
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 102

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

PART 1

INTRODUCTORY

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997 and references to sections without reference to the Act are references to sections of that Act;

“additional information” means—

- (a) supplementary information required in accordance with regulation 26(2); or
- (b) any other information provided by the developer which, in the opinion of the planning authority or the Scottish Ministers, as the case may be, 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 multi-stage condition;

“application website” means a website maintained by the planning authority, or the Scottish Ministers, as the case may be, for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the CCS Directive” means [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council [Directive 85/337/EEC](#), European Parliament and Council Directives [2000/60/EC](#), [2001/80/EC](#), [2004/35/EC](#), [2006/12/EC](#), [2008/1/EC](#) and Regulation [\(EC\) No. 1013/2006\(1\)](#);

“the consultation bodies” means—

- (a) any adjoining planning authority, where the development is likely to affect land in their area;
- (b) Scottish Natural Heritage;
- (c) Scottish Water;
- (d) the Scottish Environment Protection Agency; and
- (e) Historic Environment Scotland;

“decision notice” has the meaning given in regulation 29;

“developer”—

- (a) means, in relation to—
 - (i) an application for planning permission, the applicant;
 - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions), the appellant;
 - (iii) to an application for multi-stage consent, the applicant;
 - (iv) a review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), the applicant for planning permission or, as the case may be, for multi-stage consent; and
 - (v) in relation to a ROMP application, the applicant; and
- (b) for the purposes of regulations 7 to 10 and 17 to 19 includes a prospective applicant;

“the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013⁽²⁾;

“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⁽³⁾;

“EIA application” means an application for planning permission 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;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000⁽⁴⁾;

“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;

“exempt development” means development in respect of which the Scottish Ministers have made a direction under regulation 6(4) or (6);

“fish farming” means the breeding, rearing or keeping of fish, excluding shellfish;

“fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” having the same meaning as in section 26(6))⁽⁵⁾ and any material change of use of equipment so placed or assembled;

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

(2) [S.S.I. 2013/155](#), as amended by [S.S.I. 2014/469](#), [S.S.I. 2015/181](#), [S.S.I. 2015/237](#) and [S.S.I. 2015/249](#).

(3) OJ L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#).

(4) [2000 c.7](#), as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(5) Section 26(6) was amended by section 24(2)(a) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3) and section 3(1)(c) of the Planning etc. (Scotland) Act 2006 (asp 17).

“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 (marine protected areas) of the Marine (Scotland) Act 2010⁽⁶⁾;

“marine waters” means the waters described in paragraphs (b) and (c) of subsection (6) of section 26 (meaning of development);

“multi-stage condition” means—

- (a) a condition imposed on planning permission granted on an application made under Part III of the Act or section 242A⁽⁷⁾ (urgent crown development) where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the planning permission may be begun;
- (b) a condition specified in a simplified planning zone scheme, where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by planning permission granted by the adoption or approval of that scheme may be begun;
- (c) a condition imposed on planning permission deemed to be granted by a direction made under section 57 (development with government authorisation), where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the deemed planning permission may be begun;
- (d) a condition specified in an enterprise zone scheme, where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the planning permission granted by that enterprise zone scheme may be begun; or
- (e) a ROMP condition (as defined below);

“prospective applicant” means a person who is minded to make an application for planning permission or an application for multi-stage consent, as the case may be;

“planning authority” means the body to which it falls, fell, or would, but for a direction under—

- (a) section 46 (call-in of applications by the Scottish Ministers), fall to determine an application for planning permission or an application for multi-stage consent; or
- (b) paragraph 19 of schedule 8, paragraph 13 of schedule 9 or paragraph 8 of schedule 10 (reference of applications to the Scottish Ministers) of the Act, fall to determine a ROMP application;

“register” means a register kept pursuant to section 36⁽⁸⁾ (registers of applications etc.);

“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;

“reporter” means a person appointed by the Scottish Ministers under Schedule 4 of the Act (determination of certain appeals by persons appointed by Scottish Ministers) to determine an

⁽⁶⁾ 2010 (asp 5).

⁽⁷⁾ Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning (Scotland) Act 2006 (asp 17).

⁽⁸⁾ 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.

appeal under section 47, or to report to them on an application for planning permission referred to them under section 46 or which is the subject of an appeal under section 47;

“ROMP application” means an application to a planning authority to determine the conditions to which a planning permission is to be subject under—

- (a) paragraph 14(2) of schedule 8 of the Act (registration of old mining permissions);
- (b) paragraph 9(1) of schedule 9 of the Act (review of old mineral planning permissions); or
- (c) paragraph 6(1) of schedule 10 of the Act (periodic review of mineral planning permissions);

“ROMP condition” means a condition to which a planning permission is subject (following the determination of a ROMP application) which requires approval, consent or agreement before all or any part of the development permitted by the planning permission (as so determined) may be begun or continued;

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in schedule 1;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

“scoping direction” means a direction made by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“scoping opinion” means the opinion of the planning authority as to the scope and level of detail of information to be provided in the EIA report;

“screening direction” means a direction made by the Scottish Ministers as to whether development is, or is not, EIA development;

“screening opinion” means a written statement of the opinion of the planning authority as to whether development is, or is not, EIA development;

“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⁽⁹⁾;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹⁰⁾;
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage⁽¹¹⁾;

⁽⁹⁾ 2004 asp 6.

⁽¹⁰⁾ S.I. 1994/2716 relevantly amended by S.S.I. 2004/475, S.S.I. 2007/80 and S.S.I. 2015/249.

⁽¹¹⁾ See Command Paper 9424.

- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(12);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A(13) (national scenic areas);
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000(14); and
- (h) a marine protected area;

“site of special scientific interest” has the same meaning as in section 58(1) (interpretation) of the Nature Conservation (Scotland) Act 2004(15);

“supplementary information” has the meaning given in regulation 26(3); and

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

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

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) 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, in relation to an application for multi-stage consent, “development” means the development granted planning permission by the planning permission in respect of which such application is made, taken together with any multi-stage consent previously granted in connection with such planning permission.

(5) References in regulations 6(2)(c) and (3), 11(1)(c), 12(1), 13(1)(c), 14(1), 16(1), 17(11), 18(9), 20(1)(a), 21 to 25, 33(1), 34(1), 35(1) and 49(3)(b)(ii) to an EIA report include a reference to a report referred to by the developer as an EIA report.

(6) In these Regulations, where a developer submits a revised, updated or supplementary EIA report (or a report which the developer 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.

(7) In these Regulations, references to the Scottish Ministers, as regards an application for planning permission or appeal in relation to which a reporter has been appointed, are to be construed as including references to that reporter.

(8) In these Regulations, references to a planning authority as regards—

- (a) determination of an application by a person appointed for that purpose by virtue of a scheme of delegation prepared under section 43A(1)(16) (schemes of delegation), are to be construed as including a reference to that person; and
- (b) an application being considered on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), are to be construed as including a reference to the planning authority acting by virtue of that section.

