
STATUTORY INSTRUMENTS

1988 No. 1221 (S.122)

**TOWN AND COUNTRY PLANNING,
SCOTLANDELECTRICITYROADS AND
BRIDGES, SCOTLANDLAND DRAINAGE**

The Environmental Assessment (Scotland) Regulations 1988

Made - - - - - *12th July 1988*
Coming into force - - - - - *15th July 1988*

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 of all other powers enabling him in that behalf, hereby makes the following Regulations, a draft of which has been laid before and approved by a resolution of each House of Parliament:

PART I
INTRODUCTORY

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Environmental Assessment (Scotland) Regulations 1988.
- (2) These Regulations shall come into force on the third day after the days on which they are made.
- (3) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations, unless the contrary intention appears—

(1) S.I.1988/785
(2) 1972 c. 68

“aerodrome” means a defined area on land or water (including any buildings and other installations) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“document” includes a map, diagram, illustration or other descriptive matter in any form and also includes where appropriate a copy of a document;

“environmental information” means

- (a) any environmental statement required to be provided under these Regulations,
- (b) any representations made by any authority, body or person required by the Regulations to be invited to make representations (or consulted), and
- (c) any representations duly made by any other person about the likely environmental effects of the proposed development;

“environmental statement” means such a statement as is described in Schedule 3;

“exempt development” means development which is the subject of a direction by the Secretary of State that these regulations do not apply in relation to it;

“general development order” means the Town and Country Planning (General Development) (Scotland) Order 1981(3);

“planning authority” means—

- (a) Borders Regional Council, Dumfries and Galloway Regional Council and Highland Regional Council,
- (b) any district council, except a council for a district within any of the regions mentioned in paragraph (a) above, and
- (c) Orkney Islands Council, Shetland Islands Council and the Western Isles Islands Council.

PART II PLANNING

Application

3. This Part of these Regulations applies in any case where—
- (a) an application for planning permission was received by a planning authority on or after 15th July 1988; or
 - (b) the notices and consultation of a planning authority under regulation 4(2) of the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981(4) were given and carried out respectively, or the application of a planning authority was made, on or after 15th July 1988.

Interpretation

- 4.—(1) In this Part of these Regulations, unless the contrary intention appears—
- “the Act” means the Town and Country Planning (Scotland) Act 1972(5) and expressions used in these Regulations which are also used in the Act have the same meaning as they have in the Act;

(3) S.I. 1981/830, as amended by S.I. 1983/1620, 1984/237, 1985/1014 and 2007, 1986/1356 and 1988/977
(4) 1981/829, as amended by S.I. 1984/238
(5) 1972 c. 52

“the 1981 Regulations” means the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981;

“annex 1 application” or “annex 2 application” means an application for planning permission (other than an application made under section 28A or section 29(6)) for the carrying out of development of any description mentioned in Schedule 1 or Schedule 2 respectively, not being exempt development;

“controlled waste” has the meaning assigned to it by section 30(1) of the Control of Pollution Act 1974(7);

“regional planning authority” means the council of a Region other than the Highland Region, the Borders Region and the Dumfries and Galloway Region;

“register” means a register of applications for planning permission kept by the planning authority under section 31(2) in the manner prescribed in article 17(1) of the general development order;

“reporter” means a person appointed by the Secretary of State under Schedule 7 to the Act to determine an appeal under section 33, or to report to the Secretary of State on an application for planning permission referred to the Secretary of State under section 32 or which is the subject of an appeal under section 33;

“special road” means a special road authorised by means of a scheme (other than a scheme made by the Secretary of State) under section 7 of the Roads (Scotland) Act 1984(8) for the use of traffic falling within Classes I and II in Schedule 3 to that Act;

“special waste” means waste which is special waste for the purposes of the Control of Pollution (Special Waste) Regulations 1980(9);

references to receipt by a planning authority of applications for planning permission are to be construed as references to receipt as specified in article 10(6) of the general development order; and

references to sections are references to sections of the Act, and references to Schedules are references to Schedules to these Regulations.

(2) Where the Secretary of State gives a direction which includes a statement that in his opinion proposed development would be likely, or would not be likely, to have significant effects on the environment by virtue inter alia of its nature, size or location or includes such a statement in a notification under regulation 13(2), that statement shall determine whether an application for planning permission for that development is, or is not, an annex 2 application falling within the terms of regulation 6(1)(b) by reason of the effects the development would be likely to have, and references in these Regulations to an application to which regulation 6 applies shall be interpreted accordingly.

Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with

5. The provisions enabling the Secretary of State to give directions which may be included in a development order by virtue of section 28 shall include provisions enabling him to direct—

- (a) that particular proposed development of a description set out in Schedule 1 or 2 is exempt development to which these Regulations do not apply;

(6) Section 28A was added by the Housing and Planning Act 1986 (c. 63), Schedule 11, paragraph 31; section 29 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 2, paragraph 6 and by the Housing and Planning Act 1986, Schedule 12.

(7) 1974 c. 40

(8) 1984 c. 54

(9) S.I. 1980/1709

- (b) that particular proposed development is not development in respect of which consideration of environmental information is required before planning permission can be granted;
- (c) that particular proposed development or development of any class is development in respect of which consideration of environmental information is so required.

Prohibition on the grant of planning permission without consideration of environmental information

6.—(1) This regulation applies to—

- (a) an annex 1 application; or
- (b) an annex 2 application where the proposed development shall be likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(2) The planning authority, the Secretary of State or a reporter shall not grant planning permission in respect of an application to which this regulation applies unless they have taken into consideration environmental information in respect of the proposed development.

(3) Subject to any direction by the Secretary of State, for the purposes of paragraph (1)(b) a proposed development shall only be taken to be likely to have significant effects on the environment by virtue inter alia of its nature, size or location where the applicant and the planning authority accept that this is the case.

Opinions, directions, etc.

Opinion of planning authority prior to planning application

7.—(1) An applicant may, before applying for planning permission, request in writing the planning authority's opinion on—

- (a) whether the proposed development would fall within any of the descriptions mentioned in Schedule 1; or
- (b) whether the proposed development would fall within any of the descriptions mentioned in Schedule 2 and, if so, whether it would be likely to have significant effects on the environment.

(2) A request under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the land on which the proposed development would be carried out; and
- (b) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment.

(3) On receipt of any such request—

- (a) the planning authority shall send the applicant an acknowledgement stating the date of receipt;
- (b) the planning authority shall consult such of the authorities, bodies or persons mentioned in Schedule 4 as they consider appropriate in respect of the request under paragraph (1).

(4) The planning authority shall within 4 weeks, or such longer period as the parties agree in writing, beginning with the date of receipt of a request, give the applicant their written opinion with reasons therefor on the questions raised.

(5) Where the planning authority give an opinion under paragraph (4) that the proposed development would fall within any of the descriptions of development mentioned in Schedule 1 or Schedule 2 and would be likely to have significant effects on the environment, they shall let the

applicant know which, if any, of the authorities, bodies or persons mentioned in Schedule 4 they consulted under paragraph (3)(b).

(6) Where the planning authority consider that the applicant has not provided them with sufficient information to enable them to form an opinion, they may ask him for further information.

(7) At the same time as they give the applicant their written opinion, the planning authority shall send a copy of that opinion to such other persons as they consider desirable together with documents sufficient to identify the land and the proposed development to which the opinion relates.

(8) Where the planning authority do not give the applicant their written opinion within the 4 week period or such longer period as may be agreed between the parties under paragraph (4) above, the applicant shall be entitled to assume that at this stage the planning authority's opinion is that consideration of environmental information shall not be required.

(9) Where an applicant is notified by the planning authority that in their opinion planning permission could not be granted for the proposed development without consideration of environmental information and the applicant disagrees, he may ask the Secretary of State in accordance with regulation 9 for a direction as to whether consideration of environmental information is required.

(10) The planning authority shall hold copies of their written opinion, together with the request for it and accompanying documents, and shall make them available for inspection by the public at all reasonable hours at the place where Part I of the register is kept until such time, if any, as a copy of that opinion is required by regulation 11 to be placed on Part I of the register.

Provision of information for environmental statement

8.—(1) This regulation applies where—

- (a) (i) the planning authority have given an opinion under regulation 7(4); or
- (ii) the planning authority have received a direction from the Secretary of State under regulation 10 (other than where the direction relates to a determination by the Secretary of State under section 32 or 33);

that the proposed development would fall within any of the descriptions of development mentioned in Schedule 1 or Schedule 2 and would be likely to have significant effects on the environment; or

- (b) under regulation 14(1) the planning authority have notified an applicant for planning permission that the application for planning permission is an application to which regulation 6 applies.

(2) Where this regulation applies, the planning authority shall—

- (a) inform the authorities, bodies and persons mentioned in Schedule 4—
 - (i) of the requirement for an environmental statement;
 - (ii) that they may be required to make available to the applicant, in accordance with regulation 23, any information in their possession which he or they consider relevant to the preparation of the environmental statement; and
- (b) inform the applicant—
 - (i) of what they have done under sub-paragraph (a);
 - (ii) of their view that he should provide an environmental statement;
 - (iii) that the planning authority is a body required under regulation 23 to provide him with any relevant information in their possession; and

- (iv) that he shall supply the authorities, bodies and persons mentioned in Schedule 4 and the planning authority with such further information about the proposed development as they may request.

Application for direction to the Secretary of State

9.—(1) An application to the Secretary of State under regulation 7(9) 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 opinion and the reasons therefor; and
- (d) any representations which the applicant wishes to make.

(2) An application to the Secretary of State under regulation 14(2)(b) for a direction shall be accompanied by—

- (a) the applicant’s application for planning permission;
- (b) any document relating to the application for planning permission;
- (c) any opinion and the reasons therefor; and
- (d) any representations which the applicant wishes to make.

(3) On the date on which an application is made to the Secretary of State for a direction under regulation 7(9) or 14(2), the applicant shall send to the planning authority a copy of—

- (a) his letter to the Secretary of State; and
- (b) any representations he has made;

and the planning authority may within 2 weeks beginning with that date make written comments to the Secretary of State on any matter relating to the application.

(4) Where the Secretary of State considers that the documents put before him do not provide him with sufficient information to enable him to give a direction, the applicant and the planning authority shall supply him with such further information as he may request.

(5) If on the expiry of 4 weeks from the receipt by the Secretary of State of the application referred to in paragraph (1) or (2) (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 consideration of environmental information shall be required.

