
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 139

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 and come into force on 1st June 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997 and references to sections without reference to the Act are references to sections of that Act;

“additional information” means—

- (a) information required in accordance with regulation 23(2) or (3); and
- (b) any other substantive information provided by the applicant or appellant (as the case may be) relating to any environmental statement.

“application for multi-stage consent” means an application for approval, consent or agreement required by—

- (a) a condition imposed on planning permission granted on an application made under Part III of the Act or section 242A(1) where that approval, consent or agreement must be obtained before all or part of the development permitted by the planning permission may be begun;
- (b) a condition specified in a simplified planning zone scheme, where that approval, consent or agreement must be obtained before all or part of the development permitted by planning permission granted by the adoption or approval of that scheme may be begun;
- (c) a condition specified in an enterprise zone scheme, where that approval, consent or agreement must be obtained before all or part of the development permitted by the planning permission granted by that enterprise zone scheme may be begun; or
- (d) a ROMP condition (as defined below);

“the CCS Directive” means Directive [2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive [85/337/](#)

(1) Section 242A was inserted by section 92 of the Planning and Compulsory Purchase Act [2004 \(c.5\)](#) and amended by section 54(13) of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).

EEC, European Parliament and Council Directives [2000/60/EC](#), [2001/80/EC](#), [2004/35/EC](#), [2006/12/EC](#), [2008/1/EC](#) and Regulation (EC) No. 1013/2006(2);

“the consultation bodies” means—

- (a) any adjoining planning authority, where the development is likely to affect land in their area;
- (b) Scottish Natural Heritage;
- (c) Scottish Water;
- (d) the Scottish Environment Protection Agency;
- (e) the Scottish Ministers; and
- (f) other bodies designated by statutory provision as having specific environmental responsibilities and which the planning authority or the Scottish Ministers, as the case may be, considers are likely to have an interest in the application;

“the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008(3);

“the Directive” means Council Directive on the assessment of the effects of certain public and private projects on the environment ([85/337/EEC](#));

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992(4) as adjusted by the Protocol signed at Brussels on 17th March 1993(5);

“EIA application” means an application for planning permission for EIA development;

“EIA development” means development which is either—

- (a) Schedule 1 development; or
- (b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(6);

“environmental information” means any environmental statement and any additional information, any representations made by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development;

“environmental statement” means a statement—

- (a) that includes such of the information referred to in Part 1 of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part 2 of Schedule 4;

“exempt development” means development in respect of which the Scottish Ministers have made a direction under regulation 5(4);

“fish farming” means the breeding, rearing or keeping of fish, excluding shellfish;

(2) O.J. No. L 140, 5.6.2009, p.114.

(3) [S.S.I. 2008/432](#) as amended by [S.S.I. 2009/220](#) and [S.S.I. 2011/138](#).

(4) Command Paper 2073.

(5) Command Paper 2183.

(6) [2000 c.7](#), as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

“fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” having the same meaning as in section 26(6))(7) and any material change of use of equipment so placed or assembled;

“the land” means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“marine waters” means the waters described in paragraphs (b) and (c) of subsection (6) of section 26;

“planning authority” means the body to whom it falls, fell, or would, but for a direction under—

- (a) section 46 (call-in of applications by the Scottish Ministers), fall to determine an application for planning permission; or
- (b) paragraph 19 of Schedule 8, paragraph 13 of Schedule 9 or paragraph 8 of Schedule 10 (reference of applications to the Scottish Ministers) to the Act, fall to determine a ROMP application;

“register” means a register kept pursuant to section 36(8) (registers of applications etc.);

“reporter” means a person appointed by the Scottish Ministers under Schedule 4 to the Act (determination of certain appeals by persons appointed by Scottish Ministers) to determine an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions), or to report to them on an application for planning permission referred to them under section 46 (call-in of applications by the Scottish Ministers) or which is the subject of an appeal under section 47;

“ROMP application” means an application to a planning authority to determine the conditions to which a planning permission is to be subject under—

- (a) paragraph 14(2) of Schedule 8 to the Act (registration of old mining permissions);
- (b) paragraph 9(1) of Schedule 9 to the Act (review of old mineral planning permissions); or
- (c) paragraph 6(1) of Schedule 10 to the Act (periodic review of mineral planning permissions);

“ROMP condition” means a condition to which a planning permission is subject (following the determination of a ROMP application) which requires approval, consent or agreement before all or any part of the development permitted by the planning permission (as so determined) may be begun or continued;

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

(7) Section 26(6) was amended by section 3(1)(c) of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).

(8) Section 36 was amended by the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), section 12, by [S.S.I. 2007/268](#) and by [S.S.I. 2009/256](#).

“scoping direction” means a direction made by the Scottish Ministers as to the information to be provided in the environmental statement;

“scoping opinion” means the opinion of the planning authority as to the information to be provided in the environmental statement;

“screening direction” means a direction made by the Scottish Ministers as to whether development is EIA development;

“screening opinion” means a written statement of the opinion of the planning authority as to whether development is EIA development; and

“sensitive area” means any of the following:—

- (a) land notified under sections 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004⁽⁹⁾;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹⁰⁾;
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage⁽¹¹⁾;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽¹²⁾;
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A⁽¹³⁾; and
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000⁽¹⁴⁾.

(2) Subject to paragraph (3), expressions used both in these Regulations and in the Act have the same meaning for the purposes of these Regulations as they have for the purposes of the Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations, unless the context otherwise requires, in relation to an application for multi-stage consent, “development” means the development granted planning permission by the planning permission in respect of which such application is made, taken together with any multi-stage consent previously granted in connection with such planning permission.

(5) In these Regulations, where an applicant or appellant (as the case may be) submits a revised, updated or supplementary environmental statement (or a statement which that person refers to as such) references to an environmental statement are to be treated as including a reference to that revised, updated or supplementary environmental statement.

(6) In these Regulations, references to the Scottish Ministers, as regards an application for planning permission or appeal in relation to which a reporter has been appointed, are to be construed as including references to that reporter.

(7) In these Regulations, references to a planning authority as regards—

(9) 2004 asp 6.

(10) S.I. 1994/2716 relevantly amended by S.S.I. 2007/80.

(11) See Command Paper 9424.

(12) 1979 c.46.

(13) Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).

(14) 2000 asp 10.

- (a) determination of an application by a person appointed for that purpose by virtue of a scheme of delegation prepared under section 43A(1)(15) (schemes of delegation), are to be construed as including a reference to that person; and
- (b) an application being considered on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), are to be construed as including a reference to the planning authority acting by virtue of that section.

