
SCOTTISH STATUTORY INSTRUMENTS

2017 No.

ELECTRICITY

**The Electricity Works (Environmental Impact Assessment)
(Scotland) Regulations 2017**

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), [section 56 of the Finance Act 1973(b),] 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 of 13th December 2011 on the assessment of the effects of certain public and private projects on the environment(c).

PART 1

INTRODUCTORY

Citation, commencement, application and extent

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

(2) Subject to regulation 36, these Regulations apply in the case of—

- (a) an application under section 36 of the Electricity Act 1989(d) for consent to construct, extend or operate a generating station;
- (b) an application under section 37 of the Electricity Act 1989 for consent to install or keep installed an electric line above ground;
- (c) a direction under section 57(2) or (2ZA) of the 1997 Act;
- (d) an application for multi-stage consent; and
- (e) a variation application.

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- (a) 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 Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Functions relating to the assessment of the effects of certain electricity works projects on the environment are exercisable concurrently by the Scottish Ministers and Secretary of State by virtue of S.S.I. 1999/1750, article 3 and Schedule 2.
- (b) 1973 c.51, to which there are amendments not relevant to these Regulations. The functions conferred upon the Minister of the Crown under section 56 of the Finance Act 1973, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury consent was removed by section 55 of that Act.
- (c) O.J. L 26, 28.1.2012, p.1 amended by Directive 2014/52/EU.
- (d) The functions of the Secretary of State under sections 36 and 37 are transferred to the Scottish Ministers by virtue of the S.I. 2006/1040 and S.I. 1999/1750, respectively.

(3) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

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

“additional information” means—

- (a) supplementary information required in accordance with regulation 19(2); or
- (b) any other information provided by the developer which 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 condition included in an Electricity Act consent where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the development permitted by the Electricity Act consent may be begun;

“the consultation bodies” means—

- (a) the planning authority for the land where the development is situated;
- (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 21;

“developer” means—

- (a) in relation to—
 - (i) an application for Electricity Act consent, the applicant;
 - (ii) a variation application, the applicant,
 - (iii) to an application for multi-stage consent, the applicant; and
- (b) for the purposes of regulation 7(4) includes a prospective applicant

“development” means the carrying out of building, engineering or other operations in, on, over or under land or sea in pursuance of any application to which these Regulations apply and includes building, engineering and other operations ancillary to such operations;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment^(a);

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992^(b) as adjusted by the Protocol signed at Brussels on 17th March 1993^(c);

“EIA application” means an application for Electricity Act consent for EIA development;

“EIA development” means development which is either—

- (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;

“Electricity Act consent” means consent under section 36 or section 37 of the Electricity Act 1989;

(a) O J L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.

(b) Command Paper 2073.

(c) Command Paper 2183.

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

“environmental impact assessment” has the meaning given in regulation 4;

“environmental information” means any EIA report and any additional information, any representations made 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 development;

“exempt development” means development in respect of which the Scottish Ministers have made a direction under regulation 6(5);

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

“multi-stage consent” means an approval, consent or agreement given pursuant to an application for multi-stage consent;

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

“register” means a register kept pursuant to section 36(b) (registers of applications etc.) of the 1997 Act;

“Schedule 1 development” means development of a description set out in Schedule 1;

“Schedule 2 development” means development of a description set out in Schedule 2;

“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;

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

“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; and

“variation application” means an application made to the Scottish Ministers under section 36C(1) of the Electricity Act 1989 (variation of section 36 consents) to vary a consent under section 36 of that Act.

(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.

(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—

(a) references to a planning authority—

(i) in relation to development in, on, over or under land, are references to the planning authority within whose area the proposed development is situated; and

(ii) in relation to development in, on, over or under sea, are references to such planning authority or planning authorities as the Scottish Ministers consider appropriate in respect of the proposed development; and

(b) in relation to an application for multi-stage consent, “development” means as the case may be, the works to construct, extend or operate a generating station or the works to install an electric line above ground, taken together with any consent previously granted in connection with such consent.

