

2015 No. 249

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Miscellaneous Amendments)
(Scotland) Regulations 2015**

<i>Made</i>	- - - -	<i>4th June 2015</i>
<i>Laid before the Scottish Parliament</i>		<i>8th June 2015</i>
<i>Coming into force</i>	- -	<i>14th September 2015</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and sections 32, 40, 43A(10), 75A, 75E, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015 and come into force on 14th September 2015.

Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994

2.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994(c) are amended in accordance with paragraph (2).

(2) In regulation 10(1)(d) (meaning of European site) after “to” insert, “Article 4(1) or (2) of Council Directive 1979/409/EEC on the conservation of wild birds(d) or”.

Amendment of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010

3.—(1) The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010(e) are amended in accordance with paragraph (2).

(2) In regulation 7 (determination of application)—

(a) in paragraph (1), for “Subject to paragraph (3), the” substitute “The”; and

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- (a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3), the Legislative and Regulatory Reform Act 2006 (c.51), section 27, and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) 1997 c.8. Sections 8, 43A, 75B, 75F and 275A were inserted by sections 7, 17, 23, 24 and 52 of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Sections 43, 267 and 275 were amended by sections 16, 19(5) and (6) and 54(16) respectively of the 2006 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (c) S.I. 1994/2716 to which there are amendments which are not relevant to these Regulations.
- (d) OJ L 103, 25.4.1979, p.1.
- (e) S.S.I. 2010/432.

- (b) omit paragraph (3).

Amendment of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010

4.—(1) The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010(a) are amended in accordance with paragraph (2).

(2) In regulation 7 (determination of application)—

- (a) in paragraph (1), for “Subject to paragraph (3), the” substitute “The”; and
- (b) omit paragraph (3).

Amendment of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011

5.—(1) Subject to paragraph (11), the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011(b) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 2(1) (interpretation)—

- (a) in the definition of “the Development Management Procedure Regulations” for “2008” substitute “2013”(c);
- (b) for the definition of “the Directive” substitute—

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(d);”;
- (c) after the definition of “electronic communication” insert—

“environmental impact assessment” has the meaning given in regulation 3A;”
- (d) omit “and” following the definition of “screening opinion”; and
- (e) in the definition of “sensitive area” for paragraph (a) substitute—

“(a) site of special scientific interest;”;

 and
- (f) at the end of the definition of “sensitive area” insert—

“; and

“site of special scientific interest” has the same meaning as in section 58(1) of the Nature Conservation (Scotland) Act 2004(e)”.

(3) For regulation 3 (prohibition on granting planning permission without consideration of environmental information) and the related cross heading, substitute—

“Prohibition on granting planning permission without an environmental impact assessment

3. The planning authority (or the Scottish Ministers, as the case may be), must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority (or the Scottish Ministers, as the case may be), must take the environmental information into consideration.

(a) S.S.I. 2010/433.

(b) S.S.I. 2011/139.

(c) S.S.I. 2013/155.

(d) OJ L 26, 28.1.2012, p.1.

(e) 2004 asp 6. Section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

Environmental impact assessment

3A.—(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an environmental statement by the applicant;
- (a) the carrying out of consultation, publication and notification as required by Parts 5 and 6 and, where relevant, Part 10;
- (c) the examination by the planning authority (or the Scottish ministers, as the case may be) of the information presented in the environmental statement and any other environmental information; and
- (d) the reasoned conclusion by the planning authority (or the Scottish Ministers, as the case may be) on the significant effects of the development on the environment, taking into account the results of the examination referred to in sub-paragraph (c).

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect effects of the proposed development on the factors specified in paragraph (3) and the interaction between those factors

(3) The factors are—

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape; and
- (c) material assets and cultural heritage.”.

(4) For regulation 4(1) (consideration of environmental information when determining an application for multi-stage consent) substitute—

“(1) The planning authority (or the Scottish Ministers, as the case may be) must not grant an application for multi-stage consent in respect of EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority (or the Scottish Ministers, as the case may be) must take the environmental information into consideration.”.