(8) In these Regulations, references to the making of an application, or the date upon which an application is made, are to be construed in accordance with regulation 14(1) and (3) of the Development Management Procedure Regulations.

Prohibition on granting planning permission without consideration of environmental information

3. The planning authority or the Scottish Ministers must not grant planning permission pursuant to an EIA application unless they have first taken the environmental information into consideration and they must state in their decision that they have done so.

Consideration of environmental information when determining an application for multi stage consent

4.—(1) The planning authority or the Scottish Ministers must not grant an application for multi-stage consent in respect of EIA development unless they have first taken the environmental information into account and they must state in their decision that they have done so.

(2) When granting an application for multi-stage consent in respect of EIA development the planning authority or the Scottish Ministers may, having regard to the environmental information, impose conditions in relation to the development whether in relation to matters arising from the application for multi-stage consent or from the planning permission in respect of which such application is made for the purpose of avoiding, reducing or offsetting the effect of the development on the environment.

(3) For the purposes of paragraph (1) and (2), “environmental information” in addition to any environmental information previously provided in respect of the development includes—

- (a) any environmental statement provided in connection with the application for multi-stage consent;
- (b) any additional information provided in connection with the application for multi-stage consent; and
- (c) any representations made in connection with the application for multi-stage consent by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the development.

PART 2

SCREENING

General provisions relating to screening

5.—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) will determine for the purpose of these Regulations that development is EIA development.

- (2) The events referred to in paragraph (1) are—
- (a) the submission by the applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
 - (b) the adoption by the planning authority of a screening opinion to the effect that the development is EIA development.
- (3) A direction of the Scottish Ministers will determine for the purpose of these Regulations whether development is or is not EIA development.
- (4) The Scottish Ministers may direct that these Regulations will not apply to a particular proposed development specified in the direction in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive).
- (5) Where a direction is given under paragraph (4) the Scottish Ministers must—
- (a) send a copy of any such direction to the planning authority;
 - (b) make available to the public concerned the information considered in making the direction and the reasons for making the direction;
 - (c) consider whether another form of assessment would be appropriate; and
 - (d) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.
- (6) Where a planning authority or the Scottish Ministers have to decide under these Regulations whether Schedule 2 development is EIA development, they must take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.
- (7) Where a planning authority adopt a screening opinion or the Scottish Ministers make a screening direction to the effect that development is EIA development—
- (a) that opinion or direction must be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and
 - (b) the planning authority or the Scottish Ministers, as the case may be, must send a copy of the opinion or direction and a copy of that written statement to the person who proposes to carry out, or who has carried out, the development in question.
- (8) Where a planning authority adopt a screening opinion or the Scottish Ministers make a screening direction to the effect that development is not EIA development, the planning authority or the Scottish Ministers, as the case may be, must, if requested to do so, make available the reasons for that conclusion.
- (9) Where reasons are made available under paragraph (8), the planning authority or the Scottish Ministers, as the case may be, must also send a copy of those reasons to the person who proposes to carry out, or who has carried out, the development in question.
- (10) The Scottish Ministers may make a screening direction either—
- (a) at their own volition; or
 - (b) if requested to do so in writing by any person.
- (11) The Scottish Ministers may direct that particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” in regulation 2(1) is satisfied in relation to that development.
- (12) The Scottish Ministers must send a copy of any screening direction to the planning authority.

Requests for screening opinions of the planning authority

6.—(1) A person who is minded to carry out development may request the planning authority to adopt a screening opinion.

(2) A request for a screening opinion must be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) A planning authority receiving a request for a screening opinion must, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require further information.

(4) Unless a screening direction is made by the Scottish Ministers, a planning authority must adopt a screening opinion within the period of three weeks beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request.

(5) A planning authority which adopts a screening opinion must forthwith send a copy to the person who made the request.

(6) Where a planning authority—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (4); or
- (b) adopt an opinion to the effect that the development is EIA development,

the person who requested the opinion may request the Scottish Ministers to make a screening direction.

(7) The person may make a request pursuant to paragraph (6) even if the planning authority have not received the information which they have sought under paragraph (3).

Requests for screening directions of the Scottish Ministers

7.—(1) A person who pursuant to regulation 6(6) requests the Scottish Ministers to make a screening direction must submit with that request—

- (a) a copy of the request to the planning authority under regulation 6(1) and the documents which accompanied it;
- (b) a copy of any notification under regulation 6(3) which has been received and of any response;
- (c) a copy of any screening opinion received from the planning authority and of any accompanying statement of reasons; and
- (d) any representations that person wishes to make.

(2) When a person makes a request pursuant to regulation 6(6), that person must send to the planning authority a copy of that request and of any representations made to the Scottish Ministers, and that authority may, within two weeks of receiving those documents, provide the Scottish Ministers with their comments on the request and representations.

(3) Where the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction they—

- (a) must notify in writing the person making the request pursuant to regulation 6(6) of the points on which they require further information; and

(b) may request the planning authority to provide such information as they can on any of those points.

(4) The Scottish Ministers must make a screening direction within three weeks beginning with the date of receipt of a request pursuant to regulation 6(6) or such longer period as they may reasonably require.

(5) The Scottish Ministers must send a copy of any screening direction made pursuant to paragraph (4) forthwith to the person who made the request.

PART 3

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

Application or request to review made to a planning authority without an environmental statement

8. Where it appears to the planning authority that—

- (a) an application for planning permission which is—
 - (i) before them for determination is a Schedule 1 application or Schedule 2 application; or
 - (ii) subject to review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) 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 application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) to (5) of regulation 6 apply as if the making of the application, or the requirement to review the case under section 43A(8), as the case may be, were a request made under regulation 6(1).

EIA application made to a planning authority without an environmental statement

9.—(1) Where an EIA application which is before a planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the planning authority must notify the applicant in writing that the submission of an environmental statement is required.

(2) Notice under paragraph (1) must be given—

- (a) within three weeks beginning with the date on which the application is made; or
- (b) where—
 - (i) the planning authority adopt a screening opinion after the date on which the application is made, within seven days beginning with the date of adoption that screening opinion; or
 - (ii) the Scottish Ministers make a screening direction to the effect that the development is EIA development (and no notice under paragraph (1) has yet been given) within seven days beginning with the date on which the planning authority receive a copy of that screening direction.

(3) An applicant receiving notice under paragraph (1) may, within three weeks beginning with the date of the notice, write to the planning authority stating that the applicant—

- (a) accepts their view and is providing an environmental statement; or
- (b) 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) within that three week period, the application will, 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 that period and the deemed refusal will not give rise to—

- (a) an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions); or
- (b) review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions).

(5) A planning authority which has given notice in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application only by refusing the application if the applicant does not submit an environmental statement.

