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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 139**

**The Town and Country Planning (Environmental  
Impact Assessment) (Scotland) Regulations 2011**

**PART 9**

**SPECIAL CASES**

**Simplified planning zone schemes or enterprise zone orders**

**32.**—(1) This regulation applies to any—

- (a) simplified planning zone scheme adopted or approved;
- (b) order designating an enterprise zone made; and
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations.

(2) No scheme, order or modified scheme to which this regulation applies may—

- (a) grant planning permission for Schedule 1 development; or
- (b) grant planning permission for Schedule 2 development unless that grant is subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

**ROMP applications**

**33.**—(1) These Regulations apply to—

- (a) a ROMP application as they apply to an application for planning permission;
- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a person making a ROMP application as they apply to an applicant for planning permission; and
- (d) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications and additions set out below.

(2) Regulations 9(4) and (5), 11(4) and (5), 12(3) and (4) and 44 do not apply.

(3) In regulation 9(3)—

- (a) for “three” substitute “six”; and
- (b) after “the notice” insert “, or within such other period as may be agreed with the authority in writing,”.

(4) In regulation 11(3)—

- (a) for “three” substitute “six”; and

- (b) after “the notification” insert “, or within such other period as may be agreed with the Scottish Ministers in writing.”.
- (5) In regulation 12(2)—
  - (a) for “three” substitute “six”; and
  - (b) after “the notification” insert “, or within such other period as may be agreed with the Scottish Ministers in writing.”.
- (6) In regulation 10 for “section 47 (right to appeal against planning decisions and failure to take such decisions)” substitute—
 

“paragraphs 17(1) and 17(2) of Schedule 8 to the Act, paragraph 11(1) of Schedule 9 to the Act or paragraph 9(1) of Schedule 10 to the Act (right of appeal)”.
- (7) In regulations 14(9) and 15(8) for “an application for planning permission for” substitute “a ROMP application which relates to another planning permission which authorises”.
- (8) In regulation 17 for “an application for planning permission” substitute “a ROMP application”.
- (9) In regulation 19(2) for “application for planning permission” substitute “ROMP application”.
- (10) In regulation 21(1) for “section 46 or 47” substitute “a ROMP application”.
- (11) For regulation 42 substitute—

**“Application to the Court of Session**

- 42.** For the purposes of Part XI of the Act (validity), the references in section 239, as applied by paragraph 21(3) of Schedule 8, paragraph 16(4) of Schedule 9 or paragraph 9(4) of Schedule 10 to the Act, to action of the Scottish Ministers which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3.”.
- (12) Regulation 45 applies to ROMP development as it applies to development in respect of which a planning application is made.
  - (13) Where the Scottish Ministers or the planning authority notifies the applicant or appellant, as the case may be, that—
    - (a) the submission of an environmental statement is required under regulations 9(1), 11(1), or 12(1) such notification must specify the date by which the environmental statement and compliance with regulations 17 and 18 is required; or
    - (b) additional information is required under regulation 23 such notification must specify the date by which that information is to be provided.
  - (14) The planning permission to which the ROMP application relates must not authorise any minerals development (unless the Scottish Ministers have made a screening direction to the effect that the ROMP development is not an EIA development) if the applicant or the appellant does not—
    - (a) write to the planning authority in accordance with regulation 9(3);
    - (b) write to the Scottish Ministers in accordance with regulation 11(3) or 12(2);
    - (c) submit an environmental statement and comply with regulations 17 and 18 by the date specified by the authority, or the Scottish Ministers in accordance with paragraph (13); or
    - (d) provide additional information and comply with regulation 24 by the date specified by the authority or the Scottish Ministers in accordance with paragraph (13),
 and the planning permission to which the ROMP application relates must not authorise any development consisting of the winning and working of minerals, or involving the depositing of mineral waste, except insofar as it imposes any restoration or aftercare condition, at the end of

the relevant period referred to in regulations 9(3), 11(3) or 12(2) or on the day following the date specified or agreed by the authority for the submission of the environmental statement or additional information until the applicant or appellant has complied with all the provisions referred to in this paragraph which are relevant to the application or appeal in question.

(15) Particulars of the suspension of development referred to in paragraph (14) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

(16) Paragraph (14) does not affect any development carried out under a planning permission before the date of suspension of that development.

(17) Where it falls to—

- (a) a planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 14(6) (b) of Schedule 8, paragraph 9(8) of Schedule 9 or paragraph 6(7) of Schedule 10 to the Act do not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the planning authority has adopted a screening opinion or the Scottish Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;
- (b) a planning authority or the Scottish Ministers to determine a Schedule 1 or a Schedule 2 application—
  - (i) section 36 (register of applications, etc), and any provisions of the Development Management Procedure Regulations made by virtue of that section, have effect with any necessary amendments so that they apply to ROMP applications under paragraph 9(1) of Schedule 9 and paragraph 6(1) of Schedule 10 to the Act as they apply to applications for planning permission; and
  - (ii) where the planning authority is not the authority required to keep the register, the planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 36 as applied by sub-paragraph (i), with regulation 25 as applied by paragraph (1), and with paragraph (12).

(18) Where it falls to the planning authority or the Scottish Ministers to determine an EIA application that is made under paragraph 14(2) of Schedule 8 to the Act, paragraph 16(4) of that Schedule does not apply.

(19) Where it falls to the planning authority to determine an EIA application, the authority must give written notice of their determination of the ROMP application within four months beginning with the date upon which the ROMP application is made or such extended period as may be agreed in writing between the applicant and the authority.

(20) For the purposes of paragraph (19) a ROMP application is not made until—

- (a) a document referred to by the applicant as an environmental statement for the purposes of these Regulations;
- (b) any documents required to accompany that statement; and
- (c) any additional information required under regulation 23,

has been received by the authority.

