
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 and section 40 of the Town and Country Planning (Scotland) Act 1997. They implement in Scotland the amendments made by Article 3 of Council Directive [2003/35/EC](#) (the 2003 Directive) (O.J. L 156,25.6.03, p.17-24) with regard to public participation and access to justice to Council Directive [85/337/EEC](#) (the PPD) (O.J. L 175, 5.7.1985, p.40). The following Regulations and Act are amended in the following Parts of the Regulations:

Part II – The Environmental Impact Assessment (Scotland) Regulations 1999 (“the 1999 Regulations”);

Part III – The Roads (Scotland) Act 1984;

Part IV – The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations; and

Part V – The Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999

Part II of the Regulations provides for certain amendments to the 1999 Regulations.

Regulation 3 deals with amendments to Part II of the 1999 Regulations in respect of Town and Country Planning as follows:

Regulation 3(1) amends regulation 2 of the 1999 Regulations regarding interpretation including the insertion of a definition of “any other information”. This is to meet the requirement inserted by Article 3 of the 2003 Directive that any further information provided by the applicant or the appellant as the case may be which becomes available after the initial gathering of information for an environmental statement has taken place will also require to be publicised. The definition of consultation bodies is extended to include bodies designated by statutory provision as having specific environmental responsibilities and which are considered likely to have an interest in the application. The definition of “exempt development” is amended to omit developments which are or form part of projects serving national defence purposes. Such developments and the power to exempt them from the requirements of the regulations are now covered by a UK wide provision in regulation 22 of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2006 (S.I.2006/3295). The definition of “sensitive area” is updated to include sites of special scientific interest and nature conservation orders. The definition of “Directive” is also updated.

Regulation 3(2) inserts a new regulation 4(4) into the 1999 Regulations in respect of directions the Scottish Ministers can make regarding exempt developments. This requires the Scottish Ministers to make available the information considered and their reasons for the decision to exempt.

Regulation 3(3) amends regulation 12 (procedure to facilitate preparation of environmental statements) to include references to the Environmental Information (Scotland) Regulations 2004 and the Environmental Information Regulations 2004.

Regulation 3(5) inserts a new regulation 19 (2A) so that regulation 19(2) applies in relation to any other information (as defined in the amendments made to regulation 2) as it applies to further information. This is so that the requirements for publicity and consultation contained in regulations 14 to 16 and 18 of the 1999 Regulations apply.

Regulation 3(12) inserts a new regulation 46A into the 1999 regulations to extend the additional access to justice requirements inserted by Article 3 of the 2003 Directive to environmental non governmental organisations.

Regulation 3(13) adds a further paragraph to Schedule I of the 1999 Regulations so that where a change or extension would fall within one of the categories listed in that Schedule that change or extension also constitutes a Schedule I development.

Regulation 3(15) inserts changes into the notice prescribed by Schedule 5 so as to comply with the requirements of the changes inserted by Article 3 of the 2003 Directive which require that the public be informed of the types of decisions that can be made.

Part II of the Regulations at regulation 4 amends Part IV of the 1999 Regulations in relation to drainage works as follows:

Regulation 4(1) inserts in regulation 55 of the 1999 Regulations definitions of “environmental information” and “further information”. It also omits the definition of “sites of scientific interest” in regulation 55 of the 1999 Regulations and a new definition, “sensitive area”, is inserted in its place. The effect of this is to specify additional types of areas which will require an environmental statement to be submitted along with an application for an improvement order under section 1 of the Land Drainage (Scotland) Act 1958 (c. 24) (“the 1958 Act”) in accordance with regulation 59 of the 1999 Regulations. Sites of special scientific interest, sites subject to a nature conservation order, European Sites, National Scenic Areas and National Parks are included in the definition of “sensitive area”. Regulation 4(2) inserts a definition of “the Directive”.

Regulation 4(3) amends regulation 59(2) of the 1999 Regulations to add to the information which the Scottish Ministers are required to notify and publish in terms of that Regulation.

