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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 101**

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

**PART 2**

**DETERMINING WHETHER EIA IS REQUIRED**

**EIA Development**

**6.**—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) will determine for the purpose of these Regulations that development is EIA development.

(2) The events referred to in paragraph (1) are—

- (a) the adoption of a screening opinion by the Scottish Ministers to the effect that the development is EIA development; or
- (b) if no screening opinion has been adopted by the Scottish Ministers, the submission by the developer in relation to that development of an EIA report.

(3) A screening opinion by the Scottish Ministers determines for the purpose of these Regulations whether the development is or is not EIA development (whether or not the developer has submitted an EIA report) and a later screening opinion supersedes the terms of an earlier screening opinion.

(4) The Scottish Ministers may direct that these Regulations do not apply in relation to a particular proposed development specified in the direction if the development comprises a project having the response to civil emergencies as its sole purpose and where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on that purpose.

(5) Where a direction is given under paragraph (4) the Scottish Ministers must send a copy of the direction to the planning authority.

(6) The Scottish Ministers may, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive), direct that these Regulations do not apply in relation to a particular proposed development specified in the direction where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on the purpose of the proposed development.

(7) Before making a direction under paragraph (6) the Scottish Ministers must consider whether another form of assessment would be appropriate and where a direction is given the Scottish Ministers must—

- (a) send a copy of the direction to the planning authority;
- (b) make available to the public concerned the information considered in making the direction and the reasons for making the direction; and
- (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.

### **General provisions relating to screening**

7.—(1) When making a determination as to whether Schedule 2 development is EIA development the Scottish Ministers must—

- (a) in all cases take into account—
    - (i) such of the selection criteria set out in schedule 3 as are relevant to the development; and
    - (ii) the available results of any relevant assessment; and
  - (b) where that determination is made following a request for a screening opinion under regulation 8(1), base their determination on the information provided in accordance with regulation 8(2).
- (2) Where the Scottish Ministers adopt a screening opinion—
- (a) that screening opinion must be accompanied by a written statement giving, with reference to the criteria set out in schedule 3 as are relevant to the development, the main reasons for their conclusion as to whether the development is, or is not, EIA development; and
  - (b) where the screening opinion is to the effect that development is not EIA development, the statement referred to in paragraph (a) must state any features of the proposed development or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.
- (3) The Scottish Ministers may adopt a screening opinion at their own volition.
- (4) As soon as possible after adopting a screening opinion, the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to the developer and to the planning authority.

### **Requests for a screening opinion**

- 8.—(1) A developer may request the Scottish Ministers to adopt a screening opinion.
- (2) A request for a screening opinion under paragraph (1) must be accompanied by—
- (a) a description of the location of the development, including a plan sufficient to identify the land;
  - (b) a description of the proposed development, including in particular—
    - (i) a description of the physical characteristics of the proposed development and, where relevant, of demolition works;
    - (ii) a description of the location of the proposed development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
  - (c) a description of the aspects of the environment likely to be significantly affected by the proposed development; and
  - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed development on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant;
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the proposed development, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.
- (4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant—

- (a) the selection criteria set out in schedule 3; and
- (b) the available results of any relevant assessment.

(5) The Scottish Ministers, on receiving a request for a screening opinion from a developer under paragraph (1), must consult the planning authority as to the planning authority's views on whether the proposed development is EIA development unless the planning authority's views have already been conveyed to the Scottish Ministers.

(6) Where a planning authority is consulted by the Scottish Ministers under paragraph (5) it must give its views to the Scottish Ministers within—

- (a) a period of three weeks beginning on the date on which it was so consulted; or
- (b) such longer period as the Scottish Ministers may determine.

(7) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1) must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the developer of the points on which they require further information.

### **Screening opinions – time period for decision**

9.—(1) Following a request for a screening opinion under regulation 8(1), the Scottish Ministers must adopt a screening opinion on or before the relevant date or, where notice is given under paragraph (2), the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.

(2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development that it is not practicable for them to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the request, they may extend that period by notice in writing given to the developer.

(3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to adopt a screening opinion pursuant to the request.

(4) For the purposes of this regulation—

- (a) “the relevant date” means the earlier of—
  - (i) the date of expiry of the period of three weeks, or such longer period as may be agreed in writing between the Scottish Ministers and the developer, beginning with the date by which the planning authority is required to give its views under regulation 8(6) (or if earlier of the date on which the Scottish Ministers received the views of the planning authority; or
  - (ii) the date occurring 90 days beginning with the date of receipt of the request;
- (b) the date on which a request for a screening opinion under regulation 8(1) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening opinion in accordance with regulation 8(2) is received by the Scottish Ministers.