

2017 No. 101

ELECTRICITY

**The Electricity Works (Environmental Impact Assessment)
(Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>30th March 2017</i>
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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), section 36C(2) of the Electricity Act 1989(b) and all other powers enabling them to do so.

They have taken into account the selection criteria in Annex III to Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(c).

PART 1

INTRODUCTORY

Citation, commencement, application and extent

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and come into force on 16th May 2017.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), schedule 8, paragraph 15(3), the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and Part 1 of the schedule of the European Union (Amendment) Act 2008 (c.7). 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.

(b) 1989 c.29. Section 36C was inserted by section 20(2) of the Growth and Infrastructure Act 2013 (c.27).

(c) OJ L 26, 28.1.2012, p.1 amended by Directive 2014/52/EU, OJ L 124, 25.04.2014, p.1.

- (2) Subject to Part 12, these Regulations apply in the case of—
- (a) an application under section 36 of the Electricity Act 1989(a) for consent to construct, extend or operate a generating station;
 - (b) an application under section 37 of the Electricity Act 1989(b) for consent to install or keep installed an electric line above ground;
 - (c) a direction under section 57(2) or (2ZA) (deemed planning permission for development with government authorisation) of the 1997 Act(c);
 - (d) an application for multi-stage consent; and
 - (e) a variation application.
- (3) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997;

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000(d);

“additional information” means—

- (a) supplementary information required in accordance with regulation 19(2); or
- (b) any other information provided by the developer which, in the opinion of the Scottish Ministers, is substantive information about a matter to be included in the EIA report in accordance with regulation 5(2);

“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in an Electricity Act consent where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun;

“application website” means a website maintained by the developer for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the consultation bodies” means—

- (a) the planning authority;
- (b) Scottish Natural Heritage;
- (c) the Scottish Environment Protection Agency; and
- (d) Historic Environment Scotland;

“decision notice” has the meaning given in regulation 21;

“developer”—

- (a) means, in relation to—
 - (i) an application for Electricity Act consent, the applicant;
 - (ii) a variation application, the applicant,
 - (iii) an application for multi-stage consent, the applicant; and
- (b) for the purposes of regulations 7 to 9, 12 and 13 includes a prospective applicant

“development” means the carrying out of building, engineering or other operations in, on, over or under land or sea in pursuance of any application to which these Regulations apply and includes building, engineering and other operations ancillary to such operations;

(a) The functions of the Secretary of State under section 36 are transferred to the Scottish Ministers by virtue of S.I. 2006/1040.
 (b) The functions of the Secretary of State under section 37 are transferred to the Scottish Ministers by virtue of S.I. 1999/1750.
 (c) 1997 c.8. Section 57 was amended by section 21(5) of the Growth and Infrastructure Act 2013 (c.27).
 (d) S.S.I. 2000/320 as relevantly amended by S.S.I. 2008/246.

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment^(a);

“EIA application” means an application for Electricity Act consent for EIA development;

“EIA development” means development which is either—

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“EIA report” has the meaning given in regulation 5;

“Electricity Act consent” means consent under section 36 (consent required for construction etc. of generating stations) or section 37 (consent required for overhead lines) of the Electricity Act 1989;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000^(b);

“environmental impact assessment” has the meaning given in regulation 4;

“environmental information” means—

(a) the EIA report submitted in respect of the proposed development;

(b) any additional information submitted in respect of the development;

(c) any representations made by any consultation body, or other public body, consulted in respect of the development in accordance with these Regulations; and

(d) any representations duly made by any other person about the environmental effects of the development;

“environmental statement” has the same meaning as in the 2000 Regulations as they had effect immediately prior to the date on which these Regulations came into force;

“the land” means the land on which the development would be carried out;

“multi-stage consent” means an approval, consent or agreement given pursuant to an application for multi-stage consent;

“prospective applicant” means a person who, as the case may be, is minded to—

(a) apply for an Electricity Act consent;

(b) make a variation application; or

(c) make an application for multi-stage consent;

“register” means a register kept pursuant to section 36^(c) (registers of applications etc.) of the 1997 Act;

“relevant assessment” means, in relation to a proposed development, an assessment, or verification, of effects on the environment carried out pursuant to national legislation) which is relevant to the assessment of the environmental impacts of the proposed development;

“Schedule 1 development” means development of a description set out in schedule 1;

“Schedule 2 development” means development of a description set out in schedule 2;

“scoping opinion” means an opinion adopted by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“screening opinion” means an opinion adopted by the Scottish Ministers as to whether development is, or is not, EIA development;

“supplementary information” has the meaning given in regulation 19(2);

(a) OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.

(b) 2000 c.7, as amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

(c) Section 36 was amended by the Planning etc. (Scotland) Act 2006 (asp 17), section 12, by S.S.I. 2007/268 and by S.S.I. 2009/256.

“Union legislation” means any enactment in the national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties; and

“variation application” means an application made to the Scottish Ministers under section 36C(1) of the Electricity Act 1989 (variation of section 36 consents) to vary a consent under section 36 of that Act.

(2) Subject to paragraph (3), expressions used both in these Regulations and in the Electricity Act 1989 have the same meaning for the purposes of these Regulations as they have for the purposes of that Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Electricity Act 1989) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations, unless the context otherwise requires—

(a) references to a planning authority—

(i) in relation to development in, on, over or under land, are references to the planning authority within whose area the proposed development is situated; and

(ii) in relation to development in, on, over or under sea, are references to such planning authority or planning authorities as the Scottish Ministers consider appropriate in respect of the proposed development; and

(b) in relation to an application for multi-stage consent, “development” means as the case may be, the works to construct, extend or operate a generating station or the works to install an electric line above ground, taken together with any consent previously granted in connection with such consent.

(5) References in regulations 6(2)(b) and (3), 10(1)(c), 11(1), 12(7), 14 to 18, 25(1), 26(1) and 27(2) to an EIA report include a reference to a report referred to by the developer as an EIA report.

(6) In these Regulations, where an developer submits a revised, updated or supplementary EIA report (or a report which that person refers to as such) references to an EIA report are to be treated as including a reference to that revised, updated or supplementary EIA report.

