
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 102

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

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(1), 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
- (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)(2) 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

(1) 1971 c.80.

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

- (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.

(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(3).

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

(3) [S.I. 1994/2716](#) as relevantly amended by [S.S.I. 2007/80](#) and [S.I. 2007/1843](#).

- (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.