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

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

and paragraphs (2) to (5) of regulation 7 apply to a request under this regulation as they apply to a request made pursuant to regulation 6(6).

Application or Appeal to the Scottish Ministers without an environmental statement

10. Where on consideration of an application referred to the Scottish Ministers under section 46 (call-in of applications by the Scottish Ministers) or an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) it appears to the Scottish Ministers that—

- (a) the application is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) to (5) of regulation 7 apply as if the referral of the application or appeal, as the case may be, were a request made by the applicant or appellant pursuant to regulation 6(6).

EIA application referred to the Scottish Ministers without an environmental statement

11.—(1) Where it appears to the Scottish Ministers that an application which has been referred to them for determination 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, the Scottish Ministers must notify the applicant in writing that the submission of an environmental statement is required and must send a copy of that notification to the planning authority.

(2) The Scottish Ministers must notify the applicant in accordance with paragraph (1) within three weeks beginning with the date they received the application or such longer period as they may reasonably require.

(3) An applicant who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an environmental statement will be provided and may under regulation 15 ask the Scottish Ministers to make a scoping direction.

(4) If the applicant does not write in accordance with paragraph (3), the Scottish Ministers are under no duty to deal with the application, and at the end of the three week period the Scottish Ministers must inform the applicant in writing that no further action is being taken on the application.

(5) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the application only by refusing planning permission if the applicant does not submit an environmental statement.

Appeal to the Scottish Ministers without an environmental statement

12.—(1) Where on consideration of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) it appears to the Scottish Ministers that the application for planning permission to which the appeal relates is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, they must notify the appellant in writing that the submission of an environmental statement is required and send a copy of that notification to the planning authority.

(2) An appellant who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an environmental statement will be provided and may under regulation 15 ask the Scottish Ministers to make a scoping direction.

(3) If the appellant does not write in accordance with paragraph (2), the Scottish Ministers are under no duty to deal with the appeal and at the end of the three week period they must inform the appellant that no further action is being taken on the appeal.

(4) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the appeal only by refusing planning permission if the appellant does not submit an environmental statement.

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

13.—(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 the application for planning permission under review 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 must notify the applicant in writing that the submission of an environmental statement is required.

(2) An applicant receiving a notification pursuant to paragraph (1) may, within three weeks beginning with the date of the notification, write to the planning authority stating that the applicant—

- (a) accepts their view and is providing an environmental statement; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(3) If the applicant does not write to the planning authority in accordance with paragraph (2), the permission sought will, 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 will 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).

(4) A planning authority which has given a notification in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not

EIA development, determine the application only by refusing planning permission if the applicant does not submit an environmental statement.

(5) A person who requests a screening direction pursuant to paragraph (2)(b) must send to the Scottish Ministers with that request copies of—

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

and paragraphs (2) to (5) of regulation 7 apply to a request under this regulation as they apply to a request made pursuant to regulation 6(6).

PART 4

PREPARATION OF ENVIRONMENTAL STATEMENTS

Scoping opinions of the planning authority

14.—(1) A person who is minded to make an EIA application may ask the planning authority to adopt a scoping opinion.

(2) A request under paragraph (1) must include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) A planning authority receiving a request under paragraph (1)—

- (a) must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—
 - (i) the person who made the request;
 - (ii) the consultation bodies; and
 - (iii) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
- (b) must, if they consider that they have not been provided with sufficient information to adopt a scoping opinion, notify the person making the request of the points on which they require further information.

(4) Subject to paragraph (5), the planning authority must within five weeks beginning with the date of receipt of a request under paragraph (1) or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(5) Where—

- (a) a person has, at the same time as making a request for a screening opinion under regulation 6(1), asked the planning authority for an opinion under paragraph (1) above; and
- (b) the planning authority have adopted a screening opinion to the effect that the development is EIA development,

the planning authority must within five weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(6) Before adopting a scoping opinion, the planning authority must take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned; and
- (c) the environmental features likely to be affected by the development.

(7) Where a planning authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (4) or (5), the person who requested the opinion may under regulation 15 ask the Scottish Ministers to make a scoping direction.

(8) Paragraph (7) applies even if the planning authority have not received the information which they have sought under paragraph (3)(b).

(9) A planning authority which has adopted a scoping opinion in response to a request under paragraph (1) is not precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission for the same development as was referred to in the request.

Scoping directions of the Scottish Ministers

15.—(1) The Scottish Ministers may make a scoping direction under this regulation either—

- (a) at their own volition; or
- (b) where requested to do so pursuant to—
 - (i) regulation 11(3);
 - (ii) regulation 12(2); or
 - (iii) regulation 14(7).

(2) A request made pursuant to regulation 11(3) or 12(2) must include—

- (a) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (b) any representations that the person making the request wishes to make.

(3) A request made pursuant to regulation 14(7) must include—

- (a) a copy of the relevant request to the planning authority under regulation 14(1);
- (b) a copy of any relevant notification under regulation 14(3)(b) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(4) When a person makes a request pursuant to regulation 14(7) that person must send to the planning authority a copy of that request, but that copy need not include the matters mentioned in paragraph (3)(a) to (c).

(5) The Scottish Ministers must notify in writing the person making the request of any points on which they consider the information provided is insufficient to enable them to make a scoping direction and may request the planning authority to provide such information as they can on any of those points.

(6) Before making a scoping direction the Scottish Ministers must—

- (a) consult—

- (i) the person who made the request;
- (ii) the consultation bodies; and
- (iii) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and

(b) take into account the matters specified in regulation 14(6).

(7) The Scottish Ministers must, within five weeks beginning with the date of receipt of that request or such longer period as they may reasonably require, make a direction and send a copy to the person who made the request and to the planning authority.

(8) Where the Scottish Ministers have made a scoping direction in response to a request under this regulation, neither they nor the planning authority are precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission for the same development as was referred to in the request.

Procedure to facilitate preparation of environmental statements

16.—(1) Any person who intends to submit an environmental statement to the planning authority or the Scottish Ministers under these Regulations may give notice in writing to that planning authority or the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land and the nature and purpose of the development, and must indicate the main environmental consequences to which the person giving the notice proposes to refer in the environmental statement.

(3) Where the planning authority or the Scottish Ministers receive notice under paragraph (1) or a written statement made pursuant to regulation 9(3)(a), 11(3), 12(2) or 13(2)(a), they must—

- (a) notify the consultation bodies in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies by paragraph (4) to make information available to that person; and
- (b) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), the planning authority and any body notified in accordance with paragraph (3) must, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the planning authority or consultation body have in their possession any information which that person or they consider relevant to the preparation of the environmental statement, and the planning authority or consultation body must make any such information available to that person.