Prohibition on granting consent without an environmental impact assessment

3. The Scottish Ministers must not—

(a) grant an Electricity Act consent for EIA development; or

(b) direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the 1997 Act in respect of EIA development,

unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

Environmental impact assessment

4.—(1) An environmental impact assessment is a process consisting of—

(a) the preparation of an EIA report by the developer;

(b) the carrying out of consultation, publication and notification as required by Parts 5 and 6 and, where relevant, Part 10;

(c) the examination by the Scottish ministers of the information presented in the EIA report and any other environmental information;

(d) the reasoned conclusion by the Scottish Ministers on the significant effects of the development on the environment, taking into account the results of the examination referred to in sub-paragraph (c) and, where appropriate, their own supplementary examination; and

(e) the integration of the Scottish Ministers' reasoned conclusion into the decision notice in accordance with regulation 21.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect significant effects of the proposed development (including, where the proposed development will have operational effects, such operational effects) on the factors specified in paragraph (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under Council Directive 92/43/EEC on the conservation of natural habits and wild flora^(a) and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds^(b);
- (c) land, soil, water, air and climate; and
- (d) material assets, cultural heritage and the landscape.

(4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the development to risks, so far as relevant to the development, of major accidents and disasters.

(5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to the determination of an application for Electricity Act consent for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant consent for that development is made.

(6) This paragraph applies where the Scottish Ministers—

- (a) consider that the likely significant effects of the development on the environment are not fully identifiable at the time of their determination of the application for Electricity Act consent; and
- (b) are minded to grant Electricity Act consent for EIA development, or to direct that planning permission for EIA development is deemed to be granted, subject to a condition that the all or part of the proposed development must not commence before certain matters in implementation of that consent, or planning permission, have been approved by the Scottish Ministers, or the planning authority, as the case may be.

(7) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

Environmental impact assessment report

5.—(1) An application for an Electricity Act consent for EIA development must be accompanied by an environmental impact assessment report (“EIA report”).

(2) An EIA report is a report prepared in accordance with this regulation by the developer which includes (at least)—

- (a) a description of the development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the development on the environment;
- (c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;

(a) OJ L 206, 22.7.1992, p.7.

(b) OJ L 20, 26.1.2010, p.7.

- (d) a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 4 relevant to the specific characteristics of the development and to the environmental features likely to be affected.

(3) Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the developer must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.

PART 2

DETERMINING WHETHER EIA IS REQUIRED

EIA Development

6.—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) will determine for the purpose of these Regulations that development is EIA development.

(2) The events referred to in paragraph (1) are—

- (a) the adoption of a screening opinion by the Scottish Ministers to the effect that the development is EIA development; or
- (b) if no screening opinion has been adopted by the Scottish Ministers, the submission by the developer in relation to that development of an EIA report.

(3) A screening opinion by the Scottish Ministers determines for the purpose of these Regulations whether the development is or is not EIA development (whether or not the developer has submitted an EIA report) and a later screening opinion supersedes the terms of an earlier screening opinion.

(4) The Scottish Ministers may direct that these Regulations do not apply in relation to a particular proposed development specified in the direction if the development comprises a project having the response to civil emergencies as its sole purpose and where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on that purpose.

(5) Where a direction is given under paragraph (4) the Scottish Ministers must send a copy of the direction to the planning authority.

(6) The Scottish Ministers may, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive), direct that these Regulations do not apply in relation to a particular proposed development specified in the direction where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on the purpose of the proposed development.

(7) Before making a direction under paragraph (6) the Scottish Ministers must consider whether another form of assessment would be appropriate and where a direction is given the Scottish Ministers must—

- (a) send a copy of the direction to the planning authority;

- (b) make available to the public concerned the information considered in making the direction and the reasons for making the direction; and
- (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.

General provisions relating to screening

7.—(1) When making a determination as to whether Schedule 2 development is EIA development the Scottish Ministers must—

- (a) in all cases take into account—
 - (i) such of the selection criteria set out in schedule 3 as are relevant to the development; and
 - (ii) the available results of any relevant assessment; and
- (b) where that determination is made following a request for a screening opinion under regulation 8(1), base their determination on the information provided in accordance with regulation 8(2).

(2) Where the Scottish Ministers adopt a screening opinion—

- (a) that screening opinion must be accompanied by a written statement giving, with reference to the criteria set out in schedule 3 as are relevant to the development, the main reasons for their conclusion as to whether the development is, or is not, EIA development; and
- (b) where the screening opinion is to the effect that development is not EIA development, the statement referred to in paragraph (a) must state any features of the proposed development or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

(3) The Scottish Ministers may adopt a screening opinion at their own volition.

(4) As soon as possible after adopting a screening opinion, the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to the developer and to the planning authority.

Requests for a screening opinion

8.—(1) A developer may request the Scottish Ministers to adopt a screening opinion.

(2) A request for a screening opinion under paragraph (1) must be accompanied by—

- (a) a description of the location of the development, including a plan sufficient to identify the land;
- (b) a description of the proposed development, including in particular—
 - (i) a description of the physical characteristics of the proposed development and, where relevant, of demolition works;
 - (ii) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the proposed development; and
- (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

(4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant—

- (a) the selection criteria set out in schedule 3; and
- (b) the available results of any relevant assessment.

(5) The Scottish Ministers, on receiving a request for a screening opinion from a developer under paragraph (1), must consult the planning authority as to the planning authority's views on whether the proposed development is EIA development unless the planning authority's views have already been conveyed to the Scottish Ministers.

(6) Where a planning authority is consulted by the Scottish Ministers under paragraph (5) it must give its views to the Scottish Ministers within—

- (a) a period of three weeks beginning on the date on which it was so consulted; or
- (b) such longer period as the Scottish Ministers may determine.

(7) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1) must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the developer of the points on which they require further information.

Screening opinions – time period for decision

9.—(1) Following a request for a screening opinion under regulation 8(1), the Scottish Ministers must adopt a screening opinion on or before the relevant date or, where notice is given under paragraph (2), the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.

(2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development that it is not practicable for them to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the request, they may extend that period by notice in writing given to the developer.

(3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to adopt a screening opinion pursuant to the request.

