
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in relation to town and country planning, roads and drainage works in Scotland, Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 175, 5.7.1985, p.40), as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.1997, p.5).

The Regulations revoke and re-enact, with amendments, the relevant Parts of the Environmental Assessment (Scotland) Regulations 1988.

The main changes made by Directive [97/11/EC](#), which these Regulations implement, are as follows. The number of categories of project subject to environmental impact assessment (EIA) is increased. An individual determination on whether EIA is required must be made in respect of every project in Annex II to the Directive (Schedule 2 to these Regulations) which exceeds thresholds established by a Member State. Advice on the content of an environmental statement must be given to a developer who requests it before submitting an application. Competent authorities must give reasons for their decision on granting or refusing development consent. The Directive establishes detailed procedures for consulting other Member States on projects which are likely to have significant environmental effects in their territories.

PART I – INTRODUCTORY

Regulation 1 provides for the citation and commencement of the Regulation.

PART II – TOWN AND COUNTRY PLANNING

The Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997, development by planning authorities and enforcement of planning control, and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in Schedule 1 requires EIA. Development in Column 1 of the table in Schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table (“Schedule 2 development”) requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in this Part as “EIA development”.

Regulation 3 prohibits the grant of planning permission for EIA development unless the planning authority or the Scottish Ministers have first taken account of the environmental information (defined in regulation 2) which is before them. The prohibition applies where an application is received by or lodged by the local planning authority on or after 1st August 1999.

Regulations 4 to 9 set out procedures for determining whether development is EIA development (“screening”). They require a “screening opinion” of the planning authority or a “screening direction” of the Scottish Ministers in relation to all Schedule 2 development. Such an opinion or direction must be made by reference to the criteria in Schedule 3. Where the authority or the Scottish Ministers determine that development is EIA development, they must notify the applicant (or appellant) that he is required to submit an environmental statement.

Regulations 10 and 11 enable a person to seek an opinion from the local planning authority (“a scoping opinion”) or the Scottish Ministers (a “scoping direction”) on the information to be included in an environmental statement. The types of information which may be required are set out in Schedule 4. The planning authority or the Scottish Ministers must consult bodies with environmental

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responsibilities (“the consultation bodies” defined in regulation 2(1)) before adopting a scoping opinion or scoping direction. Regulation 12 requires consultation bodies, if requested, to assist the preparation of an environmental statement by making information available to the applicant.

Regulation 13 requires notice of the lodging of an environmental statement to be given by the applicant or appellant to the owners and occupiers of land adjacent to that on which the proposed development is to be carried out. Regulations 14 and 16 provide as to necessary consultation where an environmental statement is received by the planning authority or the Scottish Ministers respectively. Regulations 15, 17 and 18 are concerned with the provision of copies of an environmental statement.

Regulation 19 contains procedures for the provision by the applicant of information additional to that contained in the environmental statement.

Regulation 20 provides for documents to be placed on the planning register or otherwise made available to the public.

Regulation 21 requires planning authorities and the Scottish Ministers to provide information about decisions taken following the consideration of environmental information in accordance with this Part.

Regulations 22 to 26 provide procedures for EIA in relation to development to be undertaken by planning authorities.

Regulations 27 and 28 restrict the grant of planning permission by simplified planning zone schemes or enterprise zone orders.

Regulations 29 to 38 establish procedures for EIA in relation to the enforcement of planning control.

Regulations 39 to 41 implement Article 7 of the Directive by providing for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulation 42 provides for the service of notices under the Regulations. Regulation 43 provides that a grant of permission in contravention of regulation 3 or 29 shall be treated, for the purpose of section 239 of the Town and Country Planning (Scotland) Act 1997, as an act which is not within the powers of that Act. Regulation 44 provides that beginning specified operations to dispose of hazardous waste constitutes “development” under section 26 of the 1997 Act. Regulation 45 extends the time allowed to a planning authority to consider an application for planning permission for EIA development. Regulation 46 extends, in relation to EIA, the statutory power to provide in a development order for the giving of directions.

Regulation 47 provides for miscellaneous and consequential amendments. Regulation 47(4) provides for a person who is minded to undertake development which would otherwise be permitted development to seek an opinion from the planning authority as to whether the development is EIA development.

PART III – ROADS

Regulations 48 to 53 provide procedures for the Scottish Ministers to take into consideration information on the likely environmental effects of certain trunk road projects.

Regulation 49 substitutes new sections 20A and 20B for the existing section 20A of the Roads (Scotland) Act 1984. The new section 20A requires the Scottish Ministers, when they have under consideration the construction of a new road, to determine whether the project falls within the scope of the Directive. Where they so consider, they must publish an environmental statement. The new section makes provision as to the content of such a statement and as to giving the public and certain bodies with environmental responsibilities an opportunity to express an opinion before any decision is taken. The new section 20B provides for consultation between EEA States where a project is likely to have significant effects on the environment in another EEA State.

Regulation 50 substitutes new sections 55A and 55B for the existing section 55A of the 1984 Act. New sections 55A and 55B make, in respect of improvements to trunk roads, similar provision to that being made by new sections 20A and 20B.

Regulations 51 and 52 make additional amendments of the 1984 Act and regulation 53 specifies that the provisions of this Part do not apply in relation to projects where relevant procedures have been commenced before 1st August 1999.

PART IV – DRAINAGE WORKS

Regulations 54 to 62 provide that the Scottish Ministers shall take into consideration environmental information about any proposed drainage works for which authority under the Land Drainage (Scotland) Act 1958 is sought if they are likely to have significant effects on the environment.

Regulation 56 enables the Scottish Ministers to give an opinion in advance about the sort of information which requires to be submitted under this Part.

Regulation 57 prohibits the Scottish Ministers from making an improvement order authorising drainage works which come within the scope of the Directive unless they have first taken into consideration environmental information in respect of the works.

Regulation 58 requires bodies with relevant information in their possession to make it available to the applicant for the improvement order.

Regulation 59 requires an environmental statement to be submitted to the Scottish Ministers and also requires them to notify and publicise the environmental statement in the same manner as a draft order under the First Schedule to the 1958 Act.

Regulation 60 enables the Scottish Ministers to require the applicant to submit further environmental information and regulations 61 and 62 make provision as to confidentiality and charges respectively.

PART V – GENERAL

Regulation 63 makes amendments to the Private Legislation Procedure (Scotland) General Orders 1946 consequential on provisions elsewhere in the Regulations.

Regulation 64 and Schedule 7 contain revocations and transitional provisions.

A Regulatory Impact Appraisal has been prepared in relation to these Regulations. It has been placed in the Scottish Parliament Information Centre and copies may be obtained from Planning Division, Scottish Executive Development Department, Area 2-H, Victoria Quay, Edinburgh, EH6 6QQ (Telephone 0131 244 7066).