(12) 1979 c.46.

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

(14) 2000 asp 10.

(15) 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).

(16) Section 43A was inserted by section 17 of the Planning etc. (Scotland) Act 2006 (asp 17).

(9) In these Regulations, references to the making of an application, or the date upon which an application is made, are to be construed in accordance with regulation 14(1) and (3) of the Development Management Procedure Regulations.

(10) These Regulations apply in respect of an application for planning permission made by virtue of section 33 (planning permission for development already carried out) as if—

- (a) references to proposed development (however phrased) are references to the development already carried out in respect of which such application is made; and
- (b) references to the land on which the proposed development would be carried out are references to the land on which that development has been carried out.

Prohibition on granting planning permission without an environmental impact assessment

3. The planning authority or the Scottish Ministers, as the case may be, must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish ministers, as the case may be of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the planning authority or the Scottish Ministers, as the case may be 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 that reasoned conclusion into the decision notice in accordance with regulation 29.

(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 habitats and of wild fauna and flora⁽¹⁷⁾ and [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds⁽¹⁸⁾;
- (c) land, soil, water, air and climate; and
- (d) material assets, cultural heritage and the landscape.

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

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

(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 planning permission for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant planning permission for that development is made.

(6) This paragraph applies where the planning authority, or the Scottish Ministers, as the case may be—

- (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 planning permission; and
- (b) are minded to grant planning permission for EIA development subject to a multi-stage condition.

(7) The planning authority or the Scottish Ministers, as the case may be 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 planning permission 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;
- (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 (or scoping direction) is issued, the EIA report must be based on that scoping opinion (or scoping direction, as the case may be), and 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 ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

EIA Development

6.—(1) Subject to paragraphs (3), (4) and (6) 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 planning authority to the effect that the development is EIA development;
- (b) the making by the Scottish Ministers of a screening direction to the effect that the development is EIA development; or
- (c) if no screening opinion has been adopted by the planning authority and no screening direction has been made by the Scottish Ministers, the submission by the developer in relation to the development of an EIA report.

(3) A screening direction 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 direction supersedes the terms of an earlier screening direction or 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, a planning authority or the Scottish Ministers, as the case may be, 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 information is provided to them by the developer by virtue of regulation 8(2) and (3), 9(4), 10(1) or (3)(a), 11(3), 12(7), 13(3) or 16(6), as the case may be, base their determination on that information.
- (2) Where a planning authority adopt a screening opinion or the Scottish Ministers make a screening direction—
- (a) that screening opinion or screening direction 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 or the screening direction 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) As soon as possible after adopting a screening opinion the planning authority must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to the developer.
- (4) The Scottish Ministers may make a screening direction either—
- (a) at their own volition; or
 - (b) if requested to do so in writing by any person,
- and where an application for planning permission has been made in respect of the development to which the screening direction relates, regulation 13(3) applies in respect of the making of such a screening direction as it applies to the making of a screening direction under regulation 13(2).
- (5) The Scottish Ministers may make a screening direction that a particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” in regulation 2(1) is satisfied in relation to that development.
- (6) As soon as possible after adopting a screening direction, the Scottish Ministers must send a copy of the screening direction and a copy of the written statement referred to in paragraph (2) to—
- (a) the developer;
 - (b) the planning authority; and
 - (c) where the screening direction is made following a request made by a person other than the developer, to the person who made the request.

Requests for screening opinion of the planning authority

- 8.—(1) A developer may request the planning authority 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.

Screening opinions – time period for decision

9.—(1) A planning authority receiving a request for a screening opinion under regulation 8(1) must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion on or before—

- (a) the expiry of the period of 21 days beginning with the date of receipt of the request; or
- (b) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the planning authority and the developer; or
- (c) where notice is given under paragraph (2), the date specified in the notice as the date by which the planning authority are to adopt a screening opinion.

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

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

(4) A planning authority must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify the developer in writing of the points on which they require further information.

(5) Where a planning authority—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (1); or
- (b) adopt an opinion to the effect that the development is EIA development,

the developer may request the Scottish Ministers to make a screening direction.

(6) The developer may make a request pursuant to paragraph (5) even if the planning authority have not received the information which they have sought under paragraph (4).

(7) For the purposes of paragraphs (1) and (2) the date on which a request for a screening opinion under paragraph (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 planning authority.

Requests for screening directions of the Scottish Ministers

10.—(1) A developer who pursuant to regulation 9(5) requests the Scottish Ministers to make a screening direction must submit with that request—

- (a) a copy of the request to the planning authority under regulation 8(1) and the information provided in accordance with regulation 8(2) and any other documents which accompanied the request;
- (b) a copy of any notification under regulation 9(4) which has been received and of any response;
- (c) a copy of any screening opinion received from the planning authority and of any accompanying statement of reasons; and
- (d) any representations the developer wishes to make.

(2) The developer must send to the planning authority a copy of the request and of any representations made to the Scottish Ministers, and the planning authority may, within 14 days of receiving those documents, provide the Scottish Ministers with their comments on the request and representations.

(3) Where the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction they—

- (a) must notify the developer of the points on which they require further information; and
- (b) may request the planning authority to provide such information as they can on any of those points.

(4) The Scottish Ministers must make a screening direction within—

- (a) the period of 21 days beginning with the date of receipt of the request or such longer period, not exceeding 90 days beginning with the date of the request as they may reasonably require; or
- (b) where notice is given under paragraph (5), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to make a screening direction.

(5) 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 direction 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.

(6) Notice under paragraph (5) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to make the screening direction.

(7) For the purposes of paragraphs (4) and (5), the date on which a request for a screening direction 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 direction in accordance with paragraph (1)

(a) to (c) is received by the Scottish Ministers.

PART 3

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

Application or request to review made to a planning authority without prior screening

11.—(1) This regulation applies where it appears to the planning authority that—

- (a) an application for planning permission which is—
 - (i) before them for determination is a Schedule 1 application or Schedule 2 application; or
 - (ii) subject to review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) is a Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by an EIA report.

(2) Where this regulation applies the planning authority must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion in respect of the proposed development to which the application for planning permission relates.

(3) If it appears to the planning authority that the application for planning permission is a Schedule 2 application but the planning authority do not consider that the information submitted by the developer in connection with the application for planning permission includes all the information referred to in regulation 8(2), the planning authority must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

(4) The provisions of regulation 9(1) to (6) apply in relation to the adoption of a screening opinion under paragraph (2) as they apply following a request made under regulation 8(1) as if—

- (a) the making of the application for planning permission or the request for review, as the case may be, were a request made under regulation 8(1);
- (b) references to date of receipt of the request were references to the relevant date.

(5) For the purposes of paragraph (4) the relevant date is the later of—

- (a) the date on which, as the case may be—
 - (i) the application for planning permission is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the request for review is made in respect of the application for planning permission; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the planning authority.

