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

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CONTENTS

PART 1

INTRODUCTORY

1. Citation and commencement
2. Interpretation
3. Prohibition on granting planning permission without an environmental impact assessment
4. Environmental impact assessment
5. Environmental Impact Assessment Report

PART 2

DETERMINING WHETHER EIA IS REQUIRED

6. EIA Development
7. General provisions relating to screening
8. Requests for screening opinion of the planning authority
9. Screening opinions – time period for decision
10. Requests for screening directions of the Scottish Ministers

PART 3

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

11. Application or request to review made to a planning authority without an EIA report
12. EIA application made to a planning authority without an EIA report
13. Application or Appeal to the Scottish Ministers without an EIA report
14. EIA application referred to the Scottish Ministers without an EIA report
15. Appeal to the Scottish Ministers without an EIA report
16. Review by the planning authority of an application without an EIA report

PART 4
PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

17. Scoping opinions of the planning authority
18. Scoping directions of the Scottish Ministers
19. Procedure to facilitate preparation of EIA reports

PART 5
PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT
ASSESSMENT REPORTS

20. Notification of EIA report
21. Publication of EIA report
22. Consultation where EIA report received by planning authority
23. Copies of EIA report for the Scottish Ministers
24. Consultation where EIA report received by the Scottish Ministers
25. Copies of EIA report for the public

PART 6
ADDITIONAL INFORMATION

26. Additional information and evidence relating to EIA reports
27. Publication of additional information

PART 7
AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

28. Availability of opinions, directions etc. for inspection
29. Decision notice
30. Monitoring measures
31. Duties to inform the public and the Scottish Ministers of final decisions

PART 8
APPLICATIONS FOR MULTI-STAGE CONSENT

32. Prohibition on granting an application for multi stage consent without an environmental impact assessment
33. Application for multi-stage consent where EIA report previously provided
34. Application for multi-stage consent without EIA report
35. Application for multi-stage consent referred or appealed to the Scottish Ministers without an EIA report
36. Modification of regulations relating to application for multi-stage consent
37. Application for multi-stage consent – simplified planning scheme, enterprise zone scheme and ROMP condition

PART 9
SPECIAL CASES

38. Simplified planning zone schemes or enterprise zone orders
39. ROMP applications

- 40. Applications for permission under section 242A
- 41. Marine fish farming

PART 10
DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

- 42. Development in Scotland likely to have significant effects in an EEA State other than the United Kingdom
- 43. Projects in another EEA State likely to have significant transboundary effects

PART 11
MISCELLANEOUS

- 44. Electronic communications – general
- 45. Electronic communications – deemed agreement
- 46. Withdrawal of consent to use of electronic communications
- 47. Service of notices etc.
- 48. Application to the Court of Session
- 49. Hazardous waste and material change of use
- 50. Extension of the period for an authority’s decision on a planning application
- 51. Directions as to whether development is EIA development
- 52. Access to review procedure before a court
- 53. Competent authority – avoidance of conflict of interest
- 54. Co-ordination of assessments
- 55. Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992
- 56. Amendment of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2008
- 57. Revocation and savings

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- SCHEDULE 1 — DESCRIPTIONS OF DEVELOPMENT FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 1 DEVELOPMENT”
 - SCHEDULE 2 — DESCRIPTIONS OF DEVELOPMENT AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 DEVELOPMENT”
 - SCHEDULE 3 — SELECTION CRITERIA FOR SCREENING SCHEDULE 2 DEVELOPMENT
 - SCHEDULE 4 — INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS
 - SCHEDULE 5 — FORM OF NOTICE UNDER REGULATION 17

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), section 40 of the Town and Country Planning (Scotland) Act 1997(c) 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(d).

PART 1

INTRODUCTORY

Citation and commencement

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

Interpretation

2.—(1) In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997 and references to sections without reference to the Act are references to sections of that Act;

“additional information” means—

- (a) supplementary information required in accordance with regulation 26(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) a condition imposed on planning permission granted on an application made under Part III of the Act or section 242A(e) where that approval, consent or agreement must be obtained before all or part of the development permitted by the planning permission may be begun;
- (b) a condition specified in a simplified planning zone scheme, where that approval, consent or agreement must be obtained before all or part of the development permitted by planning permission granted by the adoption or approval of that scheme may be begun;
- (c) an application for approval, consent or agreement required by a condition imposed on planning permission deemed to be granted by a direction made under section 57(2) or

(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). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(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) 1997 c.8. Section 40 was amended by the Water Environment and Water Services (Scotland) Act 2003 (asp 3), section 24(3). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(d) OJ L 26, 28.1.2012, p.1 amended by Directive 2014/52/EU.

(e) Section 242A was inserted by section 92 of the Planning and Compulsory Purchase Act 2004 (c.5) and amended by section 54(13) of the Planning etc. (Scotland) Act 2006 (asp 17).