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

(b) 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.

(5) In these Regulations, where an developer submits a revised, updated or supplementary EIA report (or a report which that person 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.

Prohibition on granting consent without an environmental impact assessment

3. The Scottish Ministers must not—

- (a) grant an Electricity Act consent for EIA development; or
- (b) direct that planning permission is deemed to be granted under section 57(2) of the 1997 Act 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 Scottish Ministers must take the environmental information into consideration.

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;
- (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 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 the Scottish Ministers' reasoned conclusion into the decision notice in accordance with regulation 21.

(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 effects of the proposed development 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 Directive 92/43/EEC and Directive 2009/147/EC;
- (c) land, soil, water, air and climate;
- (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 Electricity Act consent for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant consent for that development is made.

(6) This paragraph applies where the Scottish Ministers—

- (a) are minded to grant Electricity Act consent for EIA development, or to direct that planning permission for EIA development is deemed to be granted, subject to a condition that the all or part of the proposed development must not commence before certain matters in implementation of that consent, or planning permission, have been approved

by the Scottish Ministers, or the planning authority, as the case may be (“a multi stage condition”); and

- (b) 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 Electricity Act consent.

(7) The Scottish Ministers 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 an Electricity Act consent 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 assesses the environmental impact of the development and which includes (at least)—

- (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 direction is issued, the EIA report must be based on that scoping direction and must 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 under Union or national legislation, in preparing the environmental statement.

(5) In order to ensure the completeness and quality of the EIA report the developer must ensure that the EIA report is prepared by competent experts.

PART 2

DETERMINING WHETHER EIA IS REQUIRED

EIA Development

6.—(1) Subject to paragraphs (3) and (5), 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 making by the Scottish Ministers of a screening direction to the effect that the development is EIA development; or
- (b) if no screening direction has been made by the Scottish Ministers, the submission by the developer in relation to that development of a report referred to by the developer as an EIA report.

(3) 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.

(4) Where a direction is given under paragraph (3) the Scottish Ministers must—

- (a) send a copy of any such 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;
- (c) consider whether another form of assessment would be appropriate; and
- (d) 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.

(5) 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.

General provisions relating to screening

7.—(1) Where the Scottish Ministers have to decide under these Regulations whether Schedule 2 development is EIA development, they must take into account in making that decision—

- (a) such of the selection criteria set out in Schedule 3 as are relevant to the development; and
- (b) the available results of other assessments of the effects of the proposed development.

(2) Where the Scottish Ministers make a screening direction—

- (a) that 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 that conclusion; and
- (b) where 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) 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.

(4) 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 whom made the request.

(5) A later screening direction supersedes the terms of an earlier screening direction.

Procedures for a screening direction by the Scottish Ministers

8.—(1) A prospective applicant may request the Scottish Ministers to make a screening direction.

(2) A request for a screening direction under paragraph (1) must be accompanied by—

- (a) 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) such other information or representations as the person making the request may wish to provide or make, including a description of any features of the proposed development or proposed measures to avoid or prevent significant adverse effects on the environment.

(3) The description to be provided under paragraph (2)(c) must include 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—

- (a) the expected residues and emissions and the production of waste, where relevant;
- (b) the use of natural resources, in particular soil, land, water and biodiversity.

(4) The selection criteria set out in Schedule 3 and the available results of other relevant assessments of the effects of the proposed development on the environment must be taken into account, where relevant, when compiling the information referred to in paragraph (2).

(5) The Scottish Ministers, on receiving a request for a screening direction from a prospective applicant under paragraph (1) or from another person by virtue of regulation 7(3)(b), must consult the planning authority within whose area the land is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or planning authorities as they consider appropriate), as to the planning authority's views on whether the proposed development is EIA development unless the person requesting a screening direction has already conveyed that planning authority's views to the Scottish Ministers.

