
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 137

The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017

Substitution of sections 20A and 20B and insertion of sections 20C to 20G

5. For sections 20A (environmental assessment of certain road construction projects)(1) and 20B (projects with significant transboundary effects)(2) substitute—

“20A. Prohibition on certain road construction projects without an environmental impact assessment

The Scottish Ministers must not proceed with the construction of a new road for which they are the roads authority if an environmental impact assessment is required for that project in accordance with section 20C—

- (a) unless an environmental impact assessment has been carried out, and
- (b) in carrying out such an assessment, the Scottish Ministers have taken the environmental information into account.

20B. Environmental impact assessment

(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an EIA report by the Scottish Ministers;
- (b) the carrying out of consultation, publication and notification as required by section 20C or section 55A and, where relevant, section 20F or section 55B (as it applies section 20F);
- (c) the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the Scottish Ministers on the significant effects of the project on the environment, taking into account the results of the examination referred to in paragraph (c); and
- (e) the integration of the Scottish Ministers’ reasoned conclusion into the decision notice in accordance with paragraph 7 or paragraph 13 of schedule 1 of this Act.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the project, the direct and indirect significant effects of the project on the factors specified in subsection (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;

(1) Section 20A was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).

(2) Section 20B was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#) and [S.S.I. 2013/177](#).

- (b) biodiversity, and in particular species and habitats protected under [Directive 92/43/EEC](#)(3) and [Directive 2009/147/EC](#)(4);
- (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 subsection (2) include the expected effects deriving from the vulnerability of the project to risks, so far as relevant to the project, of major accidents and disasters.

(5) The environmental impact assessment must identify the likely significant effects of the project on the environment before a decision to proceed with the project is made.

(6) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

(7) In this section and sections 20C to 20G, “the project” means a project for the construction of a new road for which the Scottish Ministers are the roads authority.

20C. Environmental Impact Assessment Report

(1) If the Scottish Ministers have under consideration the construction of a new road for which they are the roads authority they must, before details of the project are published, determine whether it falls within Annex I or II.

(2) If the Scottish Ministers determine that the project—

- (a) falls within Annex I; or
- (b) is a relevant project falling within Annex II, and that having regard to the selection criteria in Annex III it should be made subject to an environmental impact assessment in accordance with the Directive,

they shall, not later than the date when details of the project are published, prepare an EIA report and publish notice of it in accordance with subsections (5) to (10) and paragraph 7(1C), or 13(1C), as the case may be, of schedule 1 of this Act.

(3) In making a determination as to whether a project is a relevant project falling within Annex II the Scottish Ministers must—

- (a) take into account—
 - (i) such of the selection criteria set out in Annex III as are relevant to the project,
 - (ii) the available results of any relevant assessment of the effects of the project, and
- (b) base their decision on the information set out in subsection (4).

(4) The information referred to in subsection (3)(b) is to be compiled taking into account, where relevant, the factors set out in subsection (3)(a) and must include—

- (a) a description of the location of the project, including a plan sufficient to identify the land;
- (b) a description of the project, including in particular—
 - (i) a description of the physical characteristics of the project and, where relevant, of demolition works,
 - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected,

