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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 102**

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Environmental  
Impact Assessment) (Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>29th March 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>31st March 2017</i>
<i>Coming into force</i>	- -	<i>16th May 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>, section 40 of the Town and Country Planning (Scotland) Act 1997<sup>(2)</sup> and all other powers enabling them to do so.

They have taken into account the selection criteria in Annex III to [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<sup>(3)</sup>.

**PART 1**

**INTRODUCTORY**

**Citation and commencement**

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

**Interpretation**

2.—(1) In these Regulations—

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- (1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#), Schedule 8, paragraph 15(3), the Legislative and Regulatory Reform Act [2006 \(c.51\)](#), section 27, and the European Union (Amendment) Act [2008 \(c.7\)](#), schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c.46\)](#).
- (2) [1997 c.8](#). Section 40 was amended by the Water Environment and Water Services (Scotland) Act [2003 \(asp 3\)](#), section 24(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
- (3) OJ L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#).

“the Act” means the Town and Country Planning (Scotland) Act 1997 and references to sections without reference to the Act are references to sections of that Act;

“additional information” means—

- (a) supplementary information required in accordance with regulation 26(2); or
- (b) any other information provided by the developer which, in the opinion of the planning authority or the Scottish Ministers, as the case may be, 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 multi-stage condition;

“application website” means a website maintained by the planning authority, or the Scottish Ministers, as the case may be, for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the CCS Directive” means [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council [Directive 85/337/EEC](#), European Parliament and Council Directives [2000/60/EC](#), [2001/80/EC](#), [2004/35/EC](#), [2006/12/EC](#), [2008/1/EC](#) and Regulation (EC) No. 1013/2006(4);

“the consultation bodies” means—

- (a) any adjoining planning authority, where the development is likely to affect land in their area;
- (b) Scottish Natural Heritage;
- (c) Scottish Water;
- (d) the Scottish Environment Protection Agency; and
- (e) Historic Environment Scotland;

“decision notice” has the meaning given in regulation 29;

“developer”—

- (a) means, in relation to—
  - (i) an application for planning permission, the applicant;
  - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions), the appellant;
  - (iii) to an application for multi-stage consent, the applicant;
  - (iv) a review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), the applicant for planning permission or, as the case may be, for multi-stage consent; and
  - (v) in relation to a ROMP application, the applicant; and
- (b) for the purposes of regulations 7 to 10 and 17 to 19 includes a prospective applicant;

“the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(5);

“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(6);

“EIA application” means an application for planning permission for EIA development;

“EIA development” means development which is either—

(4) OJ No L 140, 5.6.2009, p.114.

(5) S.S.I. 2013/155, as amended by S.S.I. 2014/469, S.S.I. 2015/181, S.S.I. 2015/237 and S.S.I. 2015/249.

(6) OJ L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#).

- (a) Schedule 1 development; or
- (b) 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;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(7);

“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;

“exempt development” means development in respect of which the Scottish Ministers have made a direction under regulation 6(4) or (6);

“fish farming” means the breeding, rearing or keeping of fish, excluding shellfish;

“fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” having the same meaning as in section 26(6))(8) and any material change of use of equipment so placed or assembled;

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

“marine protected area” means an area designated as—

- (a) a nature conservation marine protected area;
- (b) a demonstration and research marine protected area; or
- (c) a historic marine protected area,

by a designation order made by the Scottish Ministers under section 67 (marine protected areas) of the Marine (Scotland) Act 2010(9);

“marine waters” means the waters described in paragraphs (b) and (c) of subsection (6) of section 26 (meaning of development);

“multi-stage condition” means—

- (a) a condition imposed on planning permission granted on an application made under Part III of the Act or section 242A(10) (urgent crown development) where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the planning permission may be begun;
- (b) a condition specified in a simplified planning zone scheme, where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by planning permission granted by the adoption or approval of that scheme may be begun;

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(7) 2000 c.7, as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(8) Section 26(6) was amended by section 24(2)(a) of the Water Environment and Water Services (Scotland) Act 2003 (asp 3) and section 3(1)(c) of the Planning etc. (Scotland) Act 2006 (asp 17).

(9) 2010 (asp 5).

(10) Section 242A was inserted by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning (Scotland) Act 2006 (asp 17).

- (c) a condition imposed on planning permission deemed to be granted by a direction made under section 57 (development with government authorisation), where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the deemed planning permission may be begun;
- (d) a condition specified in an enterprise zone scheme, where (in terms of the condition) the approval, consent or agreement of the planning authority must be obtained before all or part of the development permitted by the planning permission granted by that enterprise zone scheme may be begun; or
- (e) a ROMP condition (as defined below);

“prospective applicant” means a person who is minded to make an application for planning permission or an application for multi-stage consent, as the case may be;

“planning authority” means the body to which it falls, fell, or would, but for a direction under—

- (a) section 46 (call-in of applications by the Scottish Ministers), fall to determine an application for planning permission or an application for multi-stage consent; or
- (b) paragraph 19 of schedule 8, paragraph 13 of schedule 9 or paragraph 8 of schedule 10 (reference of applications to the Scottish Ministers) of the Act, fall to determine a ROMP application;

“register” means a register kept pursuant to section 36(11) (registers of applications etc.);

“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;

“reporter” means a person appointed by the Scottish Ministers under Schedule 4 of the Act (determination of certain appeals by persons appointed by Scottish Ministers) to determine an appeal under section 47, or to report to them on an application for planning permission referred to them under section 46 or which is the subject of an appeal under section 47;

“ROMP application” means an application to a planning authority to determine the conditions to which a planning permission is to be subject under—

- (a) paragraph 14(2) of schedule 8 of the Act (registration of old mining permissions);
- (b) paragraph 9(1) of schedule 9 of the Act (review of old mineral planning permissions); or
- (c) paragraph 6(1) of schedule 10 of the Act (periodic review of mineral planning permissions);

“ROMP condition” means a condition to which a planning permission is subject (following the determination of a ROMP application) which requires approval, consent or agreement before all or any part of the development permitted by the planning permission (as so determined) may be begun or continued;

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in schedule 1;

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(11) 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.

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

“scoping direction” means a direction made by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“scoping opinion” means the opinion of the planning authority as to the scope and level of detail of information to be provided in the EIA report;

“screening direction” means a direction made by the Scottish Ministers as to whether development is, or is not, EIA development;

“screening opinion” means a written statement of the opinion of the planning authority as to whether development is, or is not, EIA development;

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004(12);
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(13);
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage(14);
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(15);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A(16) (national scenic areas);
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000(17); and
- (h) a marine protected area;

“site of special scientific interest” has the same meaning as in section 58(1) (interpretation) of the Nature Conservation (Scotland) Act 2004(18);

“supplementary information” has the meaning given in regulation 26(3); and

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

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

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(12) 2004 asp 6.

(13) S.I. 1994/2716 relevantly amended by S.S.I. 2004/475, S.S.I. 2007/80 and S.S.I. 2015/249.

(14) See Command Paper 9424.

(15) 1979 c.46.

(16) Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).

(17) 2000 asp 10.

(18) 2004 asp 6. Section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

(3) Expressions used both in these Regulations and in the Directive (whether or not also used in the Act) 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, in relation to an application for multi-stage consent, “development” means the development granted planning permission by the planning permission in respect of which such application is made, taken together with any multi-stage consent previously granted in connection with such planning permission.

(5) References in regulations 6(2)(c) and (3), 11(1)(c), 12(1), 13(1)(c), 14(1), 16(1), 17(11), 18(9), 20(1)(a), 21 to 25, 33(1), 34(1), 35(1) and 49(3)(b)(ii) to an EIA report include a reference to a report referred to by the developer as an EIA report.

(6) In these Regulations, where a developer submits a revised, updated or supplementary EIA report (or a report which the developer 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.

(7) In these Regulations, references to the Scottish Ministers, as regards an application for planning permission or appeal in relation to which a reporter has been appointed, are to be construed as including references to that reporter.

(8) In these Regulations, references to a planning authority as regards—

- (a) determination of an application by a person appointed for that purpose by virtue of a scheme of delegation prepared under section 43A(1)(19) (schemes of delegation), are to be construed as including a reference to that person; and
- (b) an application being considered on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), are to be construed as including a reference to the planning authority acting by virtue of that section.

(9) In these Regulations, references to the making of an application, or the date upon which an application is made, are to be construed in accordance with regulation 14(1) and (3) of the Development Management Procedure Regulations.

(10) These Regulations apply in respect of an application for planning permission made by virtue of section 33 (planning permission for development already carried out) as if—

- (a) references to proposed development (however phrased) are references to the development already carried out in respect of which such application is made; and
- (b) references to the land on which the proposed development would be carried out are references to the land on which that development has been carried out.

### **Prohibition on granting planning permission without an environmental impact assessment**

3. The planning authority or the Scottish Ministers, as the case may be, must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority or the Scottish Ministers, as the case may be, 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;

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(19) Section 43A was inserted by section 17 of the Planning etc. (Scotland) Act 2006 (asp 17).

- (c) the examination by the planning authority or the Scottish ministers, as the case may be of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the planning authority or the Scottish Ministers, as the case may be 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 that reasoned conclusion into the decision notice in accordance with regulation 29.

(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 of wild fauna and flora<sup>(20)</sup> and [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(21)</sup>;
- (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 planning permission for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant planning permission for that development is made.

(6) This paragraph applies where the planning authority, or the Scottish Ministers, as the case may be—

- (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 planning permission; and
- (b) are minded to grant planning permission for EIA development subject to a multi-stage condition.

(7) The planning authority or the Scottish Ministers, as the case may be must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

### **Environmental Impact Assessment Report**

5.—(1) An application for planning permission 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)—

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(20) OJ L 206, 22.7.1992, p.7.

(21) OJ L 20, 26.1.2010, p.7.



- (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 (or scoping direction) is issued, the EIA report must be based on that scoping opinion (or scoping direction, as the case may be), and 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.

## PART 2

### DETERMINING WHETHER ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

#### **EIA Development**

- 6.—(1) Subject to paragraphs (3), (4) and (6) 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 planning authority to the effect that the development is EIA development;
  - (b) the making by the Scottish Ministers of a screening direction to the effect that the development is EIA development; or
  - (c) if no screening opinion has been adopted by the planning authority and no screening direction has been made by the Scottish Ministers, the submission by the developer in relation to the development of an EIA report.
- (3) A screening direction 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 direction supersedes the terms of an earlier screening direction or 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, a planning authority or the Scottish Ministers, as the case may be, 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 information is provided to them by the developer by virtue of regulation 8(2) and (3), 9(4), 10(1) or (3)(a), 11(3), 12(7), 13(3) or 16(6), as the case may be, base their determination on that information.

(2) Where a planning authority adopt a screening opinion or the Scottish Ministers make a screening direction—

- (a) that screening opinion or screening direction 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 or the screening direction 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) As soon as possible after adopting a screening opinion the planning authority must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to the developer.