Procedure following direction

10. Where the Secretary of State makes any direction under section 28 in respect of the need for consideration of environmental information, he shall send a copy of the direction to the applicant, to the planning authority and to such other persons as he considers desirable together with documents sufficient to identify the land and the proposed development to which the direction relates; and where he directs that consideration of environmental information is required or the proposed development is exempt development he shall send them a statement of his reasons therefor.

Availability of directions and opinions for inspection

11.—(1) Where a planning authority place copies of an application for planning permission in Part I of the register, they shall also place in that Part a copy of any direction given by the Secretary of State which is relevant to the question whether consideration of environmental information is

required before planning permission can be granted on that application and or any relevant opinion given under regulation 7.

(2) Where any such direction as is mentioned in paragraph (1) is given after a copy of the relevant application has been placed in Part I of the register, a copy of that direction shall also be placed in that Part of the register when it is received by the planning authority.

(3) Where a planning authority notify an applicant under regulation 14 that they consider his application cannot be granted unless they have taken into consideration environmental information in respect of the proposed development, they shall place a copy of that notification in Part I of the register.

(4) Where a direction sent under regulation 10 is received by the planning authority and an application has not been made for planning permission for the development in question, the planning authority shall make a copy of the direction and any other documents sent with it available for public inspection at all reasonable hours at the place where Part I of the register is kept.

Planning applications and environmental information

Consideration of environmental effects

12. In respect of an application for planning permission, the person to whom it would fall to grant planning permission shall on receipt of the application or appeal consider whether it is one to which regulation 6 applies.

Annex 1 or annex 2 application accompanied by environmental statement

13.—(1) Where a planning authority consider that an application is one to which regulation 6 applies and the application is accompanied by an environmental statement, they shall within 4 weeks beginning with the date of receipt of the application notify the applicant in writing of their view and that article 10 of the general development order shall have effect as if there were substituted for the reference to a period of 2 months in paragraph (5) thereof a reference to a period of 4 months.

(2) Where the Secretary of State considers that an application is one to which regulation 6 applies and the application is accompanied by an environmental statement, he shall notify the applicant in writing of his view.

Annex 1 or annex 2 application to planning authority without environmental statement

14.—(1) Subject to paragraph (4), where the planning authority consider that an application for planning permission is an application to which regulation 6 applies, but it is not accompanied by the required environmental statement, they shall within 4 weeks beginning with the date of receipt of the application or such longer period as the parties agree in writing notify the applicant in writing—

- (a) of their view with reasons thereof;
 - (b) that in their view without taking into consideration environmental information in respect of the proposed development they may not grant planning permission;
 - (c) of their view that he should provide an environmental statement; and
 - (d) of any authorities, bodies or persons mentioned in Schedule 4 whom they have consulted.
- (2) The applicant may within 4 weeks beginning with the date of notification—
- (a) inform the authority in writing that he will provide the required environmental statement; or
 - (b) apply to the Secretary of State in accordance with regulation 9 for a direction as to whether consideration of environmental information is required.

(3) If the applicant takes no action in accordance with paragraph (2) or says that he does not intend to provide the required environmental statement, planning permission shall be deemed to be refused at the end of the period mentioned, but there shall be no appeal to the Secretary of State under section 33.

(4) The preceding paragraphs shall not apply where—

- (a) the Secretary of State has directed that consideration of environmental information is not required before planning permission could be granted for a proposed development; or
- (b) the Secretary of State directs under section 32 that the application for planning permission be referred to him.

Annex 1 or annex 2 application received by Secretary of State without environmental statement

15.—(1) Where the Secretary of State considers that an application which is being determined by him by virtue of section 32 or section 33 is an application to which regulation 6 applies, or a reporter so considers, but it is not accompanied by an environmental statement, the Secretary of State may, within 4 weeks beginning with the date on which he received the application or such longer period as he may reasonably require, direct giving his reasons that consideration of environmental information in respect of the proposed development is required before planning permission could be granted for the proposed development.

(2) Where the Secretary of State makes a direction under paragraph (1), he shall—

- (a) inform the planning authority and the other authorities mentioned in Schedule 4,—
 - (i) of the requirement for an environmental statement;
 - (ii) that they may be required to make available to the applicant, in accordance with regulation 23, any information in their possession which they or the applicant consider relevant to the preparation of the environmental statement; and
- (b) inform the applicant or appellant—
 - (i) of what he has done under subparagraph (a),
 - (ii) of his view that the applicant or appellant should provide an environmental statement,
 - (iii) that the planning authority is a body required under regulation 23 to provide the applicant with any relevant information in their possession, and
 - (iv) that he shall supply the authorities, bodies or persons mentioned in Schedule 4 and the planning authority, with such further information about the proposed development as they may request.

(3) The applicant or appellant as the case may be may, within 4 weeks beginning with the date of the direction, notify the Secretary of State in writing that he proposes to provide an environmental statement and, if the Secretary of State is not so notified, he or the reporter shall not make a determination other than by refusal of planning permission and at the end of the said period of 4 weeks may inform the applicant or appellant in writing that no further action is being taken.

(4) Where the Secretary of State is notified under paragraph (3) that an environmental statement is to be provided, he shall inform the planning authority for the area in which the land to which the application relates is situated.

Publicity for environmental statement

16.—(1) In an application to which regulation 6 applies, when the applicant or appellant submits an environmental statement he shall serve on any party who holds a notifiable interest in

neighbouring land a notice in the form set out in Schedule 5 (or in a form substantially to the like effect) stating—

- (a) that the environmental statement may be inspected in the office of the planning authority for the period of 4 weeks from the date of the said notice;
- (b) the address at which copies of the environmental statement may be acquired;
- (c) the cost of a copy of the environmental statement; and
- (d) that representations may be made.

(2) The parties holding a notifiable interest in neighbouring land are the owners, lessees and occupiers of the land.

(3) An environmental statement shall not be taken into consideration by a planning authority or the Secretary of State unless it is accompanied by a certificate stating—

- (a) that notices have been served in terms of paragraph (1); or
- (b) that no notification in terms of paragraph (1) is required; or
- (c) that the applicant has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of all the parties holding a notifiable interest in neighbouring land, and either—

- (i) that the names and addresses of the parties holding a notifiable interest in neighbouring land have not been ascertained and no notice has been served in terms of paragraph (1); or

- (ii) that notices have been served in terms of paragraph (1)

on one or more of the parties holding a notifiable interest in neighbouring land but that the names and addresses of the other parties holding a notifiable interest have not been ascertained.

(4) The certificate under paragraph (3) shall, where appropriate, state the names and addresses of all those parties having a notifiable interest in neighbouring land who have been notified in terms of paragraph (1).

(5) When an environmental statement is submitted, the planning authority or the Secretary of State, as the case may be, shall publish as soon as possible a notice (containing similar information to that required to be included in a notice served in accordance with paragraph (1)) in a newspaper circulating in the locality in which the neighbouring land is situated and in the Edinburgh Gazette.

(6) Where the Planning authority are required to publish a notice in a newspaper in accordance with paragraph (5), the applicant shall pay the cost to be incurred by the planning authority in arranging such advertisement at the time of submitting his environmental statement.

(7) For the purposes of this regulation “neighbouring land” has the same meaning as in article 2(1) of the general development order.

Copies of environmental statement for the public

17. Where an environmental statement is provided in relation to an application for planning permission, the applicant or appellant shall ensure that a reasonable number of copies of the environmental statement are available at the address named in his notices under regulation 16 as the address at which copies may be obtained.

Consultation where environmental statement received by planning authority

18.—(1) Where planning authority receive an environmental statement relating to an application to which regulation 6 applies, they shall—

- (a) place a copy of the environmental statement in Part I of the register together with a copy of the related application;
- (b) send to the Secretary of State a copy of the application, of any plans and other documents sent with it, and of the environmental statement; and
- (c) consult the authorities, bodies or persons mentioned in Schedule 4 about the environmental statement and inform them that they may make representations.

(2) Where an applicant for planning permission submits an environmental statement to the planning authority, he shall let them have enough copies of the environmental statement or parts thereof to enable them to comply with paragraph (1)(c) of this regulation and 3 additional copies.

(3) Where under this regulation a planning authority consult any authority, body or person about any environmental statement, they shall give not less than 4 weeks' notice to such authority, body or person that environmental information is to be taken into consideration, and shall not take the environmental information into consideration until after the expiration of the period of such notice.

(4) Where any authority, body or person which a planning authority are required to consult under this regulation consider that consultation with them is not required in respect of any environmental statement relating to any case or class of case or relating to any specified area, they shall so inform the planning authority in writing and notwithstanding the foregoing provisions of this regulation the planning authority shall not be required so to consult them.

Consultation where environmental statement received by Secretary of State

19.—(1) This regulation applies where the Secretary of State is taking into consideration environmental information relating to an application to which regulation 6 applies and which is being determined by him by virtue of section 32 or 33 and the environmental statement has not previously been submitted to the planning authority.

(2) The provisions of regulation 18(1)(c), (2), (3) 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 an appellant.

(3) The Secretary of State shall consult the planning authority for the area in which is situated the land to which the application relates about the environmental statement and shall send them 2 copies of it.

(4) When the planning authority receive 2 copies of the environmental statement under paragraph (3) they shall place one copy in Part I of the register together with a copy of the related application.

Time periods for authority's decision on planning application

20.—(1) For the purpose of calculating the period of time which elapses before the planning authority give notice to the applicant of their decision on an application for planning permission under article 10(5) of the general development order, no account shall be taken of any period falling between the date of receipt of the application and the occurrence of such of the events specified in paragraph (2) as may be applicable to the case.

(2) The events mentioned in paragraph (1) are—

- (a) the giving by the Secretary of State of a direction that consideration of environmental information is not required before planning permission could be granted for the proposed development;
- (b) the receipt by the planning authority of an environmental statement relating to the application and the certificate required by regulation 16(3) to accompany it.

(3) Where a planning authority in determining an application for planning permission take into consideration environmental information relating to that application, article 10 of the general development order shall have effect as if—

- (a) there were substituted for the reference in paragraph (5) thereof to a period of two months, a reference to a period of 4 months;
- (b) there were substituted for the reference in paragraph (3) thereof to a period of 14 days, a reference to a period of 28 days; and
- (c) in paragraph 3(b) thereof there were a reference to whichever of the following dates is later—
 - (i) the date on which a notice in accordance with article 7(5) of the general development order was published by the planning authority, or
 - (ii) the date on which a notice in accordance with regulation 16(4) was published.

