

2009 No. 221

TOWN AND COUNTRY PLANNING

**The Environmental Impact Assessment (Scotland) Amendment
Regulations 2009**

Made - - - - - *3rd June 2009*

Laid before the Scottish Parliament *5th June 2009*

Coming into force - - - *3rd August 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 40 and 275 of the Town and Country Planning (Scotland) Act 1997(b) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Scotland) Amendment Regulations 2009 and come into force on 3rd August 2009.

(2) In these Regulations the “1999 Regulations” means the Environmental Impact Assessment (Scotland) Regulations 1999(c).

Amendments to the Environmental Impact Assessment (Scotland) Regulations 1999

2.—(1) Subject to regulation 3, the 1999 Regulations are amended in accordance with paragraphs (2) to (17).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “application for multi-stage consent” for “of reserved matters” substitute “, consent or agreement required by a condition imposed on a grant of planning permission in principle”;

(ii) after the definition of “the consultation bodies”, insert—

““the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(d)”;

(iii) omit the definition of “general development order”;

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15; functions of the Secretary of State under section 2(2) were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(c) S.S.I. 1999/1 as amended by S.S.I. 2002/324, 2003/341, 2004/332, 2007/176 and 2007/484.

(d) S.S.I. 2008/432 as amended by S.S.I. 2009/220.

- (iv) for the definition of “outline planning permission” substitute–
 - ““planning permission in principle” has the meaning given in section 59 of the Act(a)”;
 - (v) in the definition of “project” for “outline planning permission” in both places where those words occur substitute “planning permission in principle”;
 - (vi) in the definition of “reporter” omit the words “or 130” in both places where they occur;
 - (vii) omit the definition of “reserved matters”.
- (b) after paragraph (5) insert–
- “(6) In these Regulations, references to a relevant planning authority shall, as regards an application being considered on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) be construed as including a reference to the planning authority acting by virtue of that section.”.
- (3) In regulation 3(1) (prohibition on granting planning permission without consideration of environmental information) omit from the word “and” to “order” inclusive.
- (4) In regulation 3A(2) (consideration of environmental information: multi stage consent) for “outline planning permission” substitute “planning permission in principle”.
- (5) In regulation 7(5) (application made to planning authority without an environmental statement)–
- (a) omit paragraph (a); and
 - (b) in paragraph (b) at the end insert “or a review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions)”.
- (6) In regulation 9(5) (appeal to the Scottish Ministers without an environmental statement) omit “and comply with regulation 13(3)”.
- (7) After regulation 9, insert–

“Review by the planning authority of an application without an environmental statement

9A.—(1) Where on consideration of a review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) it appears to the planning authority that–

- (a) the relevant application is a Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 5 shall apply as if the requirement to review the case under section 43A(8) were a request made by the applicant pursuant to regulation 5(1).

(2) Where it appears to the planning authority that the relevant application is an EIA application and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, they shall notify the applicant in writing that the submission of an environmental statement is required.

(3) An applicant receiving a notification pursuant to paragraph (2) may, within three weeks beginning with the date of the notification, write to the planning authority–

- (a) stating that the applicant accepts their view and is providing an environmental statement; or

(a) Section 59 of the Town and Country Planning (Scotland) Act 1997 (c.8) was substituted by section 21 of the Planning etc. (Scotland) Act 2006 (asp 17).

- (b) unless the Scottish Ministers have made a screening direction in respect of the development, stating that the applicant is writing to the Scottish Ministers to request a screening direction.

(4) If the applicant does not write to the planning authority in accordance with paragraph (3), the permission sought shall, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the relevant three week period, and the deemed refusal shall not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(5) A planning authority which has given a notification in accordance with paragraph (2) shall, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement.

(6) A person who requests a screening direction pursuant to sub-paragraph (3)(b) shall send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the authority as part of the application; and
- (c) all correspondence between the applicant and the authority relating to the proposed development,

and paragraphs (2) to (5) of regulation 6 shall apply to a request under this regulation as they apply to a request made pursuant to regulation 5(6).

(7) This regulation shall not apply where regulation 21B applies.”.

(8) In regulation 12(3)(b) (procedure to facilitate preparation of environmental statements) for “or 9(3)” substitute “, 9(3) or 9A(3)(a)”.

(9) In regulation 13 (publicity for environmental statement)—

- (a) in paragraph (1) for “he shall serve on any party who holds a notifiable interest in neighbouring land a notice” substitute “the authority to whom the statement is submitted must give notice in accordance with paragraph (1A)”.

(b) after paragraph (1) insert—

“(1A) Notice under paragraph (1) is to be given where there are premises situated on the neighbouring land to which the notice can be sent to the owner, lessee or occupier of such premises, by sending a notice addressed to “the Owner, Lessee or Occupier” to such premises.”.

(c) omit paragraphs (2) to (4); and

(d) in paragraph (7) for “article 2(1) of the general development order” substitute “regulation 3(1) of the Development Management Procedure Regulations”.

(10) In regulation 14(1) (consultation where environmental statement received) after “EIA application” insert “(including an EIA application under consideration on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions))”.

(11) In regulation 21B(1) (application for multi-stage consent without environmental statement)—

- (a) in paragraph (a) for “relates to outline” substitute “(including determination following consideration of the application on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions)) relates to”; and

(b) in paragraph (c) omit “outline”.