(4) The Scottish Ministers may make a screening direction either—

- (a) at their own volition; or
- (b) if requested to do so in writing by any person,

and where an application for planning permission has been made in respect of the development to which the screening direction relates, regulation 13(3) applies in respect of the making of such a screening direction as it applies to the making of a screening direction under regulation 13(2).

(5) The Scottish Ministers may make a screening direction that a particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” in regulation 2(1) is satisfied in relation to that development.

(6) As soon as possible after adopting a screening direction, the Scottish Ministers must send a copy of the screening direction and a copy of the written statement referred to in paragraph (2) to—

- (a) the developer;
- (b) the planning authority; and
- (c) where the screening direction is made following a request made by a person other than the developer, to the person who made the request.

### **Requests for screening opinion of the planning authority**

**8.—**(1) A developer may request the planning authority 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.

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

**9.—**(1) A planning authority receiving a request for a screening opinion under regulation 8(1) must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion on or before—

- (a) the expiry of the period of 21 days beginning with the date of receipt of the request; or

- (b) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the planning authority and the developer; or
- (c) where notice is given under paragraph (2), the date specified in the notice as the date by which the planning authority are to adopt a screening opinion.

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

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

(4) A planning authority must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify the developer in writing of the points on which they require further information.

(5) Where a planning authority—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (1); or
- (b) adopt an opinion to the effect that the development is EIA development,

the developer may request the Scottish Ministers to make a screening direction.

(6) The developer may make a request pursuant to paragraph (5) even if the planning authority have not received the information which they have sought under paragraph (4).

(7) For the purposes of paragraphs (1) and (2) the date on which a request for a screening opinion under paragraph (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 planning authority.

### **Requests for screening directions of the Scottish Ministers**

**10.**—(1) A developer who pursuant to regulation 9(5) requests the Scottish Ministers to make a screening direction must submit with that request—

- (a) a copy of the request to the planning authority under regulation 8(1) and the information provided in accordance with regulation 8(2) and any other documents which accompanied the request;
- (b) a copy of any notification under regulation 9(4) which has been received and of any response;
- (c) a copy of any screening opinion received from the planning authority and of any accompanying statement of reasons; and
- (d) any representations the developer wishes to make.

(2) The developer must send to the planning authority a copy of the request and of any representations made to the Scottish Ministers, and the planning authority may, within 14 days of receiving those documents, provide the Scottish Ministers with their comments on the request and representations.

(3) Where the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction they—

- (a) must notify the developer of the points on which they require further information; and

- (b) may request the planning authority to provide such information as they can on any of those points.
- (4) The Scottish Ministers must make a screening direction within—
  - (a) the period of 21 days beginning with the date of receipt of the request or such longer period, not exceeding 90 days beginning with the date of the request as they may reasonably require; or
  - (b) where notice is given under paragraph (5), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to make a screening direction.
- (5) 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 direction 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.
- (6) Notice under paragraph (5) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to make the screening direction.
- (7) For the purposes of paragraphs (4) and (5), the date on which a request for a screening direction 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 direction in accordance with paragraph (1) (a) to (c) is received by the Scottish Ministers.

## PART 3

### PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

#### **Application or request to review made to a planning authority without prior screening**

- 11.—**(1) This regulation applies where it appears to the planning authority that—
- (a) an application for planning permission which is—
    - (i) before them for determination is a Schedule 1 application or Schedule 2 application; or
    - (ii) subject to review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) is a Schedule 2 application;
  - (b) the development in question has not been the subject of a screening opinion or screening direction; and
  - (c) the application is not accompanied by an EIA report.
- (2) Where this regulation applies the planning authority must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion in respect of the proposed development to which the application for planning permission relates.
- (3) If it appears to the planning authority that the application for planning permission is a Schedule 2 application but the planning authority do not consider that the information submitted by the developer in connection with the application for planning permission includes all the information referred to in regulation 8(2), the planning authority must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.
- (4) The provisions of regulation 9(1) to (6) apply in relation to the adoption of a screening opinion under paragraph (2) as they apply following a request made under regulation 8(1) as if—
- (a) the making of the application for planning permission or the request for review, as the case may be, were a request made under regulation 8(1);

- (b) references to date of receipt of the request were references to the relevant date.
- (5) For the purposes of paragraph (4) the relevant date is the later of—
  - (a) the date on which, as the case may be—
    - (i) the application for planning permission is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
    - (ii) the request for review is made in respect of the application for planning permission;  
or
  - (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the planning authority.

### **EIA application made to a planning authority without an EIA report**

**12.**—(1) This regulation applies where an EIA application which is before a planning authority for determination is not accompanied by an EIA report.

(2) Where this regulation applies the planning authority must notify the developer in writing that the submission of an EIA report is required.

(3) Notice under paragraph (2) must be given—

- (a) within the period of 21 days beginning with the date on which the application is made; or
- (b) where—
  - (i) the planning authority adopt a screening opinion after the date on which the application is made, within seven days beginning with the date of adoption of that screening opinion; or
  - (ii) the Scottish Ministers make a screening direction to the effect that the development is EIA development (and no notice under paragraph (2) has yet been given), within seven days beginning with the date on which the planning authority receive a copy of that screening direction.

(4) A developer who receives notice under paragraph (2) may, within the period of 21 days beginning with the date of the notice, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(5) If the developer does not write to the planning authority in accordance with paragraph (4) within the 21 day period, the application will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of that period and the deemed refusal will not give rise to—

- (a) an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions); or
- (b) review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions).

(6) A planning authority which has given notice in accordance with paragraph (2) are, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, to determine the application only by refusing the application if the developer does not submit an EIA report.

(7) A developer who requests a screening direction pursuant to paragraph (4)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application;

- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make.

(8) The provisions of regulation 10(2) to (7) apply to a request made pursuant to paragraph (4) (b) as they apply to a request made pursuant to regulation 9(5) as if the reference in regulation 10(7) to paragraph (1)(a) to (c) were a reference to paragraph (7)(a) to (c) of this regulation.

### **Application or Appeal to the Scottish Ministers without prior screening**

**13.**—(1) This regulation applies where it appears to the Scottish Ministers that—

- (a) an application for planning permission which is before them for determination by virtue of—
  - (i) a direction under section 46 (call-in of applications by the Scottish Ministers); or
  - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions),
 is a Schedule 1 application or a Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by an EIA report.

(2) Where this regulation applies the Scottish Ministers must make a screening direction in respect of the proposed development to which the application for planning permission relates.

(3) If it appears to the Scottish Ministers that the application for planning permission is a Schedule 2 application but the Scottish Ministers do not consider that the information submitted by the developer in connection with the application for planning permission includes all the information referred to in regulation 8(2), the Scottish Ministers must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

(4) The provisions of regulation 10(3)(b) and (4) to (6) apply in relation to the making of such a screening direction as they apply following a request made under regulation 9(5) as if references in regulation 10(4) and (5) to the date of receipt of the request were references to the relevant date.

(5) For the purposes of paragraph (4) the relevant date is the later of—

- (a) the date on which, as the case may be—
  - (i) the application for planning permission is referred to the Scottish Ministers under section 46; or
  - (ii) the appeal is made in respect of the application for planning permission; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the Scottish Ministers.

### **EIA application referred to the Scottish Ministers without an EIA report**

**14.**—(1) This regulation applies where an application which has been referred to the Scottish Ministers for determination is an EIA application and is not accompanied by an EIA report

(2) Where this regulation applies the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required and must send a copy of that notification to the planning authority.

(3) The Scottish Ministers must notify the developer in accordance with paragraph (2) within the period of 21 days beginning with the date they received the application or such longer period as they may reasonably require.

(4) A developer who receives notice under paragraph (2) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.

(5) If the developer does not write in accordance with paragraph (4), the Scottish Ministers are under no duty to deal with the application, and at the end of the 21 day period the Scottish Ministers must inform the developer in writing that no further action is being taken on the application.

(6) Where the Scottish Ministers have given notice under paragraph (2), they are to determine the application only by refusing planning permission if the developer does not submit an EIA report.

### **Appeal to the Scottish Ministers without an EIA report**

**15.**—(1) This regulation applies where an application for planning permission to which an appeal under section 47 relates is an EIA application and is not accompanied by an EIA report.

(2) Where this regulation applies the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required and send a copy of that notification to the planning authority.

(3) A developer who receives notice under paragraph (2) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.

(4) If the developer does not write in accordance with paragraph (3), the Scottish Ministers are under no duty to deal with the appeal and at the end of the 21 day period they must inform the developer that no further action is being taken on the appeal.

(5) Where the Scottish Ministers have given notice under paragraph (2), they are to determine the appeal only by refusing planning permission if the developer does not submit an EIA report.

### **Review by the planning authority of an application without an EIA report**

**16.**—(1) This regulation applies where an application for planning permission under review by virtue of section 43A(8) is an EIA application and is not accompanied by an EIA report.

(2) Where this regulation applies the planning authority must notify the developer in writing that the submission of an EIA report is required.

(3) A developer receiving a notification pursuant to paragraph (2) may, within the period of 21 days beginning with the date of the notification, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(4) If the developer does not write to the planning authority in accordance with paragraph (3), the application for planning permission will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the 21 day period, and the deemed refusal will not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(5) A planning authority which has given a notification in accordance with paragraph (2) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application for planning permission only by refusing the application if the developer does not submit an EIA report.

(6) A developer who requests a screening direction pursuant to paragraph (3)(b) must send to the Scottish Ministers with that request copies of—



- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application;
- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make.

(7) The provisions of regulation 10(2) to (7) apply to a request made pursuant to paragraph (3) (b) as they apply to a request made pursuant to regulation 9(5) as if the reference in regulation 10(7) to paragraph (1)(a) to (c) were a reference to paragraph (6)(a) to (c) of this regulation.

## PART 4

### PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

#### Scoping opinions of the planning authority

17.—(1) A developer may request the planning authority to adopt a scoping opinion.

(2) A request under paragraph (1) must include—

- (a) a description of the location of the development, including a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its likely significant effects on the environment; and
- (c) such other information or representations as the developer may wish to provide or make.

(3) If the planning authority consider that they have not been provided with sufficient information to adopt a scoping opinion, they must within the period of 21 days beginning with the date of receipt of the request under paragraph (1) notify the developer of the points on which they require further information.

(4) The planning authority receiving a request under paragraph (1) must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of schedule 5 to the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 to the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development; and
- (d) any other public body which the planning authority considers is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies.

(5) The planning authority when adopting a scoping opinion must take into account the information provided by the developer, in particular information provided by the developer in respect of the specific characteristics of the development, including its location and technical capacity and its likely impact on the environment.

(6) Subject to paragraph (7), the planning authority must within the period of 35 days beginning with the date of receipt of a request under paragraph (1), or such longer period as may be agreed in writing with the developer, adopt a scoping opinion and send a copy to the developer.

(7) Where—

- (a) a developer has, at the same time as making a request for a screening opinion under regulation 8(1), made a request for a scoping opinion under paragraph (1); and
- (b) the planning authority have adopted a screening opinion to the effect that the development is EIA development,

the planning authority must within the period of 35 days beginning with the date on which that screening opinion was adopted, or such longer period as may be agreed in writing with the developer, adopt a scoping opinion and send a copy to the developer.

