
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 102

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

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.