Regulation 4(4) amends regulation 60 of the 1999 Regulations to include a requirement on the Scottish Ministers to publicise specified further information relating to the application for an improvement order in the same manner as they are required to publicise the draft improvement order under the 1958 Act.

Regulation 4(5) inserts Regulations 60A, 60B and 60C into the 1999 Regulations. Regulation 60A requires the Scottish Ministers to publicise their decision in relation to an application for an improvement order and make available a statement giving information including the main reasons for the decision. Regulation 60B provides in relation to applications for improvement orders which are likely to have significant environmental effects in another EEA State. Regulation 60C sets out what the Scottish Ministers are required to do in relation to projects in other EEA states likely to have significant effects on the environment in Scotland.

Regulation 4(6) inserts a new regulation 61 into the 1999 Regulations to provide in relation to confidentiality.

Regulation 4(8) inserts a new regulation 62A into the 1999 Regulations to extend the additional access to justice requirements inserted by Article 3 of the 2003 Directive to environmental non governmental organisations.

Part III of the Regulations make amendments to the Roads (Scotland) Act 1984 (“the 1984 Act”) to amend the procedures for publication and notification of information on the likely environmental effects of certain trunk road projects.

Regulation 6(1) amends section 20A of the 1984 Act. The amended section 20A requires the Scottish Ministers, when they have under consideration the construction of a new road which is to be subject to an environmental impact assessment, to prepare an environmental statement and publish notice of it. The new section 20A(5A) sets out the information to be contained in the notice and section 20A(5B) requires Scottish Ministers to make copies of the environmental statement available for inspection free of charge and to supply copies on request, subject to a reasonable charge in certain cases.

Regulation 6(2) amends section 20B of the 1984 Act which provides for consultation between EEA States where a project is likely to have significant effects on the environment in another EEA State. The amendment to section 20B(4) requires the Scottish Ministers in these circumstances to provide a relevant EEA State with all the information in the notice prescribed by section 20A(5B).

Regulation 6(3) amends section 55A of the 1984 Act, to require the same notification procedures in respect of improvements to trunk roads, as are required by the amended section 20A in respect of construction of new trunk roads.

Regulation 6(4) amends section 151 of the 1984 Act regarding interpretation.

Regulation 6(5) amends paragraph 7 (in respect of road orders) and paragraph 13 (in respect of road schemes) of Schedule 1 to the 1984 Act so that Scottish Ministers are required, in cases where they have published an environmental statement, to take into account written representations on the environmental statement before making their decision as to whether to proceed with the project. When publishing their decision the Scottish Ministers should notify consultation bodies and, if relevant, publish information about the participation of the public and how their views were taken into account. The published notice should also contain information as to how the decision of the Scottish Ministers may be challenged. Regulation 6(5) also inserts new paragraphs 7(1D) and 13(1D) of Schedule 1 to extend the additional access to justice requirements inserted by Article 3 of the 2003 Directive to environmental non-governmental organisations.

Regulation 7 specifies that the provisions of this Part do not apply in relation to projects where relevant procedures have been commenced before these Regulations come into force.

Part IV amends the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (“the Fish Farming in Marine Waters Regulations”) as follows.

Regulation 9(1) amends regulation 2 of the Fish Farming in Marine Waters Regulations, updating the definition of “the Directive” and revising the definition of “sensitive area”.

Regulation 9(2) substitutes regulation 8 of the Fish Farming in Marine Waters Regulations. New regulation 8 provides that the relevant authority (defined in regulation 2 of the Fish Farming in Marine Waters Regulations) shall make available for public inspection the application (of a type specified in regulation 1(3), for a development of the kind referred to in regulation 1(2), of the Fish Farming in Marine Waters Regulations), environmental statement, and other reports and advice for a period of 28 days, with the opportunity for representations to be made within that period. The making available of these documents shall be publicised through press advertisement (new regulation 8(1) (a)). The applicant is responsible for the costs incurred by the relevant authority in arranging such advertisement (new regulation 8(2)).