(4) In the application of section 34(10) to an application to which regulation 6 applies, the reference to such period as may be prescribed by the general development order shall be taken to mean such period as may be prescribed by the general development order when read with these Regulations.

Copy of environmental statement for the Secretary of State

21. Where an environmental statement is provided in relation to an application for planning permission which is directed to be referred to the Secretary of State for determination, or is to be the subject of an appeal to him, the applicant or appellant shall provide the Secretary of State with a copy of the environmental statement unless (in the case of a referred application) the planning authority have already forwarded one when referring the application.

Further information and evidence relating to environmental statements

22.—(1) The Secretary of State, or reporter, or the planning authority, when dealing with an application or appeal in relation to which an environmental statement has been provided, may in writing require the applicant or appellant to provide such further information as may be specified to enable the application or appeal to be determined, or concerning any matter which is required to be dealt with in the environmental statement; and where in the opinion of the planning authority, the Secretary of State or the reporter—

- (a) the applicant or appellant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in paragraph 3 of Schedule 3; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

they or he shall notify the applicant or appellant in writing and the applicant or appellant shall provide that further information.

(2) The Secretary of State, the reporter, or the planning authority may in writing require to be produced to them such evidence, in respect of any environmental statement which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

(10) Section 34 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 2, paragraph 12 and by the Local Government (Scotland) Act 1973 (c. 65), section 172(2).

Provision of relevant information

23. Any authority, body or person mentioned in Schedule 4 who have been informed under regulation 8 or 15 that a person is proposing to make or has made an application to which regulation 6 applies and the planning authority themselves shall, if requested by the applicant or appellant, or may without any such request, enter into consultation with him with a view to ascertaining whether they have any information in their possession which he or they consider relevant to the preparation of the environmental statement and shall make any such information available to him.

Intimation of decision

24. Where, after taking into consideration environmental information, an application for planning permission has been determined by a planning authority or the Secretary of State, they or he shall inform of their decision in addition to the applicant—

- (a) the Secretary of State or the planning authority respectively;
- (b) all the authorities, bodies or persons mentioned in Schedule 4 who have been consulted about the environmental statement; and
- (c) those persons mentioned in regulation 16(4).

Development by planning authorities

Development by planning authority

25.—(1) Before a planning authority take any action under regulation 4 of the 1981 Regulations, they shall consider whether, if the proposed development were the subject of an application for planning permission, it would be an application to which regulation 6 applies and shall consult such of the authorities, bodies or persons mentioned in Schedule 4 as they consider appropriate.

(2) Any consultation under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the land on which the proposed development would be carried out; and
- (b) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment.

(3) Subject to any direction by the Secretary of State, where the planning authority consider that their proposed development would be an application to which regulation 6 applies, they shall prepare an environmental statement in respect of the proposed development.

Provision of information to planning authority

26. In preparing an environmental statement the planning authority shall inform the authorities, bodies and persons mentioned in Schedule 4 that they are doing so and any authority, body or person so informed shall make available to the planning authority any information in their possession which they or the planning authority consider relevant to the preparation of the environmental statement.

Publicity for environmental statement prepared by planning authority

27.—(1) After an environmental statement has been prepared, the planning authority shall—

- (a) place a copy of the environmental statement in Part I of the register together with the copy of the notice of intention to develop required to be placed there by regulation 8 of the 1981 Regulations;

- (b) make available copies of the environmental statement for inspection by, and sale to, the public; and
 - (c) in addition to publishing a notice in a local newspaper under regulation 4(1) of the 1981 Regulations, publish such a notice in the Edinburgh Gazette.
- (2) The notice to be so published shall contain in addition to the information specified in regulation 4(1) of the 1981 Regulations, a statement—
- (a) that an environmental statement has been prepared;
 - (b) that copies of the environmental statement may be inspected and acquired at the same address and times as the plans of the proposed development may be inspected;
 - (c) of the cost of a copy of the environmental statement; and
 - (d) that representations may be made in writing to the planning authority within 4 weeks of the later date of publication under paragraph (1)(c) where the notices were not published on the same day.
- (3) In addition to the consultations carried out under regulation 4(2)(b) of the 1981 Regulations, the planning authority shall consult the authorities, bodies or persons listed in Schedule 4 on the environmental statement, shall send each of them a copy thereof and shall inform them that they may make representations.
- (4) The information to be provided by the planning authority, when complying under regulation 4(2)(c) of the 1981 Regulations with the requirements of any development order or direction, shall include information to the same effect as is specified in sub-paragraphs (a) to (d) of paragraph (2) of this regulation.

Granting of planning permission to planning authority

28.—(1) No planning permission shall be deemed to have been granted under regulation 5(1) of the 1981 Regulations where, if the proposed development were the subject of an application for planning permission, it would be an application to which regulation 6 applies.

(2) Where paragraph (1) applies, the provisions of regulation 6 of the 1981 Regulations shall apply as if the proposed development were one of the classes of case specified in paragraph (1) of regulation 6 of the 1981 Regulations.

(3) When complying with the provisions of regulation 6 of the 1981 Regulations in respect of a proposed development to which paragraph (1) of this regulation applies, the planning authority shall accompany their notice of intention to develop with a copy of the environmental statement.

Intimation of decision

29. Where the Secretary of State under section 32 grants planning permission for development by a planning authority or planning permission is deemed to have been granted under regulation 6(3) of the 1981 Regulations, the Secretary of State shall inform the authorities, bodies or persons consulted under regulation 27(3) of the decision.

Referral of application to regional planning authority

Referral of application to regional planning authority

30.—(1) Where a regional planning authority exercise their powers under section 179 of the Local Government (Scotland) Act 1973⁽¹¹⁾ to have referred to them an application to which regulation 6 applies—

- (a) the provisions of these Regulations other than regulation 7 shall apply to a regional planning authority as they apply to a planning authority;
 - (b) section 179(6) of the said 1973 Act shall have effect as if the period of 3 months referred to therein were a period of 4 months.
- (2) In the application of these Regulations by a regional planning authority—
- (a) in regulations 13(1) and 14(1) the words “the date of receipt of the application” shall have effect as if they referred to the date when the application was received to the regional planning authority;
 - (b) where it appears to the regional planning authority that a copy of the environmental statement has not been placed in Part I of the register in accordance with regulation 18(1)(a), the planning authority from which the application has been referred shall continue to comply with regulation 18(1)(a).

General

Application to the Court of Session

31. For the purposes of sections 231 and 233, the references in section 233(1)(b) and (2) to action on the part of the Secretary of State which is not within the powers of the Act shall be taken to extend to a grant of planning permission by the Secretary of State in breach of the prohibition imposed by regulation 6.

Service of notices, etc.

32. Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 269.

PART III

ELECTRICITY APPLICATIONS

Application

33. This Part of these Regulations applies in any case where an electricity application is received by the Secretary of State on or after 15th July 1988.

Interpretation

34. In this Part of these Regulations, unless the contrary intention appears—

(11) 1973 c. 65; section 179 was substituted by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 3, paragraph 24, and was amended by the Housing and Planning Act 1986 (c. 63), Schedule 11, paragraph 61.

“annex 1 application” or “annex 2 application” means an application for consent or approval under—

- (a) the Electricity (Supply) Acts 1882-1936⁽¹²⁾;
- (b) the Schedule to the Electric Lighting (Clauses) Act 1899⁽¹³⁾; or
- (c) the Electricity (Scotland) Act 1979⁽¹⁴⁾,

in respect of development of any description in paragraph 2 of Schedule 1 or in paragraph 3 of Schedule 2 respectively;

“electricity application” means an annex 1 application or an annex 2 application.

Consent and annex 1 and annex 2 applications

35.—(1) This regulation applies to—

- (a) an annex 1 application; or
- (b) an annex 2 application where the proposed development shall be likely to have significant effects on the environment by virtue inter alia of its nature, size or location;

except where it is exempt development.

(2) The Secretary of State shall not grant consent or approval in respect of an electricity application to which this regulation applies unless he has taken into consideration environmental information in respect of the proposed development.

(3) Subject to any direction by the Secretary of State, for the purposes of paragraph (1)(b) a proposed development shall only be taken to be likely to have significant effects on the environment by virtue inter alia of its nature, size or location where the applicant and the planning authority accept that this is the case.

Directions by the Secretary of State

36. The Secretary of State, whether called upon to do so or not, may direct in respect of a particular electricity application—

- (a) that consideration of environmental information is or is not required in terms of regulation 35(2); or
- (b) that the application shall as regards the whole or any part thereof be exempt from these Regulations, which direction shall include a statement of his reasons therefor.

Annex 1 or annex 2 application to Secretary of State without environmental statement

37.—(1) Where it appears to the Secretary of State that an electricity application is an application to which regulation 35 applies, but it is not accompanied by an environmental statement, the Secretary of State shall within 4 weeks beginning with the date of receipt of the application or such longer period as he may reasonably require, and having consulted the planning authority, notify the applicant in writing—

- (a) of his view and that without taking into consideration environmental information he may not grant consent or approval;
- (b) of his view that the applicant should provide an environmental statement; and
- (c) that the authorities, bodies and persons mentioned in Schedule 4, as may appear to the Secretary of State to be relevant, are required to make available to the applicant such

⁽¹²⁾ 1882 c. 56, 1888 c. 12, 1909 c. 34, 1919 c. 100, 1922 c. 46, 1926 c. 51, 1936 c. 20

⁽¹³⁾ 1899 c. 19

⁽¹⁴⁾ 1979 c. 11

information as they have in their possession which the applicant or they consider relevant to the preparation of the environmental statement, and the Secretary of State shall also inform the authorities, bodies and persons mentioned in Schedule 4 as may appear to him to be relevant—

- (i) of the application and the requirement for an environmental statement; and
 - (ii) that they may be required to make available to the applicant in accordance with regulation 44 any information in their possession which the applicant or they consider relevant to the preparation of the environmental statement.
- (2) The applicant may within 4 weeks beginning with the date of notification—
- (a) inform the Secretary of State and the planning authority in writing that he will provide an environmental statement;
 - (b) apply to the Secretary of State in accordance with regulation 38 for a direction under regulation 36(a), notwithstanding any view already expressed by the Secretary of State, as to whether consideration of environmental information is required; or
 - (c) apply to the Secretary of State in accordance with regulation 38 for a direction under regulation 36(b) that the application should, as regards the whole or any part thereof, be exempt from these Regulations.
- (3) If the applicant takes no action under paragraph (2) or states that he does not intend to provide an environmental statement, his application shall be deemed to have been withdrawn at the end of the period mentioned in that paragraph.