(5) In regulation 5(4) (general provisions relating to screening) for “Article 2(3)” substitute “Article 2(4)”.

(6) In regulation 34(7)(a) (applications for permission under section 242A) in paragraph (1)(b)(ii) of the modification of regulation 26 after “including” insert “reasoned conclusions regarding the significant effects of the development on the environment and”.

(7) In regulation 44 (extension of the period for an authority’s decision on a planning application)—

(a) for paragraph (1) substitute—

“(1) In determining, for the purposes of the provisions specified in paragraph (1A), 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 screening direction.

(1A) The provisions are—

- (a) section 43A(8)(c) (right to require a review on failure to determine an application);
- (b) section 47(2) (right to appeal against planning decisions and failure to take such decisions); and
- (c) regulation 26(2) (time periods for decision) of the Development Management Procedure Regulations.”; and

(b) for paragraph (2)(b) substitute—

“(b) the reference to “validation date” is a reference to the later of—

- (i) the date on which the application is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
- (ii) the date on which an environmental statement is submitted in respect of the application.”.

(8) In regulation 46 (access to review procedure before a court)—

(a) for “Article 10a(a)” substitute “Article 11(a)”; and

(b) for “Article 10a(b)” substitute “Article 11(b)”.

(9) In Schedule 3 (selection criteria for screening schedule 2 development) in paragraph 2(c)(v) after “birds” insert “, Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(a)”.

(10) In Schedule 5 (form of notice under regulation 17), in both places where it occurs, for “2008” substitute “2013”.

(11) The provisions of regulation 44(1A)(a) and (c) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (inserted by paragraph (7)(a)) do not apply in respect of—

(a) an application for planning permission; or

(b) an application for multi-stage consent (as defined in regulation 2(1) of those Regulations), made before 14th September 2015.

Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

6.—(1) The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(b) are amended in accordance with paragraph (2).

(2) In regulation 2(4) (application) omit “of the Act” and at the end insert “or 242A (urgent Crown development) of the Act”.

Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2013

7.—(1) Subject to paragraphs (6) and (7), the Town and Country Planning (Appeals) (Scotland) Regulations 2013(c) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation)—

(a) after the definition of “application” insert—

““application for multi-stage consent” has the same meaning as in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011(d)”; and

(b) in the definition of “EIA development” for “has” substitute “and “environmental statement” have”; and

(a) OJ L 20, 26.1.2010, p.7.

(b) S.S.I. 2013/155.

(c) S.S.I. 2013/156.

(d) S.S.I. 2011/139.

- (c) for the definition of “validation date” substitute—
- ““validation date”—
- (a) in the case of an application for planning permission for EIA development or an application for multi-stage consent for EIA development, means the latest of—
- (i) the date on which the application is taken to have been made in terms of regulation 14 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
- (ii) the date on which an environmental statement is submitted in respect of the application; or
- (iii) where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003(a), the date on which that direction was issued; and
- (b) in any other case, means the later of—
- (i) the date on which the application is taken to have been made in terms of regulation 14 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013; or
- (ii) where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, the date on which that direction was issued.”.
- (3) In regulation 3 (notice of appeal)—
- (a) omit “and” following paragraph (2)(a); and
- (b) after paragraph (2)(a) insert—
- “(aa) in the case of an application for multi-stage consent for EIA development, the period of four months after the validation date; and”.
- (4) In Schedule 2 (inquiry session rules) in rule 4(1)(b) for “hearing” substitute “inquiry”.
- (5) In Schedule 4 (closed evidence)—
- (a) in paragraph 5, for “is restricted” substitute “are restricted”; and
- (b) in paragraph 12(1), in the definition of “appointed representative”, after “(who is also a specified person)” insert “appointed”.
- (6) The provisions of regulation 3 of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 continue to have effect as they did immediately before 14th September 2015 in respect of an application for multi-stage consent (as defined in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011) made before that date.
- (7) Paragraphs (a)(iii) and (b)(ii) of the definition of “validation date” (as inserted by paragraph (2)(c)) do not apply in respect of an application made before 14th September 2015.