(4) For the purposes of this regulation—

- (a) “the relevant date” means the earlier of—
 - (i) the date of expiry of the period of three weeks, or such longer period as may be agreed in writing between the Scottish Ministers and the developer, beginning with the date by which the planning authority is required to give its views under regulation 8(6) (or if earlier of the date on which the Scottish Ministers received the views of the planning authority; or
 - (ii) the date occurring 90 days beginning with the date of receipt of the request;
- (b) the date on which a request for a screening opinion under regulation 8(1) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening opinion in accordance with regulation 8(2) is received by the Scottish Ministers.

PART 3
PROCEDURES CONCERNING APPLICATIONS FOR ELECTRICITY ACT
CONSENT

Application without prior screening

10.—(1) This regulation applies where it appears to the Scottish Ministers that—

- (a) an application for Electricity Act consent which is before them for determination is an application for Schedule 1 development or an application for Schedule 2 development;
- (b) the development to which the application relates has not been the subject of a screening opinion; and
- (c) the application is not accompanied by an EIA report.

(2) Where this regulation applies the Scottish Ministers must adopt a screening opinion in respect of the proposed development to which the application for Electricity Act consent relates.

(3) If it appears to the Scottish Ministers that the application for Electricity Act consent is an application for Schedule 2 development but the Scottish Ministers do not consider that the information submitted by the developer in connection with the application for Electricity Act consent includes all the information referred to in regulation 8(2) the Scottish Ministers must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

EIA application made without an EIA report

11.—(1) This regulation applies where an EIA application which is before the Scottish Ministers for determination is not accompanied by a report referred to by the developer as an EIA report.

(2) Where this regulation applies the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required.

(3) Notice under paragraph (2) must be given—

- (a) within three weeks beginning with the date on which the application is made; or
- (b) where the Scottish Ministers adopt a screening opinion after the date on which the application is made, within seven days beginning with the date of adoption of that screening opinion.

(4) A developer who receives notice under paragraph (2) may within three weeks beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 12 ask the Scottish Ministers to adopt a scoping opinion.

(5) If the developer does not write in accordance with paragraph (4), the Scottish Ministers are under no duty to deal with the application, and at the end of the three week period the Scottish Ministers must inform the developer in writing that no further action is being taken on the application.

(6) Where the Scottish Ministers have given notice under paragraph (2), they are to determine the application only by refusing Electricity Act consent if the developer does not submit an EIA report

PART 4

PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Request for scoping opinions

- 12.**—(1) A developer may request the Scottish Ministers to adopt a scoping opinion.
- (2) A request under paragraph (1) must include—
- (a) a description of the location of the development, including a plan sufficient to identify the land;
 - (b) a brief description of the nature and purpose of the development and of its likely significant effects on the environment; and
 - (c) such other information or representations as the developer may wish to provide or make.
- (3) If the Scottish Ministers consider that they have not been provided with sufficient information, they must, within three weeks of receipt of the request under paragraph (1), notify the developer of the points on which they require further information.
- (4) The Scottish Ministers must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—
- (a) the consultation bodies; and
 - (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies.
- (5) The Scottish Ministers when adopting a scoping opinion must take into account—
- (a) the information provided by the developer, in particular information provided by the developer in respect of the specific characteristics of the development, including its location and technical capacity and its likely impact on the environment; and
 - (b) any representations made to them in response to consultation undertaken in accordance with paragraph (4).
- (6) The Scottish Ministers must, within the period of 9 weeks beginning with the date of receipt of a request or such longer period as they may reasonably require, adopt a scoping opinion and send a copy of the scoping opinion to the developer and to the planning authority.
- (7) The adoption of a scoping opinion by the Scottish Ministers does not preclude the Scottish Ministers from requiring of the developer information in connection with any EIA report submitted in connection with an application for Electricity Act consent for the same development as referred to in the scoping opinion.
- (8) Where the developer has, at the same time as making a request for a screening opinion under regulation 8(1), made a request under paragraph (1), and the Scottish Ministers have adopted a screening opinion to the effect that the development is EIA development, the Scottish Ministers are to begin the procedures relating to scoping on the date on which they give the screening opinion.
- (9) The Scottish Ministers may at their own volition adopt a scoping opinion and paragraphs (4), (5) and (7) apply in relation to such a scoping opinion as they apply where a request is made under paragraph (1).

Procedure to facilitate preparation of EIA reports

- 13.**—(1) A developer who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice in writing to the Scottish Ministers under this paragraph.
- (2) A notice under paragraph (1) must include the information necessary to identify the location of, and the nature and purpose, of the development, and must indicate the main environmental consequences to which the developer proposes to refer in the EIA report.

(3) Where the Scottish Ministers receive notice under paragraph (1) or a written statement made pursuant to regulation 11(4) from a developer they must—

- (a) notify—
 - (i) the consultation bodies; and
 - (ii) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies, in writing of the name and address of the developer and of the duty imposed on those bodies by paragraph (4) to make information available to the developer; and
- (b) inform in writing the developer of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), any body notified in accordance with paragraph (3) must, if requested by the developer—

- (a) enter into consultation with the developer to determine whether the body has in its possession any information which that body or the developer considers to be relevant to the preparation of the EIA report; and
- (b) if the body has any such information, the body must make any that information available to the developer.

(5) In relation to a person to which the Environmental Information (Scotland) Regulations 2004(a) apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 10(1) (exceptions from duty to make environmental information available) of those Regulations; or
- (b) is prevented from disclosing by regulation 11(1) (personal data) of those Regulations.

(6) In relation to a person to which the Environmental Information Regulations 2004(b) apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 12(1) (exceptions to the duty to disclose environmental information) of those Regulations; or
- (b) is prevented from disclosing by regulation 13(1) (personal data) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by a body which makes information available in accordance with paragraph (4).

PART 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Publication of EIA report

14.—(1) Where, in relation to an EIA application the developer submits to the Scottish Ministers an EIA report the developer must, as soon as possible after provision of the EIA report, publish a notice in accordance with this regulation.

- (2) Notice under paragraph (1) must—
 - (a) describe the application and the proposed development to which the EIA report relates;
 - (b) state that the proposed development is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;

(a) S.S.I. 2004/520.