(6) Where a planning authority is consulted by the Scottish Ministers under paragraph (5) it must give its views to the Scottish Ministers within—

- (a) a period of three weeks beginning on the date on which it was so consulted; or
- (b) such longer period as the Scottish Ministers may determine.

(7) The Scottish Ministers, on receiving a request for a screening direction under paragraph (1) must, if they consider that they have not been provided with sufficient information to make a screening direction, notify in writing the person making the request of the points on which they require further information.

Screening directions – time period for decision

9.—(1) Following a request for a screening direction under regulation 8(1), the Scottish Ministers must make a screening direction—

- (a) within three weeks of the latest of—
 - (i) the date of receipt of the request by the Scottish Ministers;
 - (ii) where the Scottish Ministers have consulted a planning authority in accordance with regulation 8(5), the date by which the planning authority is required to give its views under regulation 8(6), (or, if earlier, the date by which the Scottish Ministers have received the views of the planning authority); or
 - (iii) 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 Scottish Ministers and the person who made the request; or
- (b) where notice is given under paragraph (2), 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.

(2) 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 the request, they may extend that period by notice in writing given to the person who made the request for a screening direction.

(3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to make a screening direction pursuant to the request.

(4) The date on which a request for a screening direction under regulation 8(1) is to be taken to have been made 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 regulation 8(2) and (3) is received by the Scottish Ministers.

PART 3

PROCEDURES CONCERNING APPLICATIONS FOR ELECTRICITY ACT CONSENT

Application without an EIA report

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

- (a) an application for Electricity Act consent which is before them for determination is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening direction; and
- (c) the application is not accompanied by a report referred to by the developer as 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 Electricity Act consent relates.

(3) If it appears to the Scottish Ministers that the application for Electricity Act consent 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 Electricity Act consent includes all the information referred to in regulation 8(2)(a) to (c), 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.

EIA application made without an EIA report

11.—(1) Where it appears to the Scottish Ministers that an application which is before them for determination is an EIA application and is not accompanied by a report referred to by the developer as an EIA report, the Scottish Ministers must notify the developer in writing that the submission of an EIA report is required.

(2) Notice under paragraph (1) must be given—

- (a) within three weeks beginning with the date on which the application is made; or
- (b) where the Scottish Ministers make a screening direction after the date on which the application is made, within seven days beginning with the date of making that screening direction.

(3) A developer who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 12 ask 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 application, and at the end of the three week period the Scottish

Ministers must inform the developer in writing that no further action is being taken on the application.

(5) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the application only by refusing Electricity Act consent if the developer does not submit an EIA report

PART 4

PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Request for scoping directions

12.—(1) A prospective applicant may request the Scottish Ministers to make a scoping direction.

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

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information, they must, within 3 weeks of receipt of the request under paragraph (1), notify the person making the request of the points on which they require further information.

(4) The Scottish Ministers must not make a scoping direction in response to a request under paragraph (1) until they have consulted—

- (a) the person who made the request;
- (b) the consultation bodies; and
- (c) 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.

(5) Before making a scoping direction, the Scottish Ministers must take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned;
- (c) the environmental features likely to be affected by the development; and
- (d) any representations made to them in response to consultation undertaken in accordance with paragraph (4).

(6) The Scottish Ministers must within [three/five] weeks of the last date by which any person consulted under paragraph (4) is required to make representations, or within such longer period [as may be agreed with the person making the request,] [as they may reasonably require] make a scoping direction and send a copy to the person who made the request under paragraph (1).

(7) The making of a scoping direction by the Scottish Ministers does not preclude the Scottish Ministers from requiring of the developer information in connection with any report that may be submitted by that person as an EIA report in connection with an application for Electricity Act consent for the same development as referred to in the scoping direction.

(8) Where a person has, at the same time as making a request for a screening direction under regulation 8(1), made a request under paragraph (1), and the Scottish Ministers have given a screening direction to the effect that the development is EIA development, the Scottish Ministers are to begin the procedures relating to scoping on the date on which they give the screening direction.