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

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

- (c) a description of the aspects of the environment likely to be significantly affected by the project; and
- (d) a description of any likely significant effects (to the extent of the information available on such effects) of the project on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant, and
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (5) The Scottish Ministers must publish any determination made by them in accordance with subsections (1) to (4), and that determination must include—
 - (a) a statement giving, with reference to such of the criteria set out in Annex III as are relevant to the project, the main reasons for the determination; and
 - (b) where the determination is to the effect that the project does not require an environmental impact assessment, the statement referred to in paragraph (a) must state any features of the project which are envisaged to avoid or prevent significant adverse effects on the environment.
- (6) An EIA report is a report prepared by the Scottish Ministers in accordance with this section which assesses the environmental impact of the project and which includes (at least)
—
 - (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
 - (b) a description of the likely significant effects of the project on the environment;
 - (c) a description of the features of the project 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 Scottish Ministers, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
 - (e) a non-technical summary of the information referred to in paragraphs (a) to (d); and
 - (f) any other information specified in schedule 1A of this Act relevant to the specific characteristics of the project and to the environmental features likely to be affected.
- (7) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments under Union legislation or other legislation applicable in Scotland in preparing the EIA report.
- (8) In order to ensure the completeness and quality of the EIA report—
 - (a) the Scottish Ministers must ensure that the EIA report is prepared by competent experts; and
 - (b) the EIA report must be accompanied by a statement from the Scottish Ministers outlining the relevant expertise or qualifications of such experts.
- (9) The Scottish Ministers must publish notice of the EIA report so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before a decision on whether to proceed with the project is taken, and the Scottish Ministers must not make any such decision without taking into consideration any opinion so expressed to them within a period of 42 days commencing with the date of publication of notice of the EIA report.

- (10) Notice under subsection (9) must state—
- (a) that the Scottish Ministers, as the relevant roads authority, are considering implementing the project;
 - (b) the proposed location and nature of the project;
 - (c) that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects in another EEA State;
 - (d) that a copy of the EIA report may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);
 - (e) the times at which a copy of the EIA report can be so inspected;
 - (f) an address from which copies of the EIA report may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);
 - (g) if a charge is to be made for a copy of the EIA report, the amount of the charge;
 - (h) that the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and provide the address of the website where a copy of the EIA report will be available for inspection by the public during the period provided for under paragraph (i);
 - (i) that any person wishing to make any representations about the project and the EIA report may do so in writing to the Scottish Ministers at a specified address within a specified period, being a period of not less than 42 days commencing with the date of publication of the notice; and
 - (j) that the Scottish Ministers will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.
- (11) The Scottish Ministers must ensure that during the period specified under subsection (10)(i)—
- (a) copies of the EIA report are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (10)(d);
 - (b) copies of the EIA report are available to be obtained by any person from the address specified under subsection (10)(f); and
 - (c) the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and that a copy of the EIA report is available for inspection at a specified website address.
- (12) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Scottish Ministers for the supply of a copy of the EIA report—
- (a) to a person other than a consultation body; or
 - (b) to a consultation body to which one copy has already been supplied free of charge.
- (13) In order to ensure the completeness and quality of the EIA report the Scottish Ministers must where necessary (having regard in particular to current knowledge and methods of assessment) obtain supplementary information about any matter referred to in subsection (6) which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.
- (14) Where the Scottish Ministers obtain supplementary information relating to the EIA report and such supplementary information is reasonably required to give proper consideration to the likely environmental effects of the project, except insofar as such

supplementary information is required for the purposes of an inquiry held under section 139, subsections (9) to (12) shall apply to such supplementary information as they apply to an EIA report (subject to any necessary modifications).

(15) The Scottish Ministers must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the EIA report before they decide whether to proceed with the project and must not make any such decision within a period of 42 days commencing with the date of sending the report to the consultation bodies.

(16) In this section and sections 20D to 20G, paragraphs 7 and 13 of schedule 1 of this Act, and paragraph 9 of schedule 1A of this Act—

“the Directive” means Council [Directive 2011/92/EU\(5\)](#) on the assessment of the effects of certain public and private projects on the environment as amended by Council [Directive 2014/52/EU\(6\)](#);

“Annex” means an Annex to the Directive;

“relevant project” means a project for the construction of a new road where the completed works (together with any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps, or other such facilities or stores required during the period of construction)—

- (a) exceed 1 hectare in area; or
- (b) are situated in whole or in part in a sensitive area,

“sensitive area” has the meaning ascribed to that expression in regulation 2(1) of the Environmental Impact Assessment (Scotland) Regulations 1999(7); and

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

20D. Co-ordination of assessments

(1) Where the Scottish Ministers determine under section 20C(2) that a new road construction project should be made subject to an environmental impact assessment in accordance with the Directive and there is, in addition to that requirement for an environmental impact assessment to be carried out also a requirement to carry out a Habitats Regulation Assessment, the Scottish Ministers must, where appropriate, ensure that the Habitats Regulation Assessment and the environmental impact assessment are co-ordinated.

