
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 246

ELECTRICITY

The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008

Made - - - - - *12th June 2008*
Laid before the Scottish
Parliament - - - - - *13th June 2008*
Coming into force - - - - - *8th September 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008 and come into force on 8th September 2008.

(2) In these Regulations “the principal Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000⁽²⁾.

Amendments to regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation)–

(a) after the definition of “the Act” insert–

““additional information” means substantive information relating to the environmental statement which–

(a) is provided by the applicant or a consultative body to the Scottish Ministers–

(i) after the date of receipt by the Scottish Ministers of a document referred to by the applicant as an environmental statement; and

(1) 1972 c. 68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c. 51). Section 2(2) of this Act was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3) and section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51). Functions relating to the implementation of Council Directive 85/337/EC on the assessment of the effects of certain electricity works projects on the environment are exercisable concurrently by the Scottish Ministers and Secretary of State by virtue of S.S.I. 1999/1750, article 3 and Schedule 2.

(2) S.I. 2000/320.

- (ii) before determination by the Scottish Ministers of the application for a section 36 consent or a section 37 consent in respect of the development; and
 - (b) is not information falling within paragraphs (b) or (c) of the definition of “environmental statement”;
- (b) in the definition of “the consultative bodies”–
 - (i) at the end of paragraph (b), omit “and”; and
 - (ii) at the end of paragraph (c), insert–
 - “; and
 - (d) other bodies designated by statutory provision as having specific environmental responsibilities whom the Scottish Ministers consider are likely to have an interest in the application or proposed application”;
- (c) for the definition of “EEA State” substitute–
 - ““EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978(3);”;
- (d) for the definition of “environmental information” substitute–
 - ““environmental information” means–
 - (a) the environmental statement prepared by the applicant;
 - (b) additional information; and
 - (c) any representations duly made by any consultative body or any other person about the likely environmental effects of the proposed development;”;
- (e) for the definition of “environmental statement” substitute–
 - ““environmental statement” means–
 - (a) a statement prepared in respect of development pursuant to regulation 4(1);
 - (b) any information–
 - (i) provided to the Scottish Ministers by the applicant in order to supplement the statement referred to in paragraph (a); and
 - (ii) made available to the Scottish Ministers no later than fourteen days after the date of receipt by the Scottish Ministers of that statement; and
 - (c) any further information submitted by the applicant pursuant to a requirement under regulation 13(1);”;
- (f) in the definition of “scoping opinion” for “given in accordance with regulation 7” substitute “as to the information to be provided in an environmental statement”.

Amendment to regulation 4 of the principal Regulations

3. In regulation 4(2)(c) of the principal Regulations (procedure for grant of consent where environmental statement is required) for “9, 11, 12, 13 and 14” substitute “9, 10(2A), 11, 12, 13, 14 and 14A”.

(3) 1978 c. 30. The definition of “EEA State” was inserted into Schedule 1 of that Act by section 26(1) of the Legislative and Regulatory Reform Act 2006 (c. 51).

Amendment to regulation 6 of the principal Regulations

4. In regulation 6(1)(b)(ii) of the principal Regulations (application made without an environmental statement) omit “pursuant to a notice”.

Amendments to regulation 7 of the principal Regulations

5. In regulation 7 of the principal Regulations (procedure for a scoping opinion by Scottish Ministers)–

- (a) in paragraph (1) for “to state in writing their opinion as to the information to be provided in the environmental statement (a “scoping opinion”)” substitute “for a scoping opinion”; and
- (b) in paragraph (4)(b), omit “appropriate”.

Amendments to regulation 8 of the principal Regulations

6. In regulation 8(3)(a) of the principal Regulations (procedure to facilitate preparation of an environmental statement) omit “appropriate”.

Amendments to regulation 9 of the principal Regulations

7. In regulation 9 of the principal Regulations (publicity where an application is accompanied by an environmental statement)–

- (a) for paragraph (1) substitute–

“(1) Subject to regulation 12(5), in any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development has provided the Scottish Ministers with an environmental statement the applicant shall, as soon after provision of that statement as is reasonably practicable, publish in accordance with paragraph (1A) a notice containing the information specified in paragraph (2).

