

POLICY NOTE

THE TRANSPORT AND WORKS (SCOTLAND) ACT 2007 (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2017

SSI 2017/138

The above instrument was made in exercise of the powers conferred by Section 2(2) of the European Communities Act 1972. The instrument is subject to affirmative procedure.

Section 2(2) of the European Communities Act 1972 is the enabling power for the provisions in these Regulations which transpose the requirements of Directive 2014/52/EU into domestic legislation.

Policy Objectives

Introduction

The purpose of these Regulations is to amend the Transport and Works (Scotland) Act 2007 (“the 2007 Act”) in order to implement paragraphs (2), (8) to (10) and (13) of Article 1 of Directive 2014/52/EU (“the 2014 Directive”) which amend Directive 2011/92/EU (“the 2011 Directive”). A separate update has also been undertaken for the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 through the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017. The Regulations and Rules together integrate environmental considerations into the preparation of projects in the Scottish Transport and Works regime with a view to reduce their environmental impact.

The Environmental Impact Assessment Directive aims to ensure the authority giving the primary consent for a particular project makes its decision in full knowledge of any likely significant effects on the environment. New provisions take into account the requirements of the amended Directive, which seek to define, clarify and expand upon aspects of the Assessment process, on the basis of minimal additional regulatory burden, whilst ensuring protecting of the environment.

Key changes

The following is a summary of the main changes made to the 2011 Directive by the 2014 Directive as they apply to these Regulations which amend the 2007 Act. The 2014 Directive also makes allowance for some transitional arrangements. References to “current” requirements are to those under the 2011 Directive before amendment by the 2014 Directive.

Decisions and Monitoring

Article 1(8) of the 2014 Directive replaces the current Article 8. Article 8 currently requires the competent authority to take into consideration the information gathered under Articles 5, 6 and 7 when making a decision on development consent. Regulation 5, which amends section 12 of the 2007 Act, allows for the information submitted by the applicant and also the information obtained as a result of consultation with the consultation bodies and the public to be taken into account.

Article 1(9) of the 2014 Directive introduces a new Article 8a. This sets out certain information which is to be included in the decision to grant, or refuse, development consent. A decision to grant development consent must incorporate the competent authority's reasoned conclusion on the environmental impacts. Regulation 5 amends section 12 of the 2007 Act to set out the information which a decision notice must contain and in particular requires a decision notice to include a description of any mitigation measures and to confirm that the consenting authority is satisfied that the reasoned conclusion" (i.e. on the significant effects of the project on the environment which is required as part of the EIA process) is still up to date. In addition the new Article 8a introduces measures relating to the inclusion of monitoring measures and therefore regulation 6 inserts a new section 20A into the 2007 Act to require monitoring measures to be carried out where it is appropriate to do so.

Article 1(10) of the 2014 Directive makes changes to Article 9 of the 2011 Directive. Article 9 is currently a duty to inform the public that a decision has been made to grant or refuse development consent and to make certain information available to the public. The amended terms of Article 9 extend this duty to include bodies which must be consulted in accordance with Article 6(1). Regulation 5 amends section 12 of the 2007 Act to provide that a copy of the decision notice must be –

(a) published by the Scottish Ministers on a website; and

(b) sent to the consultation bodies and to members of the public who made objections or representations in accordance with rules made under section 8 of the 2007 Act.

Offences

New Article 10a, inserted by Article 1(13) of the 2014 Directive, provides for penalties applicable to infringements of the national provisions adopted pursuant to the Directive. Regulation 6 inserts a new section 20B into the 2007 Act to provide that it is an offence for a person to knowingly or recklessly make a false or misleading statement or, with the intent to deceive, uses a false or misleading document or withholds material information in order to obtain a favourable decision on an application. In addition, regulation 6 inserts a new section 20C to apply the offence in section 20B to bodies corporate, Scottish partnerships and Scottish unincorporated associations.

Transitional Arrangements

Article 3(1) of the 2014 Directive provides for transitional measures concerning certain applications for EIA screening of projects which are listed in Annex II of the 2011 Directive. The article states that where an application for screening for such projects has been initiated prior to 16 May 2017 then that screening application will be subject to the current 2011 Directive. This is reflected in Regulation 7.

Article 3(2) of the 2014 Directive provides transitional measures whereby the current 2011 Directive will continue to apply, as unamended by the 2014 Directive, for applications in which the applicant for an order under section 1 of the 2007 Act has, before 16th May 2017, submitted an environmental statement or where a scoping opinion has been sought. This is reflected in Regulation 7.

Consultation

The Scottish Government consulted on proposals for amending EIA legislation through *The Consultation on Transposition of Environmental Impact Assessment Directive 2014/52/EU* between August and October 2016. The comments received have helped to inform the final statutory instrument. The responses, analysis paper and a full list of those consulted and who agreed to the release of this information are available on the Scottish Government website at <http://www.gov.scot/Publications/2016/08/2499>.

Impact Assessments

A suite of impact assessments have been undertaken and an Equality Impact Assessment (EQIA) has been published on the Scottish Government website. This found that the legislation is not likely to generate any negative impacts on any of the equalities groups. In addition a strategic environmental pre-screening exercise and Children's Rights and Wellbeing screening have determined that the legislation is again unlikely to have a significant impact on the environment or a negative impact on children's rights and wellbeing.

Financial Effects

The Scottish Government consulted on a draft partial Business and Regulatory Impact Assessment (BRIA) as part of its August 2016 consultation paper. The partial BRIA concluded that some additional procedural and financial requirements will fall on the Scottish Ministers and the Consultation Bodies, and some additional procedural and financial requirements may fall to developers. The Scottish Government does not consider there will be any significant costs over and above those of compliance with existing statutory provision on EIA. Responses to the consultation have not altered this overall view and minor amendments have been made to the final BRIA to reflect the responses received.

Transport Scotland
Transport Policy Directorate

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