
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 101

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

PART 1

INTRODUCTORY

Citation, commencement, application and extent

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and come into force on 16th May 2017.

(2) Subject to Part 12, these Regulations apply in the case of—

- (a) an application under section 36 of the Electricity Act 1989 ^{M1} for consent to construct, extend or operate a generating station;
- (b) an application under section 37 of the Electricity Act 1989 ^{M2} for consent to install or keep installed an electric line above ground;
- (c) a direction under section 57(2) or (2ZA) (deemed planning permission for development with government authorisation) of the 1997 Act ^{M3};
- (d) an application for multi-stage consent; and
- (e) a variation application.

(3) These Regulations extend to Scotland only.

Marginal Citations

M1 The functions of the Secretary of State under section 36 are transferred to the Scottish Ministers by virtue of [S.I. 2006/1040](#).

M2 The functions of the Secretary of State under section 37 are transferred to the Scottish Ministers by virtue of [S.I. 1999/1750](#).

M3 [1997 c.8](#). Section 57 was amended by section 21(5) of the [Growth and Infrastructure Act 2013 \(c.27\)](#).

Interpretation

2.—(1) In these Regulations—

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997;

“the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 ^{M4};

“additional information” means—

- (a) supplementary information required in accordance with regulation 19(2); or

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- (b) any other information provided by the developer which, in the opinion of the Scottish Ministers, is substantive information about a matter to be included in the EIA report in accordance with regulation 5(2);

“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in an Electricity Act consent where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun;

“application website” means a website maintained by the developer for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the consultation bodies” means—

- (a) the planning authority;
- (b) Scottish Natural Heritage;
- (c) the Scottish Environment Protection Agency; and
- (d) Historic Environment Scotland;

“decision notice” has the meaning given in regulation 21;

“developer”—

- (a) means, in relation to—
 - (i) an application for Electricity Act consent, the applicant;
 - (ii) a variation application, the applicant,
 - (iii) an application for multi-stage consent, the applicant; and

- (b) for the purposes of regulations 7 to 9, 12 and 13 includes a prospective applicant

“development” means the carrying out of building, engineering or other operations in, on, over or under land or sea in pursuance of any application to which these Regulations apply and includes building, engineering and other operations ancillary to such operations;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment ^{M5};

“EIA application” means an application for Electricity Act consent for EIA development;

[^{F1}“EIA development” means—

- (a) in the case of an application for Electricity Act consent, development which is either—
 - (i) Schedule 1 development; or
 - (ii) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location; and
- (b) in the case of a variation application, a proposed variation which is either—
 - (i) Schedule 1 development; or
 - (ii) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;]

“EIA report” has the meaning given in regulation 5;

“Electricity Act consent” means consent under section 36 (consent required for construction etc. of generating stations) or section 37 (consent required for overhead lines) of the Electricity Act 1989;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000 ^{M6};

“environmental impact assessment” has the meaning given in regulation 4;

“environmental information” means—

- (a) the EIA report submitted in respect of the proposed development;
- (b) any additional information submitted in respect of the development;
- (c) any representations made by any consultation body, or other public body, consulted in respect of the development in accordance with these Regulations; and
- (d) any representations duly made by any other person about the environmental effects of the development;

“environmental statement” has the same meaning as in the 2000 Regulations as they had effect immediately prior to the date on which these Regulations came into force;

“the land” means the land on which the development would be carried out;

“multi-stage consent” means an approval, consent or agreement given pursuant to an application for multi-stage consent;

[^{F2}“proposed variation” has the meaning given in regulation 28(3);]

“prospective applicant” means a person who, as the case may be, is minded to—

- (a) apply for an Electricity Act consent;
- (b) make a variation application; or
- (c) make an application for multi-stage consent;

“register” means a register kept pursuant to section 36^{M7} (registers of applications etc.) of the 1997 Act;

“relevant assessment” means, in relation to a proposed development, an assessment, or verification, of effects on the environment carried out pursuant to national legislation) which is relevant to the assessment of the environmental impacts of the proposed development;

“Schedule 1 development” means development[^{F3}, or a change to or extension of development, described] in schedule 1;

“Schedule 2 development” means development[^{F4}, or a change to or extension of development, described] in schedule 2;

“scoping opinion” means an opinion adopted by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“screening opinion” means an opinion adopted by the Scottish Ministers as to whether development is, or is not, EIA development;

“supplementary information” has the meaning given in regulation 19(2);

“Union legislation” means any enactment in the national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties; and

“variation application” means an application made to the Scottish Ministers under section 36C(1) of the Electricity Act 1989 (variation of section 36 consents) to vary a consent under section 36 of that Act.

(2) Subject to paragraph (3), expressions used both in these Regulations and in the Electricity Act 1989 have the same meaning for the purposes of these Regulations as they have for the purposes of that Act.