Amendment of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

8.—(1) Subject to paragraphs (4) and (5), the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013(b) are amended in accordance with paragraphs (2) and (3).

(a) S.S.I. 2003/1.
(b) S.S.I. 2013/157.

- (2) In regulation 2 (interpretation)—
- (a) after the definition of “Act” insert—
- ““application for multi-stage consent” has the same meaning as in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011;” and
- (b) in the definition of “EIA development” for “has” substitute “and “environmental statement” have”; and
- (c) for the definition of “validation date” substitute—
- ““validation date”—
- (a) in the case of an application for planning permission for EIA development or an application for multi-stage consent for EIA development, means the latest of—
- (i) the date on which the application is taken to have been made in terms of regulation 14 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
- (ii) the date on which an environmental statement is submitted in respect of the application; or
- (iii) where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, the date on which that direction was issued; and
- (b) in any other case, means the later of—
- (i) the date on which the application is taken to have been made in terms of regulation 14 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013; or
- (ii) where the Cairngorms National Park Authority has issued a direction in exercise of its powers under article 7(3) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003, the date on which that direction was issued.”.
- (3) In regulation 8(2) (review on failure to determine the application)—
- (a) omit “and” following sub-paragraph (a); and
- (b) after sub-paragraph (a) insert—
- “(aa) in the case of an application for multi-stage consent for EIA development, the period of four months after the validation date; and”.
- (4) The provisions of regulation 8 of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 continue to have effect as they did immediately before 14th September 2015 in respect of an application for multi-stage consent (as defined in regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011) made before that date.
- (5) Paragraphs (a)(iii) and (b)(ii) of the definition of “validation date” (as inserted by paragraph (2)(c)) do not apply in respect of an application made before 14th September 2015.

ALEX NEIL

A member of the Scottish Government

St Andrew’s House,
Edinburgh
4th June 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to—

- (a) the Conservation (Natural Habitats, &c.) Regulations 1994;
- (b) the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010,
- (c) the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010,
- (d) the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011,
- (e) the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013,
- (f) the Town and Country Planning (Appeals) (Scotland) Regulations 2013, and
- (g) the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

The changes come into force on 14th September 2015.

Regulation 2 amends the definition of “European site” in the Conservation (Natural Habitats, &c.) Regulations 1994.

Regulation 3 amends the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 to remove regulation 7(3). Regulation 4 makes the equivalent change to the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010.

Regulation 5 makes various changes to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“the 2011 Regulations”). Paragraph (2) updates various definitions and introduces a new definition of “environmental impact assessment”. Paragraph (3) introduces a new regulation 3A which sets out the meaning of environmental impact assessment and sets out expressly in the substituted regulation 3 that such an assessment is to be carried out before any grant of planning permission for EIA development. Paragraph (4) makes equivalent changes in relation to the process of consideration of applications for multi-stage consent in respect of EIA Development. Paragraph (6) makes consequential changes. Paragraphs (5) and (8) to (10) update legislative references. Paragraph (7) makes changes to the regulation 44 of the 2011 Regulations to ensure that it applies to applications which are before the planning authority for determination including those applications subject to local review under section 43A of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”).

Regulation 6 makes it clear that the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 do not apply to applications made to the Scottish Ministers under section 242A of the 1997 Act.

Regulation 7 amends the Town and Country Planning (Appeals) (Scotland) Regulations 2013. The modifications clarify the provisions relating to time periods and in particular extend the period before which an appeal under section 47(2) of the 1997 Act can be made in respect of an application for multi-stage consent relating to EIA development to 4 months. Regulation 8 makes equivalent amendments to the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

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