(2ZA) or (2A) or (2B), where (in terms of the condition) that approval, consent or agreement must be obtained from the planning authority before all or part of the development permitted by the deemed planning permission may be begun;

- (d) a condition specified in an enterprise zone scheme, where that approval, consent or agreement must be obtained before all or part of the development permitted by the planning permission granted by that enterprise zone scheme may be begun; or
- (e) a ROMP condition (as defined below);

“application website” means a website maintained by the planning authority, or the Scottish Ministers, as the case may be, for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the CCS Directive” means Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No. 1013/2006(a);

“the consultation bodies” means—

- (a) any adjoining planning authority, where the development is likely to affect land in their area;
- (b) Scottish Natural Heritage;
- (c) Scottish Water;
- (d) the Scottish Environment Protection Agency; and
- (e) Historic Environment Scotland;

“developer” means—

- (a) in relation to—
 - (i) an application for planning permission, the applicant;
 - (ii) an appeal under section 47, the appellant
 - (iii) to an application for multi-stage consent, the applicant;
 - (iv) a review under section 43A(8), the applicant for planning permission or, as the case may be, for multi-stage consent; and
 - (v) in relation to a ROMP application, the applicant; and
- (b) for the purposes of regulation 7(6) includes a prospective applicant

“the Development Management Procedure Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(b);

“the Directive” means 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);

“decision notice” has the meaning given in regulation 29;

“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(d) as adjusted by the Protocol signed at Brussels on 17th March 1993(e);

“EIA application” means an application for planning permission for EIA development;

“EIA development” means development which is either—

- (a) Schedule 1 development; or

(a) OJ No L 140, 5.6.2009, p.114.

(b) S.S.I. 2013/155, as amended by S.S.I. [] and S.S.I. [].

(c) OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.

(d) Command Paper 2073.

(e) Command Paper 2183.

- (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;

“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);

“fish farming” means the breeding, rearing or keeping of fish, excluding shellfish;

“fish farm development” means the placing or assembly of any equipment in marine waters for the purposes of fish farming (“equipment” having the same meaning as in section 26(6))(b) and any material change of use of equipment so placed or assembled;

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

“marine waters” means the waters described in paragraphs (b) and (c) of subsection (6) of section 26;

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

“planning authority” means the body to whom it falls, fell, or would, but for a direction under—

- (a) section 46 (call-in of applications by the Scottish Ministers), fail to determine an application for planning permission; or
- (b) paragraph 19 of Schedule 8, paragraph 13 of Schedule 9 or paragraph 8 of Schedule 10 (reference of applications to the Scottish Ministers) to the Act, fail to determine a ROMP application;

“register” means a register kept pursuant to section 36(c) (registers of applications etc.);

“reporter” means a person appointed by the Scottish Ministers under Schedule 4 to the Act (determination of certain appeals by persons appointed by Scottish Ministers) to determine an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions), or to report to them on an application for planning permission referred to them under section 46 (call-in of applications by the Scottish Ministers) or which is the subject of an appeal under section 47;

“ROMP application” means an application to a planning authority to determine the conditions to which a planning permission is to be subject under—

- (a) paragraph 14(2) of Schedule 8 to the Act (registration of old mining permissions);
- (b) paragraph 9(1) of Schedule 9 to the Act (review of old mineral planning permissions); or
- (c) paragraph 6(1) of Schedule 10 to the Act (periodic review of mineral planning permissions);

“ROMP condition” means a condition to which a planning permission is subject (following the determination of a ROMP application) which requires approval, consent or agreement before all or any part of the development permitted by the planning permission (as so determined) may be begun or continued;

“ROMP development” means development which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made;

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

(b) Section 26(6) was amended by section 3(1)(c) of the Planning etc. (Scotland) Act 2006 (asp 17).

(c) 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.

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in Column 1 of Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of Column 2 of that table is respectively exceeded or met in relation to that development;

“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;

“scoping opinion” means the opinion of the planning authority 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;

“screening opinion” means a written statement of the opinion of the planning authority as to whether development is, or is not, EIA development;

“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);
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage^(b);
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979^(c);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A^(d); 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^(e);

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

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

(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, in relation to an application for multi-stage consent, “development” means the development granted planning permission by the

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

(b) See Command Paper 9424.

(c) 1979 c.46.

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

(e) 2000 asp 10.

(f) 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).

planning permission in respect of which such application is made, taken together with any multi-stage consent previously granted in connection with such planning permission.

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

(6) In these Regulations, references to the Scottish Ministers, as regards an application for planning permission or appeal in relation to which a reporter has been appointed, are to be construed as including references to that reporter.

(7) In these Regulations, references to a planning authority as regards—

- (a) determination of an application by a person appointed for that purpose by virtue of a scheme of delegation prepared under section 43A(1)(a) (schemes of delegation), are to be construed as including a reference to that person; and
- (b) an application being considered on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions), are to be construed as including a reference to the planning authority acting by virtue of that section.

(8) In these Regulations, references to the making of an application, or the date upon which an application is made, are to be construed in accordance with regulation 14(1) and (3) of the Development Management Procedure Regulations.

(9) These Regulations apply in respect of an application for retrospective planning permission made by virtue of section 33 as if—

- (a) references to a person who proposes to carry out development are references to person who made that application for planning permission;
- (b) references to proposed development (however phrased) are references to the development already carried out in respect of which such application is made; and
- (c) references to the land on which the proposed development would be carried out are references to the land on which that development has been carried out.

Prohibition on granting planning permission without an environmental impact assessment

3. The planning authority (or the Scottish Ministers, as the case may be), must not grant planning permission for EIA development unless an environmental impact assessment has been carried out in respect of that development and in carrying out such assessment the planning authority (or the Scottish Ministers, as the case may be), 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 planning authority (or the Scottish ministers, as the case may be) of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the planning authority (or the Scottish Ministers, as the case may be) 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 that reasoned conclusion into the decision notice in accordance with regulation 29.