(2) In this section a “Habitats Regulation Assessment” means an assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994(8).

20E. Competent authority – avoidance of conflict of interest

(1) The Scottish Ministers must perform their duties under Part III of this Act in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are considering whether to proceed with a new road construction project they must implement within their organisation of administrative

(5) OJ L 26, 28.1.2012, p.1.

(6) OJ L 124, 25.4.2014, p.1.

(7) [S.S.I. 1999/1](#) as relevantly amended by the Environmental Impact Assessment (Scotland) Amendment Regulations 2002 ([S.S.I. 2002/324](#)), regulation 2(2)(d), the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 ([S.S.I. 2006/614](#)), regulation 3(1)(f) and the National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 ([S.S.I. 2010/460](#)), article 6(2).

(8) [S.I. 1994/2716](#) to which there are amendments not relevant to these Regulations.

competencies an appropriate separation between conflicting functions when performing their duties under the Directive.

20F. Projects with significant transboundary effects

- (1) This section applies if—
 - (a) it appears to the Scottish Ministers that a project to which section 20C(2) applies is likely to have a significant effect on the environment in another EEA State, or
 - (b) an EEA State the environment of which is likely to be significantly affected by such a project asks the Scottish Ministers for information about it.
- (2) The Scottish Ministers must give to the relevant EEA State—
 - (a) a description of the project together with any information available to them which suggests that it may have a significant effect on the environment in that EEA State,
 - (b) any information which they have about the nature of the decision which may be taken on the project,
 - (c) where they consider it appropriate, information about the environmental impact assessment procedure, and
 - (d) a reasonable period within which to indicate whether that EEA State wishes to participate in that procedure.
- (3) Subsection (2)(a) and (b) above must be complied with no later than the date of publication of the notice referred to in section 20C(5).
- (4) If the EEA State indicates that it wishes to participate in the environmental impact assessment procedure, the Scottish Ministers must give it—
 - (a) a copy of the EIA report where that has not already been given to that EEA State,
 - (b) the information required by subsection (10) of section 20C to be included in the notice under subsection (9) of that section, and
 - (c) any information about the environmental impact assessment procedure under this Part of this Act which they consider it appropriate to give and has not already been given to that EEA State.
- (5) The Scottish Ministers must also—
 - (a) arrange for the information which they have given to the EEA State to be made available within a reasonable time to—
 - (i) the authorities referred to in Article 6(1) of the Directive, and
 - (ii) members of the public in the EEA State who are likely to be concerned, and
 - (b) ensure that those authorities and the members of the public concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project.
- (6) In accordance with Article 7(4) of the Directive, the Scottish Ministers must—
 - (a) consult the EEA State concerned regarding in particular the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate those effects, and
 - (b) agree with that EEA State a reasonable period for responding to that consultation.
- (7) Where an EEA State has been consulted in accordance with subsection (6) above, the Scottish Ministers must, after deciding whether to proceed with the project to which the environmental assessment relates, inform the EEA State of the decision and give it copies of

the documents containing the matters referred to in paragraph 7(1B), or paragraph 13(1B) as the case may be, of schedule 1 of this Act.

20G. Monitoring measures

(1) Where the Scottish Ministers have decided to proceed with a project to construct a new road in relation to which an environmental impact assessment has been required, the Scottish Ministers 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 Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the project 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 Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.

(4) Where mitigation measures or monitoring measures are required by a condition imposed as part of the decision to proceed with the project the Scottish Ministers must take steps to ensure that those measures are implemented.

(5) In this section “monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the project.”.