(8) Where a planning authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (6) or (7), the developer may request the Scottish Ministers to make a scoping direction.

(9) Paragraph (8) applies even if the planning authority have not received the information which they have sought under paragraph (3).

(10) Where a request has been made to the planning authority to adopt a screening opinion but no request has been made under paragraph (1), the planning authority may at their own volition adopt a scoping opinion and paragraphs (3) to (6) and (11) apply in relation to such a scoping opinion as if a request had been made under paragraph (1) on the date on which the planning authority adopt the screening opinion.

(11) Where a planning authority has adopted a scoping opinion neither they nor the Scottish Ministers are precluded from requiring additional information to be provided by the developer in connection with any EIA report submitted in connection with an application for planning permission for the same development as referred to in the scoping opinion.

(12) A later scoping opinion supersedes the terms of an earlier scoping opinion.

### **Scoping directions of the Scottish Ministers**

**18.—**(1) The Scottish Ministers may make a scoping direction under this regulation either—

- (a) where requested to do so under regulation 14(4), 15(3) or 17(8); or
- (b) at their own volition.

(2) A request made by the developer under regulation 14(4) or 15(3) must include—

- (a) a copy of any relevant screening opinion received by the developer and of any accompanying statement of reasons; and
- (b) any representations that the developer wishes to make.

(3) A request made by the developer under regulation 17(8) must include—

- (a) a copy of the relevant request to the planning authority under regulation 17(1);
- (b) a copy of any relevant notification under regulation 17(3) and of any response;
- (c) a copy of any relevant screening opinion received by the developer and of any accompanying statement of reasons; and
- (d) any representations that the developer wishes to make.

(4) If the developer makes a request under regulation 17(8), the developer must send to the planning authority a copy of that request and any representations made in accordance with paragraph (3)(d).

(5) The Scottish Ministers must notify in writing the developer of any points on which they consider the information provided is insufficient to enable them to make a scoping direction and may request the planning authority to provide such information as they can on any of those points.

(6) The Scottish Ministers must—

- (a) not make a scoping direction—

- (i) by virtue of paragraph (1)(a) until they have consulted the bodies specified in paragraph (7); and
  - (ii) by virtue of paragraph (1)(b) until they have consulted such bodies and the developer; and
  - (b) when making a scoping direction take into account the information provided by the developer, in particular information provided by the developer in respect of the specific characteristics of the development, including its location and technical capacity and its likely impact on the environment.
- (7) The bodies—
- (a) the consultation bodies;
  - (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of schedule 5 of the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development;
  - (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 of the Development Management Procedure Regulations in relation to an application for planning permission for the proposed development; and
  - (d) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed development by reason of that body’s specific environmental responsibilities or local and regional competencies.
- (8) The Scottish Ministers must, within the period of 35 days beginning with the date of receipt of that request or such longer period as they may reasonably require, make a scoping direction and send a copy to the person who made the request and to the planning authority.
- (9) Where the Scottish Ministers have made a scoping direction neither they nor the planning authority are precluded from requiring additional information to be provided in connection with any EIA report submitted in connection with an application for planning permission for the same development as was referred to in the scoping direction.
- (10) A scoping direction supercedes the terms of an earlier scoping opinion or earlier scoping direction.

### **Procedure to facilitate preparation of EIA reports**

**19.—**(1) A developer who intends to submit an EIA report to the planning authority or the Scottish Ministers under these Regulations may give notice in writing to that planning authority or the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land and the nature and purpose of the development, and must indicate the main environmental consequences to which the developer proposes to refer in the EIA report.

(3) Where the planning authority or the Scottish Ministers receive notice under paragraph (1) or a written statement made pursuant to regulation 12(4)(a), 14(4), 15(3) or 16(3)(a) from a developer, they must—

- (a) notify the bodies specified in paragraph (4) in writing of the name and address of the developer and of the duty imposed on those bodies by paragraph (5) to make information available to the developer; and
- (b) inform in writing the developer of the names and addresses of the bodies so notified.

(4) The bodies are—

- (a) the consultation bodies; and

- (b) any other public body which the planning authority considers is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies.
- (5) Subject to paragraph (6), the planning authority and any body notified in accordance with paragraph (3) must, if requested by the developer—
  - (a) enter into consultation with the developer to determine whether the planning authority or the body have in their possession any information which the developer or they consider relevant to the preparation of the EIA report; and
  - (b) the planning authority or body must make any such information available to the developer.
- (6) In relation to a person to which the Environmental Information (Scotland) Regulations 2004<sup>(22)</sup> apply, paragraph (6) does not require disclosure of information which the person—
  - (a) may refuse to disclose under regulation 10(1) (exceptions from duty to make environmental information available) of those Regulations; or
  - (b) is prevented from disclosing by regulation 11(1) (personal data) of those Regulations.
- (7) In relation to a person to which the Environmental Information Regulations 2004<sup>(23)</sup> apply, paragraph (4) does not require disclosure of information which the person—
  - (a) may refuse to disclose under regulation 12(1) (exceptions to the duty to disclose environmental information) of those Regulations; or
  - (b) is prevented from disclosing by regulation 13(1) (personal data) of those Regulations.
- (8) A reasonable charge reflecting the cost of making the relevant information available may be made by any person who makes information available in accordance with paragraph (5).

## PART 5

### PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

#### Notification of EIA report

- 20.**—(1) Where, in relation to an EIA application—
- (a) the developer submits to the planning authority or the Scottish Ministers, as the case may be, an EIA report; and
  - (b) there are premises situated on the neighbouring land to which the notice can be sent,
- the planning authority or the Scottish Ministers, as the case may be, must give notice to the owner, lessee or occupier of such premises in accordance with this regulation.
- (2) Notice under paragraph (1) is to be—
- (a) in the form set out in, and completed in accordance with the notes in, schedule 5 (or in a form substantially to the like effect); and
  - (b) given by sending to such premises a notice addressed to “the Owner, Lessee or Occupier”.
- (3) For the purposes of this regulation, “neighbouring land” has the same meaning as in regulation 3(1) (interpretation) of the Development Management Procedure Regulations.

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<sup>(22)</sup> S.S.I. 2004/520.

<sup>(23)</sup> S.I. 2004/3391.

### **Publication of EIA report**

**21.**—(1) Where, in relation to an EIA application the developer submits to the planning authority or the Scottish Ministers, as the case may be, an EIA report the planning authority or the Scottish Ministers, as the case may be, must publish as soon as possible a notice in accordance with this regulation.

(2) Notice under paragraph (1) must—

- (a) describe the application and the proposed development to which the EIA report relates;
- (b) state that the proposed development is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;
- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
- (d) state how copies of the EIA report may be obtained;
- (e) state the cost of a copy of the EIA report;
- (f) state how and by what date representations may be made (being a date not earlier than 30 days after last date on which the notice is published);
- (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice is to be given of any subsequent submission by the developer of additional information and how representations in relation to that additional information may be made; and
- (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by which such decisions are to be taken.

(3) Notice under paragraph (1) must be published—

- (a) on the application website;
- (b) in The Edinburgh Gazette; and
- (c) in a newspaper circulating in the locality in which the proposed development is situated.

(4) The developer must, at the time of submitting the EIA report, pay the cost to be incurred by the planning authority or the Scottish Ministers, as the case may be, in arranging publication of the notice in accordance with paragraph (3)(b) and (c).

(5) The planning authority must—

- (a) place a copy of the EIA report in Part I of the register together with a copy of the related application; and
- (b) make copies of the EIA report and other documents submitted with the application available for inspection—
  - (i) on the application website; and
  - (ii) at an office of the planning authority where the register may be inspected.

### **Consultation where EIA report received by planning authority**

**22.**—(1) Where a planning authority receive in connection with an EIA application (including an EIA application under consideration on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions)) an EIA report, they must—

- (a) send a copy of the EIA report to the Scottish Ministers and to the bodies mentioned in paragraph (2); and

- (b) consult the bodies mentioned in paragraph (2) about the EIA report and inform them how and by what date representations may be made (being a date not earlier than 30 days after the date on which the copy of the EIA report was sent).

(2) The bodies are—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of schedule 5 of the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of schedule 5 of the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
- (d) any other public body which the planning authority considers are likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies.

(3) Where an EIA report is submitted to the planning authority in relation to an application for planning permission, the developer must let the planning authority have enough copies of the EIA report to enable them to comply with paragraph (1)(a) and one additional copy.

(4) Where a body which a planning authority are required to consult under this regulation considers that consultation with that body is not required in respect of any EIA report relating to any case or class of case or relating to any specified area and so inform the planning authority in writing then the planning authority are not required to consult that body under this regulation.

### **Copy of EIA report for the Scottish Ministers**

**23.** Where an EIA report is provided in relation to an application for planning permission which is directed to be referred to the Scottish Ministers for determination, or is the subject of an appeal to them, the developer must provide the Scottish Ministers with a copy of the EIA report and, where relevant, a copy of any additional information.

### **Consultation where EIA report received by the Scottish Ministers**

**24.—(1)** Where the Scottish Ministers receive in connection with an EIA application which is being determined by them by virtue of section 46 or 47 an EIA report and the EIA report has not previously been submitted to the planning authority, the Scottish Ministers must—

- (a) send two copies of the EIA report to the planning authority;
- (b) send a copy of the EIA report to the bodies mentioned in paragraph (2); and
- (c) consult the planning authority and the bodies mentioned in paragraph (2) about the EIA report and inform them how and by what date representations may be made (being a date not earlier than 30 days after the date on which the copy of the EIA report was sent).

(2) The bodies are—

- (a) the consultation bodies;
- (b) the Health and Safety Executive where it would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development;
- (c) the Office for Nuclear Regulation where it would be required to be consulted under paragraph 3A of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and

(d) any other public body which the Scottish Ministers consider are likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies.

(3) Where an EIA report is submitted to the Scottish Ministers in relation to an application for planning permission, the developer must let the Scottish Ministers have enough copies of the EIA report to enable them to comply with paragraph (1)(a) and (b) and one additional copy.

(4) Where a body which the Scottish Ministers are required to consult under this regulation considers that consultation with that body is not required in respect of any report relating to any case or class of case or relating to any specified area and so inform the Scottish Ministers in writing then the Scottish Ministers are not required to consult that body under this regulation.

#### **Availability of copies of EIA report**

**25.**—(1) Where an EIA report is submitted in relation to an application for planning permission, the developer must ensure that a reasonable number of copies of the EIA report are available for inspection at any place named (by virtue of regulation 21(2)(c)) in the notice published under regulation 21(1) as a place at which copies of the EIA report may be inspected.

(2) The developer must provide copies of the EIA report in accordance with the terms of the notice published under regulation 21(1) and where that notice includes an address at which copies of the EIA report may be obtained the developer must ensure that a reasonable number of copies of the EIA report are available at that address.

(3) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of an EIA report provided in accordance with paragraph (2).

