
STATUTORY INSTRUMENTS

1997 No. 1870 (S.136)

TOWN AND COUNTRY PLANNING, SCOTLAND

**The Environmental Assessment
(Scotland) Amendment Regulations 1997**

<i>Made</i>	- - - -	<i>23rd July 1997</i>
<i>Laid before Parliament</i>		<i>11th August 1997</i>
<i>Coming into force</i>	- -	<i>1st September 1997</i>

The Secretary of State, being a Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on him by the said section 2 and section 40 of the Town and Country Planning (Scotland) Act 1997⁽³⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Assessment (Scotland) Amendment Regulations 1997 and shall come into force on 1st September 1997.

(2) In these Regulations “the 1988 Regulations” means the Environmental Assessment (Scotland) Regulations 1988⁽⁴⁾.

(3) Any reference in these Regulations to a numbered regulation, Schedule, paragraph or sub-paragraph shall, unless the context otherwise requires, be construed as a reference to the regulation, Schedule, paragraph or sub-paragraph so numbered in the 1988 Regulations.

Transitional provision

2. The amendments made to the 1988 Regulations shall not apply in relation to an enforcement notice issued under section 127 of the Town and Country Planning (Scotland) Act 1997 before 1st September 1997.

(1) S.I. 1988/785.

(2) 1972 c. 68.

(3) 1997 c. 8.

(4) S.I. 1988/1221; amended by S.I. 1990/526 and S.I. 1994/2012.

Amendments to the 1988 Regulations

3. In regulation 2 after the definition of “planning authority” insert–
- ““SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995((5)
- “water and sewerage authority” means a new water and sewerage authority within the meaning of section 62 of the Local Government etc. (Scotland) Act 1994((6)
4. In regulation 4(1)–
- (a) after the definition of “the Act” insert–
- ““the 1997 Act” means the Town and Country Planning (Scotland) Act 1997((7)
- (b) in the definition of “annex 1 application” and “annex 2 application”, after “means an application” insert “or deemed application”;
- (c) after the definition of “controlled waste” insert–
- ““deemed application” means the application for planning permission deemed under section 133(7) of the 1997 Act to be made by virtue of an appeal under section 130 of that Act;
- “enforcement appeal” means an appeal under section 130 of the 1997 Act;
- “enforcement notice” means a notice issued under section 127 of the 1997 Act;
- “ground (a) appeal” means an appeal under section 130 of the 1997 Act, so far as brought on the ground mentioned in subsection (1)(a) of that section;
- “notice of unauthorised development” means such a notice as is described in regulation 11A of these Regulations;”;
- (d) after the definition of “register” insert–
- ““relevant development” means development of any description specified in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(8) other than development of any description specified in article 3(10) of that Order;”;
- (e) for the definition of “reporter” substitute–
- ““reporter” means a person appointed by the Secretary of State under Schedule 4 to the Town and Country Planning (Scotland) Act 1997 to determine an appeal under section 47 or section 130 of that Act, or to report to the Secretary of State on an application for planning permission referred to the Secretary of State under section 46 of that Act or which is the subject of an appeal under the said sections 47 or 130;”;
- (f) after the definition of “special waste” insert–
- ““unauthorised development” means development which is (or is part of) the subject matter of an enforcement notice and–
- (a) is within a description mentioned in Schedule 1; or
- (b) is within a description mentioned in Schedule 2 and would be likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location;”.

(5) 1995 c. 25.

(6) 1994 c. 39.

(7) 1997 c. 8.

(8) S.I. 1992/223; amended by S.I. 1992/1078 and 2084, 1993/1036, 1994/1442, 2586 and 3294, 1996/252, 1266 and 3023 and 1997/1871, and as read with Part IV of S.I. 1994/2716.