(1A) A notice to which paragraph (1) applies shall be published in two successive weeks in–

- (a) the Edinburgh Gazette; and
 - (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).”;
- (b) for paragraph (2)(a) substitute–
 - “(a) describe the application in question, state that it is accompanied by an environmental statement and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;”;
 - (c) at the end of paragraph (2)(b) omit “and”;
 - (d) in paragraph (2)(c) for “paragraph (1)” substitute “paragraph (1A)”;
 - (e) after paragraph (2)(c) insert–
 - “(d) describe the procedures under regulations 14 and 14A in accordance with which any person may make representations in relation to–
 - (i) further information provided by the applicant pursuant to a requirement imposed under regulation 13(1); or
 - (ii) additional information;

- (e) describe the circumstances under the Act in which the Scottish Ministers may cause a public inquiry to be held into the application; and
- (f) set out the nature of possible decisions to be taken in relation to the application.”; and
- (f) in paragraph (4) for “regulation 11(1) or (3)” substitute “regulation 11(1), (3) or (3A)”.

Amendments to regulation 10 of the principal Regulations

8.—(1) For the heading to regulation 10 of the principal Regulations (publicity of opinions, determinations and decisions) substitute—

“Publicity of determinations and provision of information to the planning authority”.

(2) In regulation 10 of the principal Regulations—

- (a) in paragraph (2) omit “(together with a copy of any environmental statement served on the planning authority pursuant to regulation 11)”;
- (b) after paragraph (2) insert—
 - “(2A) If a planning authority receives a copy of—
 - (a) an environmental statement pursuant to regulation 11(3A);
 - (b) further information pursuant to regulation 14(3);
 - (c) additional information pursuant to regulation 14A(1)(a); or
 - (d) a notice pursuant to regulation 14(3) or 14A(5),

the planning authority shall ensure that it is placed on Part I of the register until such time as the planning authority receives a statement pursuant to paragraph (3) when the planning authority shall place it on Part II of the register.”;

(c) for paragraph (3) substitute—

“(3) Where an application for a section 36 consent or a section 37 consent which relates to EIA development is determined by the Scottish Ministers, the Scottish Ministers shall send to—

- (a) the planning authority or authorities to which a copy of the environmental statement pertaining to the application was provided under regulation 11(3A); and
- (b) the applicant,

a statement containing the information specified in paragraph (3A), and the planning authority or authorities referred to in sub-paragraph (a) shall make that statement available for public inspection at all reasonable hours at the place where the register is kept.

(3A) A statement to which paragraph (3) applies shall contain the following information—

- (a) the content of the Scottish Ministers' determination and any conditions attached to any consent granted;
- (b) a summary of the main concerns and opinions expressed by the persons affected, or likely to be affected by, or having an interest in the application;
- (c) in the light of the concerns and opinions referred to in sub-paragraph (b), the main reasons and considerations on which the Scottish Ministers' determination is based;

- (d) a description where necessary of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
 - (e) the availability of judicial review procedures, including details of where further information in relation to such procedures can be obtained.”;
- (d) in paragraph (4) for “information contained in the press or other notice issued pursuant to” substitute “statement provided in accordance with”; and
- (e) after paragraph (4) insert–
- “(5) Where an applicant receives a statement in accordance with paragraph (3) the applicant shall, as soon as is reasonably practicable, publish a notice in accordance with paragraph (6) specifying that–
 - (a) the application has been determined;
 - (b) a section 36 consent or section 37 consent has either been granted or refused; and
 - (c) the statement containing the information referred to in paragraph (3A) is available for public inspection at the planning authority or authorities to which a copy of the environmental statement pertaining to the application was provided under regulation 11(3A).
- (6) A notice to which paragraph (5) applies shall be published in two successive weeks in–
- (a) the Edinburgh Gazette; and
 - (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).”.