## **PART 6**

### **ADDITIONAL INFORMATION**

#### **Supplementary information and evidence relating to EIA reports**

**26.**—(1) This regulation applies where the Scottish Ministers or the planning authority, are dealing with—

- (a) an EIA application;
- (b) an application for multi-stage consent in respect of EIA development;
- (c) an appeal in relation to an EIA application or an application for multi-stage consent in respect of EIA development; or
- (d) a review under section 43A(8) in relation to an EIA application or an application for multi-stage consent in respect of EIA development.

(2) In order to ensure the completeness and quality of the EIA report, the planning authority or the Scottish Ministers, as the case may be, must (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about a matter to be included in the EIA report in accordance with regulation 5(2) which in the opinion of the planning authority or the Scottish Ministers, as the case may be, is directly relevant to reaching a reasoned conclusion on the significant effects of the development on the environment.

(3) The developer must provide that supplementary information and such information is referred to in these Regulations as “supplementary information”.

(4) The planning authority or the Scottish Ministers may in writing require to be produced to them such evidence in respect of any EIA report or additional information as they may reasonably



call for to verify any information contained in the EIA report or such additional information, as the case may be.

### **Publication of additional information**

**27.**—(1) Where additional information is provided to the planning authority or the Scottish Ministers, regulations 20 to 22, 24 and 25 apply to the provision of such additional information as they apply to the submission of an EIA report as if references to the EIA report were references to that additional information.

(2) Paragraph (1) does not apply in relation to additional information to the extent that—

- (a) the information is provided for the purposes of an inquiry held under the Act;
- (b) the written requirement for the information states that it is to be provided for such purposes; and
- (c) the information is required to be publicised as part of that inquiry.

## **PART 7**

### **AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS**

#### **Availability of opinions, directions etc. for inspection**

**28.**—(1) Where any document mentioned in paragraph (2) is received, issued or adopted by the planning authority, the planning authority must make copies of that document available for inspection—

- (a) on a website; and
- (b) at all reasonable hours at an office of the planning authority where the register may be inspected.

(2) The documents are any—

- (a) request under regulation 17(1);
- (b) copy of a request under regulation 17(8);
- (c) direction given under regulation 6(4) or (6);
- (d) screening opinion;
- (e) screening direction;
- (f) scoping opinion;
- (g) scoping direction;
- (h) notification given under regulation 12(2), 14(2), 15(2) or 16(2);
- (i) EIA report and any additional information; and
- (j) statement of reasons accompanying any of the above.

(3) Where particulars of a planning application are placed on Part I of the register, the planning authority must take steps to secure that there is also placed on that Part a copy of any document mentioned in paragraph (2) which is relevant to that application.

(4) Documents made available under paragraph (1) must remain so available for a period of two years.

**Decision notice**

**29.**—(1) Where an EIA application is determined by a planning authority or the Scottish Ministers the notification of the decision to be given to the developer (“the decision notice”) must include the information specified in paragraph (2).

(2) The information is—

- (a) a description of the development;
- (b) the terms of the decision;
- (c) the main reasons and considerations on which the decision is based;
- (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
- (e) a summary of—
  - (i) the environmental information; and
  - (ii) the results of the consultations and information gathered pursuant to Parts 5 and 6 and, where relevant, Part 10 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 41, have been incorporated or otherwise addressed;
- (f) if the decision is to grant planning permission—
  - (i) any conditions to which the decision is subject;
  - (ii) the reasoned conclusion referred to in regulation 4(1)(d);
  - (iii) a statement that the planning authority or the Scottish Ministers, as the case may be, are satisfied that the reasoned conclusion is still up to date;
  - (iv) a description of any mitigation measures; and
  - (v) a description of any monitoring measures required under regulation 30; and
- (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(3) Where regulation 4(6) applies the decision notice must describe the matters in respect of which the planning authority or the Scottish Ministers, as the case may be, consider that the effects of the development are not fully identifiable at the time of their determination of the EIA application.

(4) For the purposes of paragraph (2)(f)(iii) the reasoned conclusion referred to in regulation 4(1)(d) is still up to date if, the planning authority or the Scottish Ministers, as the case may be, are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the development on the environment.

(5) In this regulation and in regulation 30—

“mitigation measures” means any 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 including any such features or measures required by virtue of—

- (a) a condition imposed on the grant of planning permission; or
- (b) a planning obligation;

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed development including any such measures required by virtue of—

- (a) a condition imposed on the grant of planning permission; or
- (b) a planning obligation; and

“planning obligation” has the meaning given in section 75(1)(24).

### **Monitoring measures**

**30.**—(1) Where an EIA application is determined by a planning authority or the Scottish Ministers and the decision is to grant planning permission, the planning authority or the Scottish Ministers, as the case may be, must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the planning authority or the Scottish Ministers, as the case may be, must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and
- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

(3) Where the planning authority or the Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.

(4) Where mitigation measures or monitoring measures are required the planning authority must take steps to ensure that those measures are implemented.

### **Notification of decision**

**31.**—(1) Where an EIA application is determined by a planning authority, the planning authority must, as soon as reasonably practicable—

- (a) send a copy of the decision notice to the Scottish Ministers;
- (b) inform the public and those bodies consulted in accordance with regulation 22(1)(b) of the decision and where a copy of decision notice may be inspected, by publishing a notice on the application website or in a newspaper circulating in the locality in which the land is situated or by such other means as are reasonable in the circumstances; and
- (c) make a copy of the decision notice available for public inspection—
  - (i) at an office of the planning authority where the register may be inspected; and
  - (ii) on the application website.

(2) Where an EIA application is determined by the Scottish Ministers, they must send a copy of the decision notice to the planning authority.

(3) The planning authority must, as soon as reasonably practicable after notification of the decision under paragraph (2), comply with paragraph (1)(b) and (c) in relation to the decision so notified as if it were a decision of the planning authority.

## PART 8

### APPLICATIONS FOR MULTI-STAGE CONSENT

#### **Prohibition on granting an application for multi-stage consent without an environmental impact assessment**

**32.** The planning authority or the Scottish Ministers, as the case may be, must not grant an application for multi-stage consent 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 planning authority or the Scottish Ministers, as the case may be, must take the environmental information into account.

#### **Application for multi-stage consent where EIA report previously provided**

**33.—**(1) This regulation applies in relation to the consideration—

- (a) by the planning authority of—
  - (i) an application for multi-stage consent; or
  - (ii) a review in respect of an application for multi-stage consent under section 43A(8) (right to require review of planning decisions and failure to take such decisions); and
- (b) by the Scottish Ministers of—
  - (i) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
  - (ii) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions),

where an EIA report has previously been submitted by the developer in relation to the development.

(2) Where this regulation applies—

- (a) if it appears to the planning authority or Scottish Ministers, as the case may be, that the development, or the part of the development to which the application for multi-stage consent relates may have significant effects on the environment that have not previously been identified and assessed; and
- (b) the developer has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the planning authority or the Scottish Ministers, as the case may be, must seek supplementary information from the developer in accordance with regulation 26(2) in respect of such effects.

#### **Application for multi-stage consent without EIA report**

**34.—**(1) This regulation applies in relation to the consideration by the planning authority of—

- (a) an application for multi-stage consent; or
- (b) a review in respect of an application for multi-stage consent under section 43A(8) (right to require review of planning decisions and failure to take such decisions),

where an EIA report has not been submitted by the developer in relation to the development.

(2) Where this regulation applies and either—

- (a) it appears to the planning authority that the application for multi-stage consent relates to planning permission for Schedule 1 development and the development has not been the subject of a screening opinion or screening direction; or
- (b) it appears to the planning authority that—

- (i) the application for multi-stage consent relates to planning permission for Schedule 2 development; and
- (ii) the development may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or screening direction or because the development has not been the subject of a screening opinion or screening direction),

the planning authority must adopt a screening opinion in respect of the development.

(3) If it appears to the planning authority that the application for multi-stage consent, or review, relates to planning permission for Schedule 2 development but the planning authority do not consider that the information submitted by the developer in connection with the application, or review, includes all the information referred to in regulation 8(2), the planning authority must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

(4) The provisions of regulation 9(1) to (6) apply in relation to the adoption of a screening opinion under paragraph (2) as they apply following a request made under regulation 8(1) as if—

- (a) the making of the application for multi-stage consent were a request made under regulation 8(1); and
- (b) references to date of receipt of the request were references to the relevant date.

(5) A screening opinion adopted under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) The Scottish Ministers may make a screening direction in relation to the development to which the application for multi-stage consent relates and any such screening direction supersedes the terms of the earlier screening opinion or screening direction.

(7) Where a screening opinion is adopted, or a screening direction made, to the effect that the development to which the application for multi-stage consent relates is EIA development—

- (a) where the application is before the planning authority by virtue of a review under section 43A(8), regulation 16 applies as if the application were an EIA application; and
- (b) in other cases, regulation 12 applies as if the application were an EIA application.

(8) For the purposes of paragraph (4) the relevant date is the later of—

- (a) the date on which, as the case may be—
  - (i) the application for multi-stage consent is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
  - (ii) the request for review is made in respect of the application for multi-stage consent; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the planning authority.

#### **Application for multi-stage consent referred or appealed to the Scottish Ministers without an EIA report**

**35.—**(1) This regulation applies in relation to the consideration by the Scottish Ministers of—

- (a) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
- (b) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions),

where an EIA report has not been submitted by the developer in relation to the development.

(2) Where this regulation applies and either—

- (a) it appears to the Scottish Ministers that the application for multi-stage consent relates to planning permission for Schedule 1 development and the development has not been the subject of a screening opinion or screening direction; or
- (b) it appears to the Scottish Ministers that—
  - (i) the application for multi-stage consent relates to planning permission for Schedule 2 development; and
  - (ii) the development may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or screening direction or because the development has not been the subject of a screening opinion or screening direction),

the Scottish Ministers must make a screening direction in respect of the development.

(3) If it appears to the Scottish Ministers that the application for multi-stage consent, or appeal, relates to planning permission for Schedule 2 development but the Scottish Ministers do not consider that the information submitted by the developer in connection with the application, or appeal, includes all the information referred to in regulation 8(2), the Scottish Ministers—

- (a) must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information; and
- (b) may request the planning authority to provide such information as they can in relation to that information.

(4) The provisions of regulation 10(3)(b) and (4) to (6) apply in relation to the making of a screening direction under paragraph (2) as they apply following a request made under regulation 9(5) as if—

- (a) the making of the application for multi-stage consent were a request made under regulation 9(5); and
- (b) references to date of receipt of the request were references to the relevant date.

(5) A screening direction made under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) Where a screening direction made under this regulation to the effect that the development to which the application for multi-stage consent relates is EIA development, the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required and must send a copy of that notification to the planning authority.

(7) A developer who receives a notice under paragraph (6) may within the period of 21 days beginning with the date of the notice write to the Scottish Ministers stating that an EIA report will be provided and may request the Scottish Ministers to make a scoping direction.

(8) If the developer does not write in accordance with paragraph (7), the Scottish Ministers are under no duty to deal with the application, and at the end of the 21 day period the Scottish Ministers must inform the developer in writing that no further action is being taken on the application or appeal, as the case may be.

