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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 74**

**The Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017**

**Substitution of rule 5**

6. For rule 5 (the requirement for environmental statement and screening decision) substitute—

**“EIA application and screening decision**

5.—(1) The occurrence of an event mentioned in paragraph (2) determines for the purpose of these Rules that an application is an EIA application.

(2) The events are—

- (a) the making by the Scottish Ministers of a screening decision to the effect that proposed application will be an EIA application; or
- (b) if no screening decision has been made by the Scottish Ministers, the submission by the applicant in relation to those proposed works of a report referred to by the applicant as an EIA report.

(3) The Scottish Ministers may direct that these Rules do not apply in relation to particular proposed works specified in the direction if the works will have as their sole purpose response to civil emergencies and where in the opinion of the Scottish Ministers compliance with these Rules would have an adverse impact on their purpose.

(4) Before an application (other than an application relating to works constituting a project which is of a type mentioned in Annex I of the Directive) is made, the Scottish Ministers may at the request of the applicant make a decision as to whether or not an environmental impact assessment is required (“a screening decision”).

(5) In making a screening decision as to whether an application for proposed works which would constitute a project of a type mentioned in Annex II to the Directive is an EIA application, the Scottish Ministers must—

- (a) in all cases take into account—
    - (i) such of the selection criteria set out in Annex III to the Directive as are relevant to the proposed works; and
    - (ii) the available results of any relevant assessment of the effects of the proposed works; and
  - (b) where that decision is made following a request for a screening decision under paragraph (4), base their decision on the information provided in accordance with paragraph (6).
- (6) A request for a screening decision under paragraph (4) must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) a description of the proposed works, including in particular—
    - (i) a description of the physical characteristics of the proposed works and, where relevant, of demolition works;

- (ii) a description of the location of the proposed works, 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 works; and
  - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed works on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant; and
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (7) A request for a screening decision may, in addition to the information required in accordance with paragraph (6), also be accompanied by a description of any features of the proposed works, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.
- (8) The information referred to in paragraph (6) is to be compiled taking into account, where relevant—
- (a) the selection criteria set out in Annex III to the Directive; and
  - (b) the available results of any relevant assessment.
- (9) If the Scottish Ministers consider that the information provided by the applicant in or with a request under paragraph (4) is insufficient to enable them to make a screening decision they must, not later than 28 days after receiving the request, notify the applicant in writing of the points on which they require further information.
- (10) On receiving notification under paragraph (9), the applicant must provide the Scottish Ministers with such of the further information specified in that notification as the applicant is reasonably able to supply and, where any of the further information so specified is not provided, a written explanation as to why the applicant is unable to provide the information.
- (11) The Scottish Ministers must not give a screening decision until they have given notice of the request to, and invited the views of, the following bodies—
- (a) the consultation bodies; and
  - (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body’s specific environmental responsibilities or local and regional competencies,
- and the Scottish Ministers must include in each such notice the information provided in or with a request under paragraph (4).
- (12) Any body falling within paragraph (11) which is the recipient of a notice served under that paragraph must, not later than 28 days after receiving the notice, provide the Scottish Ministers with a written opinion as to whether or not, in the view of the recipient, the works in question should be the subject of an environmental impact assessment.
- (13) Where a request for a screening decision relates to an order which would, if made, authorise works which for the purposes of the Directive could constitute two or more projects which are not interdependent, the Scottish Ministers may, if they consider it expedient, treat each such project separately for the purposes of this rule and, in such a case, the references in this rule to works shall be construed as relating to each such project separately, and the references to the screening decision shall be construed as relating to such a decision in relation to each such project.

(14) The Scottish Ministers may of their own volition make a screening decision following intimation to the applicant of the intention to make such a decision, and paragraphs (5) to (13) apply in relation to such intimation and decision as they apply where a request is made under paragraph (4).

(15) Where the Scottish Ministers make a screening decision—

- (a) that screening decision must be accompanied by a written statement giving, with reference to such of the criteria set out in Annex III to the Directive as are relevant to the proposed works, the main reasons for that decision; and
- (b) where the screening decision is to the effect that the proposed works do not require an environmental impact assessment, the statement referred to in subparagraph (a) must state any features of the proposed works or proposed measures which are envisaged to avoid or prevent significant adverse effects on the environment.

(16) The Scottish Ministers must notify the applicant in writing of their screening decision not later than 42 days after—

- (a) receipt of the request made pursuant to paragraph (4);
- (b) intimation of the intention to make a decision of their own volition under paragraph (14); or
- (c) receiving the further information that the applicant is required to supply by virtue of paragraph (10).

(17) Following a screening decision the Scottish Ministers must publicise notice of that decision—

- (a) in the Edinburgh Gazette;
- (b) in such newspapers as they consider appropriate; and
- (c) on a website maintained by the Scottish Ministers for the purpose of making publicly available information relating to applications to which these Rules apply.”