
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact and update, with amendments and savings, Part II of the Environmental Impact Assessment (Scotland) Regulations 1999 (“the 1999 Regulations”). These Regulations apply in relation to Scotland only.

These Regulations implement, in relation to town and country planning in Scotland, Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 175, 5.7.1985, p.40), as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.1997, p.5) and Council Directive [2003/35/EC](#) (O.J. L 156, 25.6.03, p.17) and Directive [2009/31/EC](#) O.J. No. L 140, 5.6.2009, p.114.

The main changes to the 1999 Regulations are as follows.

(1) The change to the definition of ‘application for multi-stage consent’ in regulation 2(1) extends the provisions relating to applications for multi-stage consent to applications for approval, consent or agreement required by any planning permission granted following an application under Part III of the Town and Country Planning (Scotland) Act 1997 (‘the Act’) or section 242A of the Act where that approval, consent or agreement must be obtained before all or part of the development permitted by the planning permission may be begun.

(2) Regulation 5(8) introduces a requirement for the reasons for negative screening decisions to be provided in writing when requested.

(3) Regulation 5(10) clarifies that any person may ask the Scottish Ministers to make a screening direction.

(4) Schedules 1 and 2 are amended to include sites for the storage of carbon dioxide (Schedule 1 paragraphs 21 and 22), installations for the capture of carbon dioxide streams for the purposes of geological storage and pipelines for the transport of carbon dioxide streams for such purposes (Schedule 2 paragraphs 3(j) and 10(k)). These amendments are required by the Directive on the Geological Storage of Carbon Dioxide (Directive [2009/31/EC](#)).

(5) The provisions in Schedule 2 relating to changes or extensions to existing development are amended so that the effects of the development as a whole once modified are considered (Schedule 2 paragraph 13).

The Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Act, development by planning authorities and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in Schedule 1 requires EIA. Development in Column 1 of the table in Schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table (“Schedule 2 development”) requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the Regulations as “EIA development”.

Regulation 3 prohibits the grant of planning permission for EIA development unless the planning authority or the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. Regulation 4 requires a planning authority or the Scottish Ministers to take environmental information into account before granting an application for multi-stage consent.

Part 2 sets out procedures for determining whether development is EIA development. Regulation 6 enables a request to be made to the planning authority for a “screening opinion” or to the Scottish Ministers for a “screening direction”. Regulation 5 makes general provision in relation to such an opinion or direction, including that any opinion or direction must be made by reference to the criteria in Schedule 3. Part 3 sets out procedures to be followed where the planning authority or Scottish Ministers are considering an application for planning permission for EIA development, or an appeal relating to such an application, without an environmental statement.

Regulations 14 and 15 enable a person to seek an opinion from the planning authority (“a scoping opinion”) or the Scottish Ministers (a “scoping direction”) on the information to be included in an environmental statement. The types of information which may be required are set out in Schedule 4. The planning authority or the Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion or scoping direction. Regulation 16 requires consultation bodies, if requested, to assist the preparation of an environmental statement by making information available to the applicant.

Regulations 17 and 18 require publication of notice of the lodging of an environmental statement to be given by the applicant or appellant. Regulations 19 and 21 provide for consultation where an environmental statement is received by the planning authority or the Scottish Ministers respectively. Regulations 20 and 22 are concerned with the provision of copies of an environmental statement.

Regulation 23 contains procedures for the provision by the applicant of information additional to that contained in the environmental statement. Regulation 24 provides that additional 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.

Regulation 25 provides for documents to be placed on the planning register or otherwise made available to the public. Regulation 26 requires planning authorities and the Scottish Ministers to provide information about decisions taken following the consideration of environmental information in accordance with the Regulations.

Part 8 makes provision relating to applications for multi-stage consent which essentially mirror the provisions in the Regulations relating to applications for the grant of planning permission. Regulation 27 enables a person who is minded to make an application for multi-stage consent to request the planning authority to adopt a screening opinion under regulation 6 of the Regulations or to request the Scottish Ministers to make a screening direction under regulation 7 in relation to the development. Regulations 28 and 29 require the planning authority or the Scottish Ministers as the case may be to undertake screening in certain circumstances where considering an application for multi-stage consent. Regulation 30 modifies the application of the Regulations as they apply to applications for multi-stage consent and regulation 31 makes provision for special cases.

Regulation 32 restricts the grant of planning permission by simplified planning zone schemes or enterprise zone orders. Regulations 33, 34 and 35 respectively modify the application of the Regulations as they apply to ROMP applications, applications made under section 242A of the Act and for planning permission for marine fish farms. Regulations 36 and 37 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulations 38 to 40 allow the use of electronic communication. Regulation 41 provides for the service of notices under the Regulations. Regulation 42 provides that a grant of permission in contravention of regulation 3 or 4 shall be treated, for the purpose of section 239 of the Town and Country Planning (Scotland) Act 1997, as an act which is not within the powers of that Act. Regulation 43 provides that beginning specified operations to dispose of hazardous waste constitutes “development” under section 26 of the 1997 Act. Regulation 44 extends the time allowed to a planning authority to consider an application for planning permission for EIA development. Regulation 45 enables the Scottish Ministers to make directions that certain classes

of development are EIA development. Regulation 46 makes provision to extend access to justice to environmental non governmental organisations. Regulations 47 and 48 amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 / Regulation 49 revokes Part 2 the 1999 Regulations with exceptions.