(9) The Scottish Ministers may at their own volition make a scoping direction and paragraphs (4) (other than subparagraph (a)), (5) and (7) apply in relation to such a scoping direction as they apply where a request is made under paragraph (1).

Procedure to facilitate preparation of EIA reports

13.—(1) Any prospective applicant who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice in writing to the Scottish Ministers under this paragraph.

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

(3) Where the Scottish Ministers receive notice under paragraph (1) [or a written statement made pursuant to regulation 11(3)] they must—

(a) notify—

(i) the consultation bodies; and

(ii) 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,

in writing of the name and address of the person who intends to submit an EIA report and of the duty imposed on those bodies by paragraph (4) to make information available to that person; and

(b) inform in writing the person who intends to submit an EIA report of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), any body notified in accordance with paragraph (3) must, if requested by the prospective applicant enter into consultation with the prospective applicant to determine whether the body has in its possession any information which that body or the prospective applicant considers to be relevant to the preparation of the EIA report, and if the body has any such information, the body must make any that information available to the prospective applicant.

(5) In relation to a body to which the Environmental Information (Scotland) Regulations 2004(a) apply, paragraph (4) does not require disclosure of information which the body may refuse to disclose or is prevented from disclosing under those Regulations.

(6) A reasonable charge reflecting the cost of making the relevant information available may be made by a body which makes information available in accordance with paragraph (4).

PART 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Publication of EIA report

14.—(1) Where, in relation to an EIA application the developer submits to the Scottish Ministers a report which the developer refers to as an EIA report the developer must, as soon as possible after provision of that report, publish a notice in accordance with this regulation.

(2) Notice under paragraph (1) must—

(a) describe the application and the proposed development to which the report relates;

(a)

- (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 report is available for inspection free of charge and the times and places at which, and the means by which, the report is available for inspection;
 - (d) state how copies of the report may be obtained;
 - (e) state the cost of a copy of the report;
 - (f) state how and by what date representations may be made (being a date not earlier than 30 days after the 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 the procedures requiring the publication of any additional information subsequently submitted by the developer and in accordance with which any person may make representations in relation to that additional information and the circumstances under the Act in which the Scottish Ministers may cause a public inquiry to be held into the application;
 - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by whom such decisions are to be taken.
- (3) Notice under paragraph (1) must be published—
- (a) on a website (“the application website”);
 - (b) in The Edinburgh Gazette; and
 - (c) in a newspaper circulating in the locality in which the development to which the report relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).

(4) A notice under paragraph (1) may be combined with any other notice which the developer may be required to publish in respect of the application.

(5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an EIA report to any person except that the copies served pursuant to regulation 16 are to be supplied free of charge.

Publicity of determinations and provision of information to the planning authority

15.—(1) The Scottish Ministers must send to the planning authority within whose area the land which is the subject of the proposed development is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or planning authorities as the Scottish Ministers consider appropriate) a copy of—

- (a) any screening direction; and
- (b) any scoping direction,

and the planning authority must take steps to ensure that such documents are made available for public inspection at all reasonable hours at the place where the register is kept.

(2) If an application for Electricity Act consent is made and any documents relating to it are, or have been, sent to a planning authority pursuant to paragraph (1), the planning authority must take steps to ensure that any such documents are placed on Part I of the register.

(3) If, in relation to an application for Electricity Act consent a planning authority receives a copy of any document or information mentioned in paragraph (4) the planning authority must—

- (a) ensure that a copy of such document or information is placed on Part I of the register until such time as the planning authority receives a copy of the decision notice in respect of the application in accordance with regulation 19(1)(b); and
- (b) on receiving a copy of the decision notice, ensure that a copy of the decision notice along with such documents or information mentioned in paragraph (1)(a) and (b) and (4) are placed on Part II of the register.

- (4) The documents and information are—
- (a) any report received by the planning authority pursuant to regulation 16(1)(a);
 - (b) any additional information received by the planning authority pursuant to regulation 20(4); and
 - (c) any notice received by the planning authority pursuant to regulation 20(4).