Application for direction to the Secretary of State

38.—(1) An application to the Secretary of State under regulation 37(2)(b) or (c) for a direction shall be accompanied by—

- (a) a copy of the applicant's electricity application;
- (b) a copy of any document relating to the electricity application;
- (c) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment;
- (d) a copy of any view expressed by the Secretary of State under regulation 37(1); and
- (e) any representations which the applicant wishes to make.

(2) At the same time as applying for a direction from the Secretary of State, the applicant shall send to the planning authority a copy of his application for a direction and of all other documents specified in paragraph (1).

(3) The planning authority may within 2 weeks of the date of the receipt of the documents sent to them under paragraph (2) make written comments to the Secretary of State on any matter relating to the application for a direction, and in so doing shall send a copy of such comments to the applicant.

(4) Where the Secretary of State considers that the documents put before him do not provide him with sufficient information to enable him to give a direction, the applicant and, as appropriate, the planning authority shall supply him with such further information as he may request, and the supplier of the information shall at the same time send a copy of that information to the planning authority or to the applicant, as appropriate.

(5) If on the expiry of 4 weeks from the receipt by the Secretary of State of the application referred to in paragraph (1) (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 consideration of environmental information shall be required.

Procedure following direction

39. Where the Secretary of State makes any direction under regulation 36, he shall send a copy of the direction to the applicant and to the planning authority, and to such other persons as he considers appropriate, together with documents sufficient to identify the land and the proposed development to which the direction relates; and where the Secretary of State has made a direction under regulation 36(b), the planning authority shall make a copy of the direction and the related documents available for inspection by the public at all reasonable hours.

Publicity for environmental statement

40.—(1) In respect of an electricity application to which regulation 35 applies, when the applicant submits an environmental statement to the Secretary of State the applicant shall send a copy to the planning authority, together with sufficient additional copies to enable the planning authority to comply with paragraph (1) of regulation 42, and shall issue a public notice to the effect that—

- (a) an environmental statement in respect of a particular electricity application has been prepared;
- (b) the statement may be inspected for a period of 4 weeks at a specified address in the locality of the land affected by the application;
- (c) a copy of the statement may be acquired at a specified address and at a specified cost; and
- (d) that representations may be made in writing in respect of the statement, and sent to the Secretary of State at a specified address within 4 weeks of the date of publication or notice made in accordance with paragraph (2).

(2) The public notice under paragraph (1) may be—

- (a) by advertisement in one or more local newspapers circulating in the area of the land to which the application relates, and in the Edinburgh Gazette; or
- (b) included in the first notice which the applicant makes in terms of the Electricity (Publication of Applications) (Scotland) Regulations 1958(15).

(3) The applicant shall send a copy of the notice or advertisement as appropriate to the Secretary of State and the planning authority.

(4) The Secretary of State shall send to the planning authority a copy of any representations received.

(5) Where apart from these Regulations notice in respect of an electricity application is required to be given to an authority, body or person and in respect of any such application an environmental statement has been submitted to the Secretary of State, a copy of the statement shall also be supplied to that authority, body or person as appropriate.

Copies of environmental statement for the public

41. Where an environmental statement is provided in relation to an electricity application, the applicant shall ensure that a reasonable number of copies of the statement are available at the address named in his public notice made under regulation 40 as the address at which copies may be obtained.

Consultation where planning authority notified of environmental statement

42.—(1) In respect of an electricity application to which regulation 35 applies, when a planning authority receive an environmental statement they shall consult by letter all relevant authorities, bodies or persons mentioned in Schedule 4 regarding the statement.

(2) Where any relevant authority, body or person which a planning authority are required to consult under this regulation consider that consultation with them is not required in respect of an environmental statement relating to a particular electricity application, or class of electricity application, or relating to any specified area, they shall so inform the planning authority in writing and notwithstanding the foregoing provisions of this regulation the planning authority shall not be required so to consult them.

(3) Those consulted may make representations within 4 weeks from the date of the letter under paragraph (1) before the expiry of which period the planning authority shall not consider the environmental statement.

(4) On the expiry of the period stated in paragraph (3) the planning authority shall consider the environmental statement together with the representations from those consulted and the representations received under regulation 40(4) and shall make a report thereon.

(5) The planning authority shall within 16 weeks from the date of the receipt of the environmental statement under paragraph (1) send to the Secretary of State a copy of their report and of the representations received from those consulted under paragraph (1).

(6) In making his determination in respect of an electricity application to which regulation 35 applies, the Secretary of State shall consider the environmental statement provided by the applicant, the report received under paragraph (5) and any representations received.

Further information and evidence relating to environmental statement

43.—(1) The Secretary of State, when considering an electricity application in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as he may specify to enable the application to be determined, or concerning any matter which is required to be dealt with in the environmental statement; and where in the opinion of the Secretary of State—

- (a) the applicant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in paragraph 3 of Schedule 3; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

he shall notify the applicant in writing, and the applicant shall provide that further information.

(2) The Secretary of State may in writing require the applicant to produce to him such evidence, in respect of any environmental statement which it falls to him to take into consideration, as he may reasonably call for to verify any information it contains.

Provision of relevant information

44. Any authority, body or person mentioned in Schedule 4 who have been informed under regulation 37 that an electricity application to which regulation 35 applies has been made without an environmental statement shall, if requested by the applicant, or may, without any such request, enter into consultation with him with a view to ascertaining whether they have any information in their possession which the applicant or they consider relevant to the preparation of the environmental statement, and shall make any such information available to the applicant.

Intimation of decision

45.—(1) Where, after taking into consideration environmental information, an electricity application has been determined by the Secretary of State, he shall inform of his decision in addition to the applicant—

- (a) the planning authority; and
 - (b) all authorities, bodies or persons consulted under regulation 42.
- (2) On the determination referred to in paragraph (1) being received by the planning authority, they shall make a copy of the determination available for public inspection at their offices within reasonable hours.

PART IV

SPECIFIC DEVELOPMENTS IN NEW TOWNS

Application

46. This Part of these Regulations applies in any case where a specific development application is made to a development corporation on or after 15th July 1988, or where a development corporation first proposes on or after that date to carry out a specific development.

Interpretation

47. In this part of these Regulations, unless the contrary intention appears—

“annex 1 application” or “annex 2 application” means an application for authorisation under a special order in respect of development of any description in Schedule 1 or 2 respectively;

“development corporation” means a corporation established by order made, or having effect as if made, under section 2 of the New Towns (Scotland) Act 1968⁽¹⁶⁾;

“special order” means an order made, or having effect as if made, under section 21 of the Town and Country Planning (Scotland) Act 1972⁽¹⁷⁾ and section 6(2) of the New Towns (Scotland) Act 1968;

“specific development” means any particularised project or development, which is development of any description in Schedule 1 or 2, to be carried out by the development corporation in accordance with proposals approved by the Secretary of State under section 6(1) of the New Towns (Scotland) Act 1968, or by any person in circumstances where the carrying out of development by that person is deemed under a special order to be the carrying out of development by the development corporation;

“specific development application” means an annex 1 application or an annex 2 application.

Authorisation and annex 1 and annex 2 applications

48.—(1) This regulation applies to—

- (a) an annex 1 application; or
- (b) an annex 2 application where the proposed specific development shall be likely to have significant effects on the environment by virtue inter alia of its nature, size or location;

except where it is exempt development.

(2) The development corporation shall not carry out a specific development, nor shall they grant authorisation of a specific development to which this regulation applies, unless they have taken into consideration environmental information in respect of the proposed specific development.

(3) Subject to any direction by the Secretary of State, for the purposes of paragraph (1)(b) a proposed specific development shall only be taken to be likely to have significant effects on

⁽¹⁶⁾ 1968 c. 16

⁽¹⁷⁾ 1972 c. 52; section 21 was amended by the Housing and Planning Act 1986 (c. 63), Schedule 11, paragraph 30.

the environment by virtue inter alia of its nature, size or location where the applicant and the development corporation accept that this is the case.

Directions by the Secretary of State

49. The Secretary of State, whether called upon to do so or not, may direct in respect of a particular specific development application, or in respect of a particular specific development proposed to be carried out by the development corporation—

- (a) that consideration of environmental information is or is not required in terms of regulation 48(2); or
- (b) that the application or the proposed specific development shall be exempt as regards the whole or any part thereof from these Regulations, which direction shall include a statement of his reasons therefor.

Annex 1 or annex 2 application to development corporation without environmental statement

50.—(1) Where it appears to the development corporation that a specific development application is an application to which regulation 48 applies, but it is not accompanied by an environmental statement, they shall within 4 weeks beginning with the date of receipt of the application or such longer period as they may reasonably require notify the applicant in writing—

- (a) of their view that without taking into consideration environmental information they may not grant authorisation in respect of the proposed development;
- (b) of their view that the applicant should provide an environmental statement;
- (c) that the authorities, bodies and persons mentioned in Schedule 4, as may appear to the development corporation to be relevant, are required to make available to him such information as they have in their possession which he or they consider relevant to the preparation of the environmental statement,

and the development corporation shall also inform the authorities, bodies and persons mentioned in Schedule 4 as may appear to them to be relevant—

- (i) of the application and the requirement for an environmental statement; and
- (ii) that they may be required to make available to the applicant in accordance with regulation 55 any information in their possession which he or they consider relevant to the preparation of the environmental statement.

(2) The applicant may within 4 weeks beginning with the date of notification—

- (a) inform the development corporation in writing that he will provide an environmental statement;
- (b) apply to the Secretary of State in accordance with regulation 61 for a direction under regulation 49(a) as to whether consideration of environmental information is required; or
- (c) apply to the Secretary of State in accordance with regulation 61 for a direction under regulation 49(b) that the application should, as regards the whole or any part thereof, be exempted from these Regulations.

(3) If the applicant takes no action under paragraph (2) or states that he does not intend to provide an environmental statement, his application shall be deemed to have been withdrawn at the end of the period mentioned in that paragraph.

Publicity for environmental statement

51.—(1) In respect of a specific development application to which regulation 48 applies, when the applicant submits an environmental statement to the development corporation he shall serve on any person who holds a notifiable interest in neighbouring land, or to such other person, if any, appearing to the development corporation to have an interest as the development corporation in that particular instance may specify, a notice stating—

- (a) that the environmental statement may be inspected in the offices of the development corporation for the period of 4 weeks from the date of said notice;
- (b) the address at which copies of the environmental statement may be acquired;
- (c) the cost of a copy of the environmental statement; and
- (d) that representations may be made in respect of the statement, and sent to the development corporation at a specified address within 4 weeks of the date on which the said notice was delivered.