Regulation 9(3) inserts new regulation 10A into the Fish Farming in Marine Waters Regulations. New regulation 10A provides that where the relevant authority receives further information relevant for the decision it is to make it shall make available for public inspection that further information for a period of 28 days, with the opportunity for representations to be made within that period. The making available of that further information shall be publicised through press advertisement (new regulation 10A(1)(a)). The applicant is responsible for the costs incurred by the relevant authority in arranging such advertisement (new regulation 10A(2)).

Regulation 9(4) amends regulation 11 of the Fish Farming in Marine Waters Regulations to provide for the inclusion of the information referred to in regulation 9(5) in any intimation of a decision under regulation 11 of the Fish Farming in Marine Waters Regulations.

Regulation 9(5) inserts new regulation 14A into the Fish Farming in Marine Waters Regulations to extend the additional access to justice requirements inserted by Article 3 of the 2003 Directive to environmental non-governmental organisations.

Regulation 9(6) amends regulation 15(3) of the Fish Farming in Marine Waters Regulations to provide that where a Member State is sent the information set out in that regulation it shall also be sent the information specified in regulation 9(4).

Regulation 9(7) inserts new regulation 15A into the Fish Farming in Marine Waters Regulations. New regulation 15A provides for consultation between the Scottish Ministers and other Member States where a development in that Member State is likely to have significant effects in Scotland.

Part V amends the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (“The Forestry Regulations”) as follows:

Regulation 11(1) amends regulation 2(1) of the Forestry Regulations, extending the definition of “countryside body” to include bodies designated by statutory provision as having specific environmental responsibilities and updating the definition of “the Directive” (that is, Council Directive [85/337/EEC](#)).

Regulation 11(2) amends regulation 4 of the Forestry Regulations so as to require the Forestry Commissioners, where they direct that a particular project is exempted from the application of those regulations, to consider whether another form of assessment would be appropriate and to take such steps as they consider appropriate to bring the information obtained under it to the attention of the public.

Regulation 11(3) amends regulation 12 of the Forestry Regulations to substitute appropriate references to the Environmental Information (Scotland) Regulations 2004 and the Environmental Information Regulations 2004 for the existing reference to the Environmental Information Regulations 1992 (now repealed).

Regulation 11(4) amends regulation 13 of the Forestry Regulations to require an applicant for consent under regulation 10 to publish a notice in relation to any further information supplied to the Commissioners in relation to the application (and not merely further information which is required by the Commissioners in terms of regulation 11), and to include in the notice of an application a statement of the nature of the possible decisions to be taken in relation to that application.

Regulation 11(5) amends regulation 14 of the Forestry Regulations to require that any further information supplied by the applicant be made available to a relevant EEA State.

Regulation 11(6) amends regulation 19 of the Forestry Regulations by inserting a provision to extend the additional access to justice requirements inserted by Article 3 of the 2003 Directive to environmental non-governmental organisations.

Regulation 11(7) amends regulation 24 of the Forestry Regulations to require that the register kept by the Commissioners for public inspection include a copy of any direction given by the Scottish Ministers in terms of regulation 7(8)(a) of those regulations.

Regulation 11(8) amends the definition of “sensitive area” in paragraph 1 of Schedule 2 to include an area designated as a National Park in terms of section 6(1) of the National Parks (Scotland) Act 2000 and to replace references to provisions of the Wildlife and Countryside Act 1981 which have been repealed by the Nature Conservation (Scotland) Act 2004 with references to the corresponding provisions of the latter Act.

Part VI of the Regulations provides for certain amendments to the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 (“the 2006 Regulations”).

Regulation 13(1) corrects a reference in regulation 14(5) of the 2006 Regulations.

Regulation 13(2) corrects an omission in regulation 28(3)(a) of the 2006 Regulations to allow persons authorised by the Scottish Ministers to carry out re-instatement works in the event of them not being carried out as required by a notice served under the 2006 Regulations.

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Impact Assessment (Scotland) Amendment Regulations 2006.