

Scottish Statutory Instrument 2002 No. 324

The Environmental Impact Assessment (Scotland) Amendment Regulations 2002

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 324

TOWN AND COUNTRY PLANNING

ROADS AND BRIDGES

LAND DRAINAGE

The Environmental Impact Assessment (Scotland) Amendment Regulations 2002

Made 27th June 2002

Laid before the Scottish Parliament 28th June 2002

Coming into force 23rd September 2002

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[1] and section 40 of the Town and Country Planning (Scotland) Act 1997[2], and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1. - (1) These Regulations may be cited as the Environmental Impact Assessment (Scotland) Amendment Regulations 2002 and shall come into force on 23rd September 2002.

(2) In these Regulations-

"the Act" means the Town and Country Planning (Scotland) Act 1997;

"the principal Regulations" means the Environmental Impact Assessment (Scotland) Regulations 1999[3];

"environmental statement" means a statement-

(a) that includes such of the information referred to in Part I of Schedule 4 to the principal Regulations as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

(b) that includes at least the information referred to in Part II of Schedule 4 to the principal Regulations.

"ROMP application" means an application to a relevant planning authority to determine the conditions to which a planning permission is to be subject under-

(a) paragraph 14(2) of Schedule 8 to the Act (registration of old mining permissions);

(b) paragraph 9(1) of Schedule 9 to the Act (review of old mineral planning permissions); or

(c) paragraph 6(1) of Schedule 10 to the Act (periodic review of mineral permissions).

Amendment of the principal Regulations

2. - (1) The principal Regulations shall be amended as follows.

(2) In regulation 2 (interpretation)-

(a) for the definition of "relevant planning authority" substitute-

" "relevant planning authority" means the body to whom it falls, fell, or would, but for a direction under-

(a) section 46 of the Act (call-in of applications by the Scottish Ministers), fall to determine an application for planning permission; 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) to the Act, fall to determine a ROMP application;";

(b) after the definition of "reporter" insert-

"ROMP application" means an application to a relevant planning authority to determine the conditions to which a planning permission is to be subject under-

(a) paragraph 14(2) of Schedule 8 to the Act (registration of old mining permissions);

(b) paragraph 9(1) of Schedule 9 to the Act (review of old mineral planning permissions); or

(c) paragraph 6(1) of Schedule 10 to the Act (periodic review of mineral planning permissions);

"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;"

(c) for the definition of "screening direction" substitute-

" "screening direction" means a direction made by the Scottish Ministers as to whether development is EIA development;"; and

(d) for the definition of "sensitive area" substitute-

" "sensitive area" means any of the following:-

(a) land notified under section 28(1) (areas of special scientific interest) of the Wildlife and Countryside Act 1981[4];

(b) land to which section 29(3) (nature conservation orders) of the Wildlife and Countryside Act 1981 applies;

(c) a property appearing on the World Heritage List kept under article 11 (2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage[5];

(d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979[6];

(e) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994[7];

(f) an area designated as a Natural Heritage Area by a direction made by the Secretary of State or the Scottish Ministers under section 6(2) of the Natural Heritage (Scotland) Act 1991[8] or as a National Scenic Area by a direction made by the Secretary of State under section 262C of the Town and Country Planning (Scotland) Act 1972[9];

(g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000[10]."

(3) After regulation 28 (restriction of grant of permission by new simplified planning zone schemes or enterprise zone orders) insert-

" ROMP Applications

28A. - (1) These Regulations shall 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) Regulations 7(5) and (6), 8(5) and (6), 9(4) and (5), and 45 shall not apply.

(3) In Regulation 3(1) (prohibition on granting planning permission without consideration of environmental information)-

(a) for "these Regulations" substitute "the Environmental Impact Assessment (Scotland) (Amendment) Regulations 2002"; and

(b) for "determined in accordance with paragraph (3) of article 14 (time periods for decision) of the general development order" substitute "the date on which a ROMP application has been made which complies with the provisions of paragraphs 14(3) to (5) and 16(1) of Schedule 8, paragraph 9(2) of Schedule 9, or paragraph 6(2) of Schedule 10, to the Act".

(4) In regulation 7(4) (application made to a planning authority without an environmental statement)-

(a) for "three" substitute "six"; and

(b) after "the notification" insert ", or within such other period as may be agreed with the authority in writing,".

(5) In regulation 8(4) (application referred to the Scottish Ministers without an environmental statement)-

(a) for "three" substitute "six"; and

(b) after "the notification" insert ", or within such other period as may be agreed with the Scottish Ministers in writing,".

(6) In regulation 9(3) (appeal to the Scottish Ministers without an environmental statement)-

(a) for "three" substitute "six"; and

(b) after "the notification" insert ", or within such other period as may be agreed with the Scottish Ministers in writing,".

(7) In regulation 9(1) (appeal to the Scottish Ministers without an environmental statement) for "section 47 (right to appeal against planning decisions and failure to take such decisions)" substitute-

" paragraphs 17(1) and 17(2) of Schedule 8 to the Act, paragraph 11(1) of Schedule 9 to the Act, or paragraph 9(1) of Schedule 10 to the Act (right of appeal)".