(5) In relation to a person to which the Environmental Information (Scotland) Regulations 2004(16) apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 10(1) of those Regulations; or
- (b) is prevented from disclosing by regulation 11(1) of those Regulations.

(6) In relation to a person to which the Environmental Information Regulations 2004 apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 12(1) of those Regulations; or

(16) S.S.I. 2004/520.

(b) is prevented from disclosing by regulation 13(1) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by any person who makes information available in accordance with paragraph (4).

PART 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL STATEMENTS

Notification of environmental statement

17.—(1) In an EIA application, when the applicant or appellant submits to the Scottish Ministers or the planning authority a statement which that person refers to as an environmental statement for the purposes of these Regulations, the authority to whom the statement is submitted must give notice in accordance with this regulation.

(2) Notice under paragraph (1) is to be given in the form set out in Schedule 5 (or in a form substantially to the like effect) and is to include the following information—

- (a) a description of the location of the development to which the statement relates;
- (b) how the statement and other documents submitted with the application may be inspected or copies obtained;
- (c) the address at which copies of the statement may be obtained;
- (d) the cost of a copy of the statement; and
- (e) how representations may be made.

(3) 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.

(4) For the purposes of this regulation, “neighbouring land” has the same meaning as in regulation 3(1) of the Development Management Procedure Regulations.

Publication of environmental statement

18.—(1) When a statement such as is referred to in regulation 17(1) is submitted, the planning authority or the Scottish Ministers, as the case may be, must publish as soon as possible a notice containing the information specified in regulation 17(2) in—

- (a) The Edinburgh Gazette; and
- (b) a newspaper circulating in the locality in which the development to which the statement relates is situated.

(2) Where the Scottish Ministers or the planning authority are required to publish a notice in a newspaper in accordance with paragraph (1), the applicant must pay the cost to be incurred by the Scottish Ministers or the planning authority in arranging such advertisement at the time of submitting the statement.

(3) The planning authority are to make copies of the statement and other documents submitted with the application available for inspection at an office of the planning authority where the register may be inspected for the period of four weeks from the date on which notice is given under regulation 17(1).

Consultation where environmental statement received by planning authority

19.—(1) Where a planning authority receive in connection with an EIA application (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)) a statement which the applicant refers to as an environmental statement for the purposes of these Regulations, they must—

- (a) place a copy of the statement in Part I of the register together with a copy of the related application;
- (b) send to the Scottish Ministers a copy of the application, and of any plans and other documents sent with it, and three copies of the statement;
- (c) send a copy of the statement to each consultation body, consult them about it and inform them that they may make representations; and
- (d) send a copy of the statement to the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development and consult them about it and inform them that they may make representations

(2) Where a statement such as is referred to in paragraph (1) is submitted to the planning authority in relation to an application for planning permission, the applicant must let the planning authority have enough copies of the environmental statement or parts thereof to enable them to comply with paragraph (1)(c) and five additional copies.

(3) Where under this regulation a planning authority consult any person about any statement, they—

- (a) must give not less than four weeks' notice to such person that environmental information is to be taken into consideration; and
- (b) must not take the environmental information into consideration until after the expiration of the period of such notice.

(4) Where any person whom a planning authority are required to consult under this regulation considers that consultation with that person is not required in respect of any statement relating to any case or class of case or relating to any specified area and so inform the planning authority in writing then the planning authority are not required to consult that person under this regulation.

Copies of environmental statement for the Scottish Ministers

20. Where a statement which the applicant or appellant refers to as an environmental statement for the purposes of these Regulations is provided in relation to an application for planning permission which is directed to be referred to the Scottish Ministers for determination, or is to be the subject of an appeal to them, the applicant or appellant must provide the Scottish Ministers with three copies of the statement and, where relevant, any additional information unless (in the case of a referred application) the planning authority have already forwarded three copies when referring the application.

Consultation where environmental statement received by the Scottish Ministers

21.—(1) This regulation applies where the Scottish Ministers are taking into consideration environmental information relating to an EIA application which is being determined by them by virtue of section 46 or 47 and the environmental statement has not previously been submitted to the planning authority.

(2) The provisions of regulation 19(1)(c) and (d), (2), (3) and (4) apply to the Scottish Ministers as they apply to the planning authority, as if references to the applicant include, where the case requires, references to the appellant.

(3) The Scottish Ministers must consult the planning authority for the area in which is situated the land to which the application relates about the statement and must send them two copies of it.

(4) When the planning authority receive two copies of the statement under paragraph (3), they must place one copy in Part I of the register together with a copy of the related application.

Copies of environmental statement for the public

22.—(1) Where a statement which the applicant refers to as an environmental statement for the purposes of these Regulations is provided in relation to an application for planning permission, the applicant or appellant must ensure that a reasonable number of copies of the statement are available at the address named in the notices under regulation 17(1) as the address at which copies may be obtained.

(2) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement made available in accordance with paragraph (1).

PART 6

ADDITIONAL INFORMATION

Additional information and evidence relating to environmental statements

23.—(1) This regulation applies where the Scottish Ministers or the planning authority, are dealing with—

- (a) an EIA application;
- (b) an application for multi-stage consent in respect of EIA development; or
- (c) an appeal in relation to an EIA application or an application for multi-stage consent in respect of EIA development.

(2) Where in the opinion of the Scottish Ministers or the planning authority—

- (a) the applicant or appellant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in Schedule 4; and
- (b) that further information is reasonably required to give proper consideration to the likely significant effects of the proposed development on the environment,

they must notify the applicant or appellant in writing and the applicant or appellant must provide that information.

(3) The Scottish Ministers or the planning authority may in writing require the applicant or appellant to provide such other information as may be specified to enable the application or appeal to be determined, or concerning any matter which is required to be dealt with in the environmental statement submitted in relation to the application or appeal.

(4) The Scottish Ministers or the planning authority may in writing require to be produced to them such evidence, in respect of any environmental statement or additional information which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

Publication of additional information

24.—(1) Where additional information is submitted to the Scottish Ministers or the planning authority, regulations 17 to 19, 21 and 22 apply to the submission of such additional information as they apply to the submission of an environmental statement (subject to any necessary modifications).

(2) Paragraph (1) does not apply in relation to additional information to the extent that—

- (a) the information is provided for the purposes of an inquiry held under the Act;
- (b) the written requirement for the information states that it is to be provided for such purposes; and
- (c) the information is required to be publicised as part of that inquiry.