(2) The persons holding a notifiable interest in neighbouring land are the owners, lessees and occupiers of the land.

(3) When the applicant submits an environmental statement, he shall also publish as soon as possible thereafter a notice (containing similar information to that required to be included in a notice served in accordance with paragraph (1)) in one or more local newspapers circulating in the area of the proposed specific development and in the Edinburgh Gazette.

(4) The applicant shall also send to the development corporation a copy of the notices which have been served and published in accordance with paragraphs (1) and (3) respectively.

(5) An environmental statement shall not be considered by a development corporation unless its accompanied by a certificate stating—

- (a) (i) that notices have been served in accordance with paragraph (1); or
- (ii) that notification in accordance with paragraph (1) is required; or
- (iii) that the applicant has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the parties holding a notifiable interest in neighbouring land, and either—

- (a) that the names and addresses of the parties holding a notifiable interest in neighbouring land have not been ascertained and no notice has been served in terms of paragraph (1); or
- (b) that notices have been served in terms of paragraph (1) on one or more of the parties holding a notifiable interest in neighbouring land but that the names and addresses of the other parties holding a notifiable interest have not been ascertained;

- (b) where appropriate the names and addresses of all those parties having a notifiable interest in neighbouring land, and of all others specified by the development corporation as having an interest in the specific development, who have been notified in accordance with paragraph (1); and

- (c) that publication in accordance with paragraph (3) has been made.

(6) For the purposes of this regulation “neighbouring land” has the same meaning as in article 2(1) of the general development order.

Copies of environmental statement for the public

52. Where an environmental statement is provided in relation to an application for authorisation of a specific development, the applicant shall ensure that a reasonable number of copies of the

statement are available at the address named in his notices, served or published under regulation 51, as the address at which copies may be obtained.

Consultation where environmental statement received by development corporation

53.—(1) Where a development corporation receive an environmental statement relating to a specific development application to which regulation 48 applies, they shall—

- (a) make available for public inspection at their offices within reasonable hours a copy of the application, of any plans and other documents sent with it, and of the environmental statement;
- (b) send to the Secretary of State a copy of the application, of any plans and other documents sent with it, and of the environmental statement; and
- (c) consult those authorities, bodies or persons mentioned in Schedule 4, which appear to the development corporation to be relevant, about the application and the statement.

(2) Where an applicant submits an environmental statement to the development corporation, he shall let them have enough copies of the statement or relevant parts thereof to enable them to comply with paragraph (1)(c) of this regulation and 3 additional copies.

(3) Where under this regulation a development corporation consult any authority, body or person about any environmental statement, they shall give not less than 4 weeks' notice to such authority, body or person that environmental information is to be taken into consideration, and shall not take the environmental information into consideration until after the expiry of the period of such notice.

(4) Where any relevant authority, body or person which a development corporation are required to consult under this regulation consider that consultation with them is not required in respect of an environmental statement relating to a specific development application or class of specific development application, or relating to any specified area, they shall so inform the development corporation in writing and notwithstanding the foregoing provisions of this regulation the development corporation shall not be required so to consult them.

Further Information and evidence relating to environmental statements

54.—(1) The development corporation, when considering a specific development application in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as they may specify to enable the application to be determined, or to enable them to take fully into consideration any matter which under these Regulations is required to be dealt with in the environmental statement; and where in the opinion of the development corporation—

- (a) the applicant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in paragraph 3 of Schedule 3; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

they shall notify the applicant in writing, and he shall provide that further information.

(2) The development corporation may in writing require the applicant to produce to them such evidence, in respect of any environmental statement which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

Provision of relevant information

55. Any authority, body or person mentioned in Schedule 4 who have been informed under regulation 50 that a specific development application to which regulation 48 applies has been

made without an environmental statement shall, if requested by the applicant, or may, without any such request, enter into consultation with him with a view to ascertaining whether they have any information in their possession which he or they consider relevant to the preparation of the environmental statement, and shall make any such information available to him.

IntimatIion of decision

56.—(1) Where, after taking into consideration environmental information, an application for authorisation of a specific development has been determined by a development corporation, they shall inform of their decision in addition to the applicant—

- (a) the Secretary of State;
- (b) all authorities, bodies and persons consulted under regulation 53; and
- (c) those parties mentioned in regulation 51(5)(b).

(2) On making the determination referred to in paragraph (1), the development corporation shall also make a copy of their decision available for public inspection at their offices within reasonable hours.

Specific development by development corporation

57.—(1) Before the development corporation carries out work on a specific development, they shall consider whether if it were the subject of a specific development application it would be an application to which regulation 48 applies and shall consult such of the authorities, bodies or persons mentioned in Schedule 4 as they consider appropriate.

(2) Any consultation under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the land on which the proposed specific development would be carried out; and
- (b) a brief description of the nature and purpose of the proposed specific development and of its possible effects on the environment.

(3) Subject to any direction by the Secretary of State, where the development corporation consider that the proposed specific development, if it were the subject of a specific development application, would be an application to which regulation 48 applies, the development corporation shall prepare an environmental statement in respect of the proposed specific development.

(4) Where the development corporation consider that the proposed specific development, if it were the subject of a specific development application, would not be an application to which regulation 48 applies, they shall inform the Secretary of State of their view before carrying out work on the specific development.

Provision of informatIion to development corporation

58. In preparing an environmental statement, the development corporation shall inform such authorities, bodies and persons mentioned in Schedule 4, as appear to them to be relevant, that they are doing so and any authority, body or person so informed shall make available to the development corporation any information in their possession which they or the development corporation consider relevant to the preparation of the environmental statement.

Publicity for environmental statement prepared by development corporation

59.—(1) When an environmental statement has been prepared by the development corporation—

- (a) they shall provide a copy thereof to, and serve a notice in accordance with paragraph (2) on—

- (i) the Secretary of State;
 - (ii) each authority, body or person mentioned in Schedule 4, as appears relevant to the development corporation;
 - (iii) any person who holds a notifiable interest in neighbouring land; and
 - (iv) such other person, if any, appearing to the development corporation to have an interest; and
- (b) they shall publish in one or more local newspapers circulating in the area of the proposed specific development, and in the Edinburgh Gazette, a notice in accordance with paragraph (2).
- (2) The notice required to be served or published under paragraph (1) shall contain a statement to the effect that—
- (a) the development corporation propose to undertake a specific development, giving a brief description of the nature and purpose of the proposed development and identifying the land on which the proposed development would be carried out;
 - (b) an environmental statement has been prepared;
 - (c) copies of the environmental statement may be inspected and acquired within certain hours at the offices of the development corporation;
 - (d) copies of the environmental statement may be bought at a specified cost; and
 - (e) representations may be made in writing to the development corporation within 4 weeks of the date of service of the notice or of the publication containing the notice, whichever is appropriate.
- (3) Where paragraph (1) applies, the development corporation shall also make available within reasonable hours at their offices copies of the environmental statement for inspection by and sale to the public.
- (4) The persons holding a notifiable interest in neighbouring land are the owners, lessees and occupiers of the land; and for the purposes of this regulation “neighbouring land” has the same meaning as in article 2(1) of the general development order.

Intimation of decision on proposed specific development by development corporation

60.—(1) Where, after taking into consideration environmental information, the development corporation have made a determination in respect of a proposed specific development to be carried out by themselves, they shall inform of their decision—

- (a) the Secretary of State; and
- (b) all other authorities, bodies and persons consulted or notified under regulation 57 and regulation 59(1) respectively.

(2) On making the determination referred to in paragraph (1), the development corporation shall also make a copy of their decision available for public inspection at their offices within reasonable hours.

Application for direction to the Secretary of State

61.—(1) An application to the Secretary of State under regulation 50(2)(b) or (c) for a direction shall be accompanied by—

- (a) a copy of the applicant’s specific development application;
- (b) a copy of any document relating to that application;

- (c) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment;
- (d) a copy of the development corporation's opinion under regulation 50(1); and
- (e) any representations which the applicant wishes to make.

(2) On the date on which an application is made to the Secretary of State for a direction under regulation 50(2)(b) or (c), the applicant shall send to the development corporation a copy of—

- (a) his letter to the Secretary of State; and
- (b) any representations he has made;

and the development corporation may within 4 weeks beginning with that date make written comments to the Secretary of State on any issue relating to the application.

(3) Where, in respect of a proposed specific development to be carried out by the development corporation under regulation 57, the Secretary of State notifies the development corporation that he intends to make a direction in accordance with regulation 49, or the development corporation applies to him to make such a direction, the development corporation shall provide the Secretary of State with—

- (a) a plan sufficient to identify the land on which the proposed specific development would be carried out;
- (b) a description of the nature and purpose of the proposed specific development and of its likely effects on the environment;
- (c) a copy of any opinion received from an authority, body or person mentioned in Schedule 4 whom the development corporation have consulted; and
- (d) any representations which the development corporation wish to make.

(4) Where the Secretary of State considers that the documents put before him do not provide him with sufficient information to enable him to give a direction, the applicant or the development corporation, as appropriate, shall supply him with such further information as he may request, and the supplier of the information shall at the same time send a copy of that information, as appropriate, to the development corporation or the applicant.

(5) If on the expiry of 8 weeks from the date of the receipt by the Secretary of State of the application referred to in paragraph (1) or in paragraph (3) (or such longer period as the Secretary of State may, during the said 8 weeks, or any period so extended, notify in writing to the applicant and the development corporation, in the case of an application referred to in paragraph (1), or to the development corporation, in the case of an application referred to in paragraph (3)) the Secretary of State does not issue a direction, he shall be deemed to have directed that consideration of environmental information shall be required.

Procedure following direction

62. Where the Secretary of State makes any direction under regulation 49, he shall send a copy of the direction to the applicant and to the development corporation, or to the development corporation, and to such other persons as he considers appropriate, as may be relevant, together with documents sufficient to identify the land and the proposed specific development to which the direction relates; and the development corporation shall make a copy of the direction and the related documents available for inspection by the public at all reasonable hours.

PART V

DRAINAGE WORKS

Application

63. This Part of these Regulations applies to proposed drainage works which are likely to have a significant effect on the environment by virtue inter alia of their nature, size or location and for which authority under the Land Drainage (Scotland) Act 1958(**18**) to execute these works is sought from the Secretary of State on or after 15th July 1988.