5. After regulation 4(2) insert–
 - “(3) Where the Secretary of State gives a direction which includes a statement that in his opinion particular development is of a description within Schedule 2 and is likely, or is not likely, to have significant effects on the environment by virtue *inter alia* of its nature, size or location, that statement shall be conclusive of that question for the purpose of determining whether that development is unauthorised development.”.
6. In regulation 6 after “the proposed development” each time they occur insert “or development”.
7. In regulation 7(1) for “An applicant may, before applying for planning permission” substitute “The persons mentioned in paragraph (1A) may”.
8. After regulation 7(1) insert–
 - “(1A) The persons who may request an opinion under paragraph (1) are–
 - (a) a person other than a planning authority who is minded to undertake development which appears to him to be relevant development;
 - (b) an applicant before applying for planning permission.”.
9. In paragraphs (3), (4), (5), (6) and (7) of regulation 7 for “applicant” wherever it appears substitute “person making the request”.
10. For regulation 7(8) substitute–
 - “(8) Where the planning authority do not give the person making the request their written opinion within the 4 week period or such longer period as may be agreed between the parties under paragraph (4) above–
 - (a) where the person making the request is an applicant before applying for planning permission (as mentioned in paragraph (1A)(b) above) he shall be entitled to assume that at this stage the planning authority’s opinion is that consideration of environmental information shall not be required;
 - (b) where the person making the request is a person who is minded to undertake development which appears to him to be relevant development (as mentioned in paragraph (1A)(a) above) he may ask the Secretary of State in accordance with the provisions of regulation 9 below for his direction on the matter.”.
11. After regulation 7(8) insert–
 - “(8A) Paragraph (8)(b) above applies notwithstanding that the authority may not have received further information which they have sought under paragraph (6) above.”.
12. In regulation 7(9) after “applicant” insert “(as mentioned in paragraph (1A)(b) above)”.
13. After regulation 7(9) insert–
 - “(9A) Where a person making a request, being a person who is minded to undertake development which appears to him to be relevant development (as mentioned in paragraph (1A)(a) above), is notified by the planning authority that in their opinion the proposed development would fall within any of the descriptions of development mentioned in Schedule 1, or in Schedule 2 and would be likely to have significant effects on the environment, and the person making the request disagrees he may ask the Secretary of State in accordance with the provisions of regulation 9 for his direction on the matter.”.
14. In regulation 7(10)–
 - (a) after “accompanying documents” insert “and every related direction of the Secretary of State and accompanying statement of reasons”; and
 - (b) for “until such time” to the end substitute–

“for a period of 2 years or until such time as a copy of that opinion and any related direction is required by regulation 11 to be placed on Part I of the register”.

15. In regulation 8(1)–

- (a) in paragraph (a) after “section 32 or 33)” insert “or regulation 10A” and at the end delete “or”; and
- (b) at the end insert–
 - “; or
 - (c) under regulation 11A the planning authority have served a notice of unauthorised development.”.

16. After regulation 9(1) insert–

“(1A) An application to the Secretary of State under regulation 7(8)(b) or (9A) above for a direction shall be accompanied by–

- (a) the applicant’s request to the planning authority for their opinion;
- (b) the documents which accompanied the request and any other information supplied to the planning authority;
- (c) the planning authority’s opinion if any and the reasons therefor; and
- (d) any representations which the applicant wishes to make.

(1B) An application to the Secretary of State under regulation 11A(3) below for a direction shall be accompanied by–

- (a) the notice of unauthorised development;
- (b) the enforcement notice which accompanied it; and
- (c) any representations which the applicant wishes to make.”.

17. In regulation 9(3) after “regulation 7(9)” insert “,7(8)(b), 7(9A), 11A(3)”.

18. In regulation 9(5) for “paragraph (1) or (2)” substitute “paragraph (1), (1B) or (2)”.

19. After regulation 9(5) insert–

“(5A) If on the expiry of 4 weeks from the receipt by the Secretary of State of the application referred to in paragraph (1A) (or such longer period as the Secretary of State may, during the said 4 weeks or any period so extended, notify in writing to the applicant and the planning authority) the Secretary of State does not issue a direction, he shall be deemed to have directed that the proposed development would be within a description mentioned in Schedule 1, or within a description mentioned in Schedule 2 and likely to have significant effects on the environment.”.