(21) Where paragraph (17)(a) applies—

- (a) paragraph 17(2) of Schedule 8, paragraph 11(1) of Schedule 9 and paragraph 9(1) of Schedule 10, to the Act (right of appeal) have effect as if there were also a right of appeal to the Scottish Ministers where the planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (19); and

- (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the four months or other period agreed pursuant to paragraph (19).
- (22) In determining for the purposes of—
  - (a) paragraph 14(6)(b) of Schedule 8, paragraph 9(8) of Schedule 9 and paragraph 6(7) of Schedule 10, to the Act (determination of conditions); or
  - (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) as applied by paragraph (21)(b),

the time which has elapsed without the planning authority giving the applicant written notice of their determination in a case where the authority have notified an applicant in accordance with regulation 9(1) that the submission of an environmental statement is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question, no account must be taken of any period before the issue of the direction.

#### **Applications for permission under section 242A**

**34.**—(1) These Regulations apply to an application made (or to be made) to the Scottish Ministers under section 242A(1) (urgent Crown development) subject to the following modifications.

(2) References to “planning authority” are to be treated as references to “the planning authority or the Scottish Ministers, as appropriate”.

(3) Regulations 6(6) and (7), 9(3)(b), 14(7) and (8) and 19(1)(a) do not apply.

(4) In regulation 5 for paragraph (12) substitute—

“(12) The Scottish Ministers must send a copy of any screening direction to the planning authority for the area to which the application relates.”.

(5) In regulation 19—

(a) in paragraph (1)(b) for “the Scottish Ministers” substitute “the planning authority for the area to which the application relates”;

(b) after paragraph (1) insert—

“(1A) Where a planning authority receive a copy of the application and other documents referred to in paragraph (1)(b), they must place a copy of the relevant statement together with a copy of the related application for public inspection at all reasonable hours in the place where the register is kept.”.

(6) For regulation 25—

#### **“Availability of opinions, directions, etc. for inspection**

**25.**—(1) Where the Scottish Ministers—

(a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;

(b) receive a request under regulation 14(1); or

(c) make a screening direction, scoping direction or direction under regulation 5(4),

before the application is made for the development in question, the Scottish Ministers must send a copy of the opinion, request or direction to the planning authority for the area to which the application relates.

(1) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

(2) Where the planning authority receive copies of an opinion, request or direction under paragraph (1) they must take steps to secure that the documents are made available for public inspection at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.”.

(7) In regulation 26—

(a) for paragraph (1) substitute—

“(1) Where an EIA application is determined or a draft decision is issued by the Scottish Ministers they must—

- (a) notify the planning authority for the area to which the application relates and the bodies consulted of the decision;
- (b) provide the planning authority with a statement containing—
  - (i) the content of the decision and any conditions attached thereto;
  - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
  - (iii) a description, where necessary, of the main measures to avoid, reduce and if possible, offset the major adverse effects of the development; and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”;

(b) for paragraph (2) substitute—

“(2) The planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (1)(a)—

- (a) make available for public inspection at an office of the planning authority where the register may be inspected a copy of the statement referred to in paragraph (1) (b); and
- (b) inform the public of the decision (and of where the statement referred to in paragraph (1)(b) may be inspected), by publishing in a newspaper circulating in the locality in which the land is situated or by other such means as are reasonable in the circumstances.”; and

(c) paragraph (3) is omitted.

(8) Regulation 29 applies to the determination of an application for multi-stage consent by the Scottish Ministers relating to a grant of planning permission under section 242A as it applies to the determination of an application for multi-stage consent referred to them.

### **Marine fish farming**

**35.**—(1) These Regulations apply to an application for planning permission relating to fish farm development subject to the following modifications.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “the consultation bodies” after paragraph (f) insert—

“(g) any district salmon fishery board in whose area the proposed development is to be situated.”; and

- (b) after the definition of “the Directive” insert ““district salmon fishery board” has the meaning given in section 43 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(2)”.
- (3) In regulation 6(2)(a) for “land” substitute “location of the development”.
- (4) In regulation 14(2)(a) for “land” substitute “location of the development”.
- (5) Omit regulation 17 and for regulation 18 substitute—

**“Publicity for environmental statements for fish farming**

**18.**—(1) Where the planning authority or the Scottish Ministers receive an environmental statement relating to an EIA application relating to fish farm development, they must publish as soon as possible in a local newspaper circulating in the locality in which the proposed development is to be situated and in The Edinburgh Gazette a notice stating—

- (a) that copies of the environmental statement and other documents submitted with the application may, during the period of four weeks after first publication of the notice, be inspected in—
  - (i) a specified office of the planning authority, being an office of the relevant authority in the locality nearest to the proposed development; and
  - (ii) a specified Post Office being a Post Office in the locality nearest to the proposed development;
- (b) the address at which copies of the application and the environmental statement may be obtained;
- (c) the cost of a copy of the environmental statement;
- (d) that representations may be made to the planning authority, at the office referred to in paragraph (1)(a)(i), within the period specified in paragraph (1)(a); and
- (e) the nature of possible decisions.

(2) Prior to the first publication of the notice referred to in paragraph (1) the relevant authority are to—

- (a) make available in the office of the planning authority referred to in paragraph (1)(a)(i); and
- (b) send to the Post Office referred to in paragraph (1)(a)(ii),

the documents referred to in paragraph (1)(a).

(3) Where the planning authority or the Scottish Ministers are required to publish a notice in accordance with paragraph (1), the applicant must pay the cost to be incurred by the relevant authority in arranging the advertisement at the time of submission of the statement.”.

(6) Where an application for planning permission relates in part to fish farm development and in part to other development, the modifications specified in this regulation apply only for the purposes of the application to the extent that it relates to fish farm development.