Procedure where Scottish Ministers receive an EIA report

16.—(1) Where a developer submits to the Scottish Ministers a report which the developer refers to as an EIA report relating to an application for an Electricity Act consent, the developer must—

- (a) send a copy of the report to the planning authority within whose area the land which is the subject of the proposed development is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or authorities as the Scottish Ministers may direct) and must inform the Scottish Ministers of the date on which the developer did so; and
- (b) if the developer sends a copy of the report to any consultation body (whether under subparagraph (a) or otherwise), the developer must—
 - (i) send with it a copy of the application and any plan submitted with it (unless those documents have already been sent to the consultation body in question);
 - (ii) inform the consultation body that representations may be made to the Scottish Ministers; and
 - (iii) inform the Scottish Ministers of the name of every consultation body on whom the developer has sent a copy of the report and the date on which the developer did so.

(2) Where the Scottish Ministers receive a report which the developer refers to as an EIA report in connection with an application for an Electricity Act consent they must, within two weeks of receiving the report—

- (a) give notice containing the information specified in paragraph (3) to—
 - (i) the consultation bodies to whom the developer has not sent a copy of the report; and
 - (ii) any other public body which in their opinion is likely to be concerned by the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies; and
- (b) give the developer notice of the names and addresses of the consultation bodies or bodies to whom notice is given under sub paragraph (a).

(3) The information is—

- (a) a brief description of the nature of the proposed development;
- (b) that an application for Electricity Act consent has been made in respect of that proposed development;
- (c) that an EIA report will be taken into consideration in determining the application;
- (d) that the developer is to provide a copy of that EIA report to the consultation body or body; and
- (e) how and by what date (being a date not earlier than 30 days after the EIA report is sent by the developer representations may be made to the Scottish Ministers.

(4) The developer must send a copy of the EIA report on any consultation body or body of whom the developer receives notice pursuant to paragraph (2)(b) and must inform the Scottish Ministers of the date on which the developer did so.

(5) The Scottish Ministers must not determine the application until the later of—

- (a) 14 days after the last date on which a copy of the EIA report was served in accordance with this regulation; and

- (b) the date stated on the notice published by the developer pursuant to regulation 14(1) as the date by which representations are to be made to the Scottish Ministers.

Copies of EIA report for the Scottish Ministers

17. Where a report which the developer refers to as an EIA report is provided in relation to an application for Electricity Act consent, the developer must provide the Scottish Ministers with three copies of the report.

Copies of environmental statement for the public

18.—(1) Where a report which the developer refers to as an EIA report is provided in relation to an application for Electricity Act consent, the developer must ensure that a reasonable number of copies of the report are available at the address named in the notices under regulation [14(1)] as the address at which copies may be obtained.

(2) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a report made available in accordance with paragraph (1).

PART 6

ADDITIONAL INFORMATION

Additional information and evidence relating to EIA reports

19.—(1) This regulation applies where the Scottish Ministers are dealing with—

- (a) an EIA application; or
- (b) an application for multi-stage consent in respect of EIA development.

(2) In order to ensure the completeness and quality of the environmental impact assessment report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about any matter mentioned in Schedule 4 which in the opinion of the Scottish Ministers 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 provided is referred to in these Regulations as “supplementary information”.

(4) The Scottish Ministers may in writing require the developer to provide such other information as may be specified to enable the application to be determined, or concerning any matter relating to the assessment of the environmental impact of the development.

(5) The Scottish Ministers may in writing require to be produced to them such evidence, in respect of any EIA report or additional information which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

Publication of additional information

20.—(1) Where additional information is provided to the Scottish Ministers, the developer must publish a notice in accordance with paragraph (2) containing the information specified in paragraph (3).

(2) A notice under paragraph (1) must be published in two successive weeks in—

- (a) the Edinburgh Gazette; and
- (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development); and
- (c) on a website (“the application website”).

- (3) Notice under paragraph (1) must—
- (a) describe the application and the proposed development;
 - (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 additional information is available for inspection and the times and places at which, and the means by which, the additional information is available for inspection;
 - (d) state how copies of the additional information may be obtained;
 - (e) state the cost of a copy of the additional information;
 - (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 the procedures under requiring the publication of any additional information subsequently submitted by the applicant and in accordance with which any person may make representations in relation to that additional information and [the circumstances under the Act in which the Scottish Ministers may cause a public inquiry to be held into the application;]
 - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by whom such decisions are to be taken.

(4) The developer must serve a copy of the additional information on any person on whom was served a copy of the EIA report under regulation 16(1) or (4) together with a copy of the notice mentioned in paragraph (1).

(5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the additional information to any person except that the copies served pursuant to paragraph (4) are to be supplied free of charge.

- (6) 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 Electricity Act 1989;
 - (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

NOTIFICATION OF DECISIONS

Decision notice

21.—(1) Where an EIA application is determined by 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 29, have been incorporated or otherwise addressed;
- (f) if the decision is to grant consent—
 - (i) any conditions to which the decision is subject;
 - (ii) the reasoned conclusion referred to in regulation 4(1)(d); and
 - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date; and
 - (iv) a description of 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; and
 - (v) a description of any monitoring measures required under regulation 22,
- (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 Scottish Ministers consider that the effects of the development are not 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 Scottish Ministers 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.

Monitoring measures

22.—(1) Where an EIA application is determined by the Scottish Ministers and the decision is to grant Electricity Act consent, 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 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 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 on the grant of an Electricity Act consent the Scottish Ministers must take steps to ensure that those measures are implemented.

(5) Where mitigation measures or monitoring measures are required by—

- (a) a condition subject to which any planning permission is deemed to be granted by virtue of a direction given under section 57(2) or (2ZA) of the 1997 Act; or
- (b) a planning obligation

the planning authority must take steps to ensure that those measures are implemented.

(6) In this regulation and in regulation 21, “monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed development including measures contained in—

- (a) a condition imposed on the grant of an Electricity Act consent;
- (b) a condition subject to which any planning permission is deemed to be granted by virtue of a direction given under section 57(2) or (2ZA) of the 1997 Act; or
- (c) a planning obligation.

Duties to inform the public of final decisions

23.—(1) Where an EIA application is determined by the Scottish Ministers they must—

- (a) give notice of their decision (“the decision notice”) to the developer; and
- (b) notify the consultation bodies and such other persons consulted in accordance with regulation 16(2)(a)(ii) of their decision by sending a copy of the decision notice to such bodies or persons.

(2) The planning authority must, as soon as reasonably practicable after receiving notification of the decision notice under paragraph (1)(b) make a copy of the decision notice available for public inspection—

- (a) at an office of the planning authority where the register may be inspected; and
- (b) [on the application website].

(3) The developer must, as soon as reasonably practicable after receiving notification of the decision notice under paragraph (1)(a) notify the public of the decision, and of where a copy of decision notice may be inspected, by publishing a notice in accordance with paragraph (4).

(4) Notice under paragraph (3)—

- (a) must contain—
 - (i) a description of the development;
 - (ii) the terms of the decision;
 - (iii) how a copy of the decision notice is available for inspection; and
- (b) must be published in two successive weeks in—
 - (i) The Edinburgh Gazette;
 - (ii) one or more newspapers circulating in the locality in which the proposed development is situated (or in relation to a proposed development situated in, on, over or under the sea, such newspapers as are likely to come to the attention of those likely to be affected by the proposed development); and
 - (iii) on the application website.

PART 8

APPLICATIONS FOR MULTI-STAGE CONSENT

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

24. The Scottish Ministers 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 Scottish Ministers have taken the environmental information into consideration.

Application for multi-stage consent where EIA report previously provided

25. Where—

- (a) an application for multi-stage consent which is before a the Scottish Ministers for determination relates to Electricity Act consent for EIA development;
- (b) a report referred to by the developer as an EIA report has previously been submitted by the developer in relation to the development;
- (c) it appears to the Scottish Ministers that the development may have significant effects on the environment that have not previously been identified; and
- (d) the developer has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the Scottish Ministers must seek supplementary information from the developer in accordance with regulation 19(2) in respect of such effects.

Application for multi-stage consent without EIA report

26.—(1) Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage consent which is before them for determination relates to Schedule 1 development;
- (b) the development in question has not been the subject of a screening direction; and
- (c) no report referred to by the developer as an EIA report has been submitted by the developer in relation to the development,

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

(2) Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage consent which is before them for determination relates to Schedule 2 development;
- (b) it appears to them that the development in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening direction or because the development has not been the subject of a screening direction); and
- (c) no report referred to by the developer as an EIA report has been submitted by the developer in relation to the development,

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

(3) Where the Scottish Ministers make a screening direction under paragraph (1) or (2) 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.

(4) The Scottish Ministers must notify the developer in accordance with paragraph (3) within three weeks beginning with the date of the screening direction.

(5) A developer who receives a notification under paragraph (1) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 12 ask the Scottish Ministers to make a scoping direction.

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

(7) Where the Scottish Ministers have given a notification under paragraph (3), they are to determine the application only by refusing it if the developer does not submit an EIA report.

Modification of regulations relating to application for multi-stage consent

27.—(1) These Regulations (other than Part 9) apply to an application for multi-stage consent as if references—

- (a) references to an application for Electricity Act consent 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 14(2)(e) after “the report” there were inserted “, the relevant Electricity Act consent”; and
- (d) in regulation 29(4)(b) the reference to “Electricity Act consent” where a reference to “multi-stage consent”.

PART 9

VARIATION APPLICATIONS

Application of Regulations to variation applications

28.—(1) These Regulations apply in relation to a variation application as they apply in relation to an application for consent under section 36 of the Electricity Act 1989 with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references (however worded)—
 - (i) to an application for a section 36 consent are to be treated as if they are references to a variation application; and
 - (ii) to the grant of consent are to be treated as references if they are to the variation of a section 36 consent;
- (b) regulation 14 is not to be read as requiring or permitting a notice under that regulation to be published before a notice under regulation 4(2)(c) of the Electricity Generating Stations (Applications for Variation of Consent) (Scotland) Regulations 2013(a) is published; and
- (c) Part 2 of Schedule 4 is to be read as requiring the inclusion in an environmental statement of—
 - (i) the main respects in which the developer considers that the likely significant effects on the environment of the proposed development would differ from those described in any environmental statement that was prepared in connection with the relevant section 36 consent; and
 - (ii) a non-technical summary of the differences referred to in sub-paragraph (i).

(3) In this regulation “section 36 consent” means a consent under section 36 of the Electricity Act 1989 to construct, extend or operate a generating station including any variations to that consent already made under section 36C(4) of that Act.

(a) S.S.I. 2013/304.

PART 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

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

29.—(1) 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,

the Scottish Ministers must—

- (i) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if they think fit, the information referred to in paragraph (3);
- (ii) publish the information in sub-paragraph (i) above in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
- (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in paragraph (1)(i) 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.

(3) Where an EEA State indicates, in accordance with paragraph (1)(iii), 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 (1)(i).

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

- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) and any additional information submitted by the developer to be made available, within a reasonable time, to the authorities referred to in 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 Electricity Act consent for the development is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.

(5) 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.

(6) Where an EEA State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a statement of—

- (a) the content of the decision and any conditions attached to it;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Projects in another EEA State likely to have significant transboundary effects

30.—(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

31.—(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) the requirement under regulation 17 to provide copies of an EIA report;
- (b) any requirement under regulation 28 including submitting information to an EEA State; and
- (c) any requirement under regulation 29 including submitting representations.

