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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 1**

**The Environmental Impact Assessment  
(Scotland) Regulations 1999**

**PART II**

**TOWN AND COUNTRY PLANNING**

**CHAPTER 11**

**MISCELLANEOUS**

**Service of notices etc.**

**42.** Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).

**Application to the Court of Session**

**43.** For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2) to action of the Scottish Ministers which is not within the powers of the Act shall be taken to extend to a grant of planning permission by the Scottish Ministers in contravention of regulation 3 or 29.

**Hazardous waste and material change of use**

**44.** A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of Schedule 1 involves a material change in the use of that land or those buildings for the purposes of subsection (1) of section 26 (meaning of “development”).

**Extension of the period for an authority’s decision on a planning application**

**45.—(1)** In determining for the purposes of section 47 (right to appeal against planning decisions and failure to take such decisions) the time which has elapsed without the relevant planning authority giving notice to the applicant of their decision in a case where—

- (a) the authority have notified an applicant in accordance with regulation 7(2) that the submission of an environmental statement is required; and
- (b) the Scottish Ministers have given a screening direction in relation to the development in question,

no account shall be taken of any period before the issue of the direction.

(2) Where it falls to an authority to determine an EIA application, article 14 (time periods for decision) of the general development order shall have effect as if—

- (a) for the reference in paragraph (2) of that article to two months there were substituted a reference to four months; and
- (b) after paragraph (3) of that article there were inserted—

“(4) In any case where an environmental statement (within the meaning of regulation 2(1) of the Environmental Impact Assessment (Scotland) Regulations 1999) is required to be submitted in respect of an application, the date determined under paragraph (3) shall be the date on which that statement and the documents which require to accompany it were submitted (if that date is later than would otherwise be determined under paragraph (3)).”.

### **Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with**

**46.** The provisions enabling the Scottish Ministers to give directions which may be included in a development order by virtue of section 31 (permission granted by development order) shall include provisions enabling him to direct that development which is both of a description mentioned in Column 1 of the table in Schedule 2, and of a class described in the direction, is EIA development for the purposes of these Regulations.

### **Miscellaneous and consequential amendments**

**47.—**(1) In section 26(2)(b) of the Act, after the words “improvement of the road” there are inserted the words “but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment”.

(2) In article 3(5) of the Town and Country Planning (Use Classes) (Scotland) Order 1997(1), after sub-paragraph (j) there is inserted the following sub-paragraph:—

“(k) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex IIA to Directive 75/442/EEC(2) under heading D9), or landfill of waste to which Directive 91/689/EEC(3) applies”.

(3) In article 2 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(4), the definitions of “annex 1 application”, “annex 2 application” and “Environmental Assessment Regulations” shall be deleted.

(4) For paragraphs (8) and (9) of article 3 (permitted development) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, there is substituted—

“(8) Subject to paragraph (10), Schedule 1 development or Schedule 2 development within the meaning of the Environmental Impact Assessment (Scotland) Regulations 1999 (“the EIA Regulations”) is not permitted by this Order unless—

- (a) the planning authority have adopted a screening opinion under regulation 5 of those Regulations that the development is not EIA development;
- (b) the Scottish Ministers have made a screening direction under regulation 4(7) or 6(4) of those Regulations that the development is not EIA development; or
- (c) the Scottish Ministers have given a direction under regulation 4(4) of those Regulations that the development is exempted from the application of these Regulations.

(9) Where—

- (a) the planning authority have adopted a screening opinion pursuant to regulation 5 of the EIA Regulations that development is EIA development and the Scottish

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(1) S.I. 1997/3061, as amended by S.I. 1998/1196.

(2) O.J. No. L194, 25.7.1975, p.39. Council Directive 75/442/EEC was amended by Council Directive 91/156/EEC (O.J. No. L78, 26.3.1991, p.32) and by Commission Decision 94/3/EC (O.J. No. L5, 7.1.1994, p.15).

(3) O.J. No. L337, 31.12.1991, p.20. Council Directive 91/689/EEC was amended by Council Directive 94/31/EC (O.J. No. L168, 2.7.1994, p.28).

(4) S.I. 1992/223; relevant amendment instrument is S.I. 1997/1871.

Ministers have in relation to that development neither made a screening direction to the contrary under regulation 4(7) or 6(4) of those Regulations nor directed under regulation 4(4) of those Regulations that the development is exempted from the application of those Regulations; or

(b) the Scottish Ministers have directed that development is EIA development, that development shall be treated, for the purposes of paragraph (8), as development which is not permitted by this Order.”.

(5) In article 3(10) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992—

(a) sub-paragraphs (a) and (c) shall be deleted;

(b) in sub-paragraph (b), for “V of the Environmental Assessment Regulations” there is substituted “IV of the Environmental Impact Assessment (Scotland) Regulations 1999”; and

(c) in sub-paragraphs (e) and (f), for “1st September 1997” there is substituted “1st August 1999”.

(6) For Class 31 in Part 12 in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, there is substituted—

**“ Class 31.**

The carrying out by a roads authority—

(a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where said works involve development by virtue of section 26(2) (b) of the Act; or

(b) on land outside but adjoining the boundary of an existing road of works required for or incidental to the maintenance or improvement of the road.”.

(7) For article 16 of the general development order, there is substituted—

“**16.** The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999 and of a class described in the direction is EIA development for the purposes of those Regulations.”.

(8) In the Public Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999(5)—

(a) in regulation 2(1), for the definition of “the 1988 Scottish EIA Regulations” there is substituted the following definition:—

““the 1999 Scottish EIA Regulations” means the Environmental Impact Assessment (Scotland) Regulations 1999;” and

(b) in regulation 5(3)—

(i) for “1988”, where it first occurs, there is substituted “1999”;

(ii) in sub-paragraph (a), for the words after “whether” there is substituted “the pipe-line works in question are, or are not, EIA development within the meaning of the 1999 Scottish EIA Regulations”; and

(iii) for sub-paragraph (b), there is substituted the following sub-paragraph:—

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“(b) be treated for the purposes of those Regulations as if it were a direction by the Scottish Ministers under regulation 6 of the 1999 Scottish EIA Regulations.”.