Interpretation

64.—(1) In this Part of these Regulations, unless the contrary intention appears—

(a) “the Act” means the Land Drainage (Scotland) Act 1958;

“improvement order” means an order made by the Secretary of State in accordance with the First Schedule to the Act;

“local authority” means any regional, islands or district council;

“statutory body” means any body exercising functions conferred on it by or under any enactment;

(b) the following phrases have the meanings assigned to them by section 18(1) of the Act—

(i) “agricultural land”;

(ii) “drainage works”; and

(iv) “owner”

(2) For the purposes of this Part of these Regulations drainage works “likely to have a significant effect on the environment by virtue inter alia of their size, nature and location” means drainage works which require to be authorised under the Act and to which objections by local authorities or statutory bodies on environmental grounds have not been withdrawn or remain unresolved.

Prohibition on making an improvement order without consideration of environmental information

65. The Secretary of State shall not make an improvement order authorising drainage works which are likely to have a significant effect on the environment by virtue inter alia of their nature, size or location unless he has taken into consideration environmental information in respect of the proposed works.

Provision of information

66. In preparing an environmental statement the owner of agricultural land shall consult the local authorities and statutory bodies affected by the drainage works, including, where appropriate, the authorities and bodies listed in Schedule 4, who shall make available to him any relevant information in their possession.

Submission and publication of environmental statement

67.—(1) When an owner of agricultural land applies under section 1 of the Act to the Secretary of State for an improvement order authorising drainage works likely to have a significant effect on

the environment by virtue inter alia of their nature, size or location, he shall submit an environmental statement to the Secretary of State.

(2) Where an environmental statement is submitted in relation to an application for an improvement order, the Secretary of State shall notify and publicise the environmental statement in the same manner as a draft improvement order under paragraph 1 of the First Schedule to the Act for the purpose of obtaining comments.

Further information respecting environmental statement

68. The Secretary of State, when dealing with an application referred to in regulation 67(1) which is accompanied by an environmental statement, may in writing require the owner of the agricultural land to provide such further information as he may specify to enable the application for an improvement order to be determined, or concerning any matter which is required to be dealt with in his environmental statement and where in the opinion of the Secretary of State—

- (a) the owner of the agricultural land could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in paragraph 3 of Schedule 3; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

he shall notify the owner in writing, and the owner shall provide that further information.

PART VI

AMENDMENTS OF THE ROADS (SCOTLAND) ACT 1984

General

69. The Roads (Scotland) Act 1984(19) shall be amended in accordance with regulations 70 to 74 below.

New section 20A

70. The following section shall be inserted after section 20:—

“Environmental assessment of certain road construction projects

20A.—(1) In any case where the Secretary of State has under consideration the construction of a new road, he shall determine before the relevant date whether or not the project falls within Annex I or Annex II to Council Directive No [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment.

(2) If he determines that the project falls within Annex I, or that it falls within Annex II and has such characteristics that it should be made subject to an environmental assessment, he shall publish not later than the relevant date an environmental statement, that is, a statement containing the information referred to in Annex III to the Directive to the extent that he considers—

- (a) that it is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it; and

- (b) that (having regard in particular to current knowledge and methods of assessment) the information may reasonably be gathered, including at least—
- (i) a description of the project comprising information on the site, design and size of the project;
 - (ii) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
 - (iii) the data required to identify and assess the main effects which the project is likely to have on the environment;
 - (iv) a non-technical summary of the information mentioned in paragraphs (i) to (iii) above.

(3) In this section “the relevant date” means the date of publication of the draft order, or draft scheme, relating to the construction of the road.

(4) If the Secretary of State publishes an environmental statement under this section, he shall ensure that the public concerned is given an opportunity to express an opinion before the project is initiated.

(5) If on completion of the project any part of the road would lie on, or within 100 metres of, land comprised—

- (a) in a national scenic area designated under section 262C of the Town and Country Planning (Scotland) Act 1972;
- (b) in a conservation area within the meaning of the said Act of 1972; or
- (c) in an area notified under section 28 of the Wildlife and Countryside Act 1981 as an area of special scientific interest or in relation to which the Secretary of State has made an order under section 29 of that Act,

he shall ensure that the appropriate environmental body is given an opportunity to express an opinion before the project is initiated.

(6) In this Act “the appropriate environmental body” means—

- (a) The Countryside Commission for Scotland, if the proposal relates to land falling within paragraph (a) of subsection (5) above;
- (b) the planning authority, if it relates to land falling within paragraph (b); and
- (c) the Nature Conservancy Council, if it relates to land falling within paragraph (c).

(7) This section does not apply where the draft order or draft scheme is published before the coming into force of the Environmental Assessment (Scotland) Regulations 1988.”.

New section 55A

71. The following section shall be inserted after section 55:—

“Environmental assessment of certain road improvement projects

55A.—(1) In any case where the Secretary of State has under consideration—

- (a) the making of an order such as is mentioned in paragraph 1 of Schedule 1 to this Act relating to the improvement of a road, or
- (b) the improvement of a road without such an order,

he shall determine before the relevant date whether or not the project falls within Annex I or Annex II to Council Directive No [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment.

(2) If he determines that the project falls within Annex I, or that it falls within Annex II and has such characteristics that it should be made subject to an environmental assessment, he shall publish an environmental statement not later than the relevant date.

(3) In this section “the relevant date” means—

- (a) in a case falling within paragraph (a) of subsection (1) above, the date of the publication of the draft order; and
- (b) in a case falling within paragraph (b), the date of the publication of details of the project.

(4) If the Secretary of State publishes an environmental statement under this section, he shall ensure that the public concerned is given an opportunity to express an opinion before the project is initiated.

(5) If on completion of the project any part of the road would lie on, or within 100 metres of, land such as is mentioned in section 20A(5) of this Act, the Secretary of State shall ensure that the appropriate environmental body is given an opportunity to express an opinion before the project is initiated.

(6) In a case falling within subsection (1)(b) above, the Secretary of State—

- (a) shall consider—
 - (i) the environmental statement;
 - (ii) any opinion expressed by a member of the public; and
 - (iii) if the statement relates to land such as is mentioned in section 20A(5) of this Act, any opinion expressed by the appropriate environmental body; and
- (b) shall publish his decision as to whether or not to initiate the project.

(7) This section does not apply—

- (a) where a draft order relating to an improvement is published before the coming into force of the Environmental Assessment (Scotland) Regulations 1988; or
- (b) where the Secretary of State has under consideration before that date the making of an improvement without an order.”.

New definitions in section 151(1)

72. The following definitions shall be inserted in section 151(1) at the appropriate places in alphabetical order:—

““appropriate environmental body” is to be construed in accordance with section 20A(6) of this Act;”;

““environmental assessment” means an assessment in accordance with Council Directive No [85/337/EEC](#);”;

““environmental statement” has the meaning provided by section 20A(2) of this Act;”.

New paragraph 7(1A) in Schedule 1

73. The following sub-paragraph shall be inserted after paragraph 7(1) of Schedule 1:—

“(1A) Where the Secretary of State has published an environmental statement, the matters to be considered before an order is made under this paragraph include—

- (a) the statement;
- (b) any opinion expressed by a member of the public; and

- (c) if the statement relates to land such as is mentioned in section 20A(5) of this Act, any opinion expressed by the appropriate environmental body.”.

New paragraph 13(1A) in Schedule 1

74. The following sub-paragraph shall be inserted after paragraph 13(1) of that Schedule:—

“(1A) Where the Secretary of State has published an environmental statement, the matters to be considered before a scheme is made include—

- (a) the statement;
- (b) any opinion expressed by a member of the public; and
- (c) if the statement relates to land such as is mentioned in section 20A(5) of this Act, any opinion expressed by the appropriate environmental body.”.

PART VII

GENERAL

Confidentiality

75. Any authority, body or person required to provide information under these Regulations shall not be required to provide information which that authority, body or person is entitled or bound to hold in confidence.

Charges

76.—(1) A reasonable charge reflecting the costs of printing, copying and distribution may be made to the public for copies of an environmental statement made available to them under these Regulations and for copies of an environmental statement, in excess of one copy, required by an authority, body or person consulted under these Regulations.

(2) An authority, body or person required to supply information under these Regulations may make a reasonable charge reflecting the costs of making available information which they had in their possession.

St Andrew’s House,
Edinburgh
12th July 1988

Malcolm Rifkind
One of Her Majesty’s Principal Secretaries of
State

SCHEDULE 1

Regulations 4, 5, 7, 8, 34 and 47

DESCRIPTIONS OF DEVELOPMENT

1. A crude-oil refinery (excluding an undertaking manufacturing only lubricants from crude-oil) or an installation for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2. A thermal power station or other combustion installation with a heat output of 300 megawatts or more and a nuclear power station and other nuclear reactor (except a research installation for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3. An installation designed solely for the permanent storage or final disposal of radioactive waste.
4. An integrated works for the initial melting of cast-iron and steel.
5. An installation for the extraction of asbestos or for the processing and transformation of asbestos or products containing asbestos—
 - (a) where the installation produces asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products; or
 - (b) where the installation produces friction material, with an annual production of more than 50 tonnes of finished products; or
 - (c) in other cases, where the installation will utilise more than 200 tonnes of asbestos per year.
6. An integrated chemical installation, that is to say an industrial installation or group of installations where two or more linked chemical or physical processes are employed for the manufacture of olefins from petroleum products, or of sulphuric acid, nitric acid, hydrofluoric acid, chlorine or fluorine.
7. A special road, a line for long-distance railway traffic or an aerodrome with a basic runway length of 2,100 m or more.
8. A trading port, an inland waterway which permits the passage of vessels of over 1,350 tonnes or a port for inland waterway traffic capable of handling such vessels.
- 9.—(1) A waste-disposal installation for the incineration or chemical treatment of special waste.
(2) The carrying out of operations whereby land is filled with special waste or the change of use of land (where a material change) to use for the deposit of such waste.

SCHEDULE 2

Regulations 4, 5, 7, 8, 34 and 47

DESCRIPTIONS OF DEVELOPMENT

Development for any of the following purposes:

Agriculture

- (a) (a) Water-management for agriculture;
- (b) poultry-rearing;
- (c) pig-rearing;
- (d) a salmon hatchery;
- (e) an installation for the rearing of salmon; and

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- (f) the reclamation of land from the sea.