(b) S.I. 2004/3391.

- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
 - (d) state how copies of the EIA report may be obtained;
 - (e) state the cost of a copy of the EIA report;
 - (f) state how and by what date representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
 - (g) provide details of the arrangements for public participation in the decision making procedure including a description of the how notice will be given of the subsequent submission by the developer of any additional information and how representations in relation to that additional information may be made; and
 - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by which such decisions are to be taken.
- (3) Notice under paragraph (1) must be published—
- (a) on the application website;
 - (b) in The Edinburgh Gazette; and
 - (c) in a newspaper circulating in the locality in which the development to which the EIA report relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspaper as is likely to come to the attention of those likely to be affected by the proposed development).
- (4) A notice under paragraph (1) may be combined with any other notice which the developer may be required to publish in respect of the application.
- (5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an EIA report to any person except that the copies sent pursuant to regulation 16 are to be supplied free of charge.

Publicity of determinations and provision of information to the planning authority

15.—(1) The Scottish Ministers must send to the planning authority a copy of—

- (a) any screening opinion; and
- (b) any scoping opinion,

and the planning authority must take steps to ensure that such documents are made available for public inspection at all reasonable hours at the place where the register is kept.

(2) If an application for Electricity Act consent is made and any documents relating to it are, or have been, sent to a planning authority pursuant to paragraph (1), the planning authority must take steps to ensure that any such documents are placed on Part I of the register.

(3) If, in relation to an application for Electricity Act consent a planning authority receives a copy of any document or information mentioned in paragraph (4) the planning authority must—

- (a) ensure that a copy of such document or information is placed on Part I of the register until such time as the planning authority receives a copy of the decision notice in respect of the application in accordance with regulation 23(1)(b); and
- (b) on receiving a copy of the decision notice, ensure that a copy of the decision notice along with such documents or information mentioned in paragraph (1)(a) and (b) and (4) are placed on Part II of the register.

(4) The documents and information are—

- (a) any EIA report received by the planning authority pursuant to regulation 16(1)(a);
- (b) any additional information received by the planning authority pursuant to regulation 20(4); and
- (c) any notice received by the planning authority pursuant to regulation 20(4).

Procedure where Scottish Ministers receive an EIA report

16.—(1) Where a developer submits to the Scottish Ministers an EIA report relating to an application for an Electricity Act consent, the developer must—

- (a) send a copy of the EIA report to the planning authority and must inform the Scottish Ministers of the date on which the developer did so; and
- (b) if the developer sends a copy of the EIA report to any consultation body (whether under subparagraph (a) or otherwise), the developer must—
 - (i) send with it a copy of the application to which the EIA report relates and of any plan submitted with it (unless those documents have already been sent to the consultation body in question);
 - (ii) inform the consultation body that representations may be made to the Scottish Ministers; and
 - (iii) inform the Scottish Ministers of the name of every consultation body to which the developer has sent a copy of the EIA report and the date on which the developer did so.

(2) Where the Scottish Ministers receive an EIA report in connection with an application for an Electricity Act consent they must, within two weeks of receiving the EIA report—

- (a) give notice containing the information specified in paragraph (3) to—
 - (i) the consultation bodies to which the developer has not sent a copy of the EIA report; and
 - (ii) any other public body which in their opinion is likely to be concerned by the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies; and
- (b) give the developer notice of the names and addresses of the consultation bodies or other public bodies to which notice is given under sub paragraph (a).

(3) The information is—

- (a) a brief description of the nature of the proposed development;
- (b) that an application for Electricity Act consent has been made in respect of that proposed development;
- (c) that an EIA report will be taken into consideration in determining the application;
- (d) that the developer is to provide a copy of the EIA report to the consultation body or other public body; and
- (e) how and by what date (being a date not earlier than 30 days after the EIA report is sent by the developer) representations may be made to the Scottish Ministers.

(4) The developer must—

- (a) send to any consultation body or other public body named in the notice given to the developer under paragraph (2)(b)—
 - (i) a copy of the EIA report submitted to the Scottish Ministers; and
 - (ii) a copy of the application to which that EIA report relates and of any plan submitted with the application (unless those documents have already been sent to the body in question); and
- (b) inform the Scottish Ministers of the date on which the developer did so.

Copies of EIA report for the Scottish Ministers

17.—(1) Where an EIA report is submitted in relation to an application for Electricity Act consent by means of electronic communication, the developer must in addition send two hard copies of the EIA report to the Scottish Ministers.

(2) Where an EIA report is submitted in relation to an application for Electricity Act consent other than by means of electronic communication, the developer must in addition—

- (a) send a hard copy of the EIA report to the Scottish Ministers; and
- (b) send a copy of the EIA report to the Scottish Ministers by means of electronic communication.

(3) If requested to do so by the Scottish Ministers the developer must send to the Scottish Ministers such further hard copies of the EIA report as the Scottish Ministers request.

(4) In this regulation reference to “hard copy” or “hard copies” are references to a copy, or copies of an EIA report sent other than by means of electronic communication.

Copies of EIA report for the public

18.—(1) Where an EIA report is submitted in relation to an application for Electricity Act consent, the developer must ensure that a reasonable number of copies of the EIA report are available for inspection at any place named (by virtue of regulation 14(2)(c)) in the notice published under regulation 21(1) as a place at which copies of the EIA report may be inspected.

(2) The developer must provide copies of the EIA report in accordance with the terms of the notice published under regulation 14(1) and where that notice includes an address at which copies of the EIA report may be obtained the developer must ensure that a reasonable number of copies of the EIA report are available at that address.

(3) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a EIA report provided in accordance with paragraph (2).

PART 6

ADDITIONAL INFORMATION

Additional information and evidence relating to EIA reports

19.—(1) This regulation applies where the Scottish Ministers are dealing with—

- (a) an EIA application; or
- (b) an application for multi-stage consent in respect of EIA development.

(2) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about any matter mentioned in schedule 4 which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment.

(3) The developer must provide that supplementary information and such information is referred to in these Regulations as “supplementary information”.

(4) The Scottish Ministers may in writing require to be produced to them such evidence, in respect of any EIA report or additional information as they may reasonably call for to verify any information it contained in the EIA report or such additional information, as the case may be.

