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SCOTTISH STATUTORY INSTRUMENTS

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**1999 No. 1**

**The Environmental Impact Assessment  
(Scotland) Regulations 1999**

**PART II**

**TOWN AND COUNTRY PLANNING**

**CHAPTER 9**

**UNAUTHORISED DEVELOPMENT**

**Prohibition on the grant of planning permission for unauthorised EIA development**

**29.** The Scottish Ministers shall not grant planning permission under subsection (1) of section 133 (grant or modification of planning permission on appeals against enforcement notices) in respect of EIA development which is the subject of an enforcement notice under section 127 (issue of enforcement notice) (“unauthorised EIA development”) unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

**Screening opinions of the planning authority**

**30.—**(1) Where it appears to the planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, they shall, before the enforcement notice is issued, adopt a screening opinion.

(2) Where it appears to the planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they shall serve with a copy of the enforcement notice a notice (“regulation 30 notice”) which shall—

- (a) include the screening opinion required by paragraph (1) and the written statement required by regulation 4(6); and
  - (b) require a person who gives notice of an appeal under section 130 to submit to the Scottish Ministers with the notice four copies of an environmental statement relating to that EIA development and to provide them with such further copies as they may require under regulation 35(2).
- (3) The authority by whom a regulation 30 notice has been served shall send a copy of it to—
- (a) the Scottish Ministers; and
  - (b) the consultation bodies.

(4) Where an authority provide the Scottish Ministers with a copy of a regulation 30 notice, they shall also provide them with a list of the other persons to whom a copy of the notice has been or is to be sent.

### **Screening directions of the Scottish Ministers**

**31.** Any person on whom a regulation 30 notice is served may apply to the Scottish Ministers for a screening direction and the following shall apply—

- (a) an application under this regulation shall be accompanied by—
  - (i) a copy of the regulation 30 notice;
  - (ii) a copy of the enforcement notice which accompanied it; and
  - (iii) such other information or representations as the applicant may wish to provide or make;
- (b) the applicant shall send to the authority by whom the regulation 30 notice was served, at such time as he applies to the Scottish Ministers, a copy of the application under this regulation and of any information or representations provided or made in accordance with paragraph (a)(iii);
- (c) if the Scottish Ministers consider that the information provided in accordance with paragraph (a) is insufficient to enable them to make a direction, they shall notify the applicant and the authority of the matters in respect of which they require additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice;
- (d) the Scottish Ministers shall send a copy of their direction to the applicant and to the authority and, where they conclude that the matters which are alleged to constitute the breach of planning control comprise or include EIA development, they shall send with the copy of the direction a written statement giving clearly and precisely their full reasons for that conclusion;
- (e) without prejudice to paragraph (d), where the Scottish Ministers direct that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, they shall send a copy of the direction to the consultation bodies.

### **Provision of information**

**32.—**(1) The relevant planning authority and any consultation body shall, if requested by the person on whom the regulation 30 notice was served, enter into consultation with that person to determine whether the authority or body have in their possession any information which he or they consider relevant to the preparation of an environmental statement and, if they have, the authority or body shall make any such information available to that person.

(2) The provisions of paragraphs (5) and (6) of regulation 12 shall apply to information under paragraph (1) as they apply to any information falling within regulation 12(4).

### **Appeal to the Scottish Ministers without a screening opinion or screening direction**

**33.—**(1) Where on consideration of an appeal under section 130 it appears to the Scottish Ministers that the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development and, in either case, no screening opinion has been adopted and no screening direction has been made in respect of that development, they shall, before any notice is served pursuant to regulation 34(a), make such a screening direction.

(2) If the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction, they shall notify the applicant and the authority by whom the notice under section 127 was served of the matters in respect of which they require additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice.

(3) If an appellant to whom notice has been given under paragraph (2) fails to comply with the requirements of that notice—

- (a) the application which is deemed to have been made by virtue of the appeal made under section 130 (“the deemed application”); and
- (b) the appeal in so far as it is brought under the ground mentioned in section 130(1)(a) (“the ground (a) appeal”),

shall lapse at the end of the period specified in the notice.

(4) Paragraphs (d) and (e) of regulation 31 shall apply to a screening direction made under this regulation as they apply to such a direction made under that regulation.