(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^(a), 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 (other than under regulation 17) 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

32. Where a developer, so informs the Scottish Ministers using electronic communications, the developer is deemed to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to a request for a screening direction, application or notice which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the request, application or notice; and

(a) 1971 c.80.

- (c) that the developer deemed agreement under this paragraph will subsist until the developer gives notice in accordance with regulation 40 that the developer wishes to revoke the agreement.

Withdrawal of consent to use of electronic communications

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

34. Subject to regulations 30 to 32, any notice or other document to be served or given under these Regulations may be served or given in a manner specified in section 109 of the Electricity Act 1989 (service of documents).

Access to review procedure before a court

35. 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(a) of the Directive and rights capable of being impaired for the purposes of Article 11(b) of the Directive.

Co-ordination of assessments

36.—(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 Scottish Ministers 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 61 of the Conservation of Habitats and Species Regulations 2010(a).

Competent authority – avoidance of conflict of interest

37.—(1) The Scottish Ministers 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 Scottish Ministers are to consider an application for EIA development made by themselves, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Revocation and savings

38.—(1) Subject to paragraphs (2) and (3), the 2000 Regulations(b) are revoked.

(a) S.I. 2010/490.

(b) S.S.I. 2000/320 as amended by S.S.I. 2008/246.

(2) The 2000 Regulations continue to have effect as they did immediately before 15th May 2017 in respect of an application referred to in regulation 1(2)(a), (b) or (d) where the developer has before that date—

- (a) submitted an environmental statement (as defined in the 2000 Regulations) in connection with that application; or
- (b) requested the Scottish Ministers under regulation 7(1) of the 2000 Regulations to adopt a scoping opinion in respect of the development to which the application relates.

(3) Parts 1 and 2 of the 2000 Regulations continue to have effect as they did immediately before 15th May 2017 in respect of request for a screening opinion under regulation 5(1) of the 2000 Regulations made to the Scottish Ministers before that date.

(4) These Regulations (other than this regulation) do not apply in respect of an application to which the 2000 Regulations continue to have effect by virtue of paragraph (2) or to a request for a screening opinion mentioned in paragraph (3).

(5) In this regulation, “the 2000 Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2017

SCHEDULE 1

Regulation 2(1)

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

Descriptions of development

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

(1) nuclear generating station 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);

(2) thermal generating station with a heat output of 300 megawatts or more;

(3) construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km; or

(4) any change to or extension (including a change in the manner or period of operation) of development listed in paragraphs (1) to (3) of 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)

DESCRIPTION OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 DEVELOPMENT”

The carrying out of development (other than development which is Schedule 1 development) to provide any of the following—

- (1) a generating station;
- (2) an electric line installed above ground,
 - (a) with a voltage of 132 kilovolts or more;
 - (b) in a sensitive area; or
 - (c) the purpose of which installation is to connect the electric line to a power station the construction or operation of which is EIA development; or
- (3) any change to or extension (including a change in the manner or period of operation) of development of a description listed in paragraphs (1) to (4) of Schedule 1 or in this Schedule where that development is already authorised, executed, or in the process of being executed, and the change or extension may have significant adverse effects on the environment.

For the purpose of this Schedule—

“generating station” has the same meaning as in the Electricity Act 1989;

“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;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(a), [regulation 8(1) of the Conservation of Habitats and Species Regulations 2010];
- (d) a World Heritage site;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(b);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997(c); and
- (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(d);

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

“World Heritage Site” means land 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(f).

(a) S.I. 1994/2716 relevantly amended by S.S.I. 2007/80.

(b) 1979 c.46.

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

(d) 2000 asp 10.

(e) 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).

(f) See Command Paper 9424.

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;
 - (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.

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 project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed development 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 (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental 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 development, 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 development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development 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 development.

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 Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation 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 points 1 to 8.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact and update, with amendments and savings, the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (“the 2000 Regulations”). These Regulations apply in relation to Scotland only.