
STATUTORY INSTRUMENTS

1994 No. 2012 (S.91)

**TOWN AND COUNTRY PLANNING, SCOTLAND
ELECTRICITY
ROADS AND BRIDGES, SCOTLAND
LAND DRAINAGE**

**The Environmental Assessment
(Scotland) Amendment Regulations 1994**

<i>Made</i>	- - - -	<i>19th July 1994</i>
<i>Laid before Parliament</i>		<i>29th July 1994</i>
<i>Coming into force</i>	- -	<i>19th August 1994</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on him by the said section 2, section 26B of the Town and Country Planning (Scotland) Act 1972⁽³⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Assessment (Scotland) Amendment Regulations 1994 and shall come into force on 19th August 1994.

(2) In these Regulations “the 1988 Regulations” means the Environmental Assessment (Scotland) Regulations 1988⁽⁴⁾.

(3) Any reference in these Regulations to a numbered regulation, Schedule, paragraph or sub-paragraph shall, unless the context otherwise requires, be construed as a reference to the regulation, Schedule, paragraph or sub-paragraph so numbered in the 1988 Regulations.

(1) S.I. 1988/785.

(2) 1972 c. 68.

(3) 1972 c. 52; section 26B was inserted by section 48 of the Planning and Compensation Act 1991 (c. 34).

(4) S.I. 1988/1221; amended by S.I. 1990/526.

Amendments to the 1988 Regulations

2. The Schedule to these Regulations shall have effect for the purpose of amending the 1988 Regulations.

Transitional provision

3.—(1) The amendments made to—

- (a) regulations 4, 16(6), 18 and 21 and Schedule 2 shall not apply to an application for planning permission;
- (b) regulation 40 shall not apply to an electricity application within the meaning of Part III of the 1988 Regulations; and
- (c) regulation 53 shall not apply to a specific development application within the meaning of Part IV of the 1988 Regulations,

where such application for planning permission, electricity application or specific development application as the case may be was made before the coming into force of these Regulations.

(2) The amendments made to regulation 59 shall not apply in relation to any environmental statement where copies have been provided in terms of regulation 59(1) before the coming into force of these Regulations.

Amendments of the Roads (Scotland) Act 1984

4. The Roads (Scotland) Act 1984(5) shall be amended as follows:—

- (a) in section 20A(2), for the words “If he determines” there shall be substituted the words “Where it appears to him”; and after the words “, a statement” there shall be inserted the following words:—
 - “identifying, describing and assessing in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of the Directive, the direct and indirect effects of the project on the factors mentioned in Article 3 of the Directive and”;
- (b) in section 55A(2)(6), for the words “If he determines” there shall be substituted the words “Where it appears to him”;
- (c) at the end of section 55A(6)(b), there shall be added the following words:—
 - “and in his decision shall state that he has considered the matters set out in subsection (6) (a) above.”;
- (d) after paragraph 7(1A) of Schedule 1 there shall be inserted the following sub-paragraph:—
 - “(1B) When the Secretary of State issues his decision as to whether or not to make the order he shall state that he has considered the matters set out in paragraph 7(1A) above.”;
- (e) after paragraph 13(1A) of Schedule 1 there shall be inserted the following sub-paragraph:—
 - “(1B) When the Secretary of State issues his decision as to whether or not to make the scheme, he shall state that he has considered the matters set out in paragraph 13(1A) above.”.

(5) 1984 c. 54, amended by S.I. 1988/1221.

(6) Section 55A(2) was amended by section 42(2) of the New Roads and Street Works Act 1991 (c. 22).

St Andrew's House,
Edinburgh
19th July 1994

Ian Lang
One of Her Majesty's Principal Secretaries of
State

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SCHEDULE

Regulation 2

AMENDMENTS TO THE 1988 REGULATIONS

1. In regulation 4(1) in the definition of “special road”, for “a special road” substitute “any road in respect of which an assignation has been granted under section 28(1) of the New Roads and Street Works Act 1991(7) and any other road”.

2. In regulation 5(a) before “do not apply” insert “in accordance with Article 2(3) of Council Directive 85/337 EEC”(8).

3. In regulation 6–

- (a) in paragraph (2) at the end add “and state in their decision that they have done so.”; and
- (b) in place of paragraph (3), substitute “Subject to any direction by the Secretary of State, for the purposes of paragraph (1)(b) the planning authority shall decide whether the proposed development would be likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location.”.

4. In regulation 16(6)–

- (a) after the words “where the” insert the words “the Secretary of State is or the”; and
- (b) after the words “to be incurred by” insert the words “the Secretary of State or”.

5. In regulation 18–

- (a) in paragraph (1)(b) for “and of the environmental statement” substitute “and 3 copies of the environmental statement”; and
- (b) in paragraph (2) in place of “3 additional copies” substitute “5 additional copies”.