(8) In regulation 16(1) (consultation where environmental statement received by the Scottish Ministers) for "section 47" substitute "ROMP application".

(9) In regulations 10(9) (scoping opinions of the planning authority) and 11(6) (scoping directions of the Scottish Ministers) for "an application for planning permission for" substitute "a ROMP application which relates to another planning permission which authorises".

(10) In regulation 13 (publicity for environmental statement) after paragraph (3) insert-

" (3A) Where an applicant submits an environmental statement to the authority in accordance with paragraph (1), the provisions of article 12 of, and Schedule 8 to, the general development order (procedure on receipt of applications) shall apply to a ROMP application under paragraph 14(2) of Schedule 8, paragraph 9(1) of Schedule 9 and paragraph 6(1) of Schedule 10 to the Act as they apply to a planning application falling within article 12 except that for the references in the notice in Schedule 8 of the general development order to "planning permission" there shall be substituted "determination of the conditions to which a planning permission is to be subject" and that notice shall refer to the relevant provisions of the Act pursuant to which the application is made."

(11) In regulation 14(2) (Consultation where environmental statement received by planning authority)-

(a) omit "an applicant for planning permission submits";

(b) insert after "in paragraph (1)", "is submitted"; and

(c) for "he" substitute "the applicant".

(12) In regulation 15 (copies of environmental statement for the Scottish Ministers) for "an application for planning permission" substitute "a ROMP application".

(13) For regulation 43 (Application to the Court of Session) substitute-

**" Application to the Court of Session
43. 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 to the Act, to action of the Scottish Ministers which is not within the powers of the Act shall be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3."**

(14) Regulation 46 (extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with) and the direction making power substituted by regulation 47(7) shall apply to ROMP development as they apply to development in respect of which a planning application is made.

(15) Where the Scottish Ministers or the relevant planning authority notifies the applicant or appellant, as the case may be, that-

(a) the submission of an environmental statement or additional information is required under regulations 7(2), 8(2), or 9(2) then such notification shall specify the date by which the environmental statement and compliance with regulation 13 is required; or

(b) a statement should contain additional information under regulation 19(1) then such notification shall specify the date by which that information is to be provided.

(16) The planning permission to which the ROMP application relates shall not authorise any minerals development (unless the Scottish Ministers have made a screening direction to the effect that the ROMP development is not an EIA development) if the applicant or the appellant does not-

(a) write to the relevant planning authority in accordance with regulation 7(4);

(b) write to the Scottish Ministers in accordance with regulation 8(4) or 9(3);

(c) submit an environmental statement and comply with regulation 13 by the date specified by the authority, or the Scottish Ministers in accordance with paragraph (15); or

(d) provide further information and comply with regulation 19 by the date specified by the authority or the Scottish Ministers in accordance with paragraph (15);

and the planning permission to which the ROMP application relates shall 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, at the end of the relevant period referred to in regulations 7(4), 8(4) or 9(3) or on the day following the date specified or agreed by the authority for the submission of the environmental statement or further information until the applicant or appellant has complied with all the provisions referred to in this paragraph which are relevant to the application or appeal in question.

(17) Particulars of the suspension of development referred to in paragraph (16) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

(18) Paragraph (16) shall not affect any development carried out under a planning permission before the date of suspension of that development.

(19) 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 to the Act shall 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 relevant 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 general development order made by virtue of that section, shall have effect with any necessary amendments as if references to applications for planning permission included ROMP applications under paragraph 9(1) of Schedule 9 and paragraph 6(1) of Schedule 10 to the Act; and

(ii) where the relevant planning authority is not the authority required to keep the register, the relevant 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 20 as applied by paragraph (1), and with paragraph (14).

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

(21) Where it falls to the relevant planning authority to determine an EIA application, the authority shall give written notice of their determination of the ROMP application within four months beginning with the date of receipt by the authority of the ROMP application or such extended period as may be agreed in writing between the applicant and the authority.

(22) For the purposes of paragraph (21) a ROMP application is not received by the authority until-

(a) a document referred to by the applicant as an environmental statement for the purposes of these Regulations;

(b) any documents required to accompany that statement; and

(c) any additional information which the authority has notified the applicant that the environment statement should contain,

has been received by the authority.

(23) Where paragraph (19)(a) applies-

(a) paragraph 17(2) of Schedule 8, paragraph 11(1) of Schedule 9 and paragraph 9(1) of Schedule 10, to the Act (right of appeal) shall 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 (21); and

(b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) shall 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 (21).

(24) 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, to 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, to the Act (right of appeal) as applied by paragraph (23)(b),

the time which has elapsed without the planning authority giving the applicant written notice of their determination in a case where the authority have notified an applicant in accordance with regulation 7(2) that the submission of an environmental statement is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question no account shall be taken of any period before the issue of the direction.

(25) Chapter 7 of these Regulations shall apply, in relation to any development or proposed development by a planning authority which would, if made by any person other than a planning authority, require the making of a ROMP application, subject to the following modifications:-

(a) regulation 22(6) shall be omitted;

(b) in regulation 25(1)-

(i) for "No planning permission" substitute "No determination of the conditions to which a planning permission is to be subject";

(ii) for "granted" substitute "made"; and

(iii) for "an application for planning permission" substitute "a ROMP application";

(c) in regulation 25(3) for "an application to them for planning permission" substitute "a ROMP application"; and

(d) in regulation 26, for "an application to them for planning permission" substitute "a ROMP application".