EIA application made to a planning authority without an EIA report

12.—(1) This regulation applies where an EIA application which is before a planning authority for determination is not accompanied by an EIA report.

(2) Where this regulation applies the planning authority 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 the period of 21 days beginning with the date on which the application is made; or
- (b) where—

- (i) the planning authority 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; or
- (ii) the Scottish Ministers make a screening direction to the effect that the development is EIA development (and no notice under paragraph (2) has yet been given), within seven days beginning with the date on which the planning authority receive a copy of that screening direction.

(4) A developer who receives notice under paragraph (2) may, within the period of 21 days beginning with the date of the notice, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(5) If the developer does not write to the planning authority in accordance with paragraph (4) within the 21 day period, the application will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of that period and the deemed refusal will not give rise to—

- (a) an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions); or
- (b) review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions).

(6) A planning authority which has given notice in accordance with paragraph (2) are, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, to determine the application only by refusing the application if the developer does not submit an EIA report.

(7) A developer who requests a screening direction pursuant to paragraph (4)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application;
- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make.

(8) The provisions of regulation 10(2) to (7) apply to a request made pursuant to paragraph (4) (b) as they apply to a request made pursuant to regulation 9(5) as if the reference in regulation 10(7) to paragraph (1)(a) to (c) were a reference to paragraph (7)(a) to (c) of this regulation.

Application or Appeal to the Scottish Ministers without prior screening

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

- (a) an application for planning permission which is before them for determination by virtue of—
 - (i) a direction under section 46 (call-in of applications by the Scottish Ministers); or
 - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions),is a Schedule 1 application or a Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by an EIA report.

(2) Where this regulation applies the Scottish Ministers must make a screening direction in respect of the proposed development to which the application for planning permission relates.

(3) If it appears to the Scottish Ministers that the application for planning permission is a Schedule 2 application but the Scottish Ministers do not consider that the information submitted by the developer in connection with the application for planning permission 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.

(4) The provisions of regulation 10(3)(b) and (4) to (6) apply in relation to the making of such a screening direction as they apply following a request made under regulation 9(5) as if references in regulation 10(4) and (5) to the date of receipt of the request were references to the relevant date.

(5) For the purposes of paragraph (4) the relevant date is the later of—

(a) the date on which, as the case may be—

(i) the application for planning permission is referred to the Scottish Ministers under section 46; or

(ii) the appeal is made in respect of the application for planning permission; or

(b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the Scottish Ministers.

EIA application referred to the Scottish Ministers without an EIA report

14.—(1) This regulation applies where an application which has been referred to the Scottish Ministers for determination is an EIA application and is not accompanied by 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 and must send a copy of that notification to the planning authority.

(3) The Scottish Ministers must notify the developer in accordance with paragraph (2) within the period of 21 days beginning with the date they received the application or such longer period as they may reasonably require.

(4) A developer who receives notice under paragraph (2) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.

(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 21 day 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 planning permission if the developer does not submit an EIA report.

Appeal to the Scottish Ministers without an EIA report

15.—(1) This regulation applies where an application for planning permission to which an appeal under section 47 relates is an EIA application and is not accompanied by 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 and send a copy of that notification to the planning authority.

(3) A developer who receives notice under paragraph (2) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.

(4) If the developer does not write in accordance with paragraph (3), the Scottish Ministers are under no duty to deal with the appeal and at the end of the 21 day period they must inform the developer that no further action is being taken on the appeal.

(5) Where the Scottish Ministers have given notice under paragraph (2), they are to determine the appeal only by refusing planning permission if the developer does not submit an EIA report.

Review by the planning authority of an application without an EIA report

16.—(1) This regulation applies where an application for planning permission under review by virtue of section 43A(8) is an EIA application and is not accompanied by an EIA report.

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

(3) A developer receiving a notification pursuant to paragraph (2) may, within the period of 21 days beginning with the date of the notification, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(4) If the developer does not write to the planning authority in accordance with paragraph (3), the application for planning permission will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the 21 day period, and the deemed refusal will not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(5) A planning authority which has given a notification in accordance with paragraph (2) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application for planning permission only by refusing the application if the developer does not submit an EIA report.

(6) A developer who requests a screening direction pursuant to paragraph (3)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application;
- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make.

(7) The provisions of regulation 10(2) to (7) apply to a request made pursuant to paragraph (3) (b) as they apply to a request made pursuant to regulation 9(5) as if the reference in regulation 10(7) to paragraph (1)(a) to (c) were a reference to paragraph (6)(a) to (c) of this regulation.

PART 4

PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Scoping opinions of the planning authority

17.—(1) A developer may request the planning authority 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 planning authority consider that they have not been provided with sufficient information to adopt a scoping opinion, they must within the period of 21 days beginning with the date of receipt of the request under paragraph (1) notify the developer of the points on which they require further information.

(4) The planning authority receiving a request under paragraph (1) must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of schedule 5 to the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 to the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development; and
- (d) any other public body which the planning authority considers 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 planning authority when adopting a scoping opinion must take into account 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.

(6) Subject to paragraph (7), the planning authority must within the period of 35 days beginning with the date of receipt of a request under paragraph (1), or such longer period as may be agreed in writing with the developer, adopt a scoping opinion and send a copy to the developer.

(7) Where—

- (a) a developer has, at the same time as making a request for a screening opinion under regulation 8(1), made a request for a scoping opinion under paragraph (1); and
- (b) the planning authority have adopted a screening opinion to the effect that the development is EIA development,

the planning authority must within the period of 35 days beginning with the date on which that screening opinion was adopted, or such longer period as may be agreed in writing with the developer, adopt a scoping opinion and send a copy to the developer.

(8) Where a planning authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (6) or (7), the developer may request the Scottish Ministers to make a scoping direction.

(9) Paragraph (8) applies even if the planning authority have not received the information which they have sought under paragraph (3).

(10) Where a request has been made to the planning authority to adopt a screening opinion but no request has been made under paragraph (1), the planning authority may at their own volition adopt a scoping opinion and paragraphs (3) to (6) and (11) apply in relation to such a scoping opinion as if a request had been made under paragraph (1) on the date on which the planning authority adopt the screening opinion.

(11) Where a planning authority has adopted a scoping opinion neither they nor the Scottish Ministers are precluded from requiring additional information to be provided by the developer in connection with any EIA report submitted in connection with an application for planning permission for the same development as referred to in the scoping opinion.

(12) A later scoping opinion supersedes the terms of an earlier scoping opinion.

Scoping directions of the Scottish Ministers

18.—(1) The Scottish Ministers may make a scoping direction under this regulation either—

- (a) where requested to do so under regulation 14(4), 15(3) or 17(8); or
- (b) at their own volition.

(2) A request made by the developer under regulation 14(4) or 15(3) must include—

- (a) a copy of any relevant screening opinion received by the developer and of any accompanying statement of reasons; and
- (b) any representations that the developer wishes to make.

