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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 101**

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

**PART 11**

MISCELLANEOUS

**Electronic communications – general**

**31.**—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, reports, statements, notices, opinions, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement, notice or other document to any other person (“the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) the requirement under regulation 17(1), (2)(a) or (3) to provide copies of a report;
- (b) any requirement under regulation 29 including submitting information to an EEA State; and
- (c) any requirement under regulation 30 including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
- (b) at any time during a day which is not working day, it is deemed to have been received on the next working day,

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and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 <sup>M1</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement or document (other than under regulation 17(1), (2)(a) or (3), 29 or 30), any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

#### Marginal Citations

**M1** 1971 c.80.

#### Electronic communications – deemed agreement

**32.**—(1) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(2) Deemed agreement under paragraph (1) subsists until that person gives notice under regulation 33 to revoke the agreement.

#### Withdrawal of consent to use of electronic communications

**33.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of seven days, beginning with the date on which the notice is given.

#### Service of notices etc.

**34.** Subject to regulations [<sup>F1</sup>31 to 33], any notice or other document to be served, sent or given under these Regulations may be served or given in a manner specified in section 109 (service of documents) of the Electricity Act 1989.

#### Textual Amendments

**F1** Words in [reg. 34](#) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **2(15)**

## Access to review procedure before a court

35. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive [F2 (and for such purpose Article 11(1)(b) is to be read as if the reference to “ a Member State ” were a reference to “Scotland”).]

### Textual Amendments

- F2 Words in reg. 35 inserted (31.12.2020) by The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80), regs. 1, 6(9) (as amended by S.S.I. 2019/274, regs. 1, 2(2) and S.S.I. 2020/310, regs. 1, 2(2), 4(2)); 2020 c. 1, Sch. 5 para. 1(1)

## Co-ordination of assessments

36.—(1) Where in relation to EIA development there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a habitats regulation assessment, the Scottish Ministers must, where appropriate, ensure that the habitats regulation assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “habitats regulation assessment” means an assessment under regulation [F363] of the Conservation of Habitats and Species Regulations [F42017].

### Textual Amendments

- F3 Word in reg. 36(2) substituted (18.12.2017) by The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (S.S.I. 2017/451), regs. 1, 2(4)(a)
- F4 Word in reg. 36(2) substituted (18.12.2017) by The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (S.S.I. 2017/451), regs. 1, 2(4)(b)

## Competent authority – avoidance of conflict of interest

37.—(1) The Scottish Ministers are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are to consider an application for EIA development they have made, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

## Offences

38.—(1) Any person who, for the purpose of procuring a particular decision on an application to which these Regulations apply—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
  - (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
  - (c) with intent to deceive, withholds any material information,
- commits an offence.

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- (2) A person who commits an offence under paragraph (1) above is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.
- (3) No act or omission of the Crown constitutes an offence under this regulation.
- (4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing this regulation, declare unlawful any act or omission of the Crown which would but for paragraph (3) have constituted an offence under this regulation.
- (5) Despite paragraph (3), this regulation applies to a person in the public service of the Crown as it applies to other persons.

### **Offences by bodies corporate etc.**

- 39.—(1) [<sup>F5</sup>Paragraph] (2) applies where—
- (a) an offence under regulation 38 has been committed by—
    - (i) a body corporate;
    - (ii) a Scottish partnership; or
    - (iii) an unincorporated association other than a Scottish partnership, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
    - (i) a relevant individual; or
    - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In [<sup>F6</sup>paragraph] (1), “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
    - (i) a director, manager, secretary or similar officer of the body;
    - (ii) where the affairs of the body are managed by its members, a member;
  - (b) in relation to a limited liability partnership, a member;
  - (c) in relation to a Scottish partnership, a partner;
  - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

#### **Textual Amendments**

- F5** Word in reg. 39(1) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **2(16)(a)**
- F6** Word in reg. 39(3) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **2(16)(b)**

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