
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^{M1}^[F1], as Directive [2009/31/EC](#) had effect immediately before IP completion day]

“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) ^{F2}... 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) ^{F3}... 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 ^{M2};

“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 ^{M3}[^{F4}, as it had effect immediately before IP completion day]

“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 ^{M4};

“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)) ^{M5} 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;

“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 ^{M6};

“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 ^{M7} (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 ^{M8} (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 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 ^{M9};
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 ^{M10};
- (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 ^{M11};
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 ^{M12};
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A ^{M13} (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 ^{M14}; 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 ^{M15}; [^{F5}and]

“supplementary information” has the meaning given in regulation 26(3); ^{F6}...

^{F6}
...

(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) ^{M16} (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.

(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.

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| F1 | Words in reg. 2(1) inserted (31.12.2020) by The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80) , regs. 1, 5(2)(a) (as amended by S.S.I. 2019/274 , regs. 1, 2(2) and S.S.I. 2020/310 , regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1) |
| F2 | Word in reg. 2(1) omitted (30.6.2017) by virtue of The Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/168) , regs. 1, 3(2)(a) |
| F3 | Words in reg. 2(1) omitted (30.6.2017) by virtue of The Environmental Impact Assessment (Miscellaneous Amendments) (Scotland) Regulations 2017 (S.S.I. 2017/168) , regs. 1, 3(2)(b) |
| F4 | Words in reg. 2(1) inserted (31.12.2020) by The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80) , regs. 1, 5(2)(b) |

(as amended by S.S.I. 2019/274, regs. 1, 2(2) and S.S.I. 2020/310, regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1)

F5 Word in reg. 2(1) inserted (31.12.2020) by The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80), regs. 1, **5(2)(c)** (as amended by S.S.I. 2019/274, regs. 1, 2(2) and S.S.I. 2020/310, regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1)

F6 Words in reg. 2(1) omitted (31.12.2020) by virtue of The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80), regs. 1, **5(2)(d)** (as amended by S.S.I. 2019/274, regs. 1, 2(2) and S.S.I. 2020/310, regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M1 OJ No L 140, 5.6.2009, p.114.

M2 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.

M3 OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.

M4 2000 c.7, as amended by paragraph 158 of Schedule 17 to the [Communications Act 2003 \(c.21\)](#).

M5 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 \(asp 17\)](#).

M6 2010 (asp 5).

M7 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 \(asp 17\)](#).

M8 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.

M9 2004 asp 6.

M10 S.I. 1994/2716 relevantly amended by S.S.I. 2004/475, S.S.I. 2007/80 and S.S.I. 2015/249.

M11 See Command Paper 9424.

M12 1979 c.46.

M13 Section 263A was inserted by section 50 of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).

M14 2000 asp 10.

M15 2004 asp 6. Section 58(1) was relevantly amended by section 37(4)(a) of the [Wildlife and Natural Environment \(Scotland\) Act 2011 \(asp 6\)](#).

M16 Section 43A was inserted by section 17 of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).

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 [F7 any law that implemented] Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora M17 and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds M18;
- (c) land, soil, water, air and climate; and
- (d) material assets, cultural heritage and the landscape.

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

(5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to the determination of an application for 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.

F7 Words in reg. 4(3)(b) inserted (31.12.2020) by *The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019* (S.S.I. 2019/80), regs. 1, 5(3) (as amended by S.S.I. 2019/274, regs. 1, 2(2) and S.S.I. 2020/310, regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M17 OJ L 206, 22.7.1992, p.7.

M18 OJ L 20, 26.1.2010, p.7.

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.

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, PART 1.