20. After regulation 10 insert–

10A. The Secretary of State upon giving a direction following an application under regulation 7(8)(b) or (9A) shall send a copy to the applicant and the planning authority and to such other persons as he considers desirable and where his opinion is that the proposed development would be within a description mentioned in Schedule 1 or within a description mentioned in Schedule 2 and likely to have significant effects on the environment he shall send them a statement of his reasons therefor.

10B. The Secretary of State upon giving a direction following an application under regulation 11A(3) shall send a copy to the applicant and the planning authority and to such other persons as he considers desirable and where his opinion is that the matters which are alleged to constitute the breach of planning control comprise or include unauthorised development he shall send them a statement of his reasons therefor.”.

21. In regulation 11(4) after “regulation 10” insert “or 10A”.

22. After regulation 11 insert—

“Unauthorised development

11A.—(1) Where it appears to the planning authority by whom an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include unauthorised development they shall serve with a copy of the enforcement notice a notice which shall—

- (a) specify the description within Schedule 1 or, as the case may be, Schedule 2 by reference to which it is the authority’s opinion that the development is unauthorised development; and if within a description mentioned in Schedule 2, the factors by virtue of which it is likely to have significant effects on the environment; and
- (b) require a person who gives notice of an appeal under section 130 of the 1997 Act to submit to the Secretary of State with the notice of the appeal four copies of an environmental statement relating to that unauthorised development and enough additional copies of the environmental statement or parts thereof to enable him to send one to each of the authorities, bodies or persons mentioned in Schedule 4.

(2) A planning authority by whom a notice of unauthorised development has been served shall send a copy of the notice to the Secretary of State.

(3) A person on whom a notice of unauthorised development is served may apply to the Secretary of State for his direction on any matter stated in the notice.

(4) The planning authority shall hold copies of every notice of unauthorised development, together with any related direction and statement of reasons by the Secretary of State, of any notice given by him under regulation 15A and of every environmental statement received following service of a notice of unauthorised development or a notice under regulation 15A, and shall make each available for inspection by the public at all reasonable hours, at the place where Part I of the register is kept, for a period of two years or until such time as a copy of the relevant document is required by regulation 11A(5) to be placed on Part II of the register.

(5) Where particulars of any planning permission granted by the Secretary of State under section 133 of the 1997 Act are entered in Part II of the register, the planning authority shall take steps to secure that that Part also contains such particulars of the notice of unauthorised development, any direction given under regulation 10B and any notice given under regulation 15A as are relevant to the development for which permission has been granted and a copy of the environmental statement received by the authority under regulation 19(4).”.

23. In regulation 12 after “application” each time it occurs insert “or deemed application”.

24. After regulation 15 insert—

“Enforcement appeal received by the Secretary of State without environmental statement

15A.—(1) Where on consideration of an enforcement appeal the Secretary of State is of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include unauthorised development, or a reporter so considers, but the documents submitted for the purposes of the appeal do not include an environmental statement, the Secretary of State may, subject to paragraph (2), within 4 weeks beginning with the date on which he received the appeal, or such longer period as he may reasonably

require, direct giving his reasons that consideration of environmental information in respect of the development is required before planning permission could be granted for the development, and notify the appellant —

- (a) of his direction;
- (b) of the requirements of paragraph (3) below;
- (c) that the planning authority is a body required under regulation 23 to provide the appellant with any relevant information in their possession; and
- (d) that the appellant must supply the authorities, bodies or persons mentioned in Schedule 4 and the planning authority with such further information about the development as they may request.

(2) Notice need not be given under paragraph (1) where the appellant has submitted an environmental statement to the Secretary of State for the purposes of an appeal under section 47 of the Town and Country Planning (Scotland) Act 1997 which—

- (a) relates to the development to which the appeal under section 130 of that Act relates; and
- (b) is to be determined at the same time as that appeal;

and that statement and the representations (if any) made in relation to any part of it shall be treated as the environmental information for the purposes of regulation 6.