Extractive industry

- (a) (a) Extracting peat;
- (b) deep drilling, including—
 - (i) geothermal drilling;
 - (ii) drilling for the storage of nuclear waste material; and
 - (iii) drilling for water supplies;but excluding drilling to investigate the stability of the soil;
- (c) extracting minerals (other than metalliferous and energy-producing minerals), such as marble, sand, gravel, shale, salt, phosphates and potash;
- (d) extracting coal or lignite by underground or open-cast mining;
- (e) extracting petroleum;
- (f) extracting natural gas;
- (g) extracting ores;
- (h) extracting bituminous shale;
 - (i) extracting minerals (other than metalliferous and energy-producing minerals) by open-cast mining;
- (j) a surface industrial installation for the extraction of coal, petroleum, natural gas or ores, or bituminous shale;
- (k) a coke oven (dry coal distillation); and
- (l) an installation for the manufacture of cement.

Energy industry

- (a) (a) An industrial installation for the production of electricity together with steam or hot water, not being an installation falling within Schedule 1;
- (b) an industrial installation for carrying gas, steam or hot water;
- (c) the transmission of electrical energy by over-head cables;
- (d) the surface storage of natural gas;
- (e) the underground storage of combustible gases;
- (f) the surface storage of fossil fuels;
- (g) the industrial briquetting of coal and lignite;
- (h) an installation or the production or enrichment of nuclear fuels;
- (i) an installation for the reprocessing of irradiated nuclear fuels;
- (j) an installation for the collection or processing of radioactive waste, not being an installation falling within Schedule 1; and
- (k) an installation for hydroelectric energy production.

Processing of metals

- (a) (a) An ironwork or steelworks, including a foundry, forge, drawing plant or rolling mill (not being a works falling within Schedule 1);

- (b) an installation for the production (including smelting, refining, drawing or rolling) of non-ferrous metals, other than precious metals;
- (c) the pressing, drawing or stamping of large castings;
- (d) the surface treatment or coating of metals;
- (e) boilermaking or manufacturing of reservoirs, tanks and other sheet-metal containers;
- (f) manufacturing or assembling of motor vehicles or manufacturing of motor-vehicle engines;
- (g) a shipyard;
- (h) an installation for the construction or repair of aircraft;
- (i) the manufacture of railway equipment;
- (j) swaging by explosives; and
- (k) an installation for the roasting or sintering of metallic ores.

Glass making

- 5. The manufacture of glass.

Chemical industry

- (a) (a) The treatment of intermediate products and production of chemicals, other than development falling within Schedule 1;
- (b) the production of pesticides or pharmaceutical products, paint or varnishes, elastomers or peroxides; and
- (c) the storage of petroleum or petrochemical or chemical products.

Food industry

- (a) (a) The manufacture of vegetable or animal oils or fats;
- (b) the packing or canning of animal or vegetable products;
- (c) the manufacture of dairy products;
- (d) brewing or malting;
- (e) confectionery or syrup manufacture;
- (f) an installation for the slaughter of animals;
- (g) an industrial starch manufacturing installation;
- (h) a fish-meal or fish-oil factory; and
- (i) a sugar factory.

Textile, leather, wood and paper industries

- (a) (a) A wool scouring, degreasing and bleaching factory;
- (b) the manufacture of fibre board, particle board or plywood;
- (c) the manufacture of pulp, paper or board;
- (d) a fibre-dyeing factory;
- (e) a cellulose-processing or production installation; and
- (f) a tannery or a leather dressing factory.

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Rubber industry

9. The manufacture and treatment of elastomer-based products.

Infrastructure projects

- (a) (a) An industrial estate development project;
- (b) an urban development project;
- (c) a ski-lift or cable-car;
- (d) the construction of a road, or a harbour including a fishing harbour, or an aerodrome, not being development falling within Schedule 1;
- (e) canalisation or flood-relief works;
- (f) a dam and other installation designed to hold water or store it on a long-term basis;
- (g) a tramway, elevated or underground railway, suspended line or similar line exclusively or mainly for passenger transport;
- (h) an oil or gas pipeline installation;
- (i) a long-distance aqueduct; and
- (j) a yacht marina.

Other projects

- (a) (a) A holiday village or hotel complex;
- (b) a permanent racing or test track for cars or motor cycles;
- (c) an installation for the disposal of controlled waste or waste from mines and quarries, not being an installation falling within Schedule 1;
- (d) a waste water treatment plant;
- (e) a site for depositing sludge;
- (f) the storage of scrap iron;
- (g) a test bench for engines, turbines or reactors;
- (h) the manufacture of artificial mineral fibres;
- (i) the manufacture, packing, loading or placing in cartridges of gunpowder or other explosives; and
- (j) a knacker's yard.

12. The modification of a development which has been carried out where that development is within a description mentioned in Schedule 1.

13. Development within a description mentioned in Schedule 1, where it is exclusively or mainly for the development and testing of new methods or products and will not be permitted for longer than one year.

SCHEDULE 3

Regulations 2, 22, 43 54 and 68

ENVIRONMENTAL STATEMENTS

1. An environmental statement comprises a document or series of documents prepared by the applicant providing, for the purpose of taking into consideration environmental information in

respect of a proposed development, the information specified in paragraph 2 (referred to in this Schedule as “the specified information”).

2. The specified information is—

- (a) a description of the proposed development, comprising information about the site and the design and size or scale of the proposed development;
- (b) the data necessary to identify and assess the main effects which that development is likely to have on the environment;
- (c) a description of the likely significant effects, direct and indirect, on the environment of the proposed development, explained by reference to its possible impact on—
 - (A) human beings;
 - (B) flora;
 - (C) fauna;
 - (D) soil;
 - (E) water;
 - (F) air;
 - (G) climate;
 - (H) the landscape;
 - (I) the inter-action between any of the foregoing;
 - (J) material assets;
 - (K) the cultural heritage;
- (d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects;
- (e) and a summary in non-technical language of the information specified above.

3. An environmental statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters:—

- (a) the physical characteristics of the proposed development, and the land-use requirements during the construction and operational phases;
- (b) the main characteristics of any production processes proposed, including the nature and quality of the materials to be used;
- (c) the estimated type and quantity of expected residues and emissions (including pollutants of water, air or soil, noise, vibration, light, heat and radiation) resulting from the proposed development when in operation;
- (d) (in outline) the main alternatives if any studied by the applicant, appellant or authority and an indication or the main reasons for their choice, taking into account the environmental effects;
- (e) the likely significant direct and indirect effects on the environment of the proposed development which may result from—
 - (i) the use of natural resources;
 - (ii) the emission of pollutants, the creation of nuisances, and the elimination of waste;
- (f) the forecasting methods used to assess any effects on the environment about which information is given under sub-paragraph (e); and
- (g) any difficulties, such as technical deficiencies or lack of know-how, encountered in compiling any specified information.

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In paragraph (e) “effects” includes secondary, cumulative, short, medium and long-term, permanent, temporary, positive and negative effects.

4. Where further information is included in an environmental statement pursuant to paragraph 3, a non-technical summary of that information shall also be provided.

SCHEDULE 4

Regulations 7, 8, 14, 15, 18, 23 to 27, 37,
42, 44, 50, 53, 55, 57, 58, 59, 61 and 66

BODIES TO BE CONSULTED

1. Any adjoining planning authority where the proposed development is likely to affect land in their area.
2. The district planning authority where the application falls to be determined by the regional planning authority.
3. The Countryside Commission for Scotland.
4. The Health and Safety Executive.
5. The Nature Conservancy Council.
6. The regional planning authority, where the application falls to be determined by the district planning authority.
7. The River Purification Authority for the area in which the proposed development is situated.
8. The Secretary of State.
9. For the purposes of Part IV of these Regulations, the planning authority.

SCHEDULE 5

Regulation 16

THE ENVIRONMENTAL ASSESSMENT (SCOTLAND) REGULATIONS 1988
NOTICE UNDER REGULATION 16

Notes

- (a) Insert address for location of development.
- (b) Insert name of planning authority or insert Secretary of State as appropriate.
- (c) Insert name of applicant.
- (d) Insert description of proposed development.
- (e) Insert date of notification under Article 7(1) of the General Development Order.
- (f) Insert address of planning authority.
- (g) *Insert other address in the locality at which the environmental statement etc may be inspected.
- (h) Insert address where copies of environmental statement available.
- (j) Insert cost of a copy of the environmental statement.
- *(k) address to be supplied by Secretary of State

Proposed development at (a)
 Notice is hereby given that an environmental statement has been submitted to (b) by (c)

 relating to the planning application in respect of (d) notified to you under Article 7(1) of the Town and Country Planning (General Development) (Scotland) Order 1981 on (e)
 A copy of the environmental statement and the associated planning application may be inspected at all reasonable hours in the register of planning applications kept by the planning authority for the area at (f) and also at (g)* during the period of 28 days beginning with the date of this notice.
 Copies of the environmental statement may be purchased from (h) at a cost of (j)
 Any person who wishes to make representations to (b) about the environmental statement should make them in writing within that period *to the Council at (f)
 *to the Secretary of State at (k)

*Delete where inappropriate

Signed
 *On behalf of
 Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations implement, for Scotland, Council Directive No.85/337/EEC (O.J. No. L175, 5.7.85, p. 40) (“the directive”) on the assessment of the effects of certain public and private projects on the environment.

The Regulations are in seven parts covering types of project subject to different consent procedures and apply to any projects for which application is made on or after 15th July 1988.

PART I—INTRODUCTORY

Regulation 1 provides for the citation, commencement and application of the Regulations.

Regulation 2 provides general interpretations of terms applicable to all Parts of the Regulations.

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PART II — PLANNING

Part II of the Regulations imposes new procedural requirements in connection with the consideration of applications for planning permission under Part III of the Town and Country Planning (Scotland) Act 1972 and with the procedures for development by planning authorities under the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981.

The descriptions of development which are affected by this Part of the Regulations are set out in Schedules 1 and 2.

Development mentioned in Schedule 2 is only affected if it would be likely to have significant effects on the environment by virtue of, inter alia, its nature, size or location.

Regulation 5 extends the statutory power to provide in a development order for the giving of directions so that the Secretary of State can be empowered to direct whether development is, or is not, within the scope of the Regulations. He may also be given power to exempt particular development by direction.

Regulation 6 prohibits the grant of planning permission for affected development unless the planning authority, the Secretary of State or a reporter has first taken into consideration environmental information in respect of the proposed development.

Persons proposing to apply for planning permission may seek a preliminary opinion from the planning authority as to whether consideration of environmental information in respect of a proposed development is required and may seek a direction from the Secretary of State if they do not accept the authority's opinion (regulation 7).

Regulations 8 provides a procedure for requiring bodies with relevant information to make it available to the developer and regulation 9 provides the procedure for an applicant seeking a direction of the Secretary of State.