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Electricity Act 1989) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(4) In these Regulations, unless the context otherwise requires—

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- (a) references to a planning authority—
- (i) in relation to development in, on, over or under land, are references to the planning authority within whose area the proposed development is situated; and
 - (ii) in relation to development in, on, over or under sea, are references to such planning authority or planning authorities as the Scottish Ministers consider appropriate in respect of the proposed development; and
- (b) in relation to an application for multi-stage consent, “development” means as the case may be, the works to construct, extend or operate a generating station or the works to install an electric line above ground, taken together with any consent previously granted in connection with such consent.
- (5) References in regulations 6(2)(b) and (3), 10(1)(c), 11(1), 12(7), 14 to 18, 25(1), 26(1) and 27(2) to an EIA report include a reference to a report referred to by the developer as an EIA report.
- (6) In these Regulations, where an developer submits a revised, updated or supplementary EIA report (or a report which that person refers to as such) references to an EIA report are to be treated as including a reference to that revised, updated or supplementary EIA report.

Textual Amendments

- F1** Words in [reg. 2\(1\)](#) substituted (18.12.2017) by [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/451\)](#), regs. 1, **2(2)(a)**
- F2** Words in [reg. 2\(1\)](#) inserted (18.12.2017) by [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/451\)](#), regs. 1, **2(2)(b)**
- F3** Words in [reg. 2\(1\)](#) substituted (18.12.2017) by [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/451\)](#), regs. 1, **2(2)(c)**
- F4** Words in [reg. 2\(1\)](#) substituted (18.12.2017) by [The Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017 \(S.S.I. 2017/451\)](#), regs. 1, **2(2)(d)**

Marginal Citations

- M4** [S.S.I. 2000/320](#) as relevantly amended by [S.S.I. 2008/246](#).
- M5** [OJ L 26, 28.1.2012, p.1](#) as amended by [Directive 2014/52/EU](#).
- M6** [2000 c.7](#), as amended by paragraph 158 of schedule 17 of the [Communications Act 2003 \(c.21\)](#).
- M7** Section 36 was amended by the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#), **section 12**, by [S.S.I. 2007/268](#) and by [S.S.I. 2009/256](#).

Prohibition on granting consent without an environmental impact assessment

3. The Scottish Ministers must not—
- (a) grant an Electricity Act consent for EIA development; or
 - (b) direct that planning permission is deemed to be granted under section 57(2) or (2ZA) of the 1997 Act in respect of EIA development,

unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

Environmental impact assessment

- 4.—(1) An environmental impact assessment is a process consisting of—
- (a) the preparation of an EIA report by the developer;

- (b) the carrying out of consultation, publication and notification as required by Parts 5 and 6 and, where relevant, Part 10;
 - (c) the examination by the Scottish ministers of the information presented in the EIA report and any other environmental information;
 - (d) the reasoned conclusion by the Scottish Ministers on the significant effects of the development on the environment, taking into account the results of the examination referred to in sub-paragraph (c) and, where appropriate, their own supplementary examination; and
 - (e) the integration of the Scottish Ministers' reasoned conclusion into the decision notice in accordance with regulation 21.
- (2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed development, the direct and indirect significant effects of the proposed development (including, where the proposed development will have operational effects, such operational effects) on the factors specified in paragraph (3) and the interaction between those factors.
- (3) The factors are—
- (a) population and human health;
 - (b) biodiversity, and in particular species and habitats protected under Council Directive 92/43/EEC on the conservation of natural habitats and [^{F5}of wild fauna and flora] and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds ^{M8};
 - (c) land, soil, water, air and climate; and
 - (d) material assets, cultural heritage and the landscape.
- (4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the development to risks, so far as relevant to the development, of major accidents and disasters.
- (5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to the determination of an application for Electricity Act consent for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant consent for that development is made.
- (6) This paragraph applies where the Scottish Ministers—
- (a) consider that the likely significant effects of the development on the environment are not fully identifiable at the time of their determination of the application for Electricity Act consent; and
 - (b) are minded to grant Electricity Act consent for EIA development, or to direct that planning permission for EIA development is deemed to be granted, subject to a condition [^{F6}that] all or part of the proposed development must not commence before certain matters in implementation of that consent, or planning permission, have been approved by the Scottish Ministers, or the planning authority, as the case may be.
- (7) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

Textual Amendments

- F5** Words in reg. 4(3)(b) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **2(2)(a)**

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F6 Word in reg. 4(6)(b) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **2(2)(b)**

Marginal Citations

M8 OJ L 20, 26.1.2010, p.7.

Environmental impact assessment report

5.—(1) An application for an Electricity Act consent for EIA development must be accompanied by an environmental impact assessment report (“EIA report”).

(2) An EIA report is a report prepared in accordance with this regulation by the developer which includes (at least)—

- (a) a description of the development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the development on the environment;
- (c) a description of the features of the development and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the developer, which are relevant to the development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 4 relevant to the specific characteristics of the development and to the environmental features likely to be affected.

(3) Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the developer must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.

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