(3) A request made by the developer under regulation 17(8) must include—

- (a) a copy of the relevant request to the planning authority under regulation 17(1);
- (b) a copy of any relevant notification under regulation 17(3) and of any response;
- (c) a copy of any relevant screening opinion received by the developer and of any accompanying statement of reasons; and
- (d) any representations that the developer wishes to make.

(4) If the developer makes a request under regulation 17(8), the developer must send to the planning authority a copy of that request and any representations made in accordance with paragraph (3)(d).

(5) The Scottish Ministers must notify in writing the developer of any points on which they consider the information provided is insufficient to enable them to make a scoping direction and may request the planning authority to provide such information as they can on any of those points.

(6) The Scottish Ministers must—

- (a) not make a scoping direction—
 - (i) by virtue of paragraph (1)(a) until they have consulted the bodies specified in paragraph (7); and
 - (ii) by virtue of paragraph (1)(b) until they have consulted such bodies and the developer; and
- (b) when making a scoping direction take into account 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.

(7) The bodies—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of schedule 5 of the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 of the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development; and

(d) 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.

(8) The Scottish Ministers must, within the period of 35 days beginning with the date of receipt of that request or such longer period as they may reasonably require, make a scoping direction and send a copy to the person who made the request and to the planning authority.

(9) Where the Scottish Ministers have made a scoping direction neither they nor the planning authority are precluded from requiring additional information to be provided in connection with any EIA report submitted in connection with an application for planning permission for the same development as was referred to in the scoping direction.

(10) A scoping direction supercedes the terms of an earlier scoping opinion or earlier scoping direction.

Procedure to facilitate preparation of EIA reports

19.—(1) A developer who intends to submit an EIA report to the planning authority or the Scottish Ministers under these Regulations may give notice in writing to that planning authority or the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land 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 planning authority or the Scottish Ministers receive notice under paragraph (1) or a written statement made pursuant to regulation 12(4)(a), 14(4), 15(3) or 16(3)(a) from a developer, they must—

- (a) notify the bodies specified in paragraph (4) in writing of the name and address of the developer and of the duty imposed on those bodies by paragraph (5) 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) The bodies are—

- (a) the consultation bodies; and
- (b) any other public body which the planning authority considers 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) Subject to paragraph (6), the planning authority and 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 planning authority or the body have in their possession any information which the developer or they consider relevant to the preparation of the EIA report; and
- (b) the planning authority or body must make any such information available to the developer.

(6) In relation to a person to which the Environmental Information (Scotland) Regulations 2004⁽¹⁹⁾ apply, paragraph (6) 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.

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

(7) In relation to a person to which the Environmental Information Regulations 2004(20) 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.

(8) A reasonable charge reflecting the cost of making the relevant information available may be made by any person who makes information available in accordance with paragraph (5).

PART 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Notification of EIA report

20.—(1) Where, in relation to an EIA application—

- (a) the developer submits to the planning authority or the Scottish Ministers, as the case may be, an EIA report; and
- (b) there are premises situated on the neighbouring land to which the notice can be sent,

the planning authority or the Scottish Ministers, as the case may be, must give notice to the owner, lessee or occupier of such premises in accordance with this regulation.

(2) Notice under paragraph (1) is to be—

- (a) in the form set out in, and completed in accordance with the notes in, schedule 5 (or in a form substantially to the like effect); and
- (b) given by sending to such premises a notice addressed to “the Owner, Lessee or Occupier”.

(3) For the purposes of this regulation, “neighbouring land” has the same meaning as in regulation 3(1) (interpretation) of the Development Management Procedure Regulations.

Publication of EIA report

21.—(1) Where, in relation to an EIA application the developer submits to the planning authority or the Scottish Ministers, as the case may be, an EIA report the planning authority or the Scottish Ministers, as the case may be, must publish as soon as possible 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;
- (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 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; 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 proposed development is situated.
- (4) The developer must, at the time of submitting the EIA report, pay the cost to be incurred by the planning authority or the Scottish Ministers, as the case may be, in arranging publication of the notice in accordance with paragraph (3)(b) and (c).
- (5) The planning authority must—
- (a) place a copy of the EIA report in Part I of the register together with a copy of the related application; and
 - (b) make copies of the EIA report and other documents submitted with the application available for inspection—
 - (i) on the application website; and
 - (ii) at an office of the planning authority where the register may be inspected.

Consultation where EIA report received by planning authority

- 22.**—(1) Where a planning authority receive in connection with an EIA application (including an EIA application under consideration on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions)) an EIA report, they must—
- (a) send a copy of the EIA report to the Scottish Ministers and to the bodies mentioned in paragraph (2); and
 - (b) consult the bodies mentioned in paragraph (2) about the EIA report and inform them how and by what date representations may be made (being a date not earlier than 30 days after the date on which the copy of the EIA report was sent).
- (2) The bodies are—
- (a) the consultation bodies;
 - (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of schedule 5 of the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development;
 - (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 of the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
 - (d) any other public body which the planning authority considers are likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies.

(3) Where an EIA report is submitted to the planning authority in relation to an application for planning permission, the developer must let the planning authority have enough copies of the EIA report to enable them to comply with paragraph (1)(a) and one additional copy.

(4) Where a body which a planning authority are required to consult under this regulation considers that consultation with that body is not required in respect of any EIA report relating to any case or class of case or relating to any specified area and so inform the planning authority in writing then the planning authority are not required to consult that body under this regulation.

Copy of EIA report for the Scottish Ministers

23. Where an EIA report is provided in relation to an application for planning permission which is directed to be referred to the Scottish Ministers for determination, or is the subject of an appeal to them, the developer must provide the Scottish Ministers with a copy of the EIA report and, where relevant, a copy of any additional information.

Consultation where EIA report received by the Scottish Ministers

24.—(1) Where the Scottish Ministers receive in connection with an EIA application which is being determined by them by virtue of section 46 or 47 an EIA report and the EIA report has not previously been submitted to the planning authority, the Scottish Ministers must—

- (a) send two copies of the EIA report to the planning authority;
- (b) send a copy of the EIA report to the bodies mentioned in paragraph (2); and
- (c) consult the planning authority and the bodies mentioned in paragraph (2) about the EIA report and inform them how and by what date representations may be made (being a date not earlier than 30 days after the date on which the copy of the EIA report was sent).

(2) The bodies are—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
- (d) any other public body which the Scottish Ministers consider are likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies.

(3) Where an EIA report is submitted to the Scottish Ministers in relation to an application for planning permission, the developer must let the Scottish Ministers have enough copies of the EIA report to enable them to comply with paragraph (1)(a) and (b) and one additional copy.

(4) Where a body which the Scottish Ministers are required to consult under this regulation considers that consultation with that body is not required in respect of any report relating to any case or class of case or relating to any specified area and so inform the Scottish Ministers in writing then the Scottish Ministers are not required to consult that body under this regulation.

