessment set out in Planning Inspectorate's Advice Note Seventeen: Cumulative Effects Assessment¹³.

The examination of the environmental information

4.15 When examining a Proposed Development the Examining Authority (ExA) must be satisfied that the likely significant effects, including any significant residual effects taking account of any proposed mitigation measures or any adverse effects of those measures, have been adequately assessed.

4.16 At the time the application is submitted, the parameters within the DCO should not be so wide ranging as to represent an effectively different Proposed Development from that which was consulted on and assessed in the ES. The Applicant is encouraged to make effort to limit the parameters applicable to the Proposed Development. The parameters used for the assessment need to be clearly defined in the DCO and therefore in the accompanying ES. This will simplify the assessment and give confidence that the Proposed Development within the DCO (as built) would not result in significant effects beyond those assessed in the ES.

4.17 Any ES submitted with an application for a DCO should demonstrate that the likely significant environmental effects have been assessed. Any limitations in the assessment should be identified and explained. The environmental information should be sufficient for an ExA to make a recommendation, and for the relevant Secretary of State to make a decision on the application.

4.18 During the examination of an application, if it comes to light that the ES should contain further information for example to assess variations associated with flexibility within the DCO application, consideration of the application would be suspended pending receipt of that further information¹⁴.

5. Consistency across the application documents

5.1 The PA2008 introduced a streamlined decision-making process for Nationally Significant Infrastructure Projects. As such, the consideration of an application is undertaken in a relatively short period but following substantial Pre-application consultation. The Secretary of State cannot accept an application for Examination unless, among other things, the quality of the Applicant's statutory consultation has been adequate.

5.2 Implementation of the Rochdale Envelope assessment approach should only be used where it is necessary and should not be treated as a blanket opportunity to allow for insufficient detail in the assessment. Applicants should make every effort to finalise details applicable to the Proposed Development prior to submission of their DCO application. Indeed, as explained earlier in this advice note, it will be in all parties' interests for the Applicant to provide as much information as possible to inform the Pre-application consultation process.

13. Available here: <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

14. Regulation 20 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017



5.3 Greater detail will aid the Examination and reduce the possibility of a delay in the examination process or a successful legal challenge, for example on the adequacy of the ES. It is essential that flexibility is proportionately used such that there is no question of the DCO (if granted) being for a distinct project. Failure to do so may result in successful legal challenge. Ensuring consistency of approach to flexibility across application documents is therefore essential.

The Development Consent Order

5.4 The DCO is the principal document in the PA2008 process in as much that (if granted) it provides the powers to implement the Proposed Development. In most cases the DCO will be made as a statutory instrument and sets out the powers and consent for the Proposed Development. A DCO can also include provisions authorising the Compulsory Acquisition of land or of interests in or rights over land which is the subject of a DCO application.

5.5 An Applicant may choose to include parameters within the DCO as a practical way to address uncertainty and provide the required flexibility. Parameters can be secured within the DCO in a variety of ways; for example by inclusion within principal powers, by inclusion within schedules detailing the Authorised Development or by inclusion within Requirements. Applicants should take care to ensure that any flexibility sought in their DCO has been consistently and robustly assessed within their ES.

5.6 Relevant parameters enabling flexibility within a DCO will be project and sector-specific. Examples include:

- maximum/ minimum number of turbines, or maximum turbine blade tip height, associated with an offshore wind farm;
- maximum/ minimum heights or widths of buildings/ structures associated with a strategic rail freight interchange; or
- maximum stack height associated with a gas-fired power station.

5.7 In determining what is an acceptable level of flexibility applicants should have regard to information contained within relevant NPSs, notably:

- NPS EN-3 which states (paragraph 2.6.43) that the “wind farm operators are unlikely to know precisely which turbines will be procured for the site until sometime after the consent has been granted”;
- NPS for National Networks which states (paragraph 2.45) that for strategic rail freight interchanges “some degree of flexibility is needed when schemes are being developed, in order to allow the development to respond to market requirements as they arise”; and
- NPS for National Networks (paragraphs 4.18 to 4.19) which explains that “in some instances it may not be possible at the time of the application for development consent for all aspects of the proposal to have been settled in precise detail”.

5.8 The examination will, amongst other things, consider the need for and acceptability of the flexibility included within the DCO having regard to the relevant NPS (as applicable). Applicants should take particular care to ensure that any flexibility requested would not (if granted) result in materially different options which could in itself constitute a different Proposed Development from that assessed in the ES.

5.9 The same principles apply to the scope of powers proposed in any Deemed Marine Licence(s) scheduled to a DCO.

5.10 When drafting other application documents, such as Land Plans or the Statement of Reasons the Applicant will also need to consider how they take account of the flexibility sought through the DCO.



Other application documents

5.11 With consistency of approach in mind, where a DCO/ ES seeks to address uncertainty by incorporating a degree of flexibility, applicants will also need to consider how this is approached in the following other application documents:

- Compulsory Acquisition information:
 - Land Plans
 - Statement of Reasons
- Consultation Report
- Environmental Permits (if included)

This list is not exhaustive.

6. Conclusions

6.1 The Rochdale Envelope assessment approach is an acknowledged way of assessing a Proposed Development comprising EIA development where uncertainty exists and necessary flexibility is sought.

6.2 This advice note explains how the Rochdale Envelope assessment approach may be applied in the context of the PA2008 process and suggests ways to address uncertainty and allowing sufficient flexibility in the DCO to enable the delivery of the Proposed Development. There are key points and documents required in the PA2008 process where the implications of seeking that flexibility need to be addressed:

- during Pre-application consultation process;
- within the ES; and
- within the description of the project in the application documents, particularly the DCO but also other application documents identified elsewhere in this note.

6.3 The challenge for applicants is to ensure that where uncertainty exists and flexibility is sought the following is achieved:

- that the statutory consultation and publication requirements under the PA2008 (sections 42, 47 and 48) have been complied with;
- that the likely significant environmental effects from the Proposed Development have been properly assessed and presented in the ES; and
- that there is a consistent approach to the description of the development addressing the uncertainty and necessary flexibility across all relevant application documents.

Further information

The Planning Inspectorate, Major Casework Directorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Email: enquiries@pins.gsi.gov.uk

Telephone: 0303 444 5000

Web: <http://infrastructure.planninginspectorate.gov.uk>