(3) The requirements of this paragraph are that the appellant shall, within the period specified in the notice or such longer period as the Secretary of State may by notice in writing to the appellant allow, submit to the Secretary of State four copies of an environmental statement relating to the unauthorised development in question and enough additional copies of the environmental statement or parts thereof to enable him to send one to each of the other authorities, bodies or persons mentioned in Schedule 4.

(4) Where the Secretary of State makes a direction in accordance with paragraph (1), he shall inform the planning authority and the other authorities, bodies or persons mentioned in Schedule 4 of the requirement for an environmental statement and that they may be required to make available to the appellant, in accordance with regulation 23, any information in their possession which they or the appellant consider relevant to the preparation of the environmental statement.

(5) If an appellant to whom notice has been given under paragraph (1) fails to comply with the requirements of paragraph (3) the deemed application and the ground (a) appeal (if any) shall lapse at the end of the period specified or allowed (as the case may be).

(6) As soon as reasonably practicable after the occurrence of the event mentioned in paragraph (5), the Secretary of State shall notify the appellant and the planning authority in writing that the deemed application and the ground (a) appeal (if any) have lapsed.”.

25. In regulation 16(1) after the words “to which regulation 6 applies” insert “other than a deemed application”.

26. In regulation 17—

- (a) after “application” insert “or deemed application”; and
- (b) for “his notices” substitute “the notices”.

27. After regulation 19 insert—

“Consultation where environmental statement received by Secretary of State in connection with enforcement appeal

19A.—(1) This regulation applies where the Secretary of State is taking into consideration environmental information relating to a deemed application.

(2) The provisions of regulation 18(1)(c), (2) and (4) shall apply to the Secretary of State as they apply to the planning authority, as if references to the applicant include, where the case requires, references to the appellant and the provisions of regulation 18(3) shall similarly apply subject to substitution of “14 days' notice” in place of “4 weeks' notice”.

(3) The provisions of regulation 19(3) shall apply.”.

28. For regulation 22(1A) substitute—

“(1A) Where further information is requested in accordance with paragraph (1)—

(a) except insofar as such further information—

(i) is required to be provided for the purposes of a local inquiry held under the Act and the request for such further information states that it is to be provided for such purposes, or

(ii) is required to be provided for the purposes of an enforcement appeal,

regulations 17, 18 and 19 shall apply to the submission of such further information as they apply to the submission of an environmental statement subject to any necessary modifications and regulation 16 shall similarly apply subject to substitution, in paragraph (1), of “in Schedule 6” in place of “in Schedule 5”; and

(b) where such further information is required to be provided for the purposes of an enforcement appeal, regulations 16(5) and (6), 17, and 19A shall similarly apply.”.

29. After regulation 22(2) insert—

“(3) If a person to whom notice has been given under paragraph (1) fails to provide the information required within such period as may be specified by the Secretary of State, the reporter or the planning authority, as the case may be, any deemed application and ground (a) appeal shall lapse at the end of the specified period.

(4) As soon as reasonably practicable after the occurrence of the event mentioned in paragraph (3), the Secretary of State shall notify the appellant and the planning authority in writing that the deemed application and ground (a) appeal (if any) have lapsed.”.

30. In regulation 23—

(a) after “15” insert “or 15A”; and

(b) “after an application” insert “or deemed application”.

31. In regulation 24—

(a) after “application” insert “or deemed application”; and

(b) after “regulation 16(4)” insert “(except where the decision was in regard to a deemed application)”.

32. After regulation 25(1) insert—

“(1A) Where a planning authority are minded to undertake development which appears to them to be relevant development they shall consider whether the proposed development would be within a description in Schedule 1, or within a description mentioned in Schedule 2 and likely to have significant effects on the environment, and shall consult such of the authorities, bodies or persons mentioned in Schedule 4 as they consider appropriate, and inform the authorities, bodies or persons consulted of their opinion following their consideration of the matter.”.