(4) In Schedule 2, paragraph 2, in entry 13 of the table, in column 1 under the heading "Paragraph in Schedule 1" for "2(a)", "2(b)", "7(a)", "7(b) and (c)", "8(a)" and "8(b)" substitute "2(1)", "2(2)", "7(1)", "7(2) and (3)", "8(1)" and "8(2)" respectively.

Transitional

3. The amendment of the principal Regulations set out at regulation 2 above shall apply to ROMP application made and not determined before the coming into force of these Regulations where the applicant has failed to supply an environmental statement within 6 months after the coming into force of these Regulations.

HUGH HENRY

Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh

27th June 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in Scotland, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L 175, 5.7.1985, p.40), as amended by Council Directive 97/11/EC (O.J. No. L 73, 14.3.1997, p.5) ("the Directives"), in relation to applications to planning authorities to determine the revised conditions to which an existing minerals planning permission should be subjected to under Schedules 8, 9 and 10 of the Town and Country Planning (Scotland) Act 1997 ("ROMP applications").

These Regulations amend the Environmental Impact Assessment (Scotland) Regulations 1999 (S.S.I. 1999/1) ("the 1999 Regulations") which implemented the Directives in relation to town and country planning, roads and drainage works in Scotland. The 1999 Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997.

Regulation 2(2) inserts definitions relating to ROMP applications into the 1999 Regulations. It also amends the interpretation of "sensitive area" to include National Parks.

The main amendment to the 1999 Regulations is the insertion of a new regulation 28A (ROMP applications) by regulation 2(3) of these Regulations. Regulation 2(3) applies the provisions of the 1999 Regulations to ROMP applications as they apply to applications for planning permission, subject to the modifications and additions set out below.

1. The main differences in the application of the 1999 Regulations to ROMP applications as opposed to planning applications are-

(a) the time period for writing to planning authorities or the Scottish Ministers on receipt of a notice that an environmental statement is required is six weeks or such other period as may be agreed instead of three weeks (see regulation 28A(4) and (6));

(b) a notice that an environmental statement or additional information is required must specify a period within which these are required and by which the applicant or appellant must have complied with the publicity provisions in

regulation 13 of the 1999 Regulations. The period may be extended by agreement in writing;

(c) if the applicant or appellant does not comply with the time periods in (a) or (b) above, then minerals development shall be suspended until these provisions are complied with (see regulation 28A(15) and (16)). The provisions in the 1999 Regulations providing for refusal of permission or that there is no duty to deal with the application on a failure by the applicant or appellant to comply with specified time periods do not apply to ROMP applications (see regulation 28A(2)).

2. Regulation 2(3) also applies the mineral planning provisions in the 1997 Act with certain amendments (see regulation 28A(19)-(24)). In particular-

(a) where a ROMP application is in respect of a mineral planning permission which authorises development which falls within Schedule 1 or Schedule 2 to the 1999 Regulations then the deemed consent provisions in the 1997 Act shall not operate to treat the authority as having determined the ROMP application unless a screening direction or screening opinion has been adopted or made to the effect that the development is not development falling within Schedule 1 to the 1999 Regulations or is not development falling within Schedule 2 to the 1999 Regulations which is likely to have significant effects on the environment ("EIA development") (see regulation 28A(19));

(b) where a planning authority has to determine a ROMP application which relates to a planning permission authorising EIA development which has yet to be carried out, they must give notice of their decision within 4 months or such extended period as is agreed (see regulation 28A(21));

(c) where paragraph 2(a) applies, the 1997 Act applies as if there were a right of appeal to the Scottish Ministers on the planning authority failing to give their decision within 4 months or such extended period as it agreed (see regulation 28A(23)).

3. The 1999 Regulations apply to ROMP applications by planning authorities as they apply to all other ROMP applications (regulation 28A(25)).

4. These Regulations will apply to all ROMP applications made after the date the Regulations come into force and to those applications made prior to the Regulations coming into force if an environmental statement has not been submitted within 6 months of the Regulations coming into force (see regulation 3).

5. Regulation 2(4) makes consequential drafting amendments to Schedule 2 to the 1999 Regulations.

Notes:

[1] 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.back

[2] 1997 c.8. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.back

[3] S.S.I. 1999/1.back

[4] 1981 c.69.back

[5] See Command Paper 9424.back

[6] 1979 c.46.back

[7] S.I. 1994/2716.back

[8] 1991 c.28.back

[9] 1972 c.52; section 6(9) of the Natural Heritage (Scotland) Act 1991 contained a saving provision for any areas which were designated as National Scenic Areas under section 262C of the Town and Country Planning (Scotland) Act 1972 as at the date of repeal of that section by section 27 of, and Schedule 11 to, that 1991 Act.back

[10] 2000 asp 10.back

ISBN 0 11061558 1

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Prepared 17 July 2002