PART 7

AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

Availability of opinions, directions etc. for inspection

25.—(1) Where particulars of a planning application are placed on Part I of the register, the planning authority must take steps to secure that there is also placed on that Part a copy of any relevant—

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) scoping direction;
- (e) notification given under regulation 9(1), 11(1), 12(1) or 13(1);
- (f) direction under regulation 5(4);
- (g) environmental statement and any additional information; and
- (h) statement of reasons accompanying any of the above.

(2) Where the planning authority—

- (a) adopt a screening opinion or scoping opinion; or
- (b) receive—
 - (i) a request under regulation 14(1) or 15(4); or
 - (ii) a copy of a screening direction, scoping direction, or direction under regulation 5(4),

before an application for planning permission is made for the development in question, the planning authority must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.

Duties to inform the public and the Scottish Ministers of final decisions

26.—(1) Where an EIA application is determined by a planning authority, the planning authority must—

- (a) in writing, inform the Scottish Ministers and those bodies consulted in accordance with regulation 19(1)(c) and (d) of the decision;

- (b) inform the public of the decision (and of where the statement referred to in subparagraph (c) may be inspected), by publishing a notice in a newspaper circulating in the locality in which the land is situated, or by such other means as are reasonable in the circumstances; and
 - (c) make available for public inspection at an office of the planning authority where the register may be inspected, a statement containing—
 - (i) the content of the decision and any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.
- (2) Where an EIA application is determined or a draft decision is issued by the Scottish Ministers, they must—
- (a) notify the planning authority and those bodies consulted in accordance with regulation 19(1)(c) and (d) of the decision; and
 - (b) provide the planning authority with such a statement as is mentioned in paragraph (1)(c).
- (3) The planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (2)(a), comply with paragraph (1)(b) and (c) in relation to the decision so notified as if it were a decision of the planning authority.
- (4) Notification in writing of a decision is deemed to have been given to a person for the purposes of this regulation where—
- (a) the planning authority or the Scottish Ministers, as the case may be, and the person have agreed that a decision and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;
 - (b) the decision is a decision and reasons to which that agreement applies;
 - (c) the planning authority have published the decision on a website; and
 - (d) the person is notified, in a manner for the time being agreed between that person and the planning authority, of—
 - (i) the publication of the decision and reasons on a website;
 - (ii) the address of the website; and
 - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.

PART 8

APPLICATIONS FOR MULTI-STAGE CONSENT

Requests for screening opinions and screening directions

27.—(1) Where a person is minded to make an application for multi-stage consent, regulations 6 and 7 apply as if that person was a person who was minded to carry out development.

(2) A screening opinion adopted by virtue of paragraph (1) supersedes the terms of an earlier screening opinion or screening direction.

(3) A screening direction made by virtue of paragraph (1) supersedes the terms of an earlier screening direction.

Application for multi-stage consent without environmental statement

28.—(1) Where—

- (a) it appears to the planning authority that an application for multi-stage consent which is before them for determination relates to planning permission for Schedule 1 development;
- (b) the development in question has either—
 - (i) not been the subject of a screening opinion or screening direction; or
 - (ii) been the subject of a screening opinion or screening direction to the effect that it is not EIA development; and
- (c) no statement referred to by the applicant as an environmental statement for the purposes of these Regulations accompanied either the application for planning permission or the application for multi-stage consent,

the planning authority must adopt a screening opinion in respect of the development within three weeks beginning with the date upon which the application was made.

(2) Where—

- (a) it appears to the planning authority that an application for multi-stage consent which is before them for determination (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 planning permission for Schedule 2 development;
- (b) it appears to them that the development in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or screening direction or because the development has not been the subject of a screening opinion or screening direction); and
- (c) no statement referred to by the applicant as an environmental statement for the purposes of these Regulations accompanied either the application for planning permission or the application for multi-stage consent,

the planning authority must adopt a screening opinion in respect of the development within three weeks beginning with the date upon which the application was made.

(3) Where an application for multi-stage consent referred to in paragraph (1) or (2) has already been the subject of a screening opinion or screening direction under regulations 6 or 7 as applied by regulation 27 to the effect that the development to which it relates is not EIA development, the planning authority are not required to adopt a screening opinion under paragraph (1) or (2), as the case may be.

(4) The planning authority must, if they consider they have not been provided with sufficient information to adopt an opinion, notify in writing the applicant of the points on which they require further information.

(5) A screening opinion adopted under paragraph (1) or (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) The Scottish Ministers may make a screening direction in relation to a development to which paragraph (1)(b)(ii) applies or, where there has been an earlier screening opinion or direction, to which paragraph (2), applies and any such screening direction supersedes the terms of the earlier screening direction.

(7) Where the planning authority adopt a screening opinion under paragraph (1) or (2) to the effect that the development to which the application for multi-stage consent relates is EIA development, regulation 9 applies to the application as if it were an EIA application.

Application for multi-stage consent referred or appealed to the Scottish Ministers without an environmental statement

29.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of—

- (a) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
- (b) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions).

(2) Where no statement referred to by the applicant as an environmental statement for the purposes of these Regulations accompanied either the application for planning permission or the application for multi-stage consent and either—

- (a) it appears to the Scottish Ministers that the application for multi-stage consent relates to planning permission for Schedule 1 development and the development in question has either—

- (i) not been the subject of a screening opinion or screening direction; or
- (ii) been the subject of a screening opinion or screening direction to the effect that it is not EIA development; or

- (b) it appears to the Scottish Ministers that—

- (i) the application for multi-stage consent relates to planning permission for Schedule 2 development and;
- (ii) the development in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or screening direction or because the development has not been the subject of a screening opinion or screening direction),

the Scottish Ministers must make a screening direction in respect of the development within three weeks beginning with the date of referral of the application or the date of the appeal, as the case may be.

(3) Where the application for multi-stage consent referred to in paragraph (1) or (2) has already been the subject of a screening opinion under regulation 6 as applied by regulation 27 to the effect that the development to which it relates is not EIA development, the Scottish Ministers may make a screening direction under paragraph (1) or (2) (as the case may be), but are not required to do so.

(4) The Scottish Ministers must, if they consider that they have not been provided with sufficient information to make a screening direction, notify in writing the applicant of the points on which they require further information, and may request the planning authority to provide such information as they can on any of these points.

(5) A screening direction made under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) Where the Scottish Ministers make a screening direction under paragraph (2) to the effect that the development to which the application for multi-stage consent referred to them under section 46 relates is EIA development, regulation 11 applies to that application as if it were an EIA application.

(7) Where the Scottish Ministers make a screening direction under paragraph (2) to the effect that the development to which an appeal under section 47 in respect of an application for multi-stage consent relates is EIA development, regulation 12 applies to the application as if it were an EIA application.