33. In regulation 25(2) after “paragraph (1)” insert “or (1A)”.
34. Part IV (Specific Developments in New Towns) shall be omitted.
35. For Schedule 4 substitute—

“SCHEDULE 4

Regulations 7, 8, 11A, 14, 15, 15A,
18, 23 to 27, 29,

37, 42, 44 and 66

1. Any adjoining planning authority where the proposed development is likely to affect land in their area.
2. Scottish Natural Heritage.
3. The water and sewerage authority for the area in which the development is to take place.
4. SEPA.
5. The Health and Safety Executive.
6. The Secretary of State.”.

St Andrew’s House,
Edinburgh
23rd July 1997

Malcolm Chisholm
Parliamentary Under Secretary of State, Scottish
Office

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations are concerned with the further implementation in Scotland of Council Directive [85/337/EEC](#) (OJNo. L175, 5.7.85, p.40) on the assessment of the effects of certain public and private projects on the environment. They amend Part II (Planning) of the Environmental Assessment (Scotland) Regulations 1988 (“the Environmental Assessment Regulations”) to apply to appeals against enforcement notices and to allow a developer to check the need for environmental assessment in connection with a proposal which may benefit from permitted development rights. In addition the Regulations remove Part IV (Specific Developments in New Towns) of the Environmental Assessment Regulations because the new town development corporations have been wound up.

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 1997 ([S.I. 1997/1871](#)) removes permitted development rights from classes of development where an environmental assessment would be required if a planning application were to be made in respect of them.

Section 133 of the Town and Country Planning (Scotland) Act 1997 (“the 1997 Act”) enables the Secretary of State when determining an appeal against an enforcement notice issued under section 127 of that Act to grant planning permission in respect of any matter stated in the notice as constituting a breach of planning control.

The amendments made by these Regulations provide that a person who is minded to undertake development which appears to him to be within a description of development permitted under article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 may seek an opinion from the planning authority on whether the proposed development would require environmental assessment if it were to be the subject of a planning application.

Also, where an application for planning permission for development to which an enforcement notice relates would have required environmental assessment in accordance with the Environmental Assessment Regulations, the amendments made by these Regulations preclude the Secretary of State from granting planning permission on the determination of the enforcement notice appeal without first considering an environmental statement relating to the development.

Regulation 4 amends the definition of “annex 1 application” and “annex 2 application” to include a deemed application under the enforcement appeal procedure (sections 130 to 133 of the 1997 Act).

Regulations 7 to 14 amend regulation 7 (opinion of planning authority) to allow a person who is minded to undertake development which appears to be permitted development to obtain the opinion of the planning authority on whether the development would need environmental assessment and therefore not be covered by permitted development rights. If the person does not accept the authority’s opinion, he may seek a direction from the Secretary of State.

Regulation 22 adds regulation 11A which provides that when serving an enforcement notice a planning authority must also serve a notice of unauthorised development where in the planning authority’s opinion the development ought to have been subject to environmental assessment. Any appeal against the enforcement notice must then be accompanied by an environmental statement. If the person does not accept the authority’s opinion, he may seek a direction from the Secretary of State.

Regulation 24 adds regulation 15A which sets out the procedure to be followed where an enforcement appeal which ought to have been accompanied by an environmental statement is received without one. If the appellant fails to submit an environmental statement within the period

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allowed, his deemed application for planning permission, and any appeal on the ground that planning permission should be granted, lapse at the end of the period.

Regulation 27 adds regulation 19A which provides for consultation where the Secretary of State receives an environmental statement in connection with an enforcement appeal.

Regulation 32 extends regulation 25 (development by planning authority) to apply where a planning authority is minded to undertake development under permitted development rights which may require environmental assessment.

Numerous minor, consequential and technical amendments are also made and Schedule 4 to the Environmental Assessment Regulations is updated.