(12) In regulations 21C(1)(a) and (c) (application for multi-stage consent referred to the Scottish Ministers without environmental statement), 21D(1)(a) (appeal in respect of application for multi-stage consent without environmental statement) and 21H(a)(ii) and (j) (procedure for application for multi-stage consent), omit “outline”, wherever that word occurs.

(13) In regulation 21E(1) (application for multi-stage consent with environmental statement) at the end of paragraph (b) insert–

“; or

- (c) the relevant planning authority have under consideration on review under section 43A(8) an application for multi-stage consent where an environmental statement has already been submitted.”.

(14) In regulation 21G (procedure to facilitate preparation of environmental statements) for paragraph (b) substitute–

“(b) in paragraph 3(b) for “7(4)(a), 8(4), 9(3) or 9A(3)(a)” substitute 7(4)(a), 8(4) or 9(3) as those regulations are applied by regulations 21B(6), 21C(5) or 21D(5), as the case may be.”.

(15) In regulation 45 (extension of the period for an authority’s decision on a planning application) for paragraph (2) substitute–

“(2) Where it falls to an authority to determine an EIA application, regulation 26 (time periods for decision) of the Development Management Procedure Regulations has effect as if–

- (a) for the reference in paragraph (2)(b) of that regulation to two months there were substituted a reference to four months; and
- (b) the reference to “validation date” in any case where an environmental statement is required to be submitted in respect of an application is 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 regulation 14 (validation date) of the Development Management Procedure Regulations).”.

(16) In Schedules 5 (notice under regulation 13), 6 (notice under regulation 13 as applied by regulation 19(2)) and 6A (notice under regulation 13 as applied by regulation 21E(5)), for “Article 9(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992”, substitute “the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008”.

(17) In Schedule 6A–

- (a) in paragraph 1 of column 2, for “of reserved matters” substitute “, consent or agreement required by a condition imposed on a grant of planning permission in principle”; and
- (b) in paragraph 2 in sub-paragraphs (i) and (ii) for “reserved matters” substitute “the application” and in sub-paragraph (iii) for “application for approval of reserved matters” substitute “the application”; and
- (c) in paragraph 3 omit “for approval of reserved matters, the outline planning permission”.

Saving and transitional provisions

3.—(1) An application for approval of reserved matters made either before or on or after 3rd August 2009 in respect of the grant of outline planning permission before that date is to be treated for the purposes of the 1999 Regulations as an application for approval required by a condition imposed on the grant of planning permission in principle.

(2) In this regulation “outline planning permission” and “reserved matters” have the same meaning as in section 59 of the Town and Country Planning (Scotland) Act 1997 as it applied immediately before section 21 of the Planning etc. (Scotland) Act 2006^(a) came into force.

STEWART STEVENSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
3rd June 2009

^(a) 2006 asp 17.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Impact Assessment (Scotland) Regulations 1999 (“the 1999 Regulations”) to take account of changes made to the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) by the Planning etc. (Scotland) Act 2006 (“the 2006 Act”) of the replacement from 3rd August 2009 of the provisions relating to procedures and time limits set out in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (“the 1992 Order”) by the provisions of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (“the 2008 Regulations”).

The Environmental Impact Assessment (Scotland) Amendment Regulations 2007 (S.S.I. 2007/484) implemented, 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) and Council Directive 2003/35/EC (O.J. L 156, 25.6.03, p.17) – “the EIA Directive” - in relation to applications for the approval of reserved matters made in connection with the grant of outline planning permission. Following the changes made to section 59 of the 1997 Act by section 21(1) of the 2006 Act after 3rd August 2009 applications for outline planning permission will be replaced by applications for planning permission in principle which will no longer be subject to approval of reserved matters. These Regulations amend the 1999 Regulations accordingly.

Regulations 2(2)(a), (4), (11), (12) and (17) make changes to the 1999 Regulations to replace references to “outline planning permission” and applications for approval of “reserved matters” with references to “planning permission in principle” and applications for “approval, consent or agreement required by a condition imposed on the grant of planning permission in principle”.

It will remain possible for an application for reserved matters to be made after 3rd August 2009 in respect of an outline planning permission granted before that date but regulation 3 of these Regulations operates to treat such an application as an application for approval, consent or agreement required by a condition in line with the wider changes to the terminology of the 1999 Regulations made by these Regulations.

Under new section 43A of the 1997 Act (introduced by section 17 of the 2006 Act) in respect of applications determined by a person appointed under a scheme of delegation the applicant will have a right to require a review of the case by the planning authority rather than a right of appeal to the Scottish Ministers. Regulations 2(2)(b), (5)(b), (7), (10), (11)(a), (13), (14) make amendments to the 1999 Regulations to take account of the new review procedure in section 43A. In doing so these Regulations operate to transpose the EIA Directive in relation to the new procedures introduced by section 17 of the 2006 Act.

Following changes made to section 34 of the 1997 Act by section 10 of the 2006 Act and in line with the provisions of the 2008 Regulations, regulation 2(9) makes changes to regulation 13 of the 1999 Regulations to require the planning authority or the Scottish Ministers to give notice where they have received an environmental statement.

Regulation 2(15) amends regulation 45(2) of the 1999 Regulations to apply the same extensions to time periods in relation to EIA applications dealt with under the 2008 Regulations as applied under the 1992 Order. Regulation 2(16) replaces references to the 1992 Order with references to the 2008 Regulations. Regulation 2(3) removes a redundant reference to the 1992 Order.

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