Publication of additional information

20.—(1) Where additional information is provided to the Scottish Ministers, the developer must publish a notice in accordance with paragraph (2) containing the information specified in paragraph (3).

(2) A notice under paragraph (1) must be published—

- (a) on the application website;
- (b) in The Edinburgh Gazette; and

- (c) in a newspaper circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspaper as is likely to come to the attention of those likely to be affected by the proposed development).
- (3) Notice under paragraph (1) must—
- (a) describe the application and the proposed development;
 - (b) state that the proposed development is subject to environmental impact assessment;
 - (c) state that the additional information is available for inspection and the times and places at which, and the means by which, the additional information is available for inspection;
 - (d) state how copies of the additional information may be obtained;
 - (e) state the cost of a copy of the additional information;
 - (f) state how and by what date representations may be made (being a date not earlier than 30 days after last date on which the notice is published);
 - (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice is to be given of any subsequent submission by the developer of additional information and how representations in relation to that additional information may be made;
 - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by which such decisions are to be taken.
- (4) The developer must serve a copy of the additional information on the planning authority and on any other person to whom a copy of the EIA report was sent under regulation 16(1) or (4) together with a copy of the notice mentioned in paragraph (1).
- (5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the additional information to any person except that the copies served pursuant to paragraph (4) are to be supplied free of charge.
- (6) Paragraph (1) does not apply in relation to additional information to the extent that—
- (a) the information is provided for the purposes of an inquiry held under the Electricity Act 1989;
 - (b) the written requirement for the information states that it is to be provided for such purposes; and
 - (c) the information is required to be publicised as part of that inquiry.

PART 7

NOTIFICATION OF DECISIONS

Decision notice

21.—(1) Where an EIA application is determined by the Scottish Ministers the notification of the decision to be given to the developer (“the decision notice”) must include the information specified in paragraph (2).

- (2) The information is—
- (a) a description of the development;
 - (b) the terms of the decision;
 - (c) the main reasons and considerations on which the decision is based;
 - (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
 - (e) a summary of—
 - (i) the environmental information; and

- (ii) the results of the consultations and information gathered pursuant to Parts 5 and 6 and, where relevant Part 10, and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed;
- (f) if the decision is to grant consent—
 - (i) any conditions to which the decision is subject;
 - (ii) the reasoned conclusion referred to in regulation 4(1)(d); and
 - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date;
 - (iv) a description of any mitigation measures; and
 - (v) a description of any monitoring measures required under regulation 22;
- (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(3) Where regulation 4(6) applies the decision notice must describe the matters in respect of which the Scottish Ministers consider that the effects of the development are not fully identifiable at the time of their determination of the EIA application.

(4) For the purposes of paragraph (2)(f)(iii) the reasoned conclusion referred to in regulation 4(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the development on the environment.

(5) In this regulation and in regulation 22—

“mitigation measures” means any features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment including any such features or measures required by virtue of—

- (a) a condition imposed on the grant of planning permission; or
- (b) a planning obligation;

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed development including any such measures required by virtue of—

- (c) a condition imposed on the grant of planning permission; or
- (d) a planning obligation; and

“planning obligation” has the meaning given in section 75(1)(a) of the 1997 Act.

Monitoring measures

22.—(1) Where an EIA application is determined by the Scottish Ministers and the decision is to grant Electricity Act consent, the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and

(a) Section 75 was substituted by section 23 of the Planning etc. (Scotland) Act 2006 (asp 17).

- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.
- (3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.
- (4) Where mitigation measures or monitoring measures are required by a condition imposed on the grant of an Electricity Act consent the Scottish Ministers must take steps to ensure that those measures are implemented.
- (5) Where mitigation measures or monitoring measures are required by—
- (a) 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^(a); or
 - (b) a planning obligation,
- the planning authority must take steps to ensure that those measures are implemented.

Notification of decision

- 23.**—(1) Where an EIA application is determined by the Scottish Ministers they must—
- (a) send the decision notice in respect of the application to the developer;
 - (b) send a copy of the decision notice to—
 - (i) the planning authority;
 - (ii) the other consultation bodies; and
 - (iii) such other public body consulted in accordance with regulation 16(2)(a)(ii); and
 - (c) publish a notice containing the information specified in paragraph (2) on a website.
- (2) The information is—
- (a) a description of the development;
 - (b) the terms of the decision;
 - (c) how a copy of the decision notice is available for inspection.
- (3) The planning authority must, as soon as reasonably practicable after receiving notification of the decision under paragraph (1)(b)(i), make a copy of the decision notice available for public inspection—
- (a) at an office of the planning authority where the register may be inspected; and
 - (b) on a website.
- (4) The developer must, as soon as reasonably practicable after receiving notification of the decision under paragraph (1)(a), publish a notice containing the information specified in paragraph (2)—
- (a) on the application website;
 - (b) in The Edinburgh Gazette; and
 - (c) in a newspaper circulating in the locality in which the proposed development is situated (or in relation to a proposed development situated in, on, over or under the sea, such newspaper as is likely to come to the attention of those likely to be affected by the proposed development).

(a) 1997 c.8. Section 57 was amended by section 21(5) of the Growth and Infrastructure Act 2013 (c.27).

PART 8

APPLICATIONS FOR MULTI-STAGE CONSENT

Prohibition on granting an application for multi-stage consent without an environmental impact assessment

24. The Scottish Ministers must not grant an application for multi-stage consent in respect of EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

Application for multi-stage consent where EIA report previously provided

25.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of an application for multi-stage consent where an EIA report has previously been submitted by the developer in relation to the development.

(2) Where this regulation applies—

- (a) if it appears to the Scottish Ministers that the development, or the part of the development to which the application for multi-stage consent relates may have significant effects on the environment that have not previously been identified; and
- (b) the developer has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the Scottish Ministers must seek supplementary information from the developer in accordance with regulation 19(2) in respect of such effects.

Application for multi-stage consent without EIA report

26.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of an application for multi-stage consent where an EIA report has not been submitted by the developer in relation to the development.

