

Draft Regulations laid before the Scottish Parliament under paragraph 2 of schedule 2 of the European Communities Act 1972 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

TRANSPORT AND WORKS

The Transport and Works (Scotland) Act 2007
(Environmental Impact Assessment) Regulations 2017

Made - - - - 2017
Coming into force - - 16th May 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 and come into force on 16th May 2017.

Amendment of the Transport and Works (Scotland) Act 2007

2. The Transport and Works (Scotland) Act 2007⁽²⁾ is amended in accordance with regulations 3 to 6.

Amendment of section 4

3. In section 4(7) (applications), after paragraph (d) insert—
“*(e)* Historic Environment Scotland.”.

Amendment of section 11

4. In section 11 (making or refusal of orders under section 1), after subsection (7)⁽³⁾ insert—

(1) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) 2007 asp 8.

(3) Subsection 7 was inserted by S.S.I. 2011/396.

“(8) If the Scottish Ministers have under consideration an application under section 4, or a proposal to make an order under section 6, they must not make the order if an environmental impact assessment is required by rules made under this Act unless an environmental impact assessment has been carried out in respect of the application or proposal, and in carrying out such an assessment the Scottish Ministers must take the environmental information referred to in section 12(6)(b) into account.”.

Amendment of section 12

5. In section 12 (publicity for making or refusal of order)—

(a) at the end of subsection (2)(c)(iii) insert—

“, and—

- (iv) where subsection (4) applies, state a website address where the Scottish Ministers have made information referred to in this subsection and subsection (4) available”;

(b) for subsections (4) to (6) substitute—

“(4) Where a determination under section 11 relates to an application or proposal to which this subsection applies, in addition to the matters referred to in subsection (2), any notice under subsection (1) must include the following—

- (a) a description of the proposed works which are the subject of the order,
- (b) a summary of—
- (i) the environmental information, and
 - (ii) the results of the consultations and information gathered following on from the publication of any reports and additional information received by the Scottish Ministers pursuant to rules made under sections 4 or 6, and how those results, in particular comments received from an EEA State, have been incorporated or otherwise addressed,
- (c) if the determination is to make the order—
- (i) any conditions to which the determination is subject,
 - (ii) the reasoned conclusion by the Scottish Ministers on the significant effects of the proposed works on the environment, taking into account the results of the examination of the environmental information which may be required in terms of rules made under section 4 or 6,
 - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date,
 - (iv) a description of any features of the proposed works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment, and
 - (v) a description of any monitoring measures required under section 20A.

(5) For the purposes of subsection (4)(c)(iii) the reasoned conclusion is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the proposed works on the environment.

(6) In subsection (4) “environmental information” means—

- (a) any environmental impact assessment report as required by rules made under section 4 or section 6, and
- (b) any—

- (i) additional information required by rules made under section 4 or 6,
 - (ii) representations made by any body required by any such rules to be invited to make representations, and
 - (iii) representations made by any other person about the environmental effects of the implementation of the order applied for under section 4 or proposed under section 6.”;
- (c) in subsection (8)—
 - (i) in paragraph (a) for “sub-paragraph (a) of Article 10a” substitute “Article 11.1(a)”; and
 - (ii) in paragraph (b) for “sub-paragraph (b) of Article 10a” substitute “Article 11.1(b)”;
- (d) in subsection (9) for “Council [Directive 85/337/EEC](#) (as amended by Council Directives [97/11/EEC](#) and [2003/35/EC](#))” substitute “Council [Directive 2011/92/EU\(4\)](#) (as amended by Council [Directive 2014/52/EU\(5\)](#))”;
- (e) in subsection (10)—
 - (i) in paragraph (b) for “statement” substitute “notice”; and
 - (ii) after “person” insert “and body”; and
- (f) for subsection (11) substitute—

“(11) The persons and bodies are those who—

 - (a) made an objection in accordance with rules made under section 8 in relation to the environmental information referred to in subsection (4), being an objection which was not referred to an inquiry or hearing in accordance with section 9(3);
 - (b) made representations in accordance with rules made under section 8 in relation to the environmental information referred to in subsection (4);
 - (c) are consultation bodies prescribed in terms of rules made under section 4 or 6; and
 - (d) are a body who was notified of any environmental impact assessment report as required by rules made under section 4, or prepared in connection with the publication of a notice of a proposal to make an order by virtue of section 6, by reason of that body’s specific environmental responsibilities or local and regional competencies.”.

