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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 102**

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

**PART 9**

**SPECIAL CASES**

**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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, Section 38.