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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 168**

**AGRICULTURE  
ELECTRICITY  
ENVIRONMENTAL PROTECTION  
FORESTRY  
LAND DRAINAGE  
TOWN AND COUNTRY PLANNING  
WATER**

**The Environmental Impact Assessment (Miscellaneous  
Amendments) (Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>25th May 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>31st May 2017</i>
<i>Coming into force</i>	- -	<i>30th June 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1), section 36C(2) of the Electricity Act 1989(2), section 40 of the Town and Country Planning (Scotland) Act 1997(3) and all other powers enabling them to do so.

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- (1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”); schedule 8, paragraph 15(3), which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#), (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), schedule 1, Part 1. 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 1998 Act. Functions relating to the assessment of the effects of certain electricity works projects on the environment are exercisable concurrently by the Scottish Ministers and Minister of the Crown by virtue of [S.I. 1999/1750](#), article 3 and schedule 2.
- (2) [1989 c.29](#). Section 36C was inserted by section 20(2) of the Growth and Infrastructure Act [2013 \(c.27\)](#).
- (3) [1997 c.8](#). Section 40 was amended by the Water Environment and Water Services (Scotland) Act [2003 \(asp 3\)](#), section 24(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

## Citation and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 and come into force on 30th June 2017.

## Amendment of the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

2.—(1) The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017(4) are amended in accordance with paragraphs (2) to (18).

(2) In regulation 4 (environmental impact assessment)—

- (a) in paragraph (3)(b) for “wild flora” substitute “of wild fauna and flora”; and
- (b) in paragraph (6)(b) for “that the” substitute “that”.

(3) In regulation 9(4)(a)(i) (screening opinions – time period for decision) for “if earlier of” substitute “if earlier” and for “views of the planning authority” substitute “views of the planning authority”.

(4) In regulation 11(1) (EIA application made without an EIA report) omit “a report referred to by the developer as”.

(5) In regulation 13 (procedure to facilitate preparation of EIA reports)—

- (a) in paragraph (2) for “purpose, of” substitute “purpose of,”; and
- (b) in paragraph (5)(b) for “11(1)” substitute “11(2)”.

(6) In regulation 14(2)(g) (publication of EIA report) for “the how” substitute “how”.

(7) In regulation 18(1) (copies of EIA report for the public) for “21(1)” substitute “14(1)”.

(8) In regulation 19(4) (additional information and evidence relating to EIA reports) omit “it”.

(9) In regulation 20 (publication of additional information)—

- (a) in paragraph (3)(c) after “inspection” where it first occurs insert “free of charge”; and
- (b) after paragraph (6) insert—

“(7) Where additional information is provided to the Scottish Ministers the developer must ensure that a reasonable number of copies of the additional information are available for inspection at any place named in the notice under paragraph (1) as a place at which copies of the additional information may be inspected.

(8) The developer must provide copies of the additional information in accordance with the terms of the notice under paragraph (1) and where that notice includes an address at which copies of the additional information may be obtained the developer must ensure that a reasonable number of copies of the additional information are available at that address.”.

(10) In regulation 21(5) (decision notice)—

- (a) in paragraph (a) of the definition of “mitigation measures” for “planning permission” substitute “Electricity Act consent or a condition subject to which any planning permission is deemed to be granted by virtue of a direction given under section 57(2) or (2ZA) of the 1997 Act”; and
- (b) in the definition of “monitoring measures” for “by virtue of” to the end of that definition substitute—