Modification of regulations relating to application for multi-stage consent

30.—(1) Parts 2, 4 to 7, 10 and 11 and regulation 9 (where applied by regulation 28(7)), regulation 11 (where applied by regulation 29(6)) and regulation 12 (where applied by regulation 29(7)) apply to an application for multi-stage consent as if references—

- (a) to an application for planning permission were references to an application for multi-stage consent; and
- (b) to an EIA application were references to an application for multi-stage consent for EIA development,

and subject to the modifications specified in paragraph (2).

(2) The modifications are—

- (a) in regulation 14(5) after “regulation 6(1)” insert “as applied by regulation 27”;
- (b) in regulation 16(3)(b) for “9(3)(a), 11(3), 12(2) or 13(2)(a)” substitute “9(3)(a), 11(3) or 12(2) as those regulations are applied by regulations 28(7) or 29(6) or (7), as the case may be”.
- (c) in regulation 17(2)(b) after “the statement” insert “, the relevant planning permission”;
- (d) in regulation 19(1)(a) after “application” insert “(and any earlier application relating to the development, in so far as not already on Part 1 of the register)”;
- (e) in regulation 25(1)(e) at the end insert “as applied by regulations 28(7) and 29(6) or (7) as the case may be”; and
- (f) in regulation 36(4)(b) for “planning permission” substitute “multi-stage consent”.

Application for multi-stage consent – simplified planning scheme, enterprise zone scheme and ROMP condition

31.—(1) Regulation 28 applies to an application for multi-stage consent which relates to—

- (a) planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme with the omission from paragraphs (1)(c) and (2)(c) of “either the application for planning permission or”; and
- (b) a ROMP condition as if the references in paragraphs (1)(c) and (2)(c) to the application for planning permission are references to the ROMP application.

(2) Regulation 29 applies to an application for multi-stage consent which relates to—

- (a) planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme with the omission in paragraph (2) of “either the application for planning permission or”; and
- (b) a ROMP condition as if the first reference in paragraph (2) to the application for planning permission is a reference to the ROMP application.

(3) Where the application for multi-stage consent relates to planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme, the reference in regulation 30(2)(c) to the relevant planning permission is to be read as a reference to the simplified planning zone scheme or enterprise zone scheme, as the case may be.

PART 9

SPECIAL CASES

Simplified planning zone schemes or enterprise zone orders

32.—(1) This regulation applies to any—

- (a) simplified planning zone scheme adopted or approved;
- (b) order designating an enterprise zone made; and
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations.

(2) No scheme, order or modified scheme to which this regulation applies may—

- (a) grant planning permission for Schedule 1 development; or
- (b) grant planning permission for Schedule 2 development unless that grant is subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

ROMP applications

33.—(1) These Regulations apply to—

- (a) a ROMP application as they apply to an application for planning permission;
- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a person making a ROMP application as they apply to an applicant for planning permission; and
- (d) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications and additions set out below.

(2) Regulations 9(4) and (5), 11(4) and (5), 12(3) and (4) and 44 do not apply.

(3) In regulation 9(3)—

- (a) for “three” substitute “six”; and
- (b) after “the notice” insert “, or within such other period as may be agreed with the authority in writing,”.

(4) In regulation 11(3)—

- (a) for “three” substitute “six”; and
- (b) after “the notification” insert “, or within such other period as may be agreed with the Scottish Ministers in writing,”.

(5) In regulation 12(2)—

- (a) for “three” substitute “six”; and
- (b) after “the notification” insert “, or within such other period as may be agreed with the Scottish Ministers in writing,”.

(6) In regulation 10 for “section 47 (right to appeal against planning decisions and failure to take such decisions)” substitute—

“paragraphs 17(1) and 17(2) of Schedule 8 to the Act, paragraph 11(1) of Schedule 9 to the Act or paragraph 9(1) of Schedule 10 to the Act (right of appeal)”.

(7) In regulations 14(9) and 15(8) for “an application for planning permission for” substitute “a ROMP application which relates to another planning permission which authorises”.

(8) In regulation 17 for “an application for planning permission” substitute “a ROMP application”.

(9) In regulation 19(2) for “application for planning permission” substitute “ROMP application”.

(10) In regulation 21(1) for “section 46 or 47” substitute “a ROMP application”.

(11) For regulation 42 substitute—

“Application to the Court of Session

42. For the purposes of Part XI of the Act (validity), the references in section 239, as applied by paragraph 21(3) of Schedule 8, paragraph 16(4) of Schedule 9 or paragraph 9(4) of Schedule 10 to the Act, to action of the Scottish Ministers which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3.”.

(12) Regulation 45 applies to ROMP development as it applies to development in respect of which a planning application is made.

(13) Where the Scottish Ministers or the planning authority notifies the applicant or appellant, as the case may be, that—

(a) the submission of an environmental statement is required under regulations 9(1), 11(1), or 12(1) such notification must specify the date by which the environmental statement and compliance with regulations 17 and 18 is required; or

(b) additional information is required under regulation 23 such notification must specify the date by which that information is to be provided.

(14) The planning permission to which the ROMP application relates must not authorise any minerals development (unless the Scottish Ministers have made a screening direction to the effect that the ROMP development is not an EIA development) if the applicant or the appellant does not—

(a) write to the planning authority in accordance with regulation 9(3);

(b) write to the Scottish Ministers in accordance with regulation 11(3) or 12(2);

(c) submit an environmental statement and comply with regulations 17 and 18 by the date specified by the authority, or the Scottish Ministers in accordance with paragraph (13); or

(d) provide additional information and comply with regulation 24 by the date specified by the authority or the Scottish Ministers in accordance with paragraph (13),

and the planning permission to which the ROMP application relates must not authorise any development consisting of the winning and working of minerals, or involving the depositing of mineral waste, except insofar as it imposes any restoration or aftercare condition, at the end of the relevant period referred to in regulations 9(3), 11(3) or 12(2) or on the day following the date specified or agreed by the authority for the submission of the environmental statement or additional information until the applicant or appellant has complied with all the provisions referred to in this paragraph which are relevant to the application or appeal in question.

(15) Particulars of the suspension of development referred to in paragraph (14) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

(16) Paragraph (14) does not affect any development carried out under a planning permission before the date of suspension of that development.