6. In regulation 21 for “a copy” and “one” substitute “three copies”.

7. In regulation 22 after paragraph (1) insert the following paragraph:–

“(1A) Where further information is requested in accordance with paragraph (1), except insofar as such further information is required to be provided for the purposes of a local inquiry held under the Act and the request for such further information states that it is to be provided for such purposes, regulations 17, 18 and 19 shall apply to the submission of such further information as they apply to the submission of an environmental statement subject to any necessary modifications and regulation 16 shall similarly apply subject to substitution of “in Schedule 6” in place of “in Schedule 5”.”.

8. At the end of regulation 28(3) insert “and the Secretary of State shall consider the environmental statement and issue a decision as to whether or not to require the planning authority to make an application to him for planning permission and shall state in his decision that he has considered such statement.”.

9. In place of regulation 29 substitute the following:–

“In cases where paragraph (1) of regulation 28 applies the Secretary of State when he grants planning permission under section 32 for development by a planning authority or issues a decision not to require the planning authority to make an application to him for planning permission shall inform the authorities, bodies or persons consulted under regulation 27(3) of that decision.”.

10. In regulation 35–

- (a) in paragraph (2) at the end insert “and states in his decision that he has done so.”; and
- (b) in place of paragraph (3) there shall be substituted the following:–

(7) 1991 c. 22.

(8) OJ No. L175, 5.7.85, p.40.

“(3) Subject to any direction by the Secretary of State, for the purposes of paragraph (1) (b) the Secretary of State shall decide after consultation with the planning authority whether the proposed development would be likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location.”.

11. In regulation 36(b) after the words “be exempt from these Regulations” insert “in accordance with Article 2(3) of Council Directive [85/337/EEC](#)”.

12. In regulation 40(1) in place of “submits an environmental statement to the Secretary of State the applicant shall send a copy” substitute “provides an environmental statement, he shall also provide the Secretary of State with 2 copies of the statement and shall provide one copy of the statement”.

13. In regulation 43 after paragraph (1) insert the following paragraph:–

“(1A) Where further information is requested in accordance with paragraph (1), except insofar as such information is required to be provided for the purposes of a public inquiry held under the Electricity Act 1989(9) and the request for such further information states that it is to be provided for such purposes, regulations 40 to 42 shall apply to the submission of such further information as they apply to the submission of an environmental statement, subject to any necessary modifications.”.

14. In regulation 48–

(a) in place of paragraph (2) substitute–

“(2) The development corporation shall not decide to carry out nor shall they grant authorisation of a specific development to which this regulation applies, unless they have taken into consideration environmental information in respect of the proposed specific development and in their decision to carry out specific development, or, as the case may be, in the grant of authorisation they shall state that they have taken account of the environmental information.”; and

(b) in place of paragraph (3) substitute–

“(3) Subject to any direction by the Secretary of State, for the purposes of paragraph (1) (b) the development corporation shall decide whether the proposed development would be likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location.”.

15. In regulation 49(b) after “from these Regulations” insert “in accordance with Article 2(3) of Council Directive [85/337/EEC](#)”.

16. In regulation 53–

(a) in paragraph (1)(b) for “of the environmental statement” substitute “3 copies of the environmental statement”; and

(b) in paragraph (2) for “3 additional copies” substitute “5 additional copies”.

17. In regulation 54 after paragraph (1) insert the following paragraph:–

“(1A) Where further information is requested in accordance with paragraph (1), regulations 51 to 53 shall apply to the submission of such further information as they apply to the submission of an environmental statement, subject to any necessary modifications.”.

18. In regulation 59 the following shall be substituted in place of sub-paragraph (a) of paragraph (1):–

“(a) they shall provide 3 copies thereof to, and serve a notice in accordance with paragraph (2) on, the Secretary of State;

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- (aa) they shall provide a copy thereof to, and serve a notice in accordance with paragraph (2) on,—
 - (i) each authority, body or person mentioned in Schedule 4 as appears relevant to the development corporation;
 - (i) any person who holds a notifiable interest in neighbouring land; and
 - (iii) such other person, if any, appearing to the development corporation to have an interest; and”.

19. In regulation 60(1) in place of the words from the beginning to “to be carried out by themselves,” substitute “The development corporation shall take into account the environmental information in making their determination in respect of a proposed specific development to be carried out by themselves and shall state in their decision that they have done so, and”.

20. For regulation 64(2) substitute—

“For the purposes of this Part of these Regulations” drainage works to which these Regulations apply “means drainage works which the Secretary of State has decided would have significant effects on the environment by virtue *inter alia* of their size, nature or location and which require to be authorised under the Act.”.

21. In regulation 65—

- (a) in place of “drainage works which are likely to have a significant effect on the environment by virtue *inter alia* of their nature, size or location” substitute “drainage works to which these Regulations apply”; and
- (b) at the end insert, “If the Secretary of State decides to make such an improvement order he shall inform every owner of agricultural land situated in the area to which the improvement order relates of his decision and he shall state in his decision that he has taken into consideration the said environmental information.”.

22. In regulation 67(1)—

- (a) in place of “drainage works likely to have a significant effect on the environment by virtue *inter alia* of their nature, size or location” substitute “drainage works to which these Regulations apply”; and
- (b) after “an environmental statement” insert “, together with two additional copies,”.

