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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 102**

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

**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 <sup>M1</sup> (urgent Crown development) subject to the following modifications.

(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.

#### Marginal Citations

**M1** 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 \(asp 17\)](#).

### 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 ”.<sup>M2</sup>

(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.

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**Status:** Point in time view as at 16/05/2017.

**Changes to legislation:** There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, PART 9. (See end of Document for details)

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(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.

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**Marginal Citations**

**M2** [2003 asp 15](#).

**Status:**

Point in time view as at 16/05/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, PART 9.