(9) Where the Scottish Ministers have given a notice under paragraph (6), they are to determine the application by refusing it, or appeal by dismissing it, if the developer does not submit an EIA report.

(10) For the purposes of paragraph (4) the relevant date is the later of—

- (a) the date on which, as the case may be—
  - (i) the application for multi-stage consent is referred to the Scottish Ministers under section 46; or

- (ii) the appeal is made in respect of the application for multi-stage consent under section 47; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the Scottish Ministers.

### **Modification of regulations relating to application for multi-stage consent**

**36.**—(1) Parts 2, 4 to 7, 10 and 11 and regulations 12 and 16 (where applied by regulation 34(7)), apply to an application for multi-stage consent as if—

- (a) references to an application for planning permission were references to an application for multi-stage consent;
- (b) references to an EIA application were references to an application for multi-stage consent for EIA development;
- (c) in regulation 21(5)(a) after “application” there were inserted “(and any earlier application relating to the development, in so far as not already on Part 1 of the register)”;
- (d) in regulation 41(5)(b) the reference to “planning permission” were a reference to “multi-stage consent”; and
- (e) where the application for multi-stage consent relates to planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme, the reference in schedule 5 to the relevant planning permission is to be read as a reference to the simplified planning zone scheme or enterprise zone scheme, as the case may be.

(2) Regulation 29(2)(d), (e) and (g) applies in respect of the notification of a decision on an application for multi-stage consent only where additional information has been provided by the developer in connection with that application.

## **PART 9**

### **SPECIAL CASES**

#### **Simplified planning zone schemes or enterprise zone orders**

**37.**—(1) This regulation applies to any—

- (a) simplified planning zone scheme adopted or approved;
- (b) order designating an enterprise zone made; and
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations.

(2) No scheme, order or modified scheme to which this regulation applies may—

- (a) grant planning permission for Schedule 1 development; or
- (b) grant planning permission for Schedule 2 development unless that grant is subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

#### **ROMP applications**

**38.**—(1) These Regulations apply to—

- (a) a ROMP application as they apply to an application for planning permission;



- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a person making a ROMP application as they apply to an applicant for planning permission; and
- (d) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications and additions set out below.

- (2) Regulation 12 applies as if—
  - (a) in paragraph (3)(a) and (4) for “21” there were substituted “42”; and
  - (b) in paragraph (4) after “the notice” there were inserted “, or within such other period as may be agreed with the planning authority in writing”.
- (3) Regulations 12(5) and (6), 14(5) and (6), 15(4) and (5) and 49 do not apply.
- (4) Regulation 13 applies as if for paragraph (1)(a)(ii) there were substituted—
 

“(ii) an appeal under paragraphs 17(1) and 17(2) of schedule 8 of the Act, paragraph 11(1) of schedule 9 of the Act or paragraph 9(1) of schedule 10 of the Act (right of appeal)”.
- (5) Regulation 14 applies as if—
  - (a) in paragraphs (3) and (4) for “21” there were substituted “42”; and
  - (b) in paragraph (4) after “the notice” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing,”.
- (6) Regulation 15(3) applies as if—
  - (a) for “21” there were substituted “42”; and
  - (b) after “the notice” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing,”.
- (7) Regulations 17(11) and 18(9) apply as if for “an application for planning permission for” there were substituted “a ROMP application which relates to another planning permission which authorises”.
- (8) Regulation 22(3) applies as if for “application for planning permission” there were substituted “ROMP application”.
- (9) Regulation 24(1) applies as if for “section 46 or 47” there were substituted “section 46, paragraphs 17(1) and 17(2) of schedule 8 of the Act, paragraph 11(1) of schedule 9 of the Act or paragraph 9(1) of schedule 10 of the Act”.
- (10) Part 11 applies as if for regulation 47 there were substituted—

**“Application to the Court of Session**

**47.** For the purposes of Part XI of the Act (validity), the references in section 239, as applied by paragraph 21(3) of schedule 8, paragraph 16(4) of schedule 9 or paragraph 9(4) of schedule 10 of the Act, to action of the Scottish Ministers which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3.”.

- (11) Regulation 50 applies to ROMP development as it applies to development in respect of which a planning application is made.
- (12) Where the Scottish Ministers or the planning authority notifies the developer, that—
  - (a) the submission of an EIA report is required under regulations 12(2), 14(2), or 15(2) such notification must specify the date by which the EIA report is to be submitted; or

- (b) additional information is required under regulation 26 such notification must specify the date by which that information is to be provided.
- (13) Paragraph (14) applies where the Scottish Ministers or the planning authority—
- (a) notifies the developer, that—
    - (i) the submission of an EIA report is required under regulations 12(2), 14(2), or 15(2); or
    - (ii) supplementary information is required under regulation 26(2); and
  - (b) the developer, as the case may be—
    - (i) does not write to the planning authority or the Scottish Ministers in accordance with regulation 12(4),14(4) or 15(3) before the expiry of the relevant period;
    - (ii) having written to the planning authority or the Scottish Ministers in accordance with regulation 12(4),14(4) or 15(3) before the expiry of the relevant period does not submit an EIA report by the date specified by the planning authority, or the Scottish Ministers in accordance with paragraph (12); or
    - (iii) does not provide such supplementary information by the date specified by the planning authority, or the Scottish Ministers in accordance with paragraph (12);
- (14) Unless either the Scottish Ministers have made a screening direction to the effect that the ROMP development to which the ROMP Application relates is not EIA development, where this paragraph applies the planning permission to which the ROMP application relates does not authorise any development consisting of the winning and working of minerals, or involving the depositing of mineral waste, except insofar as it imposes any restoration or aftercare condition any minerals development, during the period—
- (a) beginning, as the case may be, with—
    - (i) the end of the relevant period; or
    - (ii) the day following the date specified in accordance with paragraph (12); and
  - (b) ending on the date on which the developer, as the case may be, submits an EIA report or provides the supplementary information.
- (15) For the purposes of paragraphs (13)(b)(i) and (14), the “relevant period” means the period of 42 days beginning with the date of the notice given under regulation 12(2), 14(2) or 15(3), as the case may be, or such longer period as may be agreed with the authority who gave the notice
- (16) Particulars of the suspension of development arising by virtue of paragraph (14) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.
- (17) Paragraph (14) does not affect any development carried out under a planning permission before the date of suspension of that development.
- (18) Where it falls to—
- (a) a planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 14(6)(b) of schedule 8, paragraph 9(8) of schedule 9 or paragraph 6(7) of schedule 10 of the Act do not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the planning authority has adopted a screening opinion or the Scottish Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;
  - (b) a planning authority or the Scottish Ministers to determine a Schedule 1 or a Schedule 2 application—
    - (i) section 36 (register of applications, etc), and any provisions of the Development Management Procedure Regulations made by virtue of that section, have effect with

any necessary amendments so that they apply to ROMP applications under paragraph 9(1) of schedule 9 and paragraph 6(1) of schedule 10 of the Act as they apply to applications for planning permission; and

- (ii) where the planning authority is not the authority required to keep the register, the planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 36 as applied by sub-paragraph (i), with regulation 28 as applied by paragraph (1), and with paragraph (11).

(19) Where it falls to the planning authority or the Scottish Ministers to determine an EIA application that is made under paragraph 14(2) of schedule 8 of the Act, paragraph 16(4) of that schedule does not apply.

(20) Where it falls to the planning authority to determine an EIA application, the planning authority must give written notice of their determination of the ROMP application within four months beginning with the date upon which the ROMP application is made or such extended period as may be agreed in writing between the developer and the planning authority.

(21) For the purposes of paragraph (20) a ROMP application is not made until—

- (a) a document referred to by the developer as an EIA report;
- (b) any documents required to accompany that report; and
- (c) any supplementary information required under regulation 26(2),

has been received by the authority.

(22) Where paragraph (18)(a) applies—

- (a) paragraph 17(2) of schedule 8, paragraph 11(1) of schedule 9 and paragraph 9(1) of Schedule 10 of the Act (right of appeal) have effect as if there were also a right of appeal to the Scottish Ministers where the planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (20); and
- (b) paragraph 17(5) of schedule 8, paragraph 11(2) of schedule 9 and paragraph 9(2) of schedule 10 of the Act (right of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the four months or other period agreed pursuant to paragraph (20).

(23) In determining for the purposes of—

- (a) paragraph 14(6)(b) of schedule 8, paragraph 9(8) of schedule 9 and paragraph 6(7) of Schedule 10 of the Act (determination of conditions); or
- (b) paragraph 17(5) of schedule 8, paragraph 11(2) of schedule 9 and paragraph 9(2) of Schedule 10 of the Act (right of appeal) as applied by paragraph (22)(b),

the time which has elapsed without the planning authority giving the developer written notice of their determination in a case where the authority have notified a developer in accordance with regulation 12(2) that the submission of an EIA report is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question, no account must be taken of any period before the issue of the direction.

### **Applications for permission under section 242A**

**39.**—(1) These Regulations apply to an application made (or to be made) to the Scottish Ministers under section 242A(25) (urgent Crown development) subject to the following modifications.

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(25) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning etc. (Scotland) Act 2006 (asp 17).

(2) References to “planning authority” are to be treated as references to “the planning authority or the Scottish Ministers, as appropriate”.

(3) Regulation 7(6)(b) applies as if after “authority” there were inserted, “for the area to which the application relates.”.

(4) Regulations 9(5) and (6), 12(4)(b) and 17(8) and (9) do not apply.

(5) Regulation 22 applies as if—

(a) in paragraph (1)(a) for “to the Scottish Ministers” there were substituted “and the related application to the planning authority for the area to which the application relates”;

(b) after paragraph (1) there were inserted—

“(1A) Where a planning authority receive a copy of the EIA report, they must make a copy of the EIA report together with a copy of the related application available for inspection—

(a) on a website; and

(b) at all reasonable hours at an office of the planning authority where the register may be inspected.”.

(6) Part 7 applies as if for regulation 28 there were substituted—

**“Availability of opinions, directions, etc. for inspection**

**28.**—(1) Where the Scottish Ministers—

(a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;

(b) receive a request under regulation 17(1); or

(c) make a screening direction, scoping direction or direction under regulation 6(4) or (6),

before the application is made for the development in question, the Scottish Ministers must send a copy of the opinion, request or direction to the planning authority for the area to which the application relates.

(2) Where the planning authority receive copies of an opinion, request or direction under paragraph (1) they must make copies of that document available for inspection—

(a) on a website; and

(b) at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.”.

(7) Regulation 35 applies to the determination of an application for multi-stage consent by the Scottish Ministers relating to a grant of planning permission under section 242A as it applies to the determination of an application for multi-stage consent referred to them.