Insertion of sections 20A to 20C

6. After section 20 insert—

“20A. Monitoring measures

(1) Where a determination is made by the Scottish Ministers under section 11 and that determination relates to an application or proposal of the type referred to in section 11(1), if section 12(4) and (7) apply to that determination the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

(4) OJ L 26, 28.1.2012, p.1.

(5) OJ L 124, 25.4.2014, p.1.

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works which are the subject of the determination and the significance of the effects of those works on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring,
 - (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the relevant directive) or other legislation applicable in Scotland are more appropriate, and
 - (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.
- (3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must include the terms of those measures in any order made under section 1 that follows on from any determination referred to in subsection (1).
- (4) Where mitigation measures or monitoring measures are required as part of an order made under section 1 the Scottish Ministers must take steps to ensure that those measures are implemented.
- (5) In subsection (2)—
- (a) “Union legislation” means any enactment in the domestic legislation of Scotland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU treaties, and
 - (b) the reference to the relevant directive is to the directive specified in section 12(9).
- (6) In this section and in section 12(4)(c)(v) “monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed works that are the subject of an order under section 1.

20B. Offences

- (1) Any person who, for the purpose of procuring a particular decision in relation to the making or otherwise of an order under section 1 to which section 11(8) applies—
- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,
 - (b) with intent to deceive, uses any document which is false or misleading in a material particular or
 - (c) with intent to deceive, withholds any material information,
- commits an offence.
- (2) A person who commits an offence under subsection (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.
- (3) No act or omission of the Crown constitutes an offence under this section.
- (4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which would but for subsection (3) have constituted an offence under this section.
- (5) Despite subsection (3), this section applies to a person in the public service of the Crown as it applies to other persons.

20C. Offences by bodies corporate etc.

- (1) Subsection (2) applies where—
- (a) an offence under section 20B has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a limited liability partnership, a member,
 - (c) in relation to a Scottish partnership, a partner,
 - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.”.

Transitional and savings

7.—(1) Sections 4, 11 and 12 of the Transport and Works (Scotland) Act 2007 continue to have effect as they did immediately prior to 16th May 2017 where an applicant for an order under section 1 had submitted to the Scottish Ministers—

- (a) a request for an opinion of the type referred to in Article 5(2) of Council [Directive 2011/52/EU](#); or
 - (b) information of the type referred to in Article 5(1) of that Directive,
- prior to 16th May 2017.

(2) Where paragraph (1) applies regulation 6 has no effect.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Transport and Works (Scotland) Act 2007 (“the Act”).

These Regulations implement, in relation to transport developments to which the Act applies, [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended by Council [Directive 2014/52/EU](#).

The Regulations amend the Act to impose additional procedural requirements in relation to applications under section 4, or proposals under section 6, for an order under section 1 of the Act.

Regulation 3 adds Historic Environment Scotland to the list of specified authorities in section 4(7).

Regulation 4 amends section 11 to include a prohibition on making an order under section 1 of the Act unless an environmental impact assessment has been carried out in circumstances where such an assessment is required.

Regulation 5 amends section 12 to set out additional information that must be included in the notices publicising the Scottish Ministers’ determination to make an order under section 1 where an environmental impact assessment is required for the transport development that is the subject of the determination.

Regulation 6 inserts into the Act—

- (a) section 20A to make provision for the inclusion, where appropriate, in an order under section 1 of a requirement for measures to monitor any significant adverse effects on the environment to be carried out;
- (b) section 20B to make it an offence for any person to provide false information for the purpose of obtaining a decision in relation to the making or otherwise of an order under section 1;
- (c) section 20C applies section 20B to bodies corporate (including officers and members thereof), Scottish partnerships, and unincorporated associations other than Scottish partnerships.

Regulation 7 contains transitional and savings provisions.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF.