

2007 No. 484

TOWN AND COUNTRY PLANNING

**The Environmental Impact Assessment (Scotland) Amendment
Regulations 2007**

Made - - - - - *30th October 2007*

Laid before the Scottish Parliament *31st October 2007*

Coming into force - - - *22nd November 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) (and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Scotland) Amendment Regulations 2007 and shall come into force on 22nd November 2007.

Amendment of the Environmental Impact Assessment (Scotland) Regulations 1999

2. The Environmental Impact Assessment (Scotland) Regulations^(b) are amended in accordance with regulations 3 to 8.

Amendment of regulation 2

3.—(1) Regulation 2(1) (interpretation) is amended as follows.

(2) At the appropriate place according to alphabetical order insert—

““application for multi-stage consent” means an application for approval of reserved matters;”;

““outline planning permission” has the meaning given in section 59 of the Act;”;

““project” means, in relation to the consideration of an application for multi-stage consent, the development granted planning permission by the outline planning permission in respect of which such application is made, taken together with any multi-stage consent previously granted in connection with such outline planning permission;”;

““reserved matters” has the meaning given in section 59 of the Act;” and

““supplementary information” has the meaning given in regulation 21E(4);”.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.S.I. 1999/1 as amended by S.S.I. 2002/324, S.S.I. 2003/331, S.S.I. 2004/332, S.S.I. 2006/614 and S.S.I. 2007/268. S.S.I. 2006/270 applies S.S.I. 1999/1 to the Crown with modifications.

(3) For the definition of “any other information” substitute–

““any other information” means any other substantive information relating to any environmental statement (including a revised or updated environmental statement) and provided by the applicant or appellant as the case may be;”.

(4) In the definition of “environmental information” for “the environmental statement, including any further information” substitute–

“any environmental statement (including a revised or updated environmental statement) including any further information, supplementary information”.

Prohibition on granting application for multi-stage consent without consideration of environmental information

4. After regulation 3 (prohibition on granting planning permission without consideration of environmental information) insert–

“Consideration of environmental information when determining an application for multi-stage consent

3A.—(1) The relevant planning authority or the Scottish Ministers must not grant an application for multi-stage consent in respect of EIA development unless they have first taken the environmental information into account, and they must state in their decision that they have done so.

(2) When granting an application for multi-stage consent in respect of EIA development the relevant planning authority or the Scottish Ministers may, having regard to the environmental information, impose conditions in relation to the project (whether in relation to matters arising from the application for multi-stage consent or from the outline planning permission in respect of which such application is made) for the purpose of avoiding, reducing or offsetting the effect of the project on the environment.

(3) For the purposes of paragraphs (1) and (2), “environmental information” shall in addition to any environmental information previously provided in respect of the project include–

- (a) any environmental statement or revised or updated environmental statement provided in connection with the application for multi-stage consent;
- (b) any supplementary information and any further information and any other information provided in connection with the application for multi-stage consent; and
- (c) any representations made in connection with the application for multi-stage consent by any body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the project.”.

Amendment of regulation 9

5. At the end of regulation 9 (appeal to the Scottish Ministers without an environmental statement) insert–

“(6) This regulation shall not apply where regulation 21D (appeal in respect of application for multi-stage consent to the Scottish Ministers without an environmental statement) applies.”.

Amendment of regulation 20

6. In regulation 20(1)(g) (availability of opinions, directions etc. for inspection) after “further information” insert “, supplementary information”.

Applications for multi-stage consent

7. In Part 2 after Chapter 6 (availability of directions etc. and notification of decisions) insert—

“CHAPTER 6A

APPLICATIONS FOR MULTI-STAGE CONSENT

Requests for screening opinions and screening directions

21A.—(1) Where a person is minded to make an application for multi-stage consent, regulations 5 (requests for screening opinions of the planning authority) and 6 (requests for screening directions of the Scottish Ministers) shall apply as if that person was a person who was minded to carry out development and the request related to the project.

(2) A screening opinion adopted by virtue of paragraph (1) shall supersede the terms of an earlier screening opinion or screening direction.

(3) A screening direction made by virtue of paragraph (1) shall supersede the terms of an earlier screening direction.

Application for multi-stage consent without environmental statement

21B.—(1) Where—

- (a) it appears to the relevant planning authority that an application for multi-stage consent which is before them for determination relates to outline planning permission for Schedule 1 development or Schedule 2 development;
- (b) the project in question has either—
 - (i) not been the subject of a screening opinion or screening direction; or
 - (ii) been the subject of a screening opinion or screening direction to the effect that it is not EIA development; and
- (c) no statement referred to by the applicant as an environmental statement for the purposes of these Regulations accompanied either the application for outline planning permission nor the application for multi-stage consent,

the planning authority must adopt a screening opinion in respect of the project within three weeks beginning with the date of receipt of the application.

(2) Where that application for multi-stage consent has already been the subject of a screening opinion or screening direction under regulations 5 or 6 as applied by regulation 21A to the effect that the project to which it relates is not EIA development the planning authority shall not be required to adopt a screening opinion under paragraph (1).

(3) The authority must, if they consider they have not been provided with sufficient information to adopt an opinion, notify in writing the applicant of the points on which they require additional information.

(4) A screening opinion adopted under paragraph (1) shall supersede the terms of an earlier screening opinion or screening direction.

(5) The Scottish Ministers may make a screening direction in relation to a project to which paragraph (1)(b)(ii) applies and any such screening direction shall supersede the terms of an earlier screening direction.

(6) Where the relevant planning authority adopt a screening opinion under paragraph (1) to the effect that the project to which the application for multi-stage consent relates is EIA development, regulation 7(2) to (7) shall apply to the application as if it were an EIA application, subject to the following modifications:—

- (a) for “application” in paragraph (3) substitute “application for multi-stage consent”;
- (b) for “the development” in paragraphs (3), (5), and (6) substitute “the project”;

- (c) for “the permission sought” in paragraph (5) substitute “the consent sought”;
- (d) paragraph (5)(a) is omitted;
- (e) in paragraph (6) for “planning permission” substitute, “application for multi-stage consent”; and
- (f) in paragraph (7)–
 - (i) for “application for planning permission” substitute, “application for multi-stage consent”; and
 - (ii) for “the proposed development” substitute, “the project”.

Application for multi-stage consent referred to the Scottish Ministers without environmental statement

21C.—(1) Where–

- (a) it appears to the Scottish Ministers that an application for multi-stage consent which has been referred to them for determination relates to outline planning permission for Schedule 1 development or Schedule 2 development;
- (b) the project in question has either–
 - (i) not been the subject of a screening opinion or screening direction; or
 - (ii) been the subject of a screening opinion or screening direction to the effect that it is not EIA development; and
- (c) no statement referred to by the applicant as an environmental statement for the purposes of these Regulations accompanied either the application for outline planning permission nor the application for multi-stage consent,

the Scottish Ministers must make a screening direction in respect of the development within three weeks beginning with the date of referral of the application.

(2) Where that application for multi-stage consent has already been the subject of a screening opinion under regulation 5 as applied by regulation 21A to the effect that the project to which it relates is not EIA development, the Scottish Ministers may make a screening direction under paragraph (1), but shall not be required to do so.

(3) The Scottish Ministers must, if they consider they have not been provided with sufficient information to make a screening direction, notify in writing the applicant of the points on which they require additional information, and may request the relevant planning authority to provide such information as they can on any of these points.

(4) A screening direction made under paragraph (1) shall supersede the terms of an earlier screening opinion or screening direction.

(5) Where the Scottish Ministers make a screening direction under paragraph (1) to the effect that the project to which the application for multi-stage consent relates is EIA development, regulation 8(2) to (6) shall apply to the application as if it were an EIA application and as if “the application for multi-stage consent” was substituted for “planning permission” in regulation 8(6).

Appeal in respect of application for multi-stage consent to the Scottish Ministers without an environmental statement

21D.—(1) Where on consideration of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) in respect of an application for multi-stage consent it appears to the Scottish Ministers that–

- (a) the relevant application relates to outline planning permission for Schedule 1 development or Schedule 2 development;
- (b) the project in question has either–
 - (i) not been the subject of a screening opinion or screening direction; or

- (ii) been the subject of a screening opinion or screening direction to the effect that it is not EIA development; and
- (c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

the Scottish Ministers must make a screening direction in respect of the development within three weeks beginning with the date of receipt of the appeal.

(2) Where that application for multi-stage consent has already been the subject of a screening opinion under regulation 5 as applied by regulation 21A to the effect that the project to which it relates is not EIA development, the Scottish Ministers may make a screening direction under paragraph (1), but shall not be required to do so.

(3) The Scottish Ministers must, if they consider they have not been provided with sufficient information to make a screening direction, notify in writing the appellant of the points on which they require additional information, and may request the relevant planning authority to provide such information as they can on any of these points.

(4) A screening direction made under paragraph (1) shall supersede the terms of an earlier screening opinion or screening direction.

(5) Where the Scottish Ministers make a screening direction under paragraph (1) to the effect that the project to which the application for multi-stage consent relates is EIA development, regulation 9(2) to (5) shall apply to the application as if it were an EIA application and as if “the application for multi-stage consent” was substituted for “planning permission” in regulation 9(5).

Application for multi-stage consent with environmental statement

21E.—(1) This regulation applies where—

- (a) an application for multi-stage consent in relation to a project in respect of which an environmental statement has already been submitted—
 - (i) is received by the relevant planning authority; or
 - (ii) is referred to the Scottish Ministers for determination; or
- (b) the Scottish Ministers have under consideration an appeal under section 47 in respect of an application for multi-stage consent where an environmental statement has already been submitted.

(2) The applicant or appellant may submit an environmental statement which has been revised or updated by the applicant or appellant.

(3) The Scottish Ministers or the relevant planning authority, when dealing with an application for multi-stage consent or appeal in respect of such an application, may in writing require the applicant or appellant to provide such supplementary information as may be specified to enable the application or appeal to be determined, or concerning any matter which is required to be dealt with in the environmental statement (either as originally submitted or as updated or revised).

(4) Where in the opinion of the Scottish Ministers or the relevant planning authority—

- (a) the applicant or appellant could (having regard in particular to current knowledge and methods of assessment) provide supplementary information about any matter mentioned in Schedule 4; and
- (b) that supplementary information is reasonably required to give proper consideration to the likely environmental effects of the project,

the Scottish Ministers or the relevant planning authority must notify the applicant or appellant in writing and the applicant or appellant must provide that supplementary information (and such supplementary information provided by the applicant or appellant is referred to in these Regulations as “supplementary information”).

(5) Where supplementary information is required in accordance with paragraph (4) regulations 14 and 16 to 18 shall apply to the submission of such supplementary information as they apply to the submission of an environmental statement (subject to any necessary modifications) and regulation 13 shall similarly apply subject to the substitution, in paragraph (1), of “in Schedule 6A” for “in Schedule 5”.

Scoping opinions of the planning authority

21F. Where a person is minded to make an application for multi-stage consent in respect of EIA development, regulations 10 (scoping opinions of the planning authority) and 11 (scoping directions of the Scottish Ministers) shall apply as if that person was a person who was minded to make an EIA application, subject to the following modifications:–

- (a) in regulation 10(1) the reference to “environmental statement” shall include any updated or revised environmental statement;
- (b) in regulations 10 and 11 references to the development are references to the project;
- (c) in regulation 10(5) after “regulation 5(1)” insert “as applied by regulation 21A”; and
- (d) in regulation 10(9) and 11(6) for “planning permission” substitute “multi-stage consent”.

Procedure to facilitate preparation of environmental statements

21G. Regulation 12 shall apply where a person intends to submit an environmental statement to a relevant planning authority or the Scottish Ministers in connection with an application for multi-stage consent subject to the following modifications–

- (a) in paragraph (2) for “development” substitute “project”; and
- (b) in paragraph 3(b) after “9(3)” insert, “21B, 21C or 21D as the case may be”.

