
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.