**Marine fish farming**

**40.**—(1) These Regulations apply to an application for planning permission relating to fish farm development subject to the following modifications.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “the consultation bodies” after paragraph (e) insert—

- “(f) any district salmon fishery board in whose area the proposed development is to be situated; and
- (g) the Scottish Ministers;” and
- (b) after the definition of “the Directive” insert—
  - ““district salmon fishery board” has the meaning given in section 43 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(26)
- (3) Regulation 8(2)(a) applies as if for “land” there were substituted “location of the development”.
- (4) Regulation 17(2)(a) applies as if for “land” there were substituted “location of the development”.
- (5) Regulation 20 does not apply.
- (6) Where an application for planning permission relates in part to fish farm development and in part to other development, the modifications specified in this regulation apply only for the purposes of the application to the extent that it relates to fish farm development.

## PART 10

### DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

#### **Development in Scotland likely to have significant effects in an EEA State other than the United Kingdom**

- 41.—(1) This regulation applies where—
- (a) it comes to the attention of the Scottish Ministers that development proposed to be carried out in Scotland is the subject of an EIA application and is likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
  - (b) an EEA State other than the United Kingdom likely to be significantly affected by such development so requests.
- (2) Where this regulation applies, the Scottish Ministers must—
- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in paragraph (b), the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);
  - (b) publish the information in paragraph (a) in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
  - (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (3) The particulars referred to in paragraph (2)(a) are—
- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
  - (b) information on the nature of the decision which may be taken.
- (4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must as soon as possible send to that EEA State the following information—
- (a) a copy of the application concerned;

(b) a copy of the EIA report in respect of the development to which that application relates; and  
(c) relevant information regarding the procedure under these Regulations,  
but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

(5) The Scottish Ministers, insofar as they are concerned, must also—

- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the developer to be made available, within a reasonable time, to the authorities designated in accordance with Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.

(6) The Scottish Ministers must in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a copy of the decision notice.

### **Projects in another EEA State likely to have significant transboundary effects**

**42.**—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
- (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and
- (c) so far as they have received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
  - (i) any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
  - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.

(2) The Scottish Ministers, insofar as they are concerned, must also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
- (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

## PART 11

### MISCELLANEOUS

#### **Electronic communications – general**

**43.**—(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, 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) serving any notice under regulation 20;
- (b) any requirement under regulation 41 including submitting information to an EEA State; and
- (c) any requirement under regulation 42.

(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,

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>(27)</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, any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

#### **Electronic communications – deemed agreement**

**44.**—(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 45 to revoke the agreement.

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

**45.** 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 planning authority or, as the case may be, to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the planning authority or, as the case may be, with the Scottish Ministers for that purpose,

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.**

**46.** Subject to regulations 43 to 45, any notice or other document to be served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).

#### **Application to Court of Session**

**47.** For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2)<sup>(28)</sup> to action of the Scottish Ministers or a planning authority which is not within the powers of the Act are to be taken to extend, as the case may be, to—

- (a) a grant of planning permission by the Scottish Ministers or the planning authority in contravention of regulation 3; and

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<sup>(27)</sup> 1971 c.80.

<sup>(28)</sup> Section 239 was amended by section 19(4) of the Planning etc. (Scotland) Act 2006 (asp 17).



- (b) a grant of multi-stage consent by the Scottish Ministers or the planning authority in contravention of regulation 32.

### **Hazardous waste and material change of use**

**48.** A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of schedule 1 involves a material change in the use of that land or those buildings for the purposes of subsection (1) of section 26 (meaning of “development”).

### **Extension of the period for an authority’s decision on a planning application**

**49.**—(1) In determining, for the purposes of the provisions specified in paragraph (2), the time which has elapsed without the planning authority giving notice to the developer of their decision in a case where—

- (a) the planning authority have notified a developer in accordance with regulation 12(2) that the submission of an EIA report is required; and
- (b) the Scottish Ministers have given a screening direction in relation to the development in question,

no account is to be taken of any period before the issue of the screening direction.

(2) The provisions are—

- (a) section 43A(8)(c) (right to require a review on failure to determine an application);
- (b) section 47(2) (right to appeal against planning decisions and failure to take such decisions); and
- (c) regulation 26(2) (time periods for decision) of the Development Management Procedure Regulations.

(3) Where it falls to an authority to determine an EIA application, regulation 26 (time periods for decision) of the Development Management Procedure Regulations has effect as if—

- (a) for the reference in paragraph (2)(b) of that regulation to two months there were substituted a reference to four months; and
- (b) the reference to “validation date” is a reference to the later of—
  - (i) the date on which the application is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
  - (ii) the date on which an EIA report is submitted in respect of the application.

### **Directions as to whether development is EIA development**

**50.** The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in schedule 2, and of a class described in the direction, is EIA development for the purposes of these Regulations.

### **Access to review procedure before a court**

**51.** 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.

### **Competent authority – avoidance of conflict of interest**

**52.**—(1) The planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, are to consider an application for EIA development made by that body, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

### **Co-ordination of assessments**

**53.**—(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 planning authority (or the Scottish Ministers, as the case may be) 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 48 of the Conservation (Natural Habitats, &c.) Regulations 1994(29).

### **Offences**

**54.**—(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.

(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 the provision, 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.**

**55.**—(1) Subsection (2) applies where—

- (a) an offence under regulation 54 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 subsection (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.

## PART 12

### Amendments Revocations and Transitional Provisions

#### **Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992**

**56.**—(1) Article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992<sup>(30)</sup> is amended in accordance with paragraphs (2) to (6).

(2) In paragraph (8) for “the Environmental Impact Assessment (Scotland) Regulations 2011” substitute “the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017”.

(3) In paragraphs (8)(a), (8A), (8B), (8C) and (9)(a), for “regulation 6”, in every place where those words occur, substitute “regulation 8”.

(4) In paragraphs (8)(b), (8A)(b)(i), (8B)(b) and (9)(a), for “regulation 5(10) or 7(4)” substitute “regulation 7(4) or 10”.

(5) In paragraphs (8)(c) and (9)(a), for “regulation 5(4)” substitute “regulation 6(4) or (6)”.

(6) In paragraph (9)(b), for “regulation 5(10) or (11), 7(4) or 45” substitute “regulation 7(4), 10 or 50”.

#### **Amendment of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013**

**57.**—(1) The Development Management Procedure Regulations<sup>(31)</sup> are amended in accordance with paragraphs (2) to (4).

(2) In regulation 3 (interpretation)—

- (a) after the definition of “dwellinghouse” insert—

<sup>(30)</sup> S.I. 1992/223 as relevantly amended by S.S.I. 1999/1 and S.S.I. 2011/139.

<sup>(31)</sup> S.S.I. 2013/155.

- “EIA report” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;” and
- (b) in the definition of “environmental statement” after “2011” insert “as those Regulations had effect on 15th May 2017”.
  - (3) In regulation 5(2) (content of pre-application screening notice) for “2011” substitute “2017”.
  - (4) In Schedule 2 (registers under section 36(1))—
    - (a) in paragraph 3(b) and in paragraph 4(c)(i) after “environmental statement” insert “or EIA report”;
    - (b) in paragraph 3(f) for “9(4)” substitute “12(5)” and for “2011” substitute “2017”; and
    - (c) in paragraph 4(e) for “regulation 5(11) or 45” substitute “regulation 50” and for “2011” substitute “2017”.

### **Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2013**

**58.**—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2013(**32**) are amended in accordance with paragraph (2).

- (2) In regulation 2 (interpretation)—
  - (a) in the definition of “application for multi-stage consent” for “2011” substitute “2017”;
  - (b) for the definition of “EIA development” and “environmental statement” substitute—
    - ““EIA development” and “EIA report” have the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;
    - “environmental statement” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011(**33**) as those Regulations had effect on 15th May 2017;” and
  - (c) in the definition of “validation date”, in paragraph (a)(ii) for “environmental statement” substitute “EIA report or environmental statement, as the case may be,”.

### **Amendment of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013**

**59.**—(1) The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013(**34**) are amended in accordance with paragraph (2).

- (2) In regulation 2 (interpretation)—
  - (a) in the definition of “application for multi-stage consent” for “2011” substitute “2017”;
  - (b) for the definition of “EIA development” and “environmental statement” substitute—
    - ““EIA development” and “EIA report” have the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;
    - “environmental statement” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 as those Regulations had effect on 15th May 2017;” and

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(32) S.S.I. 2013/156 as amended by S.S.I. 2015/233 and S.S.I. 2015/249.

(33) S.S.I. 2011/139.

(34) S.S.I. 2013/157 as amended by S.S.I. 2015/249.

- (c) in the definition of “validation date”, in paragraph (a)(ii) for “environmental statement” substitute “EIA report or environmental statement, as the case may be,”.

### **Revocations and transitional provisions**

**60.**—(1) Subject to paragraphs (2) to (4), the 2011 Regulations are revoked.

(2) The 2011 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of an application for planning permission or a ROMP application, including consideration of such an application in the course of any appeal under section 47 or review under section 43A(8), where the developer has before that date—

- (a) submitted an environmental statement in connection with that application;
- (b) requested the planning authority under regulation 14(1) of the 2011 Regulations to adopt a scoping opinion in respect of the development to which the application relates; or
- (c) asked the Scottish Ministers under regulation 11(3) or 12(2) of the 2011 Regulations to make a scoping direction in respect of the development to which that application relates.

(3) Where the developer has before 16th May 2017 submitted an environmental statement in connection with the development to which an application for multi-stage consent relates—

- (a) the assessment under regulation 33(2)(a) as to whether or not there are significant effects on the environment which have not previously been identified and assessed is to be undertaken by reference to the scope of the information which immediately prior to 16th May 2017 had to be included in the environmental statement in accordance with schedule 4 of the 2011 Regulations; and
- (b) regulation 26(2) and paragraph (b) of the definition of “additional information” apply as if the reference to matters to be included in an EIA report in accordance with regulation 5(2) were a reference to the information which immediately prior to 16th May 2017 had to be included in the environmental statement in accordance with schedule 4 of the 2011 Regulations.

(4) Parts 1 and 2 and schedules 1 to 3 of the 2011 Regulations continue to have effect in respect of—

- (a) a request for a screening opinion under regulation 6(1) of the 2011 Regulations made to the planning authority before 16th May 2017;
- (b) a request for a screening direction pursuant to regulation 6(6) of the 2011 Regulations made to the Scottish Ministers before that date; or
- (c) a request for a screening direction pursuant to regulation 6(6) of the 2011 Regulations made to the Scottish Ministers after that date in connection with—
  - (i) the adoption of a screening opinion by the planning authority (whether before or after that date) following a request for a screening opinion made under regulation 6(1) of the 2011 Regulations before that date; or
  - (ii) the failure of the planning authority to adopt a screening opinion following a request for a screening opinion made under regulation 6(1) of the 2011 Regulations before that date;

(5) Where, pursuant a request referred to in paragraph (4), a screening opinion is adopted by the planning authority or screening direction is made by the Scottish Ministers in respect of a particular development, regulation 7(1) and (2) of these Regulations applies to the making of any subsequent screening direction in respect of that particular development by the Scottish Ministers under regulation 7(4) as if—

- (a) the reference in paragraphs (1)(a)(i) and (2)(a) to schedule 3 were a reference to schedule 3 of the 2011 Regulations; and

- (b) paragraphs (1)(a)(ii) and (b) were omitted.
- (6) References in this regulation to provisions of the 2011 Regulations are references to such provisions as they had effect immediately before 16th May 2017.
- (7) These Regulations (other than this regulation) do not apply in respect of—
  - (a) an application for planning permission or a ROMP application to which the 2011 Regulations continue to have effect by virtue of paragraph (2); or
  - (b) a request for a screening opinion mentioned in paragraph (4).
- (8) References in any enactment to an environmental statement prepared, or having effect as if prepared, in accordance with the 2011 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.
- (9) The provisions specified in column 1 of the Table in schedule 6 are revoked to the extent specified in column 3 of that Table.
- (10) In this regulation—
  - “the 2011 Regulations” means the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011; and
  - “environmental statement” has the same meaning as in the 2011 Regulations.