(a) Section 43A was inserted by section 17 of the Planning etc. (Scotland) Act 2006 (asp 17).

(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 significant 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 planning permission for EIA development must identify the likely significant effects of the proposed development on the environment before a decision to grant planning permission for that development is made.

(6) This paragraph applies where the planning authority, or the Scottish Ministers, as the case may be—

- (a) are minded to grant planning permission for EIA development subject to a condition that the all or part of the proposed development to must not commence before certain matters in implementation of that planning permission have been approved by planning authority, or the Scottish Ministers, 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 planning permission.

(7) The planning authority (or the Scottish Ministers, as the case may be) 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 planning permission 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 opinion is issued, the EIA report must be based on that scoping opinion, and 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 legislation or national legislation, in preparing the EIA report.

(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) to (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 submission by the developer in relation to that development of a report referred to by the developer as an EIA report; or
- (b) the adoption by the planning authority of a screening opinion to the effect that the development is EIA development.

(3) A direction of the Scottish Ministers will determine for the purpose of these Regulations whether development is or is not EIA development.

(4) 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.

(5) 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.

(6) Where a direction is given under paragraph (5) 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.

General provisions relating to screening

7.—(1) Where a planning authority or 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 a planning authority adopt a screening opinion or the Scottish Ministers make a screening direction—

- (a) that screening opinion or 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 opinion or 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) The Scottish Ministers may direct that particular development of a description mentioned in Column 1 of the table in Schedule 2 is EIA development in spite of the fact that none of the conditions contained in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” in regulation 2(1) is satisfied in relation to that development.
- (5) As soon as possible after adopting a screening opinion the planning authority must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2) to the developer.
- (6) 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.
- (7) A later screening direction supersedes the terms of an earlier screening opinion or screening direction.

Requests for screening opinion of the planning authority

- 8.—**(1) A prospective applicant may request the planning authority to adopt a screening opinion.
- (2) A request for a screening opinion 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).

Screening opinions – time period for decision

9.—(1) A planning authority receiving a request for a screening opinion under regulation 8(1) must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion—

- (a) within—
 - (i) the period of 21 days beginning with the date of receipt of the request under paragraph (1); or
 - (ii) 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 planning authority 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 planning authority are to adopt a screening opinion.

(2) Where the planning authority consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development that it is not practicable for the planning authority to adopt a screening opinion within the period of 90 days beginning with the date of the request, the planning authority may extend that period by notice in writing given to the person who made the request.

(3) Notice under paragraph (2) must state the planning authority's justification for the extension and specify the date by which the planning authority are to adopt a screening opinion pursuant to the request.

(4) A planning authority must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the person making the request of the points on which they require further information.

(5) Where a planning authority—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (1); or
- (b) adopt an opinion to the effect that the development is EIA development,

the person who requested the opinion may request the Scottish Ministers to make a screening direction.

(6) The person may make a request pursuant to paragraph (5) even if the planning authority have not received the information which they have sought under paragraph (4).

(7) The date on which a request for a screening opinion under paragraph (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 opinion in accordance with regulation 8(2) is received by the planning authority.

Requests for screening directions of the Scottish Ministers

10.—(1) A person who pursuant to regulation 9(5) requests the Scottish Ministers to make a screening direction must submit with that request—

- (a) a copy of the request to the planning authority under regulation 8(1) and the documents which accompanied it;
- (b) a copy of any notification under regulation 9(4) which has been received and of any response;
- (c) a copy of any screening opinion received from the planning authority and of any accompanying statement of reasons; and
- (d) any representations that person wishes to make.

(2) When a person makes a request pursuant to regulation 9(5), that person must send to the planning authority a copy of that request and of any representations made to the Scottish Ministers, and that authority may, within 14 days of receiving those documents, provide the Scottish Ministers with their comments on the request and representations.

(3) Where the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction they—

- (a) must notify in writing the person making the request pursuant to regulation 9(5) of the points on which they require further information; and
- (b) may request the planning authority to provide such information as they can on any of those points.

(4) The Scottish Ministers must make a screening direction within—

- (a) the period of 21 days beginning with the date of receipt of a request pursuant to regulation 9(5) or such longer period, not exceeding 90 days beginning with the date of the request as they may reasonably require; or
- (b) where notice is given under paragraph (5), 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.

(5) 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.

(6) Notice under paragraph (5) 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.

PART 3

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

Application or request to review made to a planning authority without an EIA report

11.—(1) This regulation applies where it appears to the planning authority that—

- (a) an application for planning permission which is—
 - (i) before them for determination is a Schedule 1 application or Schedule 2 application; or
 - (ii) subject to review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) is a Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or 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 planning authority must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion in respect of the proposed development to which the application for planning permission relates.

(3) If it appears to the planning authority that the application for planning permission is a Schedule 2 application but the planning authority do not consider that the information submitted by the developer in connection with the application for planning permission includes all the information referred to in regulation 8(2)(a) to (c), the planning authority must seek from the developer such information as they consider remains to be provided by giving notice to the developer describing that information.

