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**To:** [Manston Airport: Richard Price](#)  
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**Subject:** EIA transitional provisions [BDB-BDB1.FID9947610]  
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Dear PINS

You asked for further detail on why we disagree with the letter from Stone Hill Park Ltd's lawyers on the interpretation of the transitional provisions in the [2017 EIA Regulations](#). In the circumstances, we thought it would be helpful to provide our analysis promptly.

While article 37 of the regulations states that (amongst other criteria) the applicant must have obtained a scoping opinion before the regulations came into force in May, one must go on to consider what 'the applicant' means.

In article 3 one of the definitions of 'the applicant' is 'a person who proposes to apply for such an order', i.e. a DCO. So substituting that phrase for 'the applicant' in article 37 gives:

"the 2009 Regulations continue to apply to any application for an order granting development consent or subsequent consent where before the commencement of these Regulations a person who proposes to apply for such an order has requested the Secretary of State or the relevant authority to adopt a scoping opinion (as defined in the 2009 Regulations) in respect of the development to which the application relates."

There is no dispute that RiverOak Investment Corporation was, when it applied for the scoping opinion in June 2016, proposing to apply for a DCO. Furthermore, the development to which the forthcoming application relates is the same as the one to which the scoping opinion related. The article therefore clearly applies to the Manston project.

This is supported by going back to [Directive 2014/52/EU](#), which states at article 3.2: "Projects shall be subject to ... Directive 2011/92/EU prior to its amendment by this Directive where, before 16 May 2017 the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated". That does not mention the applicant at all.

While we are sure of that view we are considering whether we could conform to the 2017 Regulations in any case, provided doing so is available (in the light of the mandatory wording of the Directive), and does not cause undue delay or additional expense to the project, on which we will make a decision shortly.

Regards



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