(17) Where it falls to—

- (a) a planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 14(6)(b) of Schedule 8, paragraph 9(8) of Schedule 9 or paragraph 6(7) of Schedule 10 to the Act do not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the planning authority has adopted a screening opinion or the Scottish Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;
- (b) a planning authority or the Scottish Ministers to determine a Schedule 1 or a Schedule 2 application—
 - (i) section 36 (register of applications, etc), and any provisions of the Development Management Procedure Regulations made by virtue of that section, have effect with any necessary amendments so that they apply to ROMP applications under paragraph 9(1) of Schedule 9 and paragraph 6(1) of Schedule 10 to the Act as they apply to applications for planning permission; and
 - (ii) where the planning authority is not the authority required to keep the register, the planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 36 as applied by sub-paragraph (i), with regulation 25 as applied by paragraph (1), and with paragraph (12).

(18) Where it falls to the planning authority or the Scottish Ministers to determine an EIA application that is made under paragraph 14(2) of Schedule 8 to the Act, paragraph 16(4) of that Schedule does not apply.

(19) Where it falls to the planning authority to determine an EIA application, the authority must give written notice of their determination of the ROMP application within four months beginning with the date upon which the ROMP application is made or such extended period as may be agreed in writing between the applicant and the authority.

(20) For the purposes of paragraph (19) a ROMP application is not made until—

- (a) a document referred to by the applicant as an environmental statement for the purposes of these Regulations;
- (b) any documents required to accompany that statement; and
- (c) any additional information required under regulation 23,

has been received by the authority.

(21) Where paragraph (17)(a) applies—

- (a) paragraph 17(2) of Schedule 8, paragraph 11(1) of Schedule 9 and paragraph 9(1) of Schedule 10, to the Act (right of appeal) have effect as if there were also a right of appeal to the Scottish Ministers where the planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (19); and
- (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the four months or other period agreed pursuant to paragraph (19).

(22) In determining for the purposes of—

- (a) paragraph 14(6)(b) of Schedule 8, paragraph 9(8) of Schedule 9 and paragraph 6(7) of Schedule 10, to the Act (determination of conditions); or
- (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) as applied by paragraph (21)(b),

the time which has elapsed without the planning authority giving the applicant written notice of their determination in a case where the authority have notified an applicant in accordance with

regulation 9(1) that the submission of an environmental statement is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question, no account must be taken of any period before the issue of the direction.

Applications for permission under section 242A

34.—(1) These Regulations apply to an application made (or to be made) to the Scottish Ministers under section 242A(17) (urgent Crown development) subject to the following modifications.

(2) References to “planning authority” are to be treated as references to “the planning authority or the Scottish Ministers, as appropriate”.

(3) Regulations 6(6) and (7), 9(3)(b), 14(7) and (8) and 19(1)(a) do not apply.

(4) In regulation 5 for paragraph (12) substitute—

“(12) The Scottish Ministers must send a copy of any screening direction to the planning authority for the area to which the application relates.”.

(5) In regulation 19—

(a) in paragraph (1)(b) for “the Scottish Ministers” substitute “the planning authority for the area to which the application relates”;

(b) after paragraph (1) insert—

“(1A) Where a planning authority receive a copy of the application and other documents referred to in paragraph (1)(b), they must place a copy of the relevant statement together with a copy of the related application for public inspection at all reasonable hours in the place where the register is kept.”.

(6) For regulation 25—

“Availability of opinions, directions, etc. for inspection

25.—(1) Where the Scottish Ministers—

(a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;

(b) receive a request under regulation 14(1); or

(c) make a screening direction, scoping direction or direction under regulation 5(4),

before the application is made for the development in question, the Scottish Ministers must send a copy of the opinion, request or direction to the planning authority for the area to which the application relates.

(2) Where the planning authority receive copies of an opinion, request or direction under paragraph (1) they must take steps to secure that the documents are made available for public inspection at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.”.

(7) In regulation 26—

(a) for paragraph (1) substitute—

“(1) Where an EIA application is determined or a draft decision is issued by the Scottish Ministers they must—

(17) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

- (a) notify the planning authority for the area to which the application relates and the bodies consulted of the decision;
- (b) provide the planning authority with a statement containing—
 - (i) the content of the decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and if possible, offset the major adverse effects of the development; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”;
- (b) for paragraph (2) substitute—

“(2) The planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (1)(a)—

 - (a) make available for public inspection at an office of the planning authority where the register may be inspected a copy of the statement referred to in paragraph (1) (b); and
 - (b) inform the public of the decision (and of where the statement referred to in paragraph (1)(b) may be inspected), by publishing in a newspaper circulating in the locality in which the land is situated or by other such means as are reasonable in the circumstances.”; and
- (c) paragraph (3) is omitted.

(8) Regulation 29 applies to the determination of an application for multi-stage consent by the Scottish Ministers relating to a grant of planning permission under section 242A as it applies to the determination of an application for multi-stage consent referred to them.

Marine fish farming

35.—(1) These Regulations apply to an application for planning permission relating to fish farm development subject to the following modifications.

- (2) In regulation 2(1) (interpretation)—
 - (a) in the definition of “the consultation bodies” after paragraph (f) insert—
 - “(g) any district salmon fishery board in whose area the proposed development is to be situated.”; and
 - (b) after the definition of “the Directive” insert ““district salmon fishery board” has the meaning given in section 43 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(**18**)”.
- (3) In regulation 6(2)(a) for “land” substitute “location of the development”.
- (4) In regulation 14(2)(a) for “land” substitute “location of the development”.
- (5) Omit regulation 17 and for regulation 18 substitute—

“Publicity for environmental statements for fish farming

18.—(1) Where the planning authority or the Scottish Ministers receive an environmental statement relating to an EIA application relating to fish farm development, they must publish

as soon as possible in a local newspaper circulating in the locality in which the proposed development is to be situated and in The Edinburgh Gazette a notice stating—

- (a) that copies of the environmental statement and other documents submitted with the application may, during the period of four weeks after first publication of the notice, be inspected in—
 - (i) a specified office of the planning authority, being an office of the relevant authority in the locality nearest to the proposed development; and
 - (ii) a specified Post Office being a Post Office in the locality nearest to the proposed development;
- (b) the address at which copies of the application and the environmental statement may be obtained;
- (c) the cost of a copy of the environmental statement;
- (d) that representations may be made to the planning authority, at the office referred to in paragraph (1)(a)(i), within the period specified in paragraph (1)(a); and
- (e) the nature of possible decisions.

(2) Prior to the first publication of the notice referred to in paragraph (1) the relevant authority are to—

- (a) make available in the office of the planning authority referred to in paragraph (1)(a)(i); and
- (b) send to the Post Office referred to in paragraph (1)(a)(ii),

the documents referred to in paragraph (1)(a).

(3) Where the planning authority or the Scottish Ministers are required to publish a notice in accordance with paragraph (1), the applicant must pay the cost to be incurred by the relevant authority in arranging the advertisement at the time of submission of the statement.”