(4) The provisions of regulation 7(1), (2) and (5) and regulation 9(1) to (6) apply in relation to the adoption of such a screening opinion as they apply following a request made under regulation 8(1) as if the references in regulation 9 to date of receipt of the request were references to the later of—

- (a) the date on which, as the case may be—
 - (i) the application for planning permission is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the request for review is made in respect of the application for planning permission; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the planning authority.

EIA application made to a planning authority without an EIA report

12.—(1) Where an EIA application which is before a planning authority for determination is not accompanied by a report referred to by the developer as an EIA report, the planning authority 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 the period of 21 days beginning with the date on which the application is made; or
- (b) where—
 - (i) the planning authority adopt a screening opinion after the date on which the application is made, within seven days beginning with the date of adoption that screening opinion; or
 - (ii) the Scottish Ministers make a screening direction to the effect that the development is EIA development (and no notice under paragraph (1) has yet been given) within seven days beginning with the date on which the planning authority receive a copy of that screening direction.

(3) A developer receiving notice under paragraph (1) may, within the period of 21 days beginning with the date of the notice, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(4) If the developer does not write to the planning authority in accordance with paragraph (3) within that 21 day period, the application will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the that period and the deemed refusal will not give rise to—

- (a) an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions); or
- (b) review by virtue of section 43A(8) (right to require review of planning decisions and failure to take such decisions).

(5) A planning authority which has given notice in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application only by refusing the application if the developer does not submit an EIA report.

(6) A developer who requests a screening direction pursuant to paragraph (3)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application;
- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make,

and the provisions specified in paragraph (7) apply to a request under this regulation as they apply to a request made pursuant to regulation 9(5).

(7) The provisions are—

- (a) regulation 7(1), (2) and (6); and

- (b) regulation 10(2) to (5) and (8).

Application or Appeal to the Scottish Ministers without an EIA report

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

- (a) an application for planning permission which is before them for determination by virtue of—
 - (i) a direction under section 46 (call-in of applications by the Scottish Ministers); or
 - (ii) an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions),is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or 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 planning permission relates.

(3) If it appears to the Scottish Ministers that the application for planning permission 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 planning permission 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.

(4) The provisions of regulation 7(1) and (2) and regulation 10(3) to (6) apply in relation to the making of such a screening direction as they apply following a request made pursuant to regulation 9(5) as if the references in regulation 10 to the person making a request under regulation 9(5) were references to the developer and as if references to date of receipt of the request were references to the later of—

- (a) the date on which, as the case may be—
 - (i) the application for planning permission is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the appeal is made in respect of the application for planning permission; or
- (b) where notice is given to the developer under paragraph (3), the date on which the last of the items or information sought by such notice is received by the Scottish Ministers,

apply as if the referral of the application or appeal, as the case may be, were a request made by the developer pursuant to regulation 9(5).

EIA application referred to the Scottish Ministers without an EIA report

14.—(1) Where an application which has been referred to the Scottish Ministers 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 and must send a copy of that notification to the planning authority.

(2) The Scottish Ministers must notify the developer in accordance with paragraph (1) within the period of 21 days beginning with the date they received the application or such longer period as they may reasonably require.

(3) A developer who receives a notification under paragraph (1) may within the period of 21 days beginning with the date of the notification write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 18 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 21 day 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 planning permission if the developer does not submit an EIA report.

Appeal to the Scottish Ministers without an EIA report

15.—(1) Where an application for planning permission to which an appeal under section 47 relates 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 and send a copy of that notification to the planning authority.

(2) A developer who receives a notification under paragraph (1) may within the period of 21 days beginning with the date of the notification write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 18 ask the Scottish Ministers to make a scoping direction.

(3) If the developer does not write in accordance with paragraph (2), the Scottish Ministers are under no duty to deal with the appeal and at the end of the 21 day period they must inform the developer that no further action is being taken on the appeal.

(4) Where the Scottish Ministers have given a notification under paragraph (1), they are to determine the appeal only by refusing planning permission if the developer does not submit an EIA report.

Review by the planning authority of an application without an EIA report

16.—(1) Where an application for planning permission under review by virtue of section 43A(8) is an EIA application and is not accompanied by a report referred to by the developer as an EIA report, the planning authority must notify the developer in writing that the submission of an EIA report is required.

(2) A developer receiving a notification pursuant to paragraph (1) may, within the period of 21 days beginning with the date of the notification, write to the planning authority stating that the developer—

- (a) accepts their view and is providing an EIA report; or
- (b) is writing to the Scottish Ministers to request a screening direction.

(3) If the developer does not write to the planning authority in accordance with paragraph (2), the permission sought will, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the relevant 21 day period, and the deemed refusal will not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(4) A planning authority which has given a notification in accordance with paragraph (1) are to, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the application only by refusing planning permission if the developer does not submit an EIA report.

(5) A developer who requests a screening direction pursuant to paragraph (2)(b) must send to the Scottish Ministers with that request copies of—

- (a) the application for planning permission;
- (b) all documents sent to the planning authority as part of the application; and
- (c) all correspondence between the developer and the planning authority relating to the proposed development; and
- (d) any representations which the developer wishes to make,

and the provisions specified in regulation 12(7) apply to a request under this regulation as they apply to a request made pursuant to regulation 9(5).

PART 4

PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Scoping opinions of the planning authority

17.—(1) A prospective applicant may request the planning authority to adopt a scoping opinion.

(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 planning authority consider that they have not been provided with sufficient information to adopt a scoping opinion, they must within the period of 21 days beginning with the date 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 planning authority receiving a request under paragraph (1) must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the person who made the request;
- (b) the consultation bodies;
- (c) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
- (d) any other public body which the planning authority considers 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 adopting a scoping opinion, the planning authority must take into account—

- (a) the specific characteristics of the particular development;
- (b) the specific characteristics of development of the type concerned; and
- (c) the environmental features likely to be affected by the development.

(6) Subject to paragraph (6), the planning authority must within the period of 35 days beginning with the date of receipt of a request under paragraph (1) or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(7) Where—

- (a) a person has, at the same time as making a request for a screening opinion under regulation 8(1), made a request for an opinion under paragraph (1); and
- (b) the planning authority have adopted a screening opinion to the effect that the development is EIA development,

the planning authority must within the period of 35 days beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(8) Where a planning authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (6) or (7), the person who requested the opinion may under regulation 15 request the Scottish Ministers to make a scoping direction.

(9) Paragraph (8) applies even if the planning authority have not received the information which they have sought under paragraph (4)(b).

(10) Where a request has been made to the planning authority to adopt a screening opinion but no request has been made under paragraph (1), the planning authority may at their own volition adopt a scoping opinion and this regulation, other than paragraphs (6) to (9), applies in relation to such a scoping opinion as if a request had been made under paragraph (1).

(11) A planning authority which has adopted a scoping opinion in response to a request under paragraph (1) is not precluded from requiring of the person who made the request additional information in connection with any report that may be submitted by that person as an EIA report in connection with an application for planning permission for the same development as referred to in the request.

Scoping directions of the Scottish Ministers

18.—(1) The Scottish Ministers may make a scoping direction under this regulation either—

- (a) at their own volition; or
- (b) where requested to do so pursuant to—
 - (i) regulation 14(3);
 - (ii) regulation 15(2); or
 - (iii) regulation 17(8).

(2) A request made pursuant to regulation 14(3) or 15(2) must include—

- (a) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (b) any representations that the person making the request wishes to make.

(3) A request made pursuant to regulation 17(8) must include—

- (a) a copy of the relevant request to the planning authority under regulation 17(1);
- (b) a copy of any relevant notification under regulation 17(3) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(4) When a person makes a request pursuant to regulation 17(8) that person must send to the planning authority a copy of that request, but that copy need not include the matters mentioned in paragraph (3)(a) to (c).

(5) The Scottish Ministers must notify in writing the person making the request of any points on which they consider the information provided is insufficient to enable them to make a scoping direction and may request the planning authority to provide such information as they can on any of those points.

(6) Before making a scoping direction the Scottish Ministers must—

- (a) consult—
 - (i) the person who made the request;
 - (ii) the consultation bodies;
 - (iii) the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development; and
 - (iv) any other public body which the planning authority considers is likely to have an interest in the proposed development by reason of that body's specific environmental responsibilities or local and regional competencies; and
- (b) take into account the matters specified in regulation 17(5).

(7) The Scottish Ministers must, within the period of 35 days beginning with the date of receipt of that request or such longer period as they may reasonably require, make a direction and send a copy to the person who made the request and to the planning authority.

(8) Where the Scottish Ministers have made a scoping direction in response to a request under this regulation, neither they nor the planning authority are precluded from requiring of the person who made the request additional information in connection with any report that may be submitted by that person as an EIA report in connection with an application for planning permission for the same development as was referred to in the request.

Procedure to facilitate preparation of EIA reports

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

(2) A notice under paragraph (1) must include the information necessary to identify the land 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 planning authority or the Scottish Ministers receive notice under paragraph (1) or a written statement made pursuant to regulation 12(3)(a), 14(3), 15(2) or 16(2)(a), they must—

- (a) notify—
 - (i) the consultation bodies; and
 - (ii) any other public body which the planning authority considers 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), the planning authority and 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 planning authority or the body have in their possession any information which the prospective applicant or they consider relevant to the preparation of the EIA report, and the planning authority or body must make any such information available to the prospective applicant.

(5) In relation to a person to which the Environmental Information (Scotland) Regulations 2004(a) apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 10(1) of those Regulations; or
- (b) is prevented from disclosing by regulation 11(1) of those Regulations.

(6) In relation to a person to which the Environmental Information Regulations 2004 apply, paragraph (4) does not require disclosure of information which the person—

- (a) may refuse to disclose under regulation 12(1) of those Regulations; or
- (b) is prevented from disclosing by regulation 13(1) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by any person who makes information available in accordance with paragraph (4).

(a) S.S.I. 2004/520.

PART 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

Notification of EIA report

20.—(1) Where, in relation to an EIA application—

- (a) the developer submits to the planning authority or the Scottish Ministers, as the case may be, a report which the developer refers to as an EIA report; and
- (b) there are premises situated on the neighbouring land to which the notice can be sent,

the planning authority or the Scottish Ministers, as the case may be, must give notice to the owner, lessee or occupier of such premises in accordance with this regulation.

