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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 139**

**The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011**

**PART 3**

**PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION**

**Application or request to review made to a planning authority without an environmental statement**

- 8.** Where it appears to the planning authority that—
- (a) an application for planning permission which is—
    - (i) before them for determination is a Schedule 1 application or Schedule 2 application; or
    - (ii) subject to review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) is a Schedule 2 application;
  - (b) the development in question has not been the subject of a screening opinion or screening direction; and
  - (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) to (5) of regulation 6 apply as if the making of the application, or the requirement to review the case under section 43A(8), as the case may be, were a request made under regulation 6(1).

**EIA application made to a planning authority without an environmental statement**

**9.—(1)** Where an EIA application which is before a planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the planning authority must notify the applicant in writing that the submission of an environmental statement is required.

- (2) Notice under paragraph (1) must be given—
- (a) within three weeks beginning with the date on which the application is made; or
  - (b) where—
    - (i) the planning authority adopt a screening opinion after the date on which the application is made, within seven days beginning with the date of adoption that screening opinion; or
    - (ii) the Scottish Ministers make a screening direction to the effect that the development is EIA development (and no notice under paragraph (1) has yet been given) within seven days beginning with the date on which the planning authority receive a copy of that screening direction.

(3) An applicant receiving notice under paragraph (1) may, within three weeks beginning with the date of the notice, write to the planning authority stating that the applicant—

- (a) accepts their view and is providing an environmental statement; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(4) If the applicant does not write to the planning authority in accordance with paragraph (3) within that three week period, the application will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the that period and the deemed refusal will not give rise to—

- (a) an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions); or
- (b) review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions).

(5) A planning authority which has given notice in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application only by refusing the application if the applicant does not submit an environmental statement.

(6) A person who requests a screening direction pursuant to paragraph (3)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application; and
- (c) all correspondence between the applicant and the planning authority relating to the proposed development,

and paragraphs (2) to (5) of regulation 7 apply to a request under this regulation as they apply to a request made pursuant to regulation 6(6).

#### **Application or Appeal to the Scottish Ministers without an environmental statement**

**10.** Where on consideration of an application referred to the Scottish Ministers under section 46 (call-in of applications by the Scottish Ministers) or an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) it appears to the Scottish Ministers that—

- (a) the application is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) to (5) of regulation 7 apply as if the referral of the application or appeal, as the case may be, were a request made by the applicant or appellant pursuant to regulation 6(6).

#### **EIA application referred to the Scottish Ministers without an environmental statement**

**11.—(1)** Where it appears to the Scottish Ministers that an application which has been referred to them for determination is an EIA application and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the Scottish Ministers must notify the applicant in writing that the submission of an environmental statement is required and must send a copy of that notification to the planning authority.

(2) The Scottish Ministers must notify the applicant in accordance with paragraph (1) within three weeks beginning with the date they received the application or such longer period as they may reasonably require.

(3) An applicant who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an environmental statement will be provided and may under regulation 15 ask the Scottish Ministers to make a scoping direction.

(4) If the applicant does not write in accordance with paragraph (3), the Scottish Ministers are under no duty to deal with the application, and at the end of the three week period the Scottish Ministers must inform the applicant in writing that no further action is being taken on the application.

(5) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the application only by refusing planning permission if the applicant does not submit an environmental statement.

### **Appeal to the Scottish Ministers without an environmental statement**

**12.**—(1) Where on consideration of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) it appears to the Scottish Ministers that the application for planning permission to which the appeal relates is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, they must notify the appellant in writing that the submission of an environmental statement is required and send a copy of that notification to the planning authority.

(2) An appellant who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an environmental statement will be provided and may under regulation 15 ask the Scottish Ministers to make a scoping direction.

(3) If the appellant does not write in accordance with paragraph (2), the Scottish Ministers are under no duty to deal with the appeal and at the end of the three week period they must inform the appellant that no further action is being taken on the appeal.

(4) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the appeal only by refusing planning permission if the appellant does not submit an environmental statement.

### **Review by the planning authority of an application without an environmental statement**

**13.**—(1) Where on consideration of a review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) it appears to the planning authority that the application for planning permission under review is an EIA application and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, they must notify the applicant in writing that the submission of an environmental statement is required.

(2) An applicant receiving a notification pursuant to paragraph (1) may, within three weeks beginning with the date of the notification, write to the planning authority stating that the applicant—

- (a) accepts their view and is providing an environmental statement; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(3) If the applicant does not write to the planning authority in accordance with paragraph (2), the permission sought will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the relevant three week period, and the deemed refusal will not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(4) A planning authority which has given a notification in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application only by refusing planning permission if the applicant does not submit an environmental statement.

(5) A person who requests a screening direction pursuant to paragraph (2)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application; and
- (c) all correspondence between the applicant and the planning authority relating to the proposed development,

and paragraphs (2) to (5) of regulation 7 apply to a request under this regulation as they apply to a request made pursuant to regulation 6(6).