
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 139

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

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(1), 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)(2) 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—

(1) 1971 c.80.

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

- (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).

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(3) is amended in accordance with paragraphs (2) to (5).

- (2) In paragraph (8)—

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

- (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
 - (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⁽⁴⁾ 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).

(4) S.S.I. 1999/1.