(2) Notice under paragraph (1) is to be—

- (a) in the form set out in, and completed in accordance with the notes in, Schedule 5 (or in a form substantially to the like effect); and
- (b) given by sending to such premises a notice addressed to “the Owner, Lessee or Occupier”.

(3) For the purposes of this regulation, “neighbouring land” has the same meaning as in regulation 3(1) of the Development Management Procedure Regulations.

Publication of EIA report

21.—(1) Where, in relation to an EIA application the developer submits to the planning authority or the Scottish Ministers, as the case may be, a report which the developer refers to as an EIA report the planning authority or the Scottish Ministers, as the case may be, must publish as soon as possible 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;
- (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 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 proposed development is situated.

(4) The developer must, at the time of submitting the report, pay the cost to be incurred by the planning authority or the Scottish Ministers, as the case may be, in arranging publication of the notice in accordance with paragraph (3)(b) and (c).

(5) The planning authority are to make copies of the report and other documents submitted with the application available for inspection—

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

Consultation where EIA report received by planning authority

22.—(1) Where a planning authority receive in connection with an EIA application (including an EIA application under consideration on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions)) a report which the developer refers to as an EIA report, they must—

- (a) place a copy of the report in Part I of the register together with a copy of the related application;
- (b) send to the Scottish Ministers a copy of the report;
- (c) send a copy of the report to—
 - (i) each consultation body; and
 - (ii) any other public body which the planning authority considers are likely to have an interest in the proposed development by reason of their specific environmental responsibilities or local and regional competencies,

consult them about it and inform how and by what date representations may be made (being a date not earlier than 30 days after the date on which the copy of the report was sent); and

- (d) send a copy of the report to the Health and Safety Executive where they would be required to be consulted under paragraph 3 or 4 of Schedule 5 to the Development Management Procedure Regulations in relation to the application for planning permission for the proposed development and consult them about it and inform them that they may make representations.

(2) Where a report such as is referred to in paragraph (1) is submitted to the planning authority in relation to an application for planning permission, the developer must let the planning authority have enough copies of the report to enable them to comply with paragraph (1)(c) and five additional copies.

(3) Where any person whom a planning authority are required to consult under this regulation considers that consultation with that person is not required in respect of any report relating to any case or class of case or relating to any specified area and so inform the planning authority in writing then the planning authority are not required to consult that person under this regulation.

Copies of EIA report for the Scottish Ministers

23. Where a report which the developer refers to as an EIA report is provided in relation to an application for planning permission which is directed to be referred to the Scottish Ministers for determination, or is to be the subject of an appeal to them, the developer must provide the Scottish Ministers with three copies of the report and, where relevant, any additional information unless (in the case of a referred application) the planning authority have already forwarded three copies when referring the application.

Consultation where EIA report received by the Scottish Ministers

24.—(1) This regulation applies where the Scottish Ministers are taking into consideration environmental information relating to an EIA application which is being determined by them by

virtue of section 46 or 47 and the EIA report has not previously been submitted to the planning authority.

(2) The provisions of regulation 22(1)(c) and (d), (2) and (3) apply to the Scottish Ministers as they apply to the planning authority.

(3) The Scottish Ministers must consult the planning authority for the area in which is situated the land to which the application relates about the report and must send them two copies of it.

(4) When the planning authority receive two copies of the report under paragraph (3), they must place one copy in Part I of the register together with a copy of the related application.

Copies of EIA report for the public

25.—(1) Where a report which the developer refers to as an EIA report is provided in relation to an application for planning permission, the developer must ensure that a reasonable number of copies of the report are available at the address named in the notices under regulation 21(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

26.—(1) This regulation applies where the Scottish Ministers or the planning authority, are dealing with—

- (a) an EIA application;
- (b) an application for multi-stage consent in respect of EIA development; or
- (c) an appeal in relation to an EIA application or 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 or the planning authority, as the case may be, must (having regard in particular to current knowledge and methods of assessment) seek from the developer supplementary information about a matter to be included in the EIA report in accordance with regulation 5(2) which in the opinion of the Scottish Ministers or the planning authority, as the case may be, 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 or the planning authority may in writing require the developer to provide such other information as may be specified to enable the application or appeal to be determined, or concerning any matter relating to the assessment of the environmental impact of the development.

(5) The Scottish Ministers or the planning authority 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

27.—(1) Where additional information is provided to the Scottish Ministers or the planning authority, regulations 20 to 22, 24 and 25 apply to the provision of such additional information as they apply to the submission of an EIA report as if references to the report were references to that additional information.

- (2) 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 Act;
 - (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

AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

Availability of opinions, directions etc. for inspection

28.—(1) Where particulars of a planning application are placed on Part I of the register, the planning authority must take steps to secure that there is also placed on that Part a copy of any relevant—

- (a) screening opinion;
- (b) screening direction;
- (c) scoping opinion;
- (d) scoping direction;
- (e) notification given under regulation 12(1), 14(1), 15(1) or 16(1);
- (f) direction under regulation 6(5);
- (g) EIA report and any additional information; and
- (h) statement of reasons accompanying any of the above.

(2) Where the planning authority—

- (a) adopt a screening opinion or scoping opinion; or
- (b) receive—
 - (i) a request under regulation 17(1) or 18(4); or
 - (ii) a copy of a screening direction, a scoping direction or a direction under regulation 6(4) or (5),

before an application for planning permission is made for the development in question, the planning authority must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.

