
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact and update, with amendments and savings, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“the 2011 Regulations”). These Regulations apply in relation to Scotland only.

These Regulations implement, in relation to town and country planning in Scotland, Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (OJ L 73, 14.3.1997, p.5).

The Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997 (“The Act”), development by planning authorities and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in schedule 1 requires an environmental impact assessment (“EIA”).

Development in Column 1 of the table in schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table (“Schedule 2 development”) requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the Regulations as “EIA development”.

Regulation 3 prohibits the grant of planning permission for EIA development unless an EIA is carried out and that the planning authority or the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. Regulation 32 makes equivalent provision in relation to the determination of an application for multi-stage consent.

Regulation 4 sets out what the environmental assessment process comprises and regulation 5 sets out the content of a EIA report.

Part 2 sets out procedures for determining whether development is EIA development. Regulation 6 sets out which events will establish that development is EIA development. [Regulations 8 to 10 enable a request to be made to the planning authority for a “screening opinion” or to the Scottish Ministers for a “screening direction”.] Regulation 7 makes general provision in relation to such an opinion or direction, including that any opinion or direction must be made by reference to the criteria in Schedule 3. Part 3 sets out procedures to be followed where the planning authority or Scottish Ministers are considering an application for planning permission for EIA development, or an appeal relating to such an application, without an EIA report.

Regulations 17 and 18 enable a person to seek an opinion from the planning authority (“a scoping opinion”) or the Scottish Ministers (a “scoping direction”) on the information to be included in an EIA report. The types of information which may be required are set out in Schedule 4.

The planning authority or the Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion or scoping direction. Regulation 19 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the applicant.

Regulations 20 and 21 require publication of notice of the lodging of an EIA report to be given.

Regulations 22 and 24 provide for consultation where an EIA report is received by the planning authority or the Scottish Ministers respectively. Regulations 23 and 25 are concerned with the provision of copies of an EIA report.

Regulation 26 contains procedures for the provision by the applicant of information additional to that contained in the EIA report. Regulation 27 provides that additional information provided by the applicant or the appellant as the case may be which becomes available after the initial gathering of information for an EIA report has taken place will also require to be publicised.

Regulation 28 provides for documents to be placed on the planning register or otherwise made available to the public. Regulation 29 requires planning authorities and the Scottish Ministers to provide information about decisions taken following the consideration of environmental information in accordance with the Regulations.

Part 8 makes provision relating to applications for multi-stage consent which essentially mirror the provisions in the Regulations relating to applications for the grant of planning permission. Regulations 34 and 35 require the planning authority or the Scottish Ministers as the case may be to undertake screening in certain circumstances where considering an application for multi-stage consent. Regulation 36 modifies the application of the Regulations as they apply to applications for multi-stage consent. Part 9 makes provision for special cases.

Regulation 37 restricts the grant of planning permission by simplified planning zone schemes or enterprise zone orders. Regulations 38, 39 and 40 respectively modify the application of the Regulations as they apply to ROMP applications, applications made under section 242A of the Act and for planning permission for marine fish farms. Regulations 41 and 42 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulations 43 to 45 allow the use of electronic communication. Regulation 46 provides for the service of notices under the Regulations. Regulation 47 provides that a grant of permission in contravention of regulation 3 or 32 shall be treated, for the purpose of section 239 of the Town and Country Planning (Scotland) Act 1997, as an act which is not within the powers of that Act. Regulation 48 provides that beginning specified operations to dispose of hazardous waste constitutes “development” under section 26 of the 1997 Act. Regulation 49 extends the time allowed to a planning authority to consider an application for planning permission for EIA development. Regulation 50 enables the Scottish Ministers to make directions that certain classes of development are EIA development. Regulation 51 makes provision to extend access to justice to environmental non governmental organisations. Regulation 52 provides for avoidance of conflicts of interest and regulation 53 provides for co-ordination of assessments. Regulation 54 makes it an offence knowingly or recklessly to provide false or misleading information in order to procure a decision or, with intent to deceive, to use such information or to withhold information to that end. Regulation 55 provides for how this applies in the context of offences committed by bodies corporate. Regulations 56 to 59 amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, the Town and Country (Appeals) (Scotland) Regulations 2013 and the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013. Regulation 60 revokes the 2011 Regulations subject to some saving and transitional provisions.

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.