“by virtue of—

- (a) a condition imposed on the grant of Electricity Act consent or a condition subject to which any planning permission is deemed to be granted by virtue of a direction given under section 57(2) or (2ZA) of the 1997 Act; or
  - (b) a planning obligation;”
- (11) In regulation 27(1) (modification of regulations relating to applications for multi-stage consent) omit “references” where it first occurs.
- (12) In regulation 28(2)(a)(iii) (application of regulations to variation applications) for “references if they are” substitute “if they are references”.
- (13) In regulation 29(3) (development in Scotland likely to have significant effects in an EEA state other than the United Kingdom) for “(2)(c)” substitute “(2)(a)”.
- (14) In regulation 30 (projects in another EEA state likely to have significant transboundary effects)—
- (a) in paragraph (1)(c) for “those authorities” substitute “the consultation bodies”; and
  - (b) in paragraph (2) omit “, insofar as they are concerned,”.
- (15) In regulation 34 (service of notices etc.) for “30 to 32” substitute “31 to 33”.
- (16) In regulation 39 (offences by bodies corporate etc.)—
- (a) in paragraph (1) for “Subsection” substitute “Paragraph”; and
  - (b) in paragraph (3) for “subsection” substitute “paragraph”.
- (17) After regulation 40(2) (transitional provisions – general) insert—
- “(2A) Paragraphs (1) to (3) of regulation 20 (publication of additional information) do not apply to additional information falling within paragraph (b) of the definition of “additional information” in regulation 2(1) which is received by the Scottish Ministers in relation to an application for Electricity Act consent before 16th May 2017 where before that date notice has been given under regulation 14A(2) of the 2000 Regulations in relation to that application.”.
- (18) In schedule 4 (information for inclusion in environmental impact assessment reports)—
- (a) in paragraph 1(d) for “radiation” substitute “radiation”;
  - (b) in paragraph 5 for “92/43/EEC3” substitute “92/43/EEC”;
  - (c) in paragraph 8 for “this Directive” substitute “the Directive”; and
  - (d) in paragraph 9 for “points” substitute “paragraphs”.

### **Amendment of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017**

- 3.—(1)** The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017(5) are amended in accordance with paragraphs (2) to (7).
- (2) In regulation 2(1) (interpretation) in the definition of “developer”—
- (a) in paragraph (a)(iii) omit “to”; and
  - (b) in paragraph (a)(v) omit “in relation to”.
- (3) In regulation 18(7) (scoping directions of the Scottish Ministers) after “The bodies” insert “are”.
- (4) In regulation 19 (procedure to facilitate preparation of EIA reports)—
- (a) in paragraph (5)(b) omit “the planning authority or body must”; and

- (b) in paragraph (6)(b) for “11(1)” substitute “11(2)”.
- (5) In regulation 42 (projects in another EEA state likely to have significant transboundary effects)—
  - (a) in paragraph (1)(c) for “those authorities” substitute “the consultation bodies”; and
  - (b) in paragraph (2) omit “, insofar as they are concerned,”.
- (6) In regulation 55 (offences by bodies corporate etc.)—
  - (a) in paragraph (1) for “Subsection” substitute “Paragraph”; and
  - (b) in paragraph (3) for “subsection” substitute “paragraph”.
- (7) In schedule 4 (information for inclusion in environmental impact assessment reports)—
  - (a) in paragraph 1(d) for “radiation” substitute “radiation”;
  - (b) in paragraph 5 for “92/43/EEC3” substitute “92/43/EEC”; and
  - (c) in paragraph 8 for “this Directive” substitute “the Directive”.

#### **Amendment of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017**

- 4.—(1) The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017(6) are amended in accordance with paragraphs (2) to (4).
- (2) In regulation 14(4)(a) (requests for screening directions by the Scottish Ministers) after “90 days beginning with the date of” insert “receipt of”.
- (3) In regulation 15 (requests for scoping opinions of the Commissioners)—
  - (a) in paragraph (2)(a) before “a plan” insert “a description of the location of the forestry project, including”; and
  - (b) in paragraph (5)(a) after “project” insert “, including its location and technical capacity”.
- (4) In regulation 18(2)(f) (publication of EIA report) after “after” insert “the”.