Decision notice

29.—(1) Where an EIA application is determined by a planning authority or 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; and
- (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 42, have been incorporated or otherwise addressed;
- (f) if the decision is to grant planning permission—
- (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 planning authority or the Scottish Ministers, as the case may be, 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 30; and
- (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 planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, 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

30.—(1) Where an EIA application is determined by a planning authority or the Scottish Ministers and the decision is to grant planning permission, the planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, 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 planning authority or 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 the planning authority must take steps to ensure that those measures are implemented.

(5) In this regulation and in regulation 29, “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 planning permission; and
- (b) contained in a planning obligation.

Duties to inform the public and the Scottish Ministers of final decisions

31.—(1) Where an EIA application is determined by a planning authority, the planning authority must—

- (a) notify the Scottish Ministers and those bodies consulted in accordance with regulation 19(1)(c) and (d) of the decision by sending a copy of the decision notice to such bodies;
- (b) notify the public of the decision, and of where a copy of decision notice may be inspected, by publishing a notice in a newspaper circulating in the locality in which the land is situated, or by such other means as are reasonable in the circumstances; and
- (c) make a copy of the decision notice available for public inspection—
 - (i) at an office of the planning authority where the register may be inspected; and
 - (ii) on the application website.

(2) Where an EIA application is determined by the Scottish Ministers, they must inform those bodies consulted in accordance with regulation 22(1)(c) and (d) of the decision by sending a copy of the decision notice.

(3) The planning authority must, as soon as reasonably practicable after notification of the decision notice under paragraph (2)(a), comply with paragraph (1)(b) and (c) in relation to the decision so notified as if it were a decision of the planning authority.

(4) Notification in writing of a decision is deemed to have been given to a person for the purposes of this regulation where—

- (a) the planning authority or the Scottish Ministers, as the case may be, and the person have agreed that a decision and reasons required under this regulation to be given in writing may instead be accessed by that person via a website;
- (b) the decision is a decision and reasons to which that agreement applies;
- (c) the planning authority have published the decision on a website; and
- (d) the person is notified, in a manner for the time being agreed between that person and the planning authority, of—
 - (i) the publication of the decision and reasons on a website;
 - (ii) the address of the website; and
 - (iii) the place on the website where the decision and reasons may be accessed, and how they may be accessed.

PART 8

APPLICATIONS FOR MULTI-STAGE CONSENT

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

32. The planning authority (or the Scottish Ministers, as the case may be) 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 planning authority (or the Scottish Ministers, as the case may be) has taken the environmental information into consideration.

Application for multi-stage consent where EIA report previously provided

33. Where—

- (a) an application for multi-stage consent which is before a planning authority or the Scottish Ministers for determination relates to planning permission 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 planning authority or Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers must seek supplementary information from the developer in accordance with regulation 26(2) in respect of such effects.

Application for multi-stage consent without EIA report

34.—(1) Where—

- (a) it appears to the planning authority that an application for multi-stage consent which is before them for determination relates to planning permission for Schedule 1 development; and
- (b) the development in question has not been the subject of a screening opinion or 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 planning authority must adopt a screening opinion in respect of the development within the period of 21 days beginning with the date upon which the application was made.

(2) Where—

- (a) it appears to the planning authority that an application for multi-stage consent which is before them for determination (including determination following consideration of the application on review under section 43A(8) (right to require review of planning decisions and failure to take such decisions) relates to planning permission for 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 opinion or screening direction or because the development has not been the subject of a screening opinion or 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 planning authority must adopt a screening opinion in respect of the development within the period of 21 days beginning with the date upon which the application was made.

(3) Where the development to which the application for multi-stage consent relates has already been the subject of a screening opinion or screening direction to the effect that the development to which it relates is not EIA development, the planning authority may, but are not required to, adopt a screening opinion in respect of that development.

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

(5) A screening opinion adopted under paragraph (1) or (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) The Scottish Ministers may make a screening direction in relation to a development to which paragraph (1)(b)(ii) applies or, where there has been an earlier screening opinion or direction, to which paragraph (2), applies and any such screening direction supersedes the terms of the earlier screening direction.

(7) Where the planning authority adopt a screening opinion under paragraph (1) or (2) to the effect that the development to which the application for multi-stage consent relates is EIA development—

- (a) where the application is before the planning authority by virtue of a review under section 43A(8), regulation 16 applies to the application as if it were an EIA application; and
- (b) in other cases, regulation 12 applies as if the application were an EIA application.

Application for multi-stage consent referred or appealed to the Scottish Ministers without an EIA report

35.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of—

- (a) an application for multi-stage consent referred to them under section 46 (call-in of applications by the Scottish Ministers); or
- (b) an appeal in respect of an application for multi-stage consent under section 47 (right to appeal against planning decisions and failure to take such decisions).

(2) Where no report referred to by the developer as an EIA report has been submitted by the developer in relation to the development and either—

- (a) it appears to the Scottish Ministers that the application for multi-stage consent relates to planning permission for Schedule 1 development and the development in question has not been the subject of a screening opinion or screening direction; or
- (b) it appears to the Scottish Ministers that—
 - (i) the application for multi-stage consent relates to planning permission for Schedule 2 development and;
 - (ii) the development in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or screening direction or because the development has not been the subject of a screening opinion or screening direction),

the Scottish Ministers must make a screening direction in respect of the development within the period of 21 days beginning with the date of referral of the application or the date of the appeal, as the case may be.