Amendments to regulation 11 of the principal Regulations

9. In regulation 11 of the principal Regulations (procedure where Scottish Ministers receive an environmental statement)–

- (a) in paragraph (1) and (2)(a)(i) omit “appropriate”; and
- (b) after paragraph (3) insert–

“(3A) Where an applicant submits an environmental statement to the Scottish Ministers relating to an application for a section 36 consent or a section 37 consent, the applicant shall serve a copy of the environmental statement on the planning authority within whose area the land which is the subject of the proposed development is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or authorities as the Scottish Ministers shall direct) and shall inform the Scottish Ministers of the date on which the applicant did so.”.

Amendment to regulation 12 of the principal Regulations

10. In regulation 12(2)(a) of the principal Regulations (projects affecting other EEA States) for “application for consent in respect of the proposed EIA development” substitute “notice published in accordance with regulation 9(1)”.

Amendments to regulation 14 of the principal Regulations

11. In regulation 14 of the principal Regulations (publicity in relation to further information and timing of determination)–

- (a) for paragraph (1) substitute—
 - “(1) In any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development is required in accordance with regulation 13(1) to provide further information the applicant shall publish in accordance with paragraph (1A) a notice containing the information specified in paragraph (2).
 - (1A) A notice to which paragraph (1) applies shall be published in two successive weeks in—
 - (a) the Edinburgh Gazette; and
 - (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).”;
- (b) in paragraph (2)(a) for “is available supplementing the environmental statement which has already been produced” substitute “has been provided”;
- (c) in paragraph (2)(c) for “paragraph (1)” substitute “paragraph (1A)”; and
- (d) in paragraph (3) for “regulation 11(1) or (3)” substitute “regulation 11(1), (3) or (3A)”.

Insertion of new regulation 14A of the principal Regulations

- 12.** After regulation 14 of the principal Regulations insert—

“Additional information and timing of determination

- 14A.—**(1) Where additional information is made available to the Scottish Ministers they shall—
- (a) serve a copy of the additional information on the planning authority or authorities on whom was served a copy of the environmental statement under regulation 11(3A); and
 - (b) notify the applicant that additional information has been served on the planning authority or authorities in accordance with paragraph (a).
- (2) On the first occasion on which the applicant is notified of the service of additional information in accordance with paragraph (1)(b), the applicant shall—
- (a) publish in accordance with paragraph (3) a notice containing the information specified in paragraph (4); and
 - (b) serve a copy of that notice on the Scottish Ministers.
- (3) A notice to which paragraph (2)(a) applies shall be published in two successive weeks in—
- (a) the Edinburgh Gazette; and
 - (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).
- (4) A notice to which paragraph (2)(a) applies shall—
- (a) describe the application in question and state that the Scottish Ministers have received additional information;

- (b) identify the planning authority or authorities to which the Scottish Ministers are required to forward a copy of the additional information pursuant to paragraph (1) (a);
 - (c) state that the planning authority or authorities identified in sub-paragraph (b) are required to place the additional information on the register;
 - (d) state that requests for copies of the additional information may be sent to the Scottish Ministers and specify an address for that purpose;
 - (e) state a date not less than four weeks after the date on which the notice is to be last published in accordance with paragraph (3) by which any person may make representations to the Scottish Ministers in relation to the additional information and specify the address to which any such representations are to be sent; and
 - (f) state that the details given pursuant to sub-paragraphs (b) to (d) will also apply in respect of any additional information received by the Scottish Ministers after publication of the notice.
- (5) On receipt of a notice pursuant to paragraph (2)(b) the Scottish Ministers shall serve a copy of that notice on any person on whom was served a copy of the environmental statement under regulation 11(1), (3) or (3A).
- (6) The Scottish Ministers shall not determine the application until after the later of—
- (a) fourteen days from the last date on which a copy of the notice published pursuant to paragraph (2)(a) was served in accordance with paragraph (5); and
 - (b) the date stated in the notice published pursuant to paragraph (2)(a).”.

Amendments to Schedules 1 and 2 to the principal Regulations

13.—(1) In Schedule 1 to the principal Regulations (descriptions of development for the purposes of the definition of “Schedule 1 Development”)—

- (a) for “either of the following” substitute “any of the following”; and
- (b) after paragraph (b) insert—
“; or
- (c) any change to or extension of development listed in this Schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this Schedule.”.