#### **Amendment of the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017**

- 5.—(1) The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017(7) are amended in accordance with paragraphs (2) to (4).
- (2) In regulation 2(1) (interpretation)—
  - (a) for the definition of “project” substitute—
    - ““project” means—
    - (a) the execution of construction works or other installations or schemes; or
    - (b) other interventions in the natural surroundings and landscape, involving—
      - (i) the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
      - (ii) restructuring of rural land holdings on agricultural land;
      - (iii) irrigation; or
      - (iv) drainage;”;

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(6) S.S.I. 2017/113.

(7) S.S.I. 2017/114.

- (b) in the definition of “scoping opinion” omit “[why not written statement]”.
- (3) In regulation 45 (offences by bodies corporate)—
  - (a) in paragraph (1) for “Subsection” substitute “Paragraph”; and
  - (b) in paragraph (3) for “subsection” substitute “paragraph”.
- (4) In regulation 48 (application of Part 2 to land drainage) for “EIA Project” substitute “EIA project”.

### **Amendment of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017**

6.—(1) The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>(8)</sup> are amended in accordance with paragraphs (2) to (10).

- (2) In regulation 2(1) (interpretation)—
  - (a) after the definition of “the 2010 Act” insert—

““the 2007 Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007<sup>(9)</sup>”;
  - (b) after the definition of “application website” insert—

““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](#)<sup>(10)</sup>”;
  - (c) in the definition of “environmental statement” for “the Marine Works (Environmental Impact Assessment) Regulations 2007” substitute “the 2007 Regulations”.
- (3) In regulation 11(2) (screening opinions – time period for decision) after “date of” insert “receipt of”.
- (4) In regulation 16(1) (publication of EIA report) omit “or in such other manner as they consider appropriate”.
- (5) In regulation 22 (publication of additional information)—
  - (a) in paragraph (3)(c) after “inspection” where it first occurs insert “free of charge”; and
  - (b) after paragraph (6) insert—

“(7) Where additional information is provided to the Scottish Ministers the applicant must ensure that a reasonable number of copies of the additional information are available for inspection at any place named in the notice under paragraph (1) as a place at which copies of the additional information may be inspected.

(8) The applicant must provide copies of the additional information in accordance with the terms of the notice under paragraph (1) and where that notice includes an address at which copies of the additional information may be obtained the applicant must ensure that a reasonable number of copies of the additional information are available at that address.”.
- (6) In regulation 34 (electronic communications – general)—
  - (a) in paragraph (4)(b) for “26” substitute “30”; and
  - (b) in paragraph (4)(c) for “30” substitute “31”.

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<sup>(8)</sup> S.S.I. 2017/115.

<sup>(9)</sup> S.I. 2007/1518 as amended by S.I. 2011/735, S.I. 2011/1043, and S.I. 2015/446.

<sup>(10)</sup> OJ L 140, 5.6.2009, p.114, as last amended by [Directive 2011/92/EU](#) (OJ L 26, 28.1.2012, p.1).

(7) After regulation 40(2) (transitional provisions – general) insert—

“(2A) Paragraphs (1) to (3) of regulation 22 (publication of additional information) do not apply to additional information falling within paragraph (b) of the definition of “additional information” in regulation 2(1) which is received by the Scottish Ministers in relation to an application for regulatory approval before 16th May 2017 where before that date notice has been given under regulation 16(1) of the 2007 Regulations publicising that information in relation to that application.”

(8) In regulation 41 (transitional provisions – requests for screening opinions) for “made under 10(1)” substitute “made under regulation 10(1)”.

(9) In schedule 1 (descriptions of projects for the purposes of the definition of “schedule 1 works”), in the interpretation provision, in the definition of ““nuclear power station” and “other nuclear reactor”” for “is” substitute “are”.

(10) In schedule 2 (descriptions of projects and applicable thresholds and criteria for the purposes of the definition of “schedule 2 works”) in column 2 of entry 3(c) of the table, in sub-paragraph (ii) after “operation of” insert “which”.

St Andrew’s House, Edinburgh  
25th May 2017

*R CUNNINGHAM*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make minor changes and corrections to the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017, the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017. A copy of this instrument is being issued free of charge to all known recipients of those instruments.