(2) Where this regulation applies and either—

- (a) it appears to the Scottish Ministers that the application for multi-stage consent relates to Schedule 1 development and the development has not been the subject of a screening opinion; or
- (b) it appears to the Scottish Ministers that—
 - (i) the application for multi-stage consent relates to Schedule 2 development and;
 - (ii) the development in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or because the development has not been the subject of a screening opinion),

the Scottish Ministers must adopt a screening opinion in respect of the development.

(3) Where the Scottish Ministers adopt a screening opinion under paragraph (2) to the effect that the development to which the application for multi-stage consent relates is EIA development, the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required and must send a copy of that notification to the planning authority.

(4) The Scottish Ministers must notify the developer in accordance with paragraph (3) within three weeks beginning with the date of the screening opinion.

(5) A developer who receives notice under paragraph (3) may within three weeks beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 12 ask the Scottish Ministers to adopt a scoping opinion.

(6) If the developer does not write in accordance with paragraph (5), the Scottish Ministers are under no duty to deal with the application, and at the end of the three week period the Scottish

Ministers must inform the developer in writing that no further action is being taken on the application.

(7) Where the Scottish Ministers have given notice under paragraph (3), they are to determine the application only by refusing it if the developer does not submit an EIA report.

Modification of Regulations relating to application for multi-stage consent

27.—(1) These Regulations (other than Part 9) apply to an application for multi-stage consent as if references—

- (a) references to an application for Electricity Act consent were references to an application for multi-stage consent;
- (b) references to an EIA application were references to an application for multi-stage consent for EIA development; and
- (c) in regulation 29(5)(b) the reference to “Electricity Act consent” were a reference to “multi-stage consent”.

(2) Regulations 21(2)(d), (e) and (g) and 23(1)(b)(ii) and (4) apply in respect of the notification of a decision on an application for multi-stage consent only where an EIA report or additional information has been first submitted or provided by the developer to the Scottish Ministers in connection with that application.

PART 9

VARIATION APPLICATIONS

Application of Regulations to variation applications

28.—(1) These Regulations apply in relation to a variation application as they apply in relation to an application for consent under section 36 of the Electricity Act 1989 with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references (however worded)—
 - (i) to an application for a section 36 consent are to be treated as if they are references to a variation application;
 - (ii) to the proposed development and to the development in respect of which the application for a section 36 consent relates are to be treated as references to the proposed varied development to which the variation application relates; and
 - (iii) to the grant of consent are to be treated as references if they are to the variation of a section 36 consent;
- (b) regulation 14 is not to be read as requiring or permitting a notice under that regulation to be published before a notice under regulation 4(2)(c) of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013(a) is published; and
- (c) Schedule 4 is to be read as requiring the inclusion in an EIA report of—
 - (i) the main respects in which the developer considers that the likely significant effects on the environment of the proposed development would differ from those described in any EIA report or environmental statement, as the case may be, that was prepared in connection with the relevant section 36 consent; and
 - (ii) a non-technical summary of the differences referred to in sub-paragraph (i).

(a) S.S.I. 2013/304.

(3) In this regulation—

“proposed varied development” means—

- (a) the generating station, or extension of a generating station, which the developer would be authorised to construct under a relevant section 36 consent if that consent were varied as requested in a variation application;
- (b) the way in which a generating station so constructed or extended would be authorised to be operated under the relevant section 36 consent as so varied; and
- (c) any section 57 development in respect of which section 36 consent is not required;

“relevant section 36 consent”, in relation to a variation application, means the section 36 consent in respect of which that variation application is made;

“section 36 consent” means a consent under section 36 of the Electricity Act 1989 to construct, extend or operate a generating station including any variations to that consent already made under section 36C(4) of the Act;

“section 57 development” means any development in respect of which—

- (a) a section 57 direction was given on granting the relevant section 36 consent; or
- (b) the developer, on making a variation application, requests the Scottish Ministers to give a section 57 direction;

“section 57 direction” means a direction under section 57(2) or (2ZA) of the 1997 Act (deemed planning permission for development with government authorisation).

PART 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

Development in Scotland likely to have significant effects in an EEA State other than the United Kingdom

29.—(1) This regulation applies where—

- (a) it comes to the attention of the Scottish Ministers that development proposed to be carried out in Scotland is the subject of an EIA application and is likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
- (b) an EEA State other than the United Kingdom likely to be significantly affected by such development so requests.

(2) When this regulation applies, the Scottish Ministers must—

- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in paragraph (b), the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);
- (b) publish the information in paragraph (a) in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
- (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars referred to in paragraph (2)(c) are—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must as soon as possible send to that EEA State the following information—

- (a) a copy of the application concerned;

- (b) a copy of the EIA report in respect of the development to which that application relates; and
 - (c) relevant information regarding the procedure under these Regulations,
- but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).
- (5) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the developer to be made available, within a reasonable time, to the authorities designated in accordance with Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before Electricity Act consent for the development is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.
- (6) The Scottish Ministers must in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
- (7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a statement of—
- (a) the content of the decision and any conditions attached to it;
 - (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
 - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Projects in another EEA State likely to have significant transboundary effects

30.—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
- (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and
- (c) so far as they have received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
 - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.

- (2) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
 - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

PART 11

MISCELLANEOUS

Electronic communications – general

31.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, reports, statements, notices, opinions, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement, notice or other document to any other person (“the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) the requirement under regulation 17(1), (2)(a) or (3) to provide copies of a report;
- (b) any requirement under regulation 29 including submitting information to an EEA State; and
- (c) any requirement under regulation 30 including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
- (b) at any time during a day which is not working day, it is deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(a), a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement or document (other than under regulation 17(1), (2)(a) or (3), 29 or 30), any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

Electronic communications – deemed agreement

32.—(1) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(2) Deemed agreement under paragraph (1) subsists until that person gives notice under regulation 33 to revoke the agreement.

Withdrawal of consent to use of electronic communications

33. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.

Service of notices etc.

34. Subject to regulations 30 to 32, any notice or other document to be served, sent or given under these Regulations may be served or given in a manner specified in section 109 (service of documents) of the Electricity Act 1989.

Access to review procedure before a court

35. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive.

Co-ordination of assessments

36.—(1) Where in relation to EIA development there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a

(a) 1971 c.80.

requirement to carry out a habitats regulation assessment, the Scottish Ministers must, where appropriate, ensure that the habitats regulation assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “habitats regulation assessment” means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010(a).