St Andrew’s House,  
Edinburgh  
29th March 2017

*KEVIN STEWART*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 2(1)

DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES  
OF THE DEFINITION OF “SCHEDULE 1 DEVELOPMENT”**Interpretation**

In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)**(35)**;

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15th November 1975**(36)**; and

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is to be treated as development of the description mentioned in paragraph 2(2) of this schedule.

**Descriptions of development**

The carrying out of development to provide any of the following:—

**1.** Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude-oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

**2.—(1)** Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

**(2)** Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

**3.—(1)** Installations for the reprocessing of irradiated nuclear fuel.

**(2)** Installations designed—

(a) for the production or enrichment of nuclear fuel;

(b) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(c) for the final disposal of irradiated nuclear fuel;

(d) solely for the final disposal of radioactive waste;

(e) solely for the storage (planned for more than ten years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

**4.—(1)** Integrated works for the initial smelting of cast-iron and steel.

**(2)** Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

**5.** Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

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**(35)** Command Paper 6614.

**(36)** Command Paper 6993.

- (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;
  - (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
  - (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.
- 6.** Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—
- (a) for the production of basic organic chemicals;
  - (b) for the production of basic inorganic chemicals;
  - (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
  - (d) for the production of basic plant health products and of biocides;
  - (e) for the production of basic pharmaceutical products using a chemical or biological process;
  - (f) for the production of explosives.
- 7.—(1)** Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.
- (2) Construction of motorways and express roads.
- (3) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 kilometres or more in a continuous length.
- 8.—(1)** Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.
- (2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
- 9.** Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to [Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives<sup>(37)</sup> under heading D9), or landfill of hazardous waste (that is to say, waste which is considered to be hazardous in accordance with Articles 3(2) and 7 of that Directive).
- 10.** Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to [Directive 2008/98/EC](#) under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.
- 11.** Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
- 12.—(1)** Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
- (2) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

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(37) OJ No L 312, 22.11.2008, p.3.



**Status:** This is the original version (as it was originally made).

**13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2(6) of Council [Directive 91/271/EEC](#) concerning urban waste-water treatment<sup>(38)</sup>.

**14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

**15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

**16.** Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres for the transport of—

- (a) gas, oil or chemicals;
- (b) carbon dioxide streams for the purposes of geological storage, including associated booster stations.

**17.** Installations for the intensive rearing of poultry or pigs with more than—

- (a) 85,000 places for broilers or 60,000 places for hens;
- (b) 3,000 places for production pigs (over 30 kg); or
- (c) 900 places for sows.

**18.** Industrial plants for—

- (a) the production of pulp from timber or similar fibrous materials;
- (b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

**19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

**20.** Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

**21.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

**22.** Storage sites pursuant to the CCS Directive.

**23.** Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations referred to in this schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

**24.** 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.

## SCHEDULE 2

Regulation 2(1)

### DESCRIPTIONS OF DEVELOPMENT AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 DEVELOPMENT”

1. In the table below—

<sup>(38)</sup> OJ No L 135, 30.5.1991, p.40, last amended by Regulation [\(EC\) No. 1137/2008](#) (OJ No L 311, 21.11.2008, p.1).

“area of the works” includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“controlled waters” has the same meaning as in section 30A(1) of the Control of Pollution Act 1974<sup>(39)</sup>; and

“floorspace” means the floorspace in a building or buildings.

2. The table below sets out the descriptions of development and applicable thresholds and criteria for the purposes of classifying development as Schedule 2 development.

**TABLE**

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
The carrying out of development to provide any of the following:—	
<b>1. Agriculture and aquaculture</b>	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the development exceeds 0.5 hectare.
(b) Water management projects for agriculture, including drainage projects, but excluding irrigation projects;	The area of the works exceeds one hectare.
(c) Intensive livestock installations (unless otherwise included in schedule 1);	The area of floorspace exceeds 500 square metres.
(d) Intensive fish farming;	(i) the installation resulting from the development is designed to produce more than 10 tonnes of dead fish weight per year; (ii) where the development is situated in marine waters, the development is designed to hold a biomass of 100 tonnes or greater; or (iii) the development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations.
(e) Reclamation of land from the sea.	All development.
<b>2. Extractive industry</b>	
(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1);	All development except the construction of buildings or other ancillary structures where the floorspace does not exceed 1,000 square metres.
(b) Underground mining;	

<sup>(39)</sup> Section 30A was inserted by the Water Act 1989 (c.15), Schedule 23, paragraph 4 and amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 29(2), and Schedule 4.

**Status:** This is the original version (as it was originally made).

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(c) Extraction of minerals by marine or fluvial dredging;	All development.
(d) Deep drillings, in particular—  (i) Geothermal drilling; (ii) Drilling for the storage of nuclear waste material; (iii) Drilling for water supplies;  with the exception of drillings for investigating the stability of the soil.	(i) in relation to any type of drilling, the area of the works exceeds 1 hectare; or  (ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waters.
(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.
<b>3. Energy industry</b>	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in schedule 1);	The area of the development exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(c) Transmission of electrical energy by overhead cables (unless included in schedule 1);	(i) The area of the works exceeds 1 hectare; (ii) the purpose of which installation is to connect the electric line to a generating station the construction or operation of which requires consent under section 36 of the Electricity Act 1989(40); or  (iii) an electric line installed above ground with a voltage of 132 kilovolts or more, the installation of which (or the keeping installed of which) requires consent under section 37 of the Electricity Act 1989.
(d) Surface storage of natural gas;	(i) the area of any building, deposit or structure exceeds 500 square metres; or
(e) Underground storage of combustible gases;	(ii) a building, deposit or structure is to be sited within 100 metres of any controlled waters.
(f) Surface storage of fossil fuels;	
(g) Industrial briquetting of coal and lignite;	The area of floorspace exceeds 1,000 square metres.

(40) 1989 c.29.

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
(h) Installations for the processing and storage of radioactive waste (unless included in schedule 1);	(i) the area of floorspace exceeds 1,000 square metres; or (ii) the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993(41).
(i) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.
(j) Installations for the harnessing of wind power for energy production (wind farms);	(i) the development involves the installation of more than 2 turbines; or (ii) the hub height of any turbine or height of any other structure exceeds 15 metres.
(k) installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations not referred to in schedule 1.	All development.
<b>4. Production and processing of metals</b>	
(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;	The area of floorspace exceeds 1,000 square metres.
(b) Installations for the processing of ferrous metals— (i) hot-rolling mills; (ii) smitheries with hammers; (iii) application of protective fused metal coats;	
(c) Ferrous metal foundries;	
(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);	The area of the floor space exceeds 1,000 square metres.
(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;	
(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;	

(41) 1993 c.12.

*Status: This is the original version (as it was originally made).*

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(g) Shipyards; (h) Installations for the construction and repair of aircraft; (i) Manufacture of railway equipment; (j) Swaging by explosives; (k) Installations for the roasting and sintering of metallic ores.	
<b>5. Mineral industry</b> (a) Coke ovens (dry coal distillation); (b) Installations for the manufacture of cement; (c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in schedule 1); (d) Installations for the manufacture of glass including glass fibre; (e) Installations for smelting mineral substances including the production of mineral fibres; (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.	The area of floorspace exceeds 1,000 square metres.
<b>6. Chemical industry (unless included in schedule 1)</b>	
(a) Treatment of intermediate products and production of chemicals;	The area of floorspace exceeds 1,000 square metres.
(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;	The area of floor space exceeds 1,000 square metres.
(c) Storage facilities for petroleum, petrochemical and chemical products.	(i) The area of any building or structure exceeds 0.05 hectare; or (ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.
<b>7. Food industry</b> (a) Manufacture of vegetable and animal oils and fats;	The area of floorspace exceeds 1,000 square metres.

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
(b) Packing and canning of animal and vegetable products; (c) Manufacture of dairy products; (d) Brewing and malting; (e) Confectionery and syrup manufacture; (f) Installations for the slaughter of animals; (g) Industrial starch manufacturing installations; (h) Fish-meal and fish-oil factories; (i) Sugar factories.	
<b>8. Textile, leather, wood and paper industries</b> (a) Industrial plants for the production of paper and board (unless included in schedule 1); (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles; (c) Plants for the tanning of hides and skins; (d) Cellulose-processing and production installations.	The area of floorspace exceeds 1,000 square metres.
<b>9. Rubber industry</b> Manufacturing and treatment of elastomer-based products.	The area of floorspace exceeds 1,000 square metres
<b>10. Infrastructure projects</b> (a) Industrial estate development projects; (b) Urban development projects, including the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas; (c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in schedule 1);	The area of the development exceeds 0.5 hectare.
(d) Construction of railways (unless included in schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in schedule 1);	(i) The development involves an extension to a runway; or (ii) the area of the works exceeds 1 hectare.

**Status:** This is the original version (as it was originally made).

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
(f) Construction of roads (unless included in schedule 1);	The area of the works exceeds 1 hectare.
(g) Construction of harbours and port installations, including fishing harbours (unless included in schedule 1);	
(h) Inland-waterway construction not included in schedule 1, canalisation and flood-relief works;	
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in schedule 1);	
(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;	
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in schedule 1);	(i) the area of the work exceeds 1 hectare; or
(l) Installations of long-distance aqueduct;	(ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	All development.
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in schedule 1;	The area of the works exceeds 1 hectare.
(o) Works for the transfer of water resources between river basins not included in schedule 1;	
(p) Motorway service areas.	The area of the development exceeds 0.5 hectare.
<b>11. Other projects</b>	
(a) Permanent racing and test tracks for motorized vehicles;	The area of the development exceeds 1 hectare.
(b) Installations for the disposal of waste (unless included in schedule 1);	(i) The disposal is by incineration; or

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
	(ii) the area of the development exceeds 0.5 hectare; or (iii) the installation is to be sited within 100 metres of any controlled waters.
(c) Waste-water treatment plants (unless included in schedule 1);	The area of the development exceeds 1,000 square metres.
(d) Sludge-deposition sites;	(i) The area of deposit or storage exceeds 0.5 hectare; or
(e) Storage of scrap iron, including scrap vehicles;	(ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters.
(f) Test benches for engines, turbines or reactors;	The area of floorspace exceeds 1,000 square metres.
(g) Installations for the manufacture of artificial mineral fibres;	
(h) Installations for the recovery or destruction of explosive substances;	
(i) Knackers' yards.	
<b>12. Tourism and leisure</b>	
(a) Ski-runs, ski-lifts and cable cars and associated developments;	(i) The area of the works exceeds 1 hectare; or (ii) the height of any building or other structure exceeds 15 metres.
(b) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.
(c) Holiday villages and hotel complexes outside urban areas and associated developments;	The area of the development exceeds 0.5 hectare.
(d) Theme parks;	All development
(e) Permanent camp sites and caravan sites;	The area of the development exceeds 1 hectare.
(f) Golf courses and associated developments.	The area of the development exceeds 1 hectare
<b>13.</b> Any change to or extension of development of a description mentioned in paragraphs 1 to 12 of Column 1 of this table where that development is already authorised, executed or in the process of being executed.	The thresholds and criteria in the corresponding part of Column 2 of this table applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.