Regulations 10 and 11 provide for the opinion of a planning authority and directions of the Secretary of State to be made available to interested parties and the public.

In regulations 12 to 15 procedures are provided for considering whether an application requires consideration of environmental information and for requiring the submission of an environmental statement if necessary.

Regulation 16 provides procedures for publicising the environmental statement through notification of owners, occupiers and lessees of neighbouring land and through press advertisement.

Regulations 17 to 19 deal with consultation about an environmental statement whether submitted to the planning authority (regulation 18) or the Secretary of State (regulation 19) and provide procedures.

Regulation 20 extends the time allowed to a planning authority to consider an application for planning permission from 2 months to 4 months where consideration of environmental information is required and provides that the time does not run until an environmental statement is submitted or while the need for consideration of environmental information is being considered.

Regulation 21 concerns the provision of a copy of an environmental statement for the Secretary of State.

Regulation 22 empowers a person taking into consideration environmental information to require further information or the verification of information.

Regulation 23 requires the bodies mentioned in Schedule 4 to supply information (other than confidential information) for the preparation of an environmental statement where they are required to do so.

Regulation 24 requires the Secretary of State to be informed of planning decisions by planning authorities involving consideration of environmental information.

Regulations 25 to 28 relate to developments being undertaken by planning authorities and provide for, where necessary, the provision of an environmental statement (regulation 25); the provision of relevant information to the planning authority by bodies mentioned in Schedule 4 (regulation 26); and consultation on and publicity for an environmental statement by neighbour notification and press advertisement (regulation 27). Regulation 28 provides that no planning permission shall be deemed to be granted under the 1981 Regulations for development requiring consideration of environmental information and requires all such proposals to be submitted to the Secretary of State.

Regulation 29 provides that the Secretary of State shall inform the authorities, bodies and persons consulted by the planning authority about his decision on whether to grant planning permission.

Regulation 30 applies the requirements of the Regulations to applications being dealt with by a regional planning authority where that authority has used its powers to call in the application for its own determination.

Regulation 31 modifies the operation of sections 231 and 233 of the Town and Country Planning (Scotland) Act 1972 so that decisions of the Secretary of State (or a reporter) may be challenged on the ground that regulation 6 has been contravened:

Regulation 32 provides for the method of service of notices under the Regulations.

PART III —ELECTRICITY APPLICATIONS

Part III of the Regulations provides for the implementation of the directive in relation to applications for consent or approval of electricity developments made under the Electricity (Supply) Acts 1882-1936, the Schedule to the Electric Lighting (Clauses) Act 1899 and the Electricity (Scotland) Act 1979.

The principal provisions are as follows:—

Regulation 35 prohibits the grant of consent or approval to an electricity application without the Secretary of State having taken into consideration environmental information in respect of the proposed development where the development falls within a description within Schedule 1 or Schedule 2 and is likely to have significant effects on the environment.

Regulation 36 provides for the Secretary of State to direct that an electricity application requires or does not require consideration of environmental information and for the Secretary of State to direct that a particular electricity application, in respect of which consideration of environmental information would be required in terms of the Regulations, be exempt in whole or part from the Regulations.

Regulation 37 sets out the procedures to be undertaken where the Secretary of State receives an electricity application which requires consideration of environmental information but which is not accompanied by an environmental statement. It further provides for the applicant to apply to the Secretary of State for a direction as to whether consideration of environmental information is required, or to apply for the exemption of the application in whole or in part from the Regulations.

Regulation 38 sets out the procedures which the applicant is required to follow when making application for a direction to the Secretary of State and also sets out time limits for the Secretary of State's consideration of the application for a direction.

Regulation 39 provides for any direction by the Secretary of State to be sent to the applicant, to the relevant planning authority and to other appropriate persons.

Regulation 40 provides that, where an electricity applicant submits an environmental statement to the Secretary of State, the applicant shall issue a public notice to the effect that an environmental statement has been prepared and is available for inspection. The regulation also provides for representations to be made in respect of the environmental statement.

Regulation 42 provides for the relevant planning authority to consult relevant authorities, bodies or persons mentioned in Schedule 4 about an environmental statement. The regulation further

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provides for consultees to make representations and for the planning authority to consider these representations with the environmental statement. Provision is also made for the Secretary of State to be provided with a report by the planning authority on their consideration of the environmental statement and with copies of any representations, and for the Secretary of State to consider the environmental statement together with all representations received under this regulation or regulation 40.

Regulation 43 provides for the Secretary of State to require the applicant to provide such further information as the Secretary of State may consider necessary in order that he can consider an electricity application.

Regulation 44 requires bodies consulted regarding environmental statements to provide the applicant with any information in their possession which he or they consider relevant to the preparation of the statement.

Regulation 45 provides that where the Secretary of State has taken into consideration environmental information and determined an electricity application he shall inform the applicant, the planning authority and all authorities, bodies or persons consulted under regulation 42 of his decision. It further provides that the planning authority shall make the determination available for public inspection.

PART IV —SPECIFIC DEVELOPMENTS IN NEW TOWNS

Regulations 46 to 62 implement the directive in respect of specific developments in New Town Development Corporation areas and provide procedures for New Town Development Corporations to consider whether applications for authorisation of development require consideration of environmental information, to require the developer to prepare an environmental statement and to require the Development Corporation to undertake the necessary consultation and publicity and take the results thereof into consideration in coming to their decision on the application for authorisation.

Regulation 48 prohibits the authorisation of any development falling within the scope of the directive without first taking into consideration of environmental information in respect of the project.

Regulation 49 provides that the Secretary of State may direct whether development requires consideration of environmental information or that it should be exempt from the scope of the Regulations.

Regulations 50 to 56 provide procedures in relation to the provision of an environmental statement and the consideration thereof by the Development Corporation.

Regulation 50 provides for procedures for the Development Corporation, where they consider that consideration of environmental information is required in respect of a proposed development, but the application is not accompanied by an environmental statement, to ask the applicant for such a statement. The applicant may provide the statement or apply to the Secretary of State for a direction. If he takes no action his application is deemed to be withdrawn. When an environmental statement is received by the Development Corporation they must give it appropriate publicity (regulation 51), make copies of it available for the public (regulation 52) and consult those bodies with an interest in the environmental statement (regulation 53), inviting representations. The Development Corporation may require further information to be provided by the applicant (regulation 54) and any body that has relevant information in its possession must make it available to the applicant for the preparation of the environmental statement (regulation 55).

Regulation 56 provides that once the Development Corporation have made their decision on the proposed specific development they must inform the applicant, the Secretary of State, all the authorities, bodies and persons consulted under regulation 53 and those persons having a notifiable interest in terms of regulation 51. It further provides that the Development Corporation shall make their decision available for public inspection.

Regulation 57 to 62 provide parallel procedures where the development is to be undertaken by the Development Corporation itself.

Regulation 57 requires that the Development Corporation shall consider whether they require to take into consideration environmental information in respect of the proposed development and, if so, they shall provide an environmental statement in respect of the proposed development.

Regulation 58 requires bodies with relevant information in their possession to make it available to the Development Corporation.

Regulation 59 requires that the environmental statement be publicised through notification of owners, lessees and occupiers of neighbouring land and through press advertisement, stating that representations may be made.

Regulation 60 requires the Development Corporation to inform of their decision, on their proposed specific development, the Secretary of State and all other consulted or notified authorities, bodies and persons. It also requires them to make their decision available for public inspection.

Regulation 61 provides a procedure for applications to the Secretary of State for a direction as to whether development requires consideration of environmental information or is exempt development.

Regulation 62 provides a procedure for the Secretary of State to make available the terms of any direction he makes under regulation 49.

PART V —DRAINAGE WORKS

Regulations 63 to 68 provide that the Secretary of State shall take into consideration environmental information about any proposed drainage works for which authority under the Land Drainage (Scotland) Act 1958 is sought if they are likely to have significant effects on the environment.

Regulation 65 prohibits the Secretary of State from making an improvement order authorising drainage works which come within the scope of the directive unless he has first taken into consideration environmental information in respect of the works.

Regulation 66 requires any bodies with relevant information in their possession to make it available to the applicant for the improvement order.

Regulation 67 requires an environmental statement to be submitted to the Secretary of State and also requires the Secretary of State to notify and publicise the environmental statement in the same manner as a draft order under the First Schedule to the Land Drainage (Scotland) Act 1958.

Regulation 68 enables the Secretary of State to require such further information from the applicant for the improvement order as he considers necessary to enable the application to be determined and requires him to notify the applicant if there is further information he considers the applicant should be able to provide. The applicant shall then provide that information.

PART VI —AMENDMENTS OF THE ROADS (SCOTLAND) ACT 1984

Regulations 69 to 74 provide procedures for the Secretary of State to take into consideration environmental information on the likely environmental effects of certain trunk road projects.

Regulation 70 inserts a new section 20A into the Roads (Scotland) Act 1984 requiring the Secretary of State, when he has under consideration the construction of a new road, to determine whether the project falls within the scope of the directive. Where he so considers, he shall publish an environmental statement and the new section provides for the content of such a statement. The section also provides that the public shall be given an opportunity to express an opinion before the project is initiated.

The section also provides that in certain circumstances the Secretary of State shall consult the appropriate environmental bodies and lists those bodies.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 71 inserts a new section 55A into the 1984 Act which makes similar provision to that inserted by regulation 70 in respect of improvements to trunk roads.

Regulation 72 inserts appropriate definitions into the 1984 Act.

Regulations 73 and 74 make further insertions into the 1984 Act requiring the Secretary of State, where he has published an environmental statement to take into account environmental information in respect of a proposed project before making an order or a scheme under the 1984 Act.

PART VII —GENERAL

Regulation 75 provides that any authority, body or person who must make available any relevant information in their possession in terms of the Regulations shall not be required to provide any information which they are entitled or bound to hold in confidence.

Regulation 76 provides that a reasonable charge reflecting printing, copying and distribution may be made for copies of an environmental statement, and that bodies required to make available information in their possession may make a reasonable charge for doing so.

SCHEDULES

Schedule 1 and 2 list the descriptions of development which fall within Annexes 1 and 2 respectively to the directive and which may be subject to consideration of their environmental effects. Schedule 3 sets out the information which is required in an environmental statement. Schedule 4 lists the bodies with environmental responsibilities who are to be consulted about environmental statements and Schedule 5 prescribes a form for notification under regulation 16 of owners, occupiers and lessees of neighbouring land.