Competent authority – avoidance of conflict of interest

37.—(1) The Scottish Ministers are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are to consider an application for EIA development they have made, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Offences

38.—(1) Any person who, for the purpose of procuring a particular decision on an application to which these Regulations apply—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

commits an offence.

(2) A person who commits an offence under paragraph (1) above is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) No act or omission of the Crown constitutes an offence under this regulation.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing this regulation, declare unlawful any act or omission of the Crown which would but for paragraph (3) have constituted an offence under this regulation.

(5) Despite paragraph (3), this regulation applies to a person in the public service of the Crown as it applies to other persons.

Offences by bodies corporate etc.

39.—(1) Subsection (2) applies where—

- (a) an offence under regulation 38 has been committed by—
 - (i) a body corporate;
 - (ii) a Scottish partnership; or
 - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual.

(a) S.I. 2010/490.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a limited liability partnership, a member;
- (c) in relation to a Scottish partnership, a partner;
- (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

PART 12

Revocations and Transitional Provisions

Transitional provisions - general

40.—(1) These Regulations, other than regulation 4(4), 5(4) and (5)(b), 6(4), 22 and 36, apply with the modifications specified in paragraph (2)(a) to (d) in respect of an application for Electricity Act consent or a variation application, where the developer has before 16th May 2017—

- (a) submitted an environmental statement in connection with the application; or
- (b) made a request for a scoping opinion in respect of the development to which the application relates.

(2) These Regulations apply in accordance with paragraph (1) as if—

- (a) references to an EIA report included references to an environmental statement;
- (b) for the factors specified in regulation 4(3)(a) to (d) there were substituted—
 - “(a) human beings, fauna and flora;
 - (b) soil, water, air, climate and the landscape; and
 - (c) material assets and cultural heritage;”;
- (c) for paragraphs (a) to (f) of regulation 5(2) there were substituted—
 - “(a) the information referred to in Part II of schedule 4 of the 2000 Regulations; and
 - (b) such of the information referred to in Part I of schedule 4 of the 2000 Regulations as is reasonably required to assess the environmental effects of the development and which having regard in particular to current knowledge and methods of assessment, the developer can reasonably be required to compile taking into account the terms of any scoping opinion.”; and
- (d) the reference in regulation 19(2) to matters mentioned in schedule 4 of these Regulations were a reference to the matters mentioned in schedule 4 of the 2000 Regulations;

(3) Where—

- (a) a request for a scoping opinion is made before 16th May 2017; and
- (b) the Scottish Ministers have not adopted a scoping opinion before that date;

that request is to be treated as having been made under regulation 12(1) but when adopting a scoping opinion the Scottish Ministers are to assess the scope and level of detail of information to be contained in the EIA report by reference only to the scope and level of detail of information which immediately prior to 16th May 2017 had to be included in an environmental statement in accordance with regulation 4(1) and schedule 4 of the 2000 Regulations.

(4) References in this regulation and in regulation 41 to provisions of the 2000 Regulations are references to such provisions as they had effect immediately before 16th May 2017.

(5) Anything done before 16th May 2017 in connection with an application to which these Regulations apply which could have been done under a provision of these Regulations (had these Regulations been in force at that time) is to be treated as if done under that provision of these Regulations and references in any enactment (including any Act of the Scottish Parliament or any subordinate legislation) to an environmental statement prepared in accordance with the 2000 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.

Transitional provisions – requests for screening opinions

41. These Regulations, other than regulations 7(1)(b) and 8(2) to (4), apply in respect of a request for a screening opinion made under regulation 5(1) of the 2000 Regulations before 16th May 2017 as they apply to a request for a screening opinion made under 8(1) of these Regulations on or after that date as if—

- (a) the reference in regulation 9(4)(b) to items or information required to be contained in or accompany a request in accordance with regulation 8(2) of these Regulations were a reference to items or information required to accompany a request for a screening opinion in accordance with regulation 5(2)(a) and (b) of the 2000 Regulations; and
- (b) the reference in regulation 7(1)(a)(i) and (2)(a) to the criteria set out in schedule 3 of these Regulations were a reference to the criteria set out in schedule 3 of the 2000 Regulations.

Amendment of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013

42.—(1) The Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2 (interpretation)—

- (a) in the definition of “the EIA Regulations” for “2000” substitute “2017”; and
- (b) omit the definition of “environmental statement”.

(3) In regulation 4 (publication and service of notice of application)—

- (a) in paragraph (2)(a)(iv) after “any” insert, “EIA report or”;
- (b) in paragraph (4)(c)(iv) after “any” insert, “EIA report or”;
- (c) after paragraph (6) insert—

“(7) In this regulation—

“EIA report” has the same meaning as in the EIA Regulations (a); and

“environmental statement” has the same meaning as in the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 as those Regulations had effect immediately prior to 16 May 2017.”.

(4) Regulation 5 (application of the EIA Regulations with modifications) is omitted.

(5) In regulation 7(2) (withdrawal of variation application) for “consultative” substitute “consultation”.

(a) S.S.I. 2013/304.

Revocations

43.—(1) The provisions specified in paragraph (2) are revoked.

(2) The provisions are—

- (a) the 2000 Regulations; and
- (b) the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008.

St Andrew's House,
Edinburgh
30th March 2017

PAUL WHEELHOUSE
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2(1)

DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 1 DEVELOPMENT”

Descriptions of development

The carrying out of development to provide any of the following—

(1) nuclear generating station or other nuclear reactors (except research installation for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load);

(2) thermal generating station with a heat output of 300 megawatts or more;

(3) construction of overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres; or

(4) any change to or extension (including a change in the manner or period of operation) of development listed in paragraphs (1) to (3) of this schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this schedule.

SCHEDULE 2

Regulation 2(1)

DESCRIPTION OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 DEVELOPMENT”

The carrying out of development (other than development which is Schedule 1 development) to provide any of the following—

- (1) a generating station;
- (2) an electric line installed above ground—
 - (a) with a voltage of 132 kilovolts or more;
 - (b) in a sensitive area; or
 - (c) the purpose of which installation is to connect the electric line to a generating station the construction or operation of which requires consent under section 36 of the Electricity Act 1989; or

(3) any change to or extension (including a change in the manner or period of operation) of development of a description listed in schedule 1 or in paragraphs (1) or (2) of this schedule where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment.