Availability of copies of EIA report

25.—(1) Where an EIA report is submitted in relation to an application for planning permission, 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 21(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 21(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 an EIA report provided in accordance with paragraph (2).

PART 6

ADDITIONAL INFORMATION

Supplementary information and evidence relating to EIA reports

26.—(1) This regulation applies where the Scottish Ministers or the planning authority, are dealing with—

- (a) an EIA application;
- (b) an application for multi-stage consent in respect of EIA development;
- (c) an appeal in relation to an EIA application or an application for multi-stage consent in respect of EIA development; or
- (d) a review under section 43A(8) in relation to an EIA application or 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 planning authority or the Scottish Ministers, as the case may be, must (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about a matter to be included in the EIA report in accordance with regulation 5(2) which in the opinion of the planning authority or the Scottish Ministers, as the case may be, 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 planning authority or 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 contained in the EIA report or such additional information, as the case may be.

Publication of additional information

27.—(1) Where additional information is provided to the planning authority or the Scottish Ministers, regulations 20 to 22, 24 and 25 apply to the provision of such additional information as they apply to the submission of an EIA report as if references to the EIA report were references to that additional information.

(2) 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 Act;
- (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

AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

Availability of opinions, directions etc. for inspection

28.—(1) Where any document mentioned in paragraph (2) is received, issued or adopted by the planning authority, the planning authority must make copies of that document available for inspection—

- (a) on a website; and
- (b) at all reasonable hours at an office of the planning authority where the register may be inspected.

(2) The documents are any—

- (a) request under regulation 17(1);
- (b) copy of a request under regulation 17(8);
- (c) direction given under regulation 6(4) or (6);
- (d) screening opinion;
- (e) screening direction;
- (f) scoping opinion;
- (g) scoping direction;
- (h) notification given under regulation 12(2), 14(2), 15(2) or 16(2);
- (i) EIA report and any additional information; and
- (j) statement of reasons accompanying any of the above.

(3) Where particulars of a planning application are placed on Part I of the register, the planning authority must take steps to secure that there is also placed on that Part a copy of any document mentioned in paragraph (2) which is relevant to that application.

(4) Documents made available under paragraph (1) must remain so available for a period of two years.

Decision notice

29.—(1) Where an EIA application is determined by a planning authority or 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 41, have been incorporated or otherwise addressed;

- (f) if the decision is to grant planning permission—
 - (i) any conditions to which the decision is subject;
 - (ii) the reasoned conclusion referred to in regulation 4(1)(d);
 - (iii) a statement that the planning authority or the Scottish Ministers, as the case may be, 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 30; and
- (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 planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, 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 30—

“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—

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

“planning obligation” has the meaning given in section 75(1)(21).

Monitoring measures

30.—(1) Where an EIA application is determined by a planning authority or the Scottish Ministers and the decision is to grant planning permission, the planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, 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
 - (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.
- (3) Where the planning authority or 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 the planning authority must take steps to ensure that those measures are implemented.

Notification of decision

31.—(1) Where an EIA application is determined by a planning authority, the planning authority must, as soon as reasonably practicable—

- (a) send a copy of the decision notice to the Scottish Ministers;
- (b) inform the public and those bodies consulted in accordance with regulation 22(1)(b) of the decision and where a copy of decision notice may be inspected, by publishing a notice on the application website or in a newspaper circulating in the locality in which the land is situated or by such other means as are reasonable in the circumstances; and
- (c) make a copy of the decision notice available for public inspection—
 - (i) at an office of the planning authority where the register may be inspected; and
 - (ii) on the application website.

(2) Where an EIA application is determined by the Scottish Ministers, they must send a copy of the decision notice to the planning authority.

(3) The planning authority must, as soon as reasonably practicable after notification of the decision under paragraph (2), comply with paragraph (1)(b) and (c) in relation to the decision so notified as if it were a decision of the planning authority.

PART 8

APPLICATIONS FOR MULTI-STAGE CONSENT

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

32. The planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, must take the environmental information into account.

Application for multi-stage consent where EIA report previously provided

33.—(1) This regulation applies in relation to the consideration—

- (a) by the planning authority of—
 - (i) an application for multi-stage consent; or
 - (ii) a review in respect of an application for multi-stage consent under section 43A(8) (right to require review of planning decisions and failure to take such decisions); and

(b) by the Scottish Ministers of—

- (i) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
- (ii) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions),

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 planning authority or Scottish Ministers, as the case may be, 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 assessed; and
- (b) the developer has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the planning authority or the Scottish Ministers, as the case may be, must seek supplementary information from the developer in accordance with regulation 26(2) in respect of such effects.

Application for multi-stage consent without EIA report

34.—(1) This regulation applies in relation to the consideration by the planning authority of—

- (a) an application for multi-stage consent; or
- (b) a review in respect of an application for multi-stage consent under section 43A(8) (right to require review of planning decisions and failure to take such decisions),

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

the planning authority must adopt a screening opinion in respect of the development.

(3) If it appears to the planning authority that the application for multi-stage consent, or review, relates to planning permission for Schedule 2 development but the planning authority do not consider that the information submitted by the developer in connection with the application, or review, includes all the information referred to in regulation 8(2), the planning authority must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

(4) The provisions of regulation 9(1) to (6) apply in relation to the adoption of a screening opinion under paragraph (2) as they apply following a request made under regulation 8(1) as if—

- (a) the making of the application for multi-stage consent were a request made under regulation 8(1); and
- (b) references to date of receipt of the request were references to the relevant date.

(5) A screening opinion adopted under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) The Scottish Ministers may make a screening direction in relation to the development to which the application for multi-stage consent relates and any such screening direction supersedes the terms of the earlier screening opinion or screening direction.

(7) Where a screening opinion is adopted, or a screening direction made, to the effect that the development to which the application for multi-stage consent relates is EIA development—

- (a) where the application is before the planning authority by virtue of a review under section 43A(8), regulation 16 applies as if the application were an EIA application; and
- (b) in other cases, regulation 12 applies as if the application were an EIA application.

(8) For the purposes of paragraph (4) the relevant date is the later of—

- (a) the date on which, as the case may be—
 - (i) the application for multi-stage consent is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the request for review is made in respect of the application for multi-stage consent; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the planning authority.

Application for multi-stage consent referred or appealed to the Scottish Ministers without an EIA report

35.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of—

- (a) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
- (b) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions),

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

the Scottish Ministers must make a screening direction in respect of the development.