(6) Where an application for planning permission relates in part to fish farm development and in part to other development, the modifications specified in this regulation apply only for the purposes of the application to the extent that it relates to fish farm development.

PART 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

Development in Scotland likely to have significant effects in an EEA State other than the United Kingdom

36.—(1) Where—

- (a) it comes to the attention of the Scottish Ministers that development proposed to be carried out in Scotland is the subject of an EIA application and is likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
- (b) an EEA State other than the United Kingdom likely to be significantly affected by such development so requests,

the Scottish Ministers must—

- (i) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if they think fit, the information referred to in paragraph (3);

- (ii) publish the information in sub-paragraph (i) above in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
 - (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (2) The particulars referred to in paragraph (1)(i) are—
- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
 - (b) information on the nature of the decision which may be taken.
- (3) Where an EEA State indicates, in accordance with paragraph (1)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must as soon as possible send to that EEA State the following information—
- (a) a copy of the application concerned;
 - (b) a copy of the environmental statement in respect of the development to which that application relates; and
 - (c) relevant information regarding the procedure under these Regulations,
- but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(i).
- (4) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any additional information submitted by the applicant or appellant to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.
- (5) The Scottish Ministers must in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
- (6) Where an EEA State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a statement of—
- (a) the content of the decision and any conditions attached to it;
 - (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
 - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Projects in another EEA State likely to have significant transboundary effects

37.—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on

the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
 - (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and
 - (c) so far as they have received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
 - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.
- (2) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
 - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

PART 11

MISCELLANEOUS

Electronic communications – general

38.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, statements, notices, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
 - (b) legible in all material respects; and
 - (c) sufficiently permanent to be used for subsequent reference.
- (4) The cases are—
- (a) serving any notice under regulation 17;
 - (b) any requirement under regulation 36 including submitting information to an EEA State; and
 - (c) any requirement under regulation 37 including submitting representations.
- (5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.
- (6) Where the electronic communication is received by the recipient—
- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
 - (b) at any time during a day which is not working day, it is deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(19), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement or document, any such requirement may be complied with by sending one copy only of the statement or other document in question.

Electronic communications – deemed agreement

39. Where an applicant or appellant, as the case may be, so informs the Scottish Ministers or, as the case may be, the planning authority, using electronic communications, the applicant or appellant is deemed to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to a request for a screening opinion, application, notice or appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the request, application, notice or appeal; and
- (c) that the applicant or appellant’s deemed agreement under this paragraph will subsist until the applicant or appellant gives notice in accordance with regulation 40 that the applicant or appellant wishes to revoke the agreement.

Withdrawal of consent to use of electronic communications

40. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers or, as the case may be, to a planning authority for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers or, as the case may be, with a planning authority for that purpose,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.

Service of notices etc.

41. Subject to regulations 38 to 40, any notice or other document to be 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

42. For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2)(20) to action of the Scottish Ministers or a planning authority which is not within the powers of the Act are to be taken to extend, as the case may be, to—

- (a) a grant of planning permission by the Scottish Ministers or the planning authority in contravention of regulation 3; and
- (b) a grant of multi-stage consent by the Scottish Ministers or the planning authority in contravention of regulation 4.

Hazardous waste and material change of use

43. 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

44.—(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 planning authority giving notice to the applicant of their decision in a case where—

- (a) the planning authority have notified an applicant in accordance with regulation 9(1) 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 is to be taken of any period before the issue of the direction.

(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).

(20) Section 239 was amended by section 19(4) of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).

Directions as to whether development is EIA development

45. 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, and of a class described in the direction, is EIA development for the purposes of these Regulations.

Access to review procedure before a court

46. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 10a(a) of the Directive and rights capable of being impaired for the purposes of Article 10a(b) of the Directive.

Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

47.—(1) Article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(21) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph (8)—

- (a) for “the Environmental Impact Assessment (Scotland) Regulations 1999” substitute “the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011”; and
- (b) after “EIA development” where it occurs in sub-paragraphs (a) and (b) insert “within the meaning of those Regulations”.

(3) In paragraphs (8) and (9)—

- (a) for “regulation 5” substitute “regulation 6”;
- (b) for “regulation 4(7) or 6(4)” substitute “regulation 5(10) or 7(4)”;
- (c) for “regulation 4(4)” substitute “regulation 5(4)”.

(4) After paragraph (8) insert—

“(8A) Where it appears to the planning authority that—

- (a) an application under this Order for a determination as to whether prior approval of the planning authority will be required in respect of any matter, or an application for prior approval of any matter, relates to Schedule 1 development within the meaning of the EIA Regulations; and

(b) the development—

- (i) has not been the subject of a screening opinion under regulation 6 of those Regulations or a screening direction under regulation 5(10) or 7(4) of those Regulations; or
- (ii) has been the subject of such a screening opinion or direction to the effect that it is not EIA development within the meaning of those Regulations,

the planning authority must adopt a screening opinion under regulation 6 of those Regulations in respect of the development to which the application relates.

(8B) Where it appears to the planning authority that—

- (a) an application under this Order for a determination as to whether prior approval of the planning authority will be required in respect of any matter, or an application for prior approval of any matter, relates to Schedule 2 development within the meaning of the EIA Regulations; and

(21) [S.I. 1992/223](#) relevantly amended by [S.S.I. 1999/1](#).

- (b) the development may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion under regulation 6 of those Regulations or a screening direction under regulation 5(10) or 7(4) of those Regulations, or because the development has not been the subject of such a screening opinion or direction),

the planning authority must adopt a screening opinion under regulation 6 of those Regulations in respect of the development to which the application relates.

(8C) A screening opinion adopted under regulation 6 of the EIA Regulations in pursuance of paragraph (8A) or (8B) supersedes the terms of an earlier screening opinion or direction in relation to the development.”.

- (5) In paragraph (10) for “Paragraph (8) does” substitute “Paragraphs (8), (8A) and (8B) do”.

Amendment of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2008

- 48.** Regulation 30 of the Development Management Procedure Regulations is omitted.

Revocation and savings

49.—(1) Part II and Schedules 1 to 6A of the Environmental Impact Assessment (Scotland) Regulations 1999~~(22)~~ are (except for the provisions mentioned in paragraph (2)) revoked.

(2) The provisions are—

- (a) regulation 2 (interpretation);
- (b) regulation 27 (restriction of grant of permission by old simplified planning zone schemes or enterprise zone orders);
- (c) regulation 47 (miscellaneous and consequential amendments); and
- (d) Schedule 4 (information for inclusion in environmental statements).

St Andrew’s House,
Edinburgh
21st February 2011

KEITH BROWN
Authorised to sign by the Scottish Ministers