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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 102**

**The Town and Country Planning (Environmental  
Impact Assessment) (Scotland) Regulations 2017**

**PART 1**

**INTRODUCTORY**

**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) supplementary information required in accordance with regulation 26(2); or
- (b) any other information provided by the developer which, in the opinion of the planning authority or the Scottish Ministers, as the case may be, is substantive information about a matter to be included in the EIA report in accordance with regulation 5(2);

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

“application website” means a website maintained by the planning authority, or the Scottish Ministers, as the case may be, for the purpose of making publicly available information relating to applications to which these Regulations apply;

“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/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(1);

“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; and
- (e) Historic Environment Scotland;

“decision notice” has the meaning given in regulation 29;

“developer”—

- (a) means, in relation to—

- (i) an application for planning permission, the applicant;
  - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions), the appellant;
  - (iii) to an application for multi-stage consent, the applicant;
  - (iv) a review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), the applicant for planning permission or, as the case may be, for multi-stage consent; and
  - (v) in relation to a ROMP application, the applicant; and
- (b) for the purposes of regulations 7 to 10 and 17 to 19 includes a prospective applicant;
- “the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(2);
- “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(3);
- “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;
- “EIA report” has the meaning given in regulation 5;
- “electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(4);
- “environmental impact assessment” has the meaning given in regulation 4;
- “environmental information” means—
- (a) the EIA report submitted in respect of the proposed development;
  - (b) any additional information submitted in respect of the development;
  - (c) any representations made by any consultation body, or other public body, consulted in respect of the development in accordance with these Regulations; and
  - (d) any representations duly made by any other person about the environmental effects of the development;
- “exempt development” means development in respect of which the Scottish Ministers have made a direction under regulation 6(4) or (6);
- “fish farming” means the breeding, rearing or keeping of fish, excluding shellfish;
- “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))(5) and any material change of use of equipment so placed or assembled;
- “the land” means the land on which the proposed development would be carried out;
- “marine protected area” means an area designated as—
- (a) a nature conservation marine protected area;
  - (b) a demonstration and research marine protected area; or

(2) [S.S.I. 2013/155](#), as amended by [S.S.I. 2014/469](#), [S.S.I. 2015/181](#), [S.S.I. 2015/237](#) and [S.S.I. 2015/249](#).

(3) OJ L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#).

(4) [2000 c.7](#), as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(5) Section 26(6) was amended by section 24(2)(a) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3) and section 3(1)(c) of the Planning etc. (Scotland) Act 2006 (asp 17).

(c) a historic marine protected area,

by a designation order made by the Scottish Ministers under section 67 (marine protected areas) of the Marine (Scotland) Act 2010<sup>(6)</sup>;

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

“multi-stage condition” means—

(a) a condition imposed on planning permission granted on an application made under Part III of the Act or section 242A<sup>(7)</sup> (urgent crown development) where (in terms of the condition) the approval, consent or agreement of the planning authority 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 (in terms of the condition) the approval, consent or agreement of the planning authority 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 imposed on planning permission deemed to be granted by a direction made under section 57 (development with government authorisation), where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the deemed planning permission may be begun;

(d) a condition specified in an enterprise zone scheme, where (in terms of the condition) the approval, consent or agreement of the planning authority 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

(e) a ROMP condition (as defined below);

“prospective applicant” means a person who is minded to make an application for planning permission or an application for multi-stage consent, as the case may be;

“planning authority” means the body to which 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 an application for multi-stage consent; 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) of the Act, fall to determine a ROMP application;

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

“relevant assessment” means, in relation to a proposed development, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the proposed development;

“reporter” means a person appointed by the Scottish Ministers under Schedule 4 of the Act (determination of certain appeals by persons appointed by Scottish Ministers) to determine an appeal under section 47, or to report to them on an application for planning permission referred to them under section 46 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—

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<sup>(6)</sup> 2010 (asp 5).

<sup>(7)</sup> Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning (Scotland) Act 2006 (asp 17).

<sup>(8)</sup> 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.

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

“scoping direction” means a direction made by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“scoping opinion” means the opinion of the planning authority as to the scope and level of detail of information to be provided in the EIA report;

“screening direction” means a direction made by the Scottish Ministers as to whether development is, or is not, EIA development;

“screening opinion” means a written statement of the opinion of the planning authority as to whether development is, or is not, EIA development;

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004<sup>(9)</sup>;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(10)</sup>;
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage<sup>(11)</sup>;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979<sup>(12)</sup>;
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A<sup>(13)</sup> (national scenic areas);

<sup>(9)</sup> 2004 asp 6.

<sup>(10)</sup> S.I. 1994/2716 relevantly amended by S.S.I. 2004/475, S.S.I. 2007/80 and S.S.I. 2015/249.

<sup>(11)</sup> See Command Paper 9424.

<sup>(12)</sup> 1979 c.46.

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

(g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000<sup>(14)</sup>; and

(h) a marine protected area;

“site of special scientific interest” has the same meaning as in section 58(1) (interpretation) of the Nature Conservation (Scotland) Act 2004<sup>(15)</sup>;

“supplementary information” has the meaning given in regulation 26(3); and

“Union legislation” means any enactment in national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties.

(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) References in regulations 6(2)(c) and (3), 11(1)(c), 12(1), 13(1)(c), 14(1), 16(1), 17(11), 18(9), 20(1)(a), 21 to 25, 33(1), 34(1), 35(1) and 49(3)(b)(ii) to an EIA report include a reference to a report referred to by the developer as an EIA report.

(6) In these Regulations, where a developer submits a revised, updated or supplementary EIA report (or a report which the developer refers to as such) references to an EIA report are to be treated as including a reference to that revised, updated or supplementary EIA report.

(7) 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.

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

(a) determination of an application by a person appointed for that purpose by virtue of a scheme of delegation prepared under section 43A(1)<sup>(16)</sup> (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.

(9) 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.

(10) These Regulations apply in respect of an application for planning permission made by virtue of section 33 (planning permission for development already carried out) as if—

(a) references to proposed development (however phrased) are references to the development already carried out in respect of which such application is made; and

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<sup>(14)</sup> 2000 asp 10.

<sup>(15)</sup> 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).

<sup>(16)</sup> Section 43A was inserted by section 17 of the Planning etc. (Scotland) Act 2006 (asp 17).

- (b) references to the land on which the proposed development would be carried out are references to the land on which that development has been carried out.