(3) If it appears to the Scottish Ministers that the application for multi-stage consent, or appeal, relates to planning permission for Schedule 2 development but the Scottish Ministers do not consider that the information submitted by the developer in connection with the application, or appeal, includes all the information referred to in regulation 8(2), the Scottish Ministers—

- (a) must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information; and

- (b) may request the planning authority to provide such information as they can in relation to that information.
- (4) The provisions of regulation 10(3)(b) and (4) to (6) apply in relation to the making of a screening direction under paragraph (2) as they apply following a request made under regulation 9(5) as if—
- (a) the making of the application for multi-stage consent were a request made under regulation 9(5); and
- (b) references to date of receipt of the request were references to the relevant date.
- (5) A screening direction made under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.
- (6) Where a screening direction made under this regulation 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.
- (7) A developer who receives a notice under paragraph (6) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.
- (8) If the developer does not write in accordance with paragraph (7), the Scottish Ministers are under no duty to deal with the application, and at the end of the 21 day period the Scottish Ministers must inform the developer in writing that no further action is being taken on the application or appeal, as the case may be.
- (9) Where the Scottish Ministers have given a notice under paragraph (6), they are to determine the application by refusing it, or appeal by dismissing it, if the developer does not submit an EIA report.
- (10) For the purposes of paragraph (4) the relevant date is the later of—
- (a) the date on which, as the case may be—
- (i) the application for multi-stage consent is referred to the Scottish Ministers under section 46; or
- (ii) the appeal is made in respect of the application for multi-stage consent under section 47; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the Scottish Ministers.

Modification of regulations relating to application for multi-stage consent

36.—(1) Parts 2, 4 to 7, 10 and 11 and regulations 12 and 16 (where applied by regulation 34(7)), apply to an application for multi-stage consent as if—

- (a) references to an application for planning permission 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;
- (c) in regulation 21(5)(a) after “application” there were inserted “(and any earlier application relating to the development, in so far as not already on Part 1 of the register)”;
- (d) in regulation 41(5)(b) the reference to “planning permission” were a reference to “multi-stage consent”; and
- (e) where the application for multi-stage consent relates to planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme,

the reference in schedule 5 to the relevant planning permission is to be read as a reference to the simplified planning zone scheme or enterprise zone scheme, as the case may be.

(2) Regulation 29(2)(d), (e) and (g) applies in respect of the notification of a decision on an application for multi-stage consent only where additional information has been provided by the developer in connection with that application.

PART 9

SPECIAL CASES

Simplified planning zone schemes or enterprise zone orders

37.—(1) This regulation applies to any—

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

after the commencement of these Regulations.

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

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

ROMP applications

38.—(1) These Regulations apply to—

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

subject to the modifications and additions set out below.

(2) Regulation 12 applies as if—

- (a) in paragraph (3)(a) and (4) for “21” there were substituted “42”; and
- (b) in paragraph (4) after “the notice” there were inserted “, or within such other period as may be agreed with the planning authority in writing”.

(3) Regulations 12(5) and (6), 14(5) and (6), 15(4) and (5) and 49 do not apply.

(4) Regulation 13 applies as if for paragraph (1)(a)(ii) there were substituted—

“(ii) an appeal under paragraphs 17(1) and 17(2) of schedule 8 of the Act, paragraph 11(1) of schedule 9 of the Act or paragraph 9(1) of schedule 10 of the Act (right of appeal)”.

(5) Regulation 14 applies as if—

- (a) in paragraphs (3) and (4) for “21” there were substituted “42”; and

- (b) in paragraph (4) after “the notice” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing.”.
- (6) Regulation 15(3) applies as if—
 - (a) for “21” there were substituted “42”; and
 - (b) after “the notice” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing.”.
- (7) Regulations 17(11) and 18(9) apply as if for “an application for planning permission for” there were substituted “a ROMP application which relates to another planning permission which authorises”.
- (8) Regulation 22(3) applies as if for “application for planning permission” there were substituted “ROMP application”.
- (9) Regulation 24(1) applies as if for “section 46 or 47” there were substituted “section 46, paragraphs 17(1) and 17(2) of schedule 8 of the Act, paragraph 11(1) of schedule 9 of the Act or paragraph 9(1) of schedule 10 of the Act”.
- (10) Part 11 applies as if for regulation 47 there were substituted—

“Application to the Court of Session

- 47.** For the purposes of Part XI of the Act (validity), the references in section 239, as applied by paragraph 21(3) of schedule 8, paragraph 16(4) of schedule 9 or paragraph 9(4) of schedule 10 of the Act, to action of the Scottish Ministers which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3.”.
- (11) Regulation 50 applies to ROMP development as it applies to development in respect of which a planning application is made.
 - (12) Where the Scottish Ministers or the planning authority notifies the developer, that—
 - (a) the submission of an EIA report is required under regulations 12(2), 14(2), or 15(2) such notification must specify the date by which the EIA report is to be submitted; or
 - (b) additional information is required under regulation 26 such notification must specify the date by which that information is to be provided.
 - (13) Paragraph (14) applies where the Scottish Ministers or the planning authority—
 - (a) notifies the developer, that—
 - (i) the submission of an EIA report is required under regulations 12(2), 14(2), or 15(2); or
 - (ii) supplementary information is required under regulation 26(2); and
 - (b) the developer, as the case may be—
 - (i) does not write to the planning authority or the Scottish Ministers in accordance with regulation 12(4), 14(4) or 15(3) before the expiry of the relevant period;
 - (ii) having written to the planning authority or the Scottish Ministers in accordance with regulation 12(4), 14(4) or 15(3) before the expiry of the relevant period does not submit an EIA report by the date specified by the planning authority, or the Scottish Ministers in accordance with paragraph (12); or
 - (iii) does not provide such supplementary information by the date specified by the planning authority, or the Scottish Ministers in accordance with paragraph (12);
 - (14) Unless either the Scottish Ministers have made a screening direction to the effect that the ROMP development to which the ROMP Application relates is not EIA development, where this

paragraph applies the planning permission to which the ROMP application relates does not authorise any development consisting of the winning and working of minerals, or involving the depositing of mineral waste, except insofar as it imposes any restoration or aftercare condition any minerals development, during the period—

- (a) beginning, as the case may be, with—
 - (i) the end of the relevant period; or
 - (ii) the day following the date specified in accordance with paragraph (12); and
- (b) ending on the date on which the developer, as the case may be, submits an EIA report or provides the supplementary information.

(15) For the purposes of paragraphs (13)(b)(i) and (14), the “relevant period” means the period of 42 days beginning with the date of the notice given under regulation 12(2), 14(2) or 15(3), as the case may be, or such longer period as may be agreed with the authority who gave the notice

(16) Particulars of the suspension of development arising by virtue of paragraph (14) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

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

(18) Where it falls to—

- (a) a planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 14(6)(b) of schedule 8, paragraph 9(8) of schedule 9 or paragraph 6(7) of schedule 10 of the Act do not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the planning authority has adopted a screening opinion or the Scottish Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;
- (b) a planning authority or the Scottish Ministers to determine a Schedule 1 or a Schedule 2 application—
 - (i) section 36 (register of applications, etc), and any provisions of the Development Management Procedure Regulations made by virtue of that section, have effect with any necessary amendments so that they apply to ROMP applications under paragraph 9(1) of schedule 9 and paragraph 6(1) of schedule 10 of the Act as they apply to applications for planning permission; and
 - (ii) where the planning authority is not the authority required to keep the register, the planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 36 as applied by sub-paragraph (i), with regulation 28 as applied by paragraph (1), and with paragraph (11).