### **Appeal to the Scottish Ministers without an environmental statement**

**34.** Where the Scottish Ministers are considering an appeal under section 130 and the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development, and the documents submitted to them for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, the following procedure shall apply—

- (a) the Scottish Ministers shall, subject to paragraph (b), within the period of three weeks beginning with the day on which they receive the appeal, or such longer period as they may reasonably require, notify the appellant in writing of the requirements of paragraph (c) below;
- (b) notice need not be given under paragraph (a) where the appellant has submitted a statement which he refers to as an environmental statement for the purposes of these Regulations to the Scottish Ministers for the purposes of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) which—
  - (i) relates to the development to which the appeal under section 130 relates; and
  - (ii) is to be determined at the same time as that appeal under section 130;and that statement, any further information, and the representations (if any) made in relation to it shall be treated as the environmental statement and representations for the purpose of regulation 29;
- (c) the requirements of this paragraph are that the appellant shall, within the period specified in the notice or such longer period as the Scottish Ministers may allow, submit to them such number of copies of an environmental statement relating to the unauthorised EIA development in question as may be so specified;
- (d) the Scottish Ministers shall send to the relevant planning authority a copy of any notice sent to the appellant under paragraph (a);
- (e) if an appellant to whom notice has been given under paragraph (a) fails to comply with the requirements of paragraph (c), the deemed application and the ground (a) appeal (if any) shall lapse at the end of the period specified or allowed (as the case may be);
- (f) as soon as reasonably practicable after the occurrence of the event mentioned in paragraph (e), the Scottish Ministers shall notify the appellant and the planning authority in writing that the deemed application and the ground (a) appeal (if any) have lapsed.

### **Procedure where an environmental statement is submitted to the Scottish Ministers**

**35.—(1)** Where the Scottish Ministers receive (otherwise than as mentioned in regulation 34(b)) in connection with an enforcement appeal a statement which the appellant refers to as an environmental statement for the purposes of these Regulations, they shall send a copy of that statement to the relevant planning authority and the consultation bodies, advise them that the

statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations.

(2) The appellant shall provide the Scottish Ministers with such copies of the statement referred to in paragraph (1) as they may require to enable them to fulfil their obligations under that paragraph.

#### **Further information and evidence respecting environmental statements**

**36.**—(1) Paragraphs (1) and (3) of regulation 19 shall apply to statements provided in accordance with this Chapter with the following modifications—

- (a) where the Scottish Ministers notify the appellant under regulation 19(1), the appellant shall provide the further information within such period as they may specify in the notice or such longer period as they may allow;
- (b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allowed (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(2) Regulation 35 shall apply in relation to further information received by the Scottish Ministers in accordance with paragraph (1) as it applies to such a statement as is referred to in that regulation.

#### **Publicity for environmental statements or further information**

**37.**—(1) Where an authority receive a copy of a statement or further information by virtue of regulation 35, they shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name of the appellant and that he has appealed to the Scottish Ministers against the enforcement notice;
- (b) the address or location of the land to which the notice relates and the nature of the development;
- (c) that a copy of the statement or further information may be inspected by members of the public at all reasonable hours;
- (d) an address in the locality in which the land is situated at which the statement or further information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (e) that any person wishing to make representations about any matter dealt with in the statement or further information should make them in writing, no later than 14 days after the date specified in accordance with sub-paragraph (d), to the Scottish Ministers; and
- (f) the address to which any such representations should be sent.

(2) The authority shall as soon as practicable after publication of a notice in accordance with paragraph (1) send to the Scottish Ministers a copy of the notice certified by or on behalf of the authority as having been published in a named newspaper on a date specified in the certificate.

(3) Where the Scottish Ministers receive a certificate under paragraph (2), they shall not determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 14 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

### **Public inspection of documents**

**38.**—(1) The relevant planning authority shall make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept a copy of—

- (a) every regulation 30 notice given by the authority;
- (b) every direction received by the authority under regulation 31(d) or 33(4);
- (c) every notice received by the authority under regulation 34(d); and
- (d) every statement and all further information received by the authority under regulation 35;

and copies of those documents shall remain so available for a period of two years or until they are entered in Part II of the register in accordance with paragraph (2), whichever is the sooner.

(2) Where particulars of any planning permission granted by the Scottish Ministers under section 130 are entered in Part II of the register, the relevant planning authority shall take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (1) as are relevant to the development for which planning permission has been granted.

(3) The provisions of paragraphs (2) and (3) of regulation 21 apply to a deemed application and a grant of planning permission under section 130 as they apply to an application for and grant of planning permission under Part III of the Act.

### **Unauthorised development with significant transboundary effects**

**39.** Regulation 40 shall apply to unauthorised EIA development as if—

- (a) for regulation 40(1)(a) there were substituted—
  - “(a) on consideration of an appeal under section 130, the Scottish Ministers are of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA State; or”;
- (b) in regulation 40(3)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”;
- (c) in regulation 40(3)(b) the words “to which that application relates” were omitted; and
- (d) in regulation 40(6) the word “application” was replaced by the word “appeal”.