23. In regulation 68—

- (a) insert “(1)” at the beginning; and
- (b) insert at the end the following paragraph:—
 - “(2) Where further information is requested in accordance with paragraph (1), regulation 67(2) shall apply to the submission of such further information as it applies to the submission of an environmental statement.”.

24. In paragraph 3 of Schedule 2 after sub-paragraph (k) insert the following sub-paragraph:—

“(l) a wind generator.”.

25. In paragraph 10 of Schedule 2 after sub-paragraph (j) insert the following sub-paragraphs:—

- “(k) a motorway service area;
- (l) coast protection works.”.

26. After Schedule 5 insert the following schedule:—

“SCHEDULE 6

Regulation 22(1A)

THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) REGULATIONS 1988
NOTICE UNDER REGULATION 16 AS APPLIED BY REGULATION 22(1A)

Notes

- (a)* Insert address for location of development.
- (b)* Insert name of planning authority or insert Secretary of State as appropriate.
- (c)* Insert name of applicant.
- (d)* Insert description of proposed development.
- (e)* Insert date of notification under Article 9(1) of the General Development Procedure Order.
- (f)* Insert address of planning authority.
- (g)* *Insert other address in the locality at which the further information may be inspected.
- (h)* Insert address where copies of the further information are available.
- (i)* Insert cost of a copy of the further information.
- (k)* Address to be supplied by Secretary of State.

*Delete where inappropriate

Proposed development at *(a)*.....
 Notice is hereby given that further information in relation to an environmental statement has been submitted to *(b)*..... by *(c)*.....

 relating to the planning application in respect of *(d)*..... notified to you under Article 9(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 on *(e)*.....
 A copy of the further information together with the environmental statement and the associated planning application may be inspected at all reasonable hours in the register of planning applications kept by the planning authority for the area at *(f)*..... and also at *(g)**..... during the period of 28 days beginning with the date of this notice.
 Copies of the further information may be purchased from *(k)*..... at a cost of *(i)*.....
 Any person who wishes to make representations to *(b)*..... about the further information should make them in writing within that period *to the Council at *(f)*.....
 *to the Secretary of State at *(k)*.....
 Signed,
 *On behalf of,
 Date.....

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Assessment (Scotland) Regulations 1988 (“the 1988 Regulations”) which are concerned with the implementation in Scotland of Council Directive 85/337/EEC (OJNo. L175, 5.7.85, p.40) on the assessment of the effects of certain public and private projects on the environment.

Schedule 2 to the 1988 Regulations is amended, with the consequence that those Regulations apply to new classes of development. The new classes are introduced by the insertion into Schedule 2 of references to—

- (i) a wind generator;

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- (ii) a motorway service area; and
- (iii) coast protection works.

In addition to minor drafting amendments, the Regulations also amend–

- (a) the definition of “special road” in regulation 4(1) of the 1988 Regulations, to include roads subject to an assignment within the meaning of the New Roads and Street Works Act 1991;
- (b) regulations 18(1)(b), 21, 40(1), 53(1)(b), 59(1)(a) and 67(1), with the effect that the number of copies or additional copies of an environmental statement to be provided, sent or supplied pursuant to those provisions is increased from one to three;
- (c) regulations 18(2) and 53(2), with the effect that the number of copies of an environmental statement to be submitted pursuant to those provisions is increased from 3 to 5;
- (d) regulations 22, 43, 54 and 68, with the consequence that public notice is required to be given of any further information which the applicant or appellant is required to provide under paragraph (1) of the relevant regulation except, in the case of regulations 22 and 43, where the further information is required to be provided for the purposes of a local inquiry held under the Town and Country Planning (Scotland) Act 1972 or the Electricity Act 1989.

Regulation 3 provides that the amendments to regulations 4, 16(6), 18, 21, 40 and 53 of, and Schedule 2 to, the 1988 Regulations do not apply in relation to applications made before the coming into force of these Regulations. It also provides that the amendments made to regulation 59 do not apply in respect of any environmental statement where copies have been provided in terms of that regulation before the coming into force of these Regulations.

Regulation 4 amends certain provisions of the Roads (Scotland) Act 1984 inserted by the 1988 Regulations. Regulation 4(a) amends section 20A(2) to make it clear that the Secretary of State has to make a judgement as to whether a road construction project falls within Annex I of the Directive or within Annex II and is likely to have significant effects on the environment; and also amends that subsection so that any environmental statement shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of the Directive, the direct and indirect effects of the project on the factors mentioned in Article 3 of the Directive.

In relation to certain road improvement projects, regulation 4(b) amends section 55A to make similar amendments to those contained in regulation 4(a).

Regulations 4(c), (d) and (e) provide that the Secretary of State, when publishing or issuing his decision to initiate a road construction project or a road improvement project, shall state that he has considered the environmental statement and opinions expressed on it.

A Compliance Cost Assessment has been prepared in relation to these Regulations. It has been placed in the libraries of both Houses of Parliament and copies may also be obtained from Planning Division, The Scottish Office Environment Department, Room 6/84, New St Andrew’s House, Edinburgh EH1 3TG (031 244 4082).