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

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

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

- (a) a document referred to by the developer as an EIA report;
- (b) any documents required to accompany that report; and
- (c) any supplementary information required under regulation 26(2),

has been received by the authority.

- (22) Where paragraph (18)(a) applies—
- (a) paragraph 17(2) of schedule 8, paragraph 11(1) of schedule 9 and paragraph 9(1) of Schedule 10 of the Act (right of appeal) have effect as if there were also a right of appeal to the Scottish Ministers where the planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (20); and
 - (b) paragraph 17(5) of schedule 8, paragraph 11(2) of schedule 9 and paragraph 9(2) of schedule 10 of the Act (right of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the four months or other period agreed pursuant to paragraph (20).
- (23) In determining for the purposes of—
- (a) paragraph 14(6)(b) of schedule 8, paragraph 9(8) of schedule 9 and paragraph 6(7) of Schedule 10 of the Act (determination of conditions); or
 - (b) paragraph 17(5) of schedule 8, paragraph 11(2) of schedule 9 and paragraph 9(2) of Schedule 10 of the Act (right of appeal) as applied by paragraph (22)(b),

the time which has elapsed without the planning authority giving the developer written notice of their determination in a case where the authority have notified a developer in accordance with regulation 12(2) that the submission of an EIA report is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question, no account must be taken of any period before the issue of the direction.

Applications for permission under section 242A

39.—(1) These Regulations apply to an application made (or to be made) to the Scottish Ministers under section 242A(22) (urgent Crown development) subject to the following modifications.

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

(3) Regulation 7(6)(b) applies as if after “authority” there were inserted, “for the area to which the application relates.”.

(4) Regulations 9(5) and (6), 12(4)(b) and 17(8) and (9) do not apply.

(5) Regulation 22 applies as if—

- (a) in paragraph (1)(a) for “to the Scottish Ministers” there were substituted “and the related application to the planning authority for the area to which the application relates”;
- (b) after paragraph (1) there were inserted—

“(1A) Where a planning authority receive a copy of the EIA report, they must make a copy of the EIA report together with a copy of the related application available for inspection—

- (a) on a website; and
- (b) at all reasonable hours at an office of the planning authority where the register may be inspected.”.

(6) Part 7 applies as if for regulation 28 there were substituted—

“Availability of opinions, directions, etc. for inspection

28.—(1) Where the Scottish Ministers—

(22) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning etc. (Scotland) Act 2006 (asp 17).

- (a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;
- (b) receive a request under regulation 17(1); or
- (c) make a screening direction, scoping direction or direction under regulation 6(4) or (6),

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

(2) Where the planning authority receive copies of an opinion, request or direction under paragraph (1) they must make copies of that document available for inspection—

- (a) on a website; and
- (b) at all reasonable hours at an office of the planning authority where the register may be inspected.

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

(7) Regulation 35 applies to the determination of an application for multi-stage consent by the Scottish Ministers relating to a grant of planning permission under section 242A as it applies to the determination of an application for multi-stage consent referred to them.

Marine fish farming

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

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

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

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

(g) the Scottish Ministers;” and

(b) after the definition of “the Directive” insert—

““district salmon fishery board” has the meaning given in section 43 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(**23**)

(3) Regulation 8(2)(a) applies as if for “land” there were substituted “location of the development”.

(4) Regulation 17(2)(a) applies as if for “land” there were substituted “location of the development”.

(5) Regulation 20 does not apply.

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

PART 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

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

41.—(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) Where 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)(a) 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 planning permission 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 copy of the decision notice.

Projects in another EEA State likely to have significant transboundary effects

42.—(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

43.—(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, 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) serving any notice under regulation 20;
- (b) any requirement under regulation 41 including submitting information to an EEA State; and
- (c) any requirement under regulation 42.

(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(24), 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, 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

44.—(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

(24) 1971 c.80.

(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 45 to revoke the agreement.

Withdrawal of consent to use of electronic communications

45. 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 planning authority or, as the case may be, to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the planning authority or, as the case may be, with the Scottish Ministers for that purpose,

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.

46. Subject to regulations 43 to 45, any notice or other document to be served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).

Application to Court of Session

47. For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2)(25) to action of the Scottish Ministers or a planning authority which is not within the powers of the Act are to be taken to extend, as the case may be, to—

- (a) a grant of planning permission by the Scottish Ministers or the planning authority in contravention of regulation 3; and
- (b) a grant of multi-stage consent by the Scottish Ministers or the planning authority in contravention of regulation 32.

Hazardous waste and material change of use

48. A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of schedule 1 involves a material change in the use of that land or those buildings for the purposes of subsection (1) of section 26 (meaning of “development”).

Extension of the period for an authority’s decision on a planning application

49.—(1) In determining, for the purposes of the provisions specified in paragraph (2), the time which has elapsed without the planning authority giving notice to the developer of their decision in a case where—

- (a) the planning authority have notified a developer in accordance with regulation 12(2) that the submission of an EIA report is required; and
- (b) the Scottish Ministers have given a screening direction in relation to the development in question,

no account is to be taken of any period before the issue of the screening direction.

(25) Section 239 was amended by section 19(4) of the Planning etc. (Scotland) Act 2006 (asp 17).

- (2) The provisions are—
- (a) section 43A(8)(c) (right to require a review on failure to determine an application);
 - (b) section 47(2) (right to appeal against planning decisions and failure to take such decisions); and
 - (c) regulation 26(2) (time periods for decision) of the Development Management Procedure Regulations.
- (3) Where it falls to an authority to determine an EIA application, regulation 26 (time periods for decision) of the Development Management Procedure Regulations has effect as if—
- (a) for the reference in paragraph (2)(b) of that regulation to two months there were substituted a reference to four months; and
 - (b) the reference to “validation date” is a reference to the later of—
 - (i) the date on which the application is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the date on which an EIA report is submitted in respect of the application.

Directions as to whether development is EIA development

50. The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in schedule 2, and of a class described in the direction, is EIA development for the purposes of these Regulations.

Access to review procedure before a court

51. 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.

Competent authority – avoidance of conflict of interest

52.—(1) The planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, are to consider an application for EIA development made by that body, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Co-ordination of assessments

53.—(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 requirement to carry out a Habitats Regulation Assessment, the planning authority (or the Scottish Ministers, as the case may be) 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 48 of the Conservation (Natural Habitats, &c.) Regulations 1994(**26**).

Offences

54.—(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 the provision, 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.

55.—(1) Subsection (2) applies where—

- (a) an offence under regulation 54 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.

(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

Amendments Revocations and Transitional Provisions

Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

56.—(1) Article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽²⁷⁾ is amended in accordance with paragraphs (2) to (6).