Procedure for application for multi-stage consent

21H. Where an environmental statement (including a revised or updated environmental statement) is submitted in connection with an application for multi-stage consent, Part II of these Regulations shall apply in respect of such an environmental statement subject to the following modifications:–

- (a) in regulation 13(1)–
 - (i) for “an EIA application” substitute “an application for multi-stage consent in respect of EIA development”; and
 - (ii) in paragraph (a) after “the statement” insert “, the relevant outline planning permission and supporting documents”;
- (b) in regulation 14(1) for “an EIA application” substitute “an application for multi-stage consent in respect of EIA development” and in regulation 14(2) for “planning permission” substitute “multi-stage consent”;
- (c) in regulation 15 for “planning permission” substitute “multi-stage consent”;
- (d) in regulation 16 for “an EIA application” substitute “an application for multi-stage consent in respect of EIA development”;
- (e) in regulation 17 for “planning permission” substitute “multi-stage consent”;
- (f) in regulation 20–
 - (i) in paragraph (1)(e) at the end insert “as applied by regulations 21B(6), 21C(5) and 21D(5) as the case may be”;
 - (ii) in paragraph (2)(b)(i) after “11(2)” insert “as applied by regulation 21F”; and

- (iii) in paragraph (2) for “planning permission” substitute “multi-stage consent” and for “development” substitute “project”;
- (g) in regulation 21(1) and (2) for “an EIA application” substitute “an application for multi-stage consent in respect of EIA development”;
- (h) in regulation 40–
 - (i) for references to “ the development” substitute “ the project”;
 - (ii) in paragraph (1) for “an EIA application” substitute “an application for multi-stage consent for EIA development”; and
 - (iii) in paragraph (4) for “planning permission” substitute “multi-stage consent”;
- (i) in regulation 45(2) for “an EIA application” substitute “an application for multi-stage consent in respect of EIA development”; and
- (j) in Schedule 5 (notice under regulation 13) in the second paragraph of the right hand column, after “planning application” insert “(including, in the case of an application for multi-stage consent, the relevant outline planning permission and supporting documents)”.

Form of notice under regulation 13

8. After Schedule 6 (notice under regulation 13 as applied by regulation 19(2)) insert the Schedule set out in the Schedule to these Regulations.

St Andrew’s House,
Edinburgh
30th October 2007

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 8

“SCHEDULE 6A

Regulation 21E(5)

THE ENVIRONMENTAL IMPACT ASSESSMENT (SCOTLAND) REGULATIONS 1999

NOTICE UNDER REGULATION 13 AS APPLIED BY REGULATION 21E(5)

Notes

- (a) Insert address for location of the project
- (b) Insert name of planning authority or insert the Scottish Ministers as appropriate.
- (c) Insert name of applicant.
- (d) Insert description of proposed project.
- (e) Insert date of notification under Article 9(1) of the General Development Procedure Order.
- (f) Insert address of planning authority.
- (g) *Insert other address in the locality and, where available, website address at which the supplementary information may be inspected.
- (h) Insert address where copies of the supplementary information are available.
- (j) Insert cost of a copy of the supplementary information.
- (k) Address to be supplied by the Scottish Ministers.

Proposed project at (a) Notice is hereby given that supplementary information in relation to an environmental statement has been submitted to (b) by (c) relating to the application for approval of reserved matters in respect of (d) notified to you under Article 9(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 on (e)

Possible decisions relating to the application are:–

- (i) approval of reserved matters without conditions;
- (ii) approval of reserved matters with conditions;
- (iii) refusal of application for approval of reserved matters.

A copy of the supplementary information together with the environmental statement, the associated application for approval of reserved matters, the outline 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 28 days beginning with the date of this notice.

Copies of the supplementary information may be purchased from (h) at a cost of (j) .

Any person who wishes to make representations to (b) about the supplementary information should make them in writing within that period *to the Council at (f) .

*Delete where inappropriate.

*to the Scottish Ministers at (k)

Signed

*On behalf of

Date

”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They amend the Environmental Impact Assessment (Scotland) Regulations 1999 (“the 1999 Regulations”). The 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) and Council Directive 2003/35/EC (O.J. L 156, 25.6.03, p.17) in relation to applications for the approval of reserved matters made in connection with the grant of outline planning permission.

Regulation 3 introduces new definitions into and amends existing definitions in the 1999 Regulations. In particular regulations 3(3) and (4) amend the definition of “any other information” and “environmental information” to include a reference to a revised or updated environmental statement.

Regulation 4 introduces new regulation 3A into the 1999 Regulations. New regulation 3A(1) requires a planning authority or the Scottish Ministers to take environmental information into account before granting an application for multi-stage consent. An application for multi-stage consent is an application for approval of reserved matters. New regulation 3A(2) enables a planning authority or the Scottish Ministers when granting an application for multi-stage consent to impose conditions which relate to the project as a whole and not solely to the matters arising from the application. A definition of “project” is introduced by regulation 3(2).