**Status:** This is the original version (as it was originally made).

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>																																																		
<p><b>14.</b> Any change to or extension of development of a description mentioned in schedule 1 (other than a change or extension falling within paragraph 24 of schedule 1) where that development is already authorised, executed or in the process of being executed.</p>	<p>The thresholds and criteria in Column 2 of the paragraph of this table indicated below applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.</p> <table border="0"> <thead> <tr> <th data-bbox="801 707 1082 801">Paragraph in schedule 1</th> <th data-bbox="1082 707 1345 801">Paragraph of this table</th> </tr> </thead> <tbody> <tr><td>1</td><td>6(a)</td></tr> <tr><td>2(1)</td><td>3(a)</td></tr> <tr><td>2(2)</td><td>3(h)</td></tr> <tr><td>3</td><td>3(h)</td></tr> <tr><td>4</td><td>4</td></tr> <tr><td>5</td><td>5</td></tr> <tr><td>6</td><td>6(a)</td></tr> <tr><td>7(1)</td><td>10(d) (in relation to railways) or 10(e) (in relation to airports)</td></tr> <tr><td>7(2) and (3)</td><td>10(f)</td></tr> <tr><td>8(1)</td><td>10(h)</td></tr> <tr><td>8(2)</td><td>10(g)</td></tr> <tr><td>9</td><td>11(b)</td></tr> <tr><td>10</td><td>11(b)</td></tr> <tr><td>11</td><td>10(n)</td></tr> <tr><td>12</td><td>10(o)</td></tr> <tr><td>13</td><td>11(c)</td></tr> <tr><td>14</td><td>2(e)</td></tr> <tr><td>15</td><td>10(i)</td></tr> <tr><td>16</td><td>10(k)</td></tr> <tr><td>17</td><td>1(c)</td></tr> <tr><td>18</td><td>8(a)</td></tr> <tr><td>19</td><td>2(a)</td></tr> <tr><td>20</td><td>3(c)</td></tr> <tr><td>21</td><td>6(c)</td></tr> </tbody> </table>	Paragraph in schedule 1	Paragraph of this table	1	6(a)	2(1)	3(a)	2(2)	3(h)	3	3(h)	4	4	5	5	6	6(a)	7(1)	10(d) (in relation to railways) or 10(e) (in relation to airports)	7(2) and (3)	10(f)	8(1)	10(h)	8(2)	10(g)	9	11(b)	10	11(b)	11	10(n)	12	10(o)	13	11(c)	14	2(e)	15	10(i)	16	10(k)	17	1(c)	18	8(a)	19	2(a)	20	3(c)	21	6(c)
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<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
	22 3(k)
	23 3(k)
<b>15.</b> Development of a description mentioned in schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.	All development.

SCHEDULE 3

Regulation 7(2)

SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT

**Characteristics of development**

1. The characteristics of development must be considered having regard, in particular, to—
  - (a) the size and design of the development;
  - (b) cumulation with other existing development and/or approved development;
  - (c) the use of natural resources, in particular land, soil, water and biodiversity;
  - (d) the production of waste;
  - (e) pollution and nuisances;
  - (f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
  - (g) the risks to human health (for example due to water contamination or air pollution).

**Location of development**

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered having regard, in particular, to—
  - (a) the existing and approved land use;
  - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
  - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
    - (i) wetlands, riparian areas, river mouths;
    - (ii) coastal zones and the marine environment;
    - (iii) mountain and forest areas;
    - (iv) nature reserves and parks;
    - (v) european sites and other areas classified or protected under national legislation;
    - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;

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- (vii) densely populated areas;
- (viii) landscapes and sites of historical, cultural or archaeological significance.

### **Characteristics of the potential impact**

**3.** The likely significant effects of the development on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the development on the factors specified in regulation 4(3), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved development;
- (h) the possibility of effectively reducing the impact.

## SCHEDULE 4

Regulation 5

### INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

- 1.** A description of the development, including in particular:
  - (a) a description of the location of the development;
  - (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
  - (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
  - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases).
- 2.** A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
- 3.** A description of the relevant aspects of the current state of the environment (the “baseline scenario”) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of relevant information and scientific knowledge.

4. A description of the factors specified in regulation 4(3) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the development on the environment resulting from, inter alia:

- (a) the construction and existence of the development, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project including in particular those established under Council [Directive 92/43/EEC](#) and [Directive 2009/147/EC](#).

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation of the European Union such as [Directive 2012/18/EU](#) of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

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**10.** A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

SCHEDULE 5

Regulation 20(2)

FORM OF NOTICE UNDER REGULATION 20

THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL  
IMPACT ASSESSMENT) SCOTLAND REGULATIONS 2017

*NOTICE UNDER REGULATION 20*

The proposed development at (a) is subject to environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017.

Notice is hereby given that [\*an EIA report] [\*additional information in relation to an EIA report] has been submitted to (b) by (c) relating to [\* the planning application] [\* an application for approval, consent or agreement imposed on planning permission] in respect of (d) [\*notified to you under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 on (e)].

Possible decisions relating to the application are:—

approval of the application without conditions;  
approval of the application with conditions;  
refusal of the application.

A copy of the [\*EIA report] [\*additional information together with the EIA report], the associated application [\*and relevant planning permission] and other documents submitted with the application may be inspected at all reasonable hours at the place where the register of planning applications is kept by the planning authority for the area at (f) and also at (g) during the period of [30] days beginning with the date of this notice.

Copies of the [\*EIA report] [\*additional information] may be purchased from (h) at a cost of (i).

Any person who wishes to make representations to (b) about the [\*EIA report] [\*additional information] should make them in writing within that period [\*to the Council at (f)] [\*to the Scottish Ministers at (j)].

Signed

\*On behalf of

Date

Notes

- (a) Insert address for location of the development.
- (b) Insert name of planning authority or insert the Scottish Ministers as appropriate.
- (c) Insert name of applicant.
- (d) Insert description of proposed development.

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- (e) Insert date of notification under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
  - (f) Insert address of planning authority.
  - (g) Insert the application website address and any other address in the locality at which the EIA report and additional information may be inspected.
  - (h) Insert how a copy of the EIA report or of the additional information may be obtained.
  - (i) Insert cost of a copy of the EIA report or additional information.
  - (j) Address to be supplied by the Scottish Ministers
- \*Delete where inappropriate.

SCHEDULE 6

Regulation 60(9)

REVOCATIONS

<i>Column (1)</i>	<i>Column (2)</i>	<i>Column (3)</i>
<i>Regulations revoked</i>	<i>References</i>	<i>Extent of Revocations</i>
The European Union (Amendments in respect of the Accession of Croatia) (Scotland) Regulations 2013	<a href="#">S.S.I. 2013/177</a>	Paragraph 21 of schedule 1
The Energy Act 2013 (Office for Nuclear Regulation) (Consequential Amendments, Transitional Provisions and Savings) Order 2014	<a href="#">S.I. 2014/469</a>	Paragraph 202 of schedule 3
Waste (Meaning of Hazardous Waste and European Waste Catalogue) (Miscellaneous Amendments) (Scotland) Regulations 2016	<a href="#">S.S.I. 2015/188</a>	Regulation 9
The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015	<a href="#">S.S.I. 2015/237</a>	Regulation 4(1) to (4)
The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015	<a href="#">S.S.I. 2015/249</a>	Regulation 5(1) to (10)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and re-enact and update, with amendments and savings, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“the 2011 Regulations”). These Regulations apply in relation to Scotland only.

These Regulations implement, in relation to town and country planning in Scotland, [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 (OJ L 26, 28.1.2012, p.1), as amended by Council [Directive 2014/52/EU](#) (OJ L 73, 14.3.1997, p.5).

The Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997 (“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 an environmental impact assessment (“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 an EIA is carried out and that 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 32 makes equivalent provision in relation to the determination of an application for multi-stage consent.

Regulation 4 sets out what the environmental assessment process comprises and regulation 5 sets out the content of a EIA report.

Part 2 sets out procedures for determining whether development is EIA development. Regulation 6 sets out which events will establish that development is EIA development. [Regulations 8 to 10 enable a request to be made to the planning authority for a “screening opinion” or to the Scottish Ministers for a “screening direction”.] Regulation 7 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 EIA report.

Regulations 17 and 18 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 EIA report. 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 19 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the applicant.

Regulations 20 and 21 require publication of notice of the lodging of an EIA report to be given. Regulations 22 and 24 provide for consultation where an EIA report is received by the planning authority or the Scottish Ministers respectively. Regulations 23 and 25 are concerned with the provision of copies of an EIA report.



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Regulation 26 contains procedures for the provision by the applicant of information additional to that contained in the EIA report. Regulation 27 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 EIA report has taken place will also require to be publicised.

Regulation 28 provides for documents to be placed on the planning register or otherwise made available to the public. Regulation 29 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. Regulations 34 and 35 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 36 modifies the application of the Regulations as they apply to applications for multi-stage consent. Part 9 makes provision for special cases.

Regulation 37 restricts the grant of planning permission by simplified planning zone schemes or enterprise zone orders. Regulations 38, 39 and 40 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 41 and 42 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulations 43 to 45 allow the use of electronic communication. Regulation 46 provides for the service of notices under the Regulations. Regulation 47 provides that a grant of permission in contravention of regulation 3 or 32 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 48 provides that beginning specified operations to dispose of hazardous waste constitutes “development” under section 26 of the 1997 Act. Regulation 49 extends the time allowed to a planning authority to consider an application for planning permission for EIA development. Regulation 50 enables the Scottish Ministers to make directions that certain classes of development are EIA development. Regulation 51 makes provision to extend access to justice to environmental non governmental organisations. Regulation 52 provides for avoidance of conflicts of interest and regulation 53 provides for co-ordination of assessments. Regulation 54 makes it an offence knowingly or recklessly to provide false or misleading information in order to procure a decision or, with intent to deceive, to use such information or to withhold information to that end. Regulation 55 provides for how this applies in the context of offences committed by bodies corporate. Regulations 56 to 59 amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, the Town and Country (Appeals) (Scotland) Regulations 2013 and the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013. Regulation 60 revokes the 2011 Regulations subject to some saving and transitional provisions.