(2) In paragraph (8) for “the Environmental Impact Assessment (Scotland) Regulations 2011” substitute “the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017”.

(3) In paragraphs (8)(a), (8A), (8B), (8C) and (9)(a), for “regulation 6”, in every place where those words occur, substitute “regulation 8”.

(4) In paragraphs (8)(b), (8A)(b)(i), (8B)(b) and (9)(a), for “regulation 5(10) or 7(4)” substitute “regulation 7(4) or 10”.

(5) In paragraphs (8)(c) and (9)(a), for “regulation 5(4)” substitute “regulation 6(4) or (6)”.

(6) In paragraph (9)(b), for “regulation 5(10) or (11), 7(4) or 45” substitute “regulation 7(4), 10 or 50”.

Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

57.—(1) The Development Management Procedure Regulations⁽²⁸⁾ are amended in accordance with paragraphs (2) to (4).

(2) In regulation 3 (interpretation)—

(a) after the definition of “dwellinghouse” insert—

““EIA report” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;” and

(b) in the definition of “environmental statement” after “2011” insert “as those Regulations had effect on 15th May 2017”.

(3) In regulation 5(2) (content of pre-application screening notice) for “2011” substitute “2017”.

(4) In Schedule 2 (registers under section 36(1))—

(a) in paragraph 3(b) and in paragraph 4(c)(i) after “environmental statement” insert “or EIA report”;

(b) in paragraph 3(f) for “9(4)” substitute “12(5)” and for “2011” substitute “2017”; and

(c) in paragraph 4(e) for “regulation 5(11) or 45” substitute “regulation 50” and for “2011” substitute “2017”.

Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2013

58.—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2013⁽²⁹⁾ are amended in accordance with paragraph (2).

(2) In regulation 2 (interpretation)—

⁽²⁷⁾ S.I. 1992/223 as relevantly amended by S.S.I. 1999/1 and S.S.I. 2011/139.

⁽²⁸⁾ S.S.I. 2013/155.

⁽²⁹⁾ S.S.I. 2013/156 as amended by S.S.I. 2015/233 and S.S.I. 2015/249.

- (a) in the definition of “application for multi-stage consent” for “2011” substitute “2017”;
- (b) for the definition of “EIA development” and “environmental statement” substitute—
 - ““EIA development” and “EIA report” have the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;
 - “environmental statement” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011⁽³⁰⁾ as those Regulations had effect on 15th May 2017;”;
- (c) in the definition of “validation date”, in paragraph (a)(ii) for “environmental statement” substitute “EIA report or environmental statement, as the case may be,”.

Amendment of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

59.—(1) The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013⁽³¹⁾ are amended in accordance with paragraph (2).

(2) In regulation 2 (interpretation)—

- (a) in the definition of “application for multi-stage consent” for “2011” substitute “2017”;
- (b) for the definition of “EIA development” and “environmental statement” substitute—
 - ““EIA development” and “EIA report” have the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;
 - “environmental statement” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 as those Regulations had effect on 15th May 2017;”;
- (c) in the definition of “validation date”, in paragraph (a)(ii) for “environmental statement” substitute “EIA report or environmental statement, as the case may be,”.

Revocations and transitional provisions

60.—(1) Subject to paragraphs (2) to (4), the 2011 Regulations are revoked.

(2) The 2011 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of an application for planning permission or a ROMP application, including consideration of such an application in the course of any appeal under section 47 or review under section 43A(8), where the developer has before that date—

- (a) submitted an environmental statement in connection with that application;
- (b) requested the planning authority under regulation 14(1) of the 2011 Regulations to adopt a scoping opinion in respect of the development to which the application relates; or
- (c) asked the Scottish Ministers under regulation 11(3) or 12(2) of the 2011 Regulations to make a scoping direction in respect of the development to which that application relates.

(3) Where the developer has before 16th May 2017 submitted an environmental statement in connection with the development to which an application for multi-stage consent relates—

- (a) the assessment under regulation 33(2)(a) as to whether or not there are significant effects on the environment which have not previously been identified and assessed is to be undertaken by reference to the scope of the information which immediately prior to 16th

⁽³⁰⁾ S.S.I. 2011/139.

⁽³¹⁾ S.S.I. 2013/157 as amended by S.S.I. 2015/249.

May 2017 had to be included in the environmental statement in accordance with schedule 4 of the 2011 Regulations; and

- (b) regulation 26(2) and paragraph (b) of the definition of “additional information” apply as if the reference to matters to be included in an EIA report in accordance with regulation 5(2) were a reference to the information which immediately prior to 16th May 2017 had to be included in the environmental statement in accordance with schedule 4 of the 2011 Regulations.

(4) Parts 1 and 2 and schedules 1 to 3 of the 2011 Regulations continue to have effect in respect of—

- (a) a request for a screening opinion under regulation 6(1) of the 2011 Regulations made to the planning authority before 16th May 2017;
- (b) a request for a screening direction pursuant to regulation 6(6) of the 2011 Regulations made to the Scottish Ministers before that date; or
- (c) a request for a screening direction pursuant to regulation 6(6) of the 2011 Regulations made to the Scottish Ministers after that date in connection with—
- (i) the adoption of a screening opinion by the planning authority (whether before or after that date) following a request for a screening opinion made under regulation 6(1) of the 2011 Regulations before that date; or
- (ii) the failure of the planning authority to adopt a screening opinion following a request for a screening opinion made under regulation 6(1) of the 2011 Regulations before that date;

(5) Where, pursuant a request referred to in paragraph (4), a screening opinion is adopted by the planning authority or screening direction is made by the Scottish Ministers in respect of a particular development, regulation 7(1) and (2) of these Regulations applies to the making of any subsequent screening direction in respect of that particular development by the Scottish Ministers under regulation 7(4) as if—

- (a) the reference in paragraphs (1)(a)(i) and (2)(a) to schedule 3 were a reference to schedule 3 of the 2011 Regulations; and
- (b) paragraphs (1)(a)(ii) and (b) were omitted.

(6) References in this regulation to provisions of the 2011 Regulations are references to such provisions as they had effect immediately before 16th May 2017.

(7) These Regulations (other than this regulation) do not apply in respect of—

- (a) an application for planning permission or a ROMP application to which the 2011 Regulations continue to have effect by virtue of paragraph (2); or
- (b) a request for a screening opinion mentioned in paragraph (4).

(8) References in any enactment to an environmental statement prepared, or having effect as if prepared, in accordance with the 2011 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.

(9) The provisions specified in column 1 of the Table in schedule 6 are revoked to the extent specified in column 3 of that Table.

(10) In this regulation—

“the 2011 Regulations” means the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011; and

“environmental statement” has the same meaning as in the 2011 Regulations.

St Andrew's House,
Edinburgh
29th March 2017

KEVIN STEWART
Authorised to sign by the Scottish Ministers