(2) In Schedule 2 to the principal Regulations (description of development for the purposes of the definition of “Schedule 2 Development”)—

- (a) omit paragraph (b);
- (b) at the end of paragraph (d), omit “or”;
- (c) after paragraph (e) insert—
“; or
- (f) any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph (c) of that Schedule) or this Schedule where that development is already authorised, executed, or in the process of being executed, and the change or extensions may have significant adverse effects on the environment.”.

St Andrew's House,
Edinburgh
12th June 2008

JIM MATHER
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (S.I. 2000/320) (“the principal Regulations”), which extend to Scotland only.

The principal Regulations implement Council Directive 85/337/EEC⁽⁴⁾ on the assessment of the effects of certain public and private projects on the environment (as amended by Council Directive 97/11/EC⁽⁵⁾) in relation to applications under sections 36 or 37 of the Electricity Act 1989 (c. 29) in Scotland for consent to construct, extend or operate a generating station or for consent to install or keep installed an electric line above ground.

These Regulations implement, as regards the principal Regulations, the amendments to Council Directive 85/337/EEC made by Article 3 of Directive 2003/35/EC⁽⁶⁾ of the European Parliament and of the Council. Article 3 of that Directive provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends with regard to public participation and access to justice Council Directive 85/337/EEC.

Regulation 2 amends regulation 2 of the principal Regulations by inserting a definition for “additional information”. It also amends the definitions of “the consultative bodies”, “EEA State”, “environmental information”, “environmental statement” and “scoping opinion”.

Regulation 3 amends regulation 4 of the principal Regulations by adding to the list of procedures that must be followed before the Scottish Ministers may grant a section 36 consent or a section 37 consent.

Regulations 4, 5 and 6 make minor drafting changes to regulations 6, 7 and 8 respectively of the principal Regulations.

Regulation 7 amends regulation 9 of the principal Regulations. The amendments increase the information to be contained in the notice to be published where an environmental statement is submitted to the Scottish Ministers. The amendments also impose new requirements as to the timing of the publication of the notice and for publication of the notice in the Edinburgh Gazette.

Regulation 8 amends regulation 10 of the principal Regulations. The amendments widen the range of documents to be placed on the planning register following receipt by the planning authority. The amendments also increase the information to be included in the statement of the Scottish Ministers' determination of the application and impose a new requirement for the applicant to publish notice of the determination in the Edinburgh Gazette and in one or more local papers.

Regulation 9 amends regulation 11 of the principal Regulations. The amendments require the applicant to serve a copy of the environmental statement on the planning authority and to inform the Scottish Ministers when this has been done.

Regulation 10 amends regulation 12 of the principal Regulations. It amends the list of documents that the Scottish Ministers must send to any EEA State likely to be significantly affected by the proposed development.

Regulation 11 amends regulation 14 of the principal Regulations. The amendments impose a new requirement for the notice of further information to be published in the Edinburgh Gazette and require

⁽⁴⁾ O.J. No. L 175, 5.7.1985, p.40.

⁽⁵⁾ O.J. No. L 73, 14.3.1997, p.5.

⁽⁶⁾ O.J. No. L 156, 25.6.2003, p.17.

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the applicant to serve a copy of the further information together with a copy of the notice of further information on the principal planning authority.

Regulation 12 inserts a new regulation 14A into the principal Regulations. The new regulation sets out the procedure which the Scottish Ministers must follow following receipt of “additional information” and the notice that the applicant must publish relating to “additional information”.

Regulation 13 amends Schedules 1 and 2 to the principal Regulations. The amendments concern the descriptions of development in respect of which an environmental statement is required.

A Regulatory Impact Assessment and Transposition Note has been prepared in connection with these Regulations and placed in the Scottish Parliament Information Centre. Copies can also be obtained from the Scottish Government Enterprise Energy and Tourism Directorate, Meridian Court, Cadogan Street, Glasgow G2 6AT.