Regulation 5 introduces a new paragraph (6) into regulation 9 of the 1999 Regulations. New regulation 21D which forms part of the new Chapter 6A introduced into the 1999 Regulations by regulation 7, makes provision in relation to appeals to the Scottish Ministers under section 47 of the Town and Country Planning (Scotland) Act 1997 (c.8). New paragraph (6) disapplies regulation 9 which has more general application in relation to appeals under section 47 where specific provision is made in new regulation 21D.

Regulation 6 amends regulation 20(1)(g) of the 1999 Regulations to provide that a copy of any relevant supplementary information is placed on the planning register by the planning authority. “Supplementary information” is described in new regulation 21E(4).

Regulation 7 introduces new Chapter 6A into the 1999 Regulations. New Chapter 6A makes detailed provision relating to applications for multi-stage consent which essentially mirror the provisions in the 1999 Regulations relating to applications for the grant of planning permission. New regulation 21A enables a person who is minded to make an application for multi-stage consent to request the planning authority to adopt a screening opinion under regulation 5 of the 1999 Regulations or to request the Scottish Ministers to make a screening direction under regulation 6 in relation to the project. New regulations 21B, 21C and 21D respectively make equivalent provisions for applications for multi-stage consent as regulations 7, 8 and 9 of the 1999 Regulations make in respect of applications for planning permission.

New regulation 21B requires the planning authority when considering an application for multi-stage consent to adopt a screening opinion in respect of the project if it appears to them to relate to an outline planning permission for Schedule 1 or Schedule 2 development and no environmental statement is submitted with the application if, either the project to which the application relates has not previously been the subject of a screening opinion or direction or, if it has been, such opinion or direction is to the effect that the project is not EIA development. New regulations 21B(4) and (5) provide that a screening opinion or direction under this regulation is to supersede an earlier opinion or direction. New regulation 21B(6) applies, with modifications regulations 7(2) to (7) where the planning authority adopt a screening opinion to the effect that the project in question is EIA development. The planning authority is thus obliged to require the

applicant for multi-stage consent to submit an environmental statement and the applicant may challenge this in accordance with the terms of regulation 7(4) to (7).

New regulations 21C and 21D, respectively, require the Scottish Ministers when considering an application for multi-stage consent referred to them for determination or which is the subject of an appeal under section 47 to make a screening direction in respect of the project if it appears to them to relate to an outline planning permission for Schedule 1 or Schedule 2 development and no environmental statement is submitted with the application if, either the project to which the application relates has not previously been the subject of a screening opinion or direction or, if it has been, such opinion or direction is to the effect that the project is not EIA development. New regulations 21C(4) and 21D(4) provide that a screening direction under these regulations is to supersede an earlier direction. New regulation 21C(6) applies, with modifications regulations 8(2) to (6) and new regulation 21D(5) applies, with modifications, regulations 9(2) to 9(5) where the Scottish Ministers make a screening direction to the effect that the project in question is EIA development. The Scottish Ministers are then obliged to require the applicant to submit an environmental statement.

New regulation 21E applies where an environmental statement has already been submitted in connection with the project. This regulation operates both to permit an applicant, or as the case may be appellant, to provide an updated or revised environmental statement and to enable, or in the circumstances set out in paragraphs (a) and (b) or paragraph (4) oblige, the planning authority or Scottish Ministers to require more information.

New regulation 21F applies regulation 10 (scoping opinions of the planning authority) and regulation 11 (scoping directions of the Scottish Ministers) with modifications to circumstances where a person is minded to make an application for multi-stage consent in respect of EIA development. New regulation 21G applies regulation 12 (procedure to facilitate preparation of environmental statements) with modifications to the circumstances where a person intends to submit an environmental statement in connection with an application for multi-stage consent. New regulation 21H applies Part 2 of the 1997 Regulations, with modifications set out in paragraphs (a) to (j), in circumstances where an environmental statement is submitted in connection with an application for multi-stage consent.

Regulation 8 inserts a new Schedule 6A into the 1999 Regulations.

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