For the purpose of this schedule—

“marine protected area” means an area designated as—

- (a) a nature conservation marine protected area;
- (b) a demonstration and research marine protected area; or
- (c) a historic marine protected area,

by a designation order made by the Scottish Ministers under section 67 of the Marine (Scotland) Act 2010(a);

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004;
- (c) a European site within the meaning of regulation 10 of the Conservation of Habitats and Species Regulations 2010(b);
- (d) a World Heritage site;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(c);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997(d);
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000(e); and
- (h) a marine protected area;

(a) 2010 asp 5.

(b) S.I. 2010/490.

(c) 1979 c.46.

(d) Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).

(e) 2000 asp 10.

“site of special scientific interest” has the same meaning as in section 58(1) of the Nature Conservation (Scotland) Act 2004^(a); and

“World Heritage Site” means land appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage^(b).

(a) 2004 asp 6, section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

(b) See Command Paper 9424.

SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT

Characteristics of development

1. The characteristics of development must be considered having regard, in particular, to—
 - (a) the size and design of the development;
 - (b) cumulation with other existing development and/or approved development;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
 - (g) the risks to human health (for example due to water contamination or air pollution).

Location of development

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered having regard, in particular, to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) European sites and other areas classified or protected under national legislation;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the development on the factors specified in regulation 4(3), taking into account—
 - (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
 - (b) the nature of the impact;
 - (c) the transboundary nature of the impact;
 - (d) the intensity and complexity of the impact;

- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved development;
- (h) the possibility of effectively reducing the impact.

INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

1. A description of the development, including in particular:
 - (a) a description of the location of the development;
 - (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (the “baseline scenario”) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of relevant information and scientific knowledge.
4. A description of the factors specified in regulation 4(3) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the development on the environment resulting from, inter alia:
 - (a) the construction and existence of the development, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
 - (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
 - (e) the cumulation of effects with other existing and/or approved development, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
 - (f) the impact of the development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
 - (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the development including in particular those established under Council Directive 92/43/EEC³ and Directive 2009/147/EC.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation of the European Union such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under points 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”). These Regulations apply in relation to Scotland only.

These Regulations implement Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (OJ L 124, 25.04.2014, p.1), in relation to consents (“Electricity Act consents”) required under sections 36 and 37 of the Electricity Act 1989 for projects in Scotland for the construction of generating stations and overhead electric lines.

The Regulations impose procedural requirements in relation to the consideration of applications for such Electricity Act consents by the Scottish Ministers. All development in schedule 1 requires an environmental impact assessment (EIA). Development in schedule 2 requires an EIA if it is likely to have significant effects on the environment. Development which requires an EIA is referred to in the Regulations as “EIA development”.

Regulation 3 prohibits the grant of Electricity Act consent for EIA development unless an environmental impact assessment has been carried out and the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. It also restricts the power to make related directions under section 57 of the Town and Country Planning (Scotland) Act 1997 deeming planning to be granted. Regulation 24 makes equivalent provision in relation to the determination of an application for multi-stage consent. Regulation 4 sets out what the environmental assessment process comprises and regulation 5 sets out the content of a EIA report.

Part 2 sets out procedures for determining whether development is EIA development. Regulation 6 sets out which events will establish that development is EIA development. Regulation 8 enables a request to be made to the Scottish Ministers for a “screening opinion”. Regulation 7 makes general provision in relation to such an opinion, including that any opinion must be made by reference to the criteria in schedule 3. Part 3 sets out procedures to be followed where the Scottish Ministers are considering an application for consent for EIA development without an EIA report.

Regulations 12 enables a developer to seek an opinion from the Scottish Ministers (“a scoping opinion”) on the information to be included in an EIA report. The types of information which may be required are set out in schedule 4. The Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion. Regulation 13 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the developer.

Regulation 14 requires publication of notice of the lodging of an EIA report to be given. Regulation 15 requires the EIA report and other relevant information to be made available for inspection on the planning register. Regulation 16 provides for consultation where an EIA report is received by the Scottish Ministers. Regulations 17 and 18 are concerned with the provision of copies of an EIA report.

Regulation 19 contains procedures for requiring the provision by the developer of supplementary information over and above that contained in the EIA report. The developer may also submit information relating to the EIA report voluntarily. Such information is together referred to as “additional information” (regulation 2(1)). Regulation 20 provides that notice of the receipt and availability of additional information provided by the developer after the initial gathering of information for an EIA report has taken place will require to be publicised.

Regulation 21 sets out what information is to be contained in the decision notice following determination of an application for consent. Regulation 22 requires consideration to be given to the inclusion of monitoring measures. Regulation 23 requires the Scottish Ministers to notify the developer, consultation bodies and the public of their decision.

Part 8 makes provision relating to applications for multi-stage consent which essentially mirror the provisions in the Regulations relating to applications for the grant of Electricity Act consent. Regulation 25 requires the Scottish Ministers to seek supplementary information if they identify that the environmental assessment has yet to consider certain significant environmental impacts of the development. Regulation 26 requires the Scottish Ministers to undertake screening in certain circumstances where considering an application for multi-stage consent. Regulation 27 modifies the application of the Regulations as they apply to applications for multi-stage consent. Part 9 makes provision for variation applications.

Regulations 29 and 30 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulations 31 to 33 make provision for the use of electronic communication. Regulation 34 provides for the service of notices under the Regulations. Regulation 35 makes provision to facilitate the access to legal challenge procedures for non-governmental organisations promoting environmental protection. Regulation 36 provides for co-ordination of assessments and regulation 37 for the avoidance of conflicts of interest. Regulations 38 makes it an offence knowingly or recklessly to provide a false or misleading statement in order to procure a decision or, with intent to deceive, to use document which is false or misleading or to withhold material information. Regulation 39 provides for how this applies in the context of offences committed by bodies corporate etc. Part 12 makes transitional provisions and revokes the 2000 Regulations.

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