(3) Where the development to which the application for multi-stage consent relates has already been the subject of a screening opinion or direction relates to the effect that the development to which it relates is not EIA development, the Scottish Ministers may make a screening direction, but are not required to do so.

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

(5) A screening direction made under paragraph (2) supersedes the terms of an earlier screening opinion or screening direction.

(6) Where the Scottish Ministers make a screening direction under paragraph (2) to the effect that the development to which the application for multi-stage consent referred to them under section 46 relates is EIA development, regulation 14 applies to that application as if it were an EIA application.

(7) Where the Scottish Ministers make a screening direction under paragraph (3) to the effect that the development to which an appeal under section 47 in respect of an application for multi-stage consent relates is EIA development, regulation 15 applies to the application as if it were an EIA application.

Modification of regulations relating to application for multi-stage consent

36.—(1) Parts 2, 4 to 7, 10 and 11 and regulation 12 (where applied by regulation 34(7)), regulation 14 (where applied by regulation 35(6)) and regulation 15 (where applied by regulation 35(7)) apply to an application for multi-stage consent as if—

- (a) references to an application for planning permission 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 22(1)(a) after “application” there were inserted “(and any earlier application relating to the development, in so far as not already on Part 1 of the register)”; and
- (d) in regulation 42(4)(b) the references to “planning permission” were a reference to “multi-stage consent”.

Application for multi-stage consent – simplified planning scheme, enterprise zone scheme and ROMP condition

37.—(1) Regulation 28 applies to an application for multi-stage consent which relates to—

- (a) planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme with the omission from paragraphs (1)(c) and (2)(c) of “either the application for planning permission or”; and
- (b) a ROMP condition as if the references in paragraphs (1)(c) and (2)(c) to the application for planning permission are references to the ROMP application.

(2) Regulation 29 applies to an application for multi-stage consent which relates to—

- (a) planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme with the omission in paragraph (2) of “either the application for planning permission or”; and
- (b) a ROMP condition as if the first reference in paragraph (2) to the application for planning permission is a reference to the ROMP application.

(3) Where the application for multi-stage consent relates to planning permission granted by the adoption or approval of a simplified planning scheme or by an enterprise zone scheme, the reference in regulation 30(2)(c) to the relevant planning permission is to be read as a reference to the simplified planning zone scheme or enterprise zone scheme, as the case may be.

PART 9

SPECIAL CASES

Simplified planning zone schemes or enterprise zone orders

38.—(1) This regulation applies to any—

- (a) simplified planning zone scheme adopted or approved;
- (b) order designating an enterprise zone made; and
- (c) modified scheme in relation to an enterprise zone approved,

after the commencement of these Regulations.

(2) No scheme, order or modified scheme to which this regulation applies may—

- (a) grant planning permission for Schedule 1 development; or
- (b) grant planning permission for Schedule 2 development unless that grant is subject to the prior adoption of a screening opinion or prior making of a screening direction that the particular proposed development is not EIA development.

ROMP applications

39.—(1) These Regulations apply to—

- (a) a ROMP application as they apply to an application for planning permission;

- (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- (c) a person making a ROMP application as they apply to an applicant for planning permission; and
- (d) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to the modifications and additions set out below.

(2) Regulations 12(4) and (5), 14(4) and (5), 15(3) and (4) and 50 do not apply.

(3) Regulation 12(3) applies as if—

- (a) for “21” there were substituted “42”; and
- (b) after “the notice” there were inserted “, or within such other period as may be agreed with the planning authority in writing,”.

(4) Regulation 14(3) applies as if—

- (a) for “21” there were substituted “42”; and
- (b) after “the notification” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing,”.

(5) Regulation 15(2) applies as if—

- (a) for “21” there were substituted “42”; and
- (b) after “the notification” there were inserted “, or within such other period as may be agreed with the Scottish Ministers in writing,”.

(6) Regulation 13 applies as if for paragraph (1)(a)(ii) there were substituted—

“(ii) an appeal under paragraphs 17(1) and 17(2) of Schedule 8 to the Act, paragraph 11(1) of Schedule 9 to the Act or paragraph 9(1) of Schedule 10 to the Act (right of appeal)”.

(7) Regulations 17(11) and 18(8) applies as if for “an application for planning permission for” there were substituted “a ROMP application which relates to another planning permission which authorises”.

(8) Regulation 22(2) applies as if for “application for planning permission” there were substituted “ROMP application”.

(9) Regulation 24(1) applies as if for “section 46 or 47” there were substituted “a ROMP application”.

(10) For the purposes of paragraph (1) for regulation 51 there is substituted—

“Application to the Court of Session

51. For the purposes of Part XI of the Act (validity), the references in section 239, as applied by paragraph 21(3) of Schedule 8, paragraph 16(4) of Schedule 9 or paragraph 9(4) of Schedule 10 to the Act, to action of the Scottish Ministers which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Scottish Ministers in contravention of regulation 3.”.

(11) Regulation 54 applies to ROMP development as it applies to development in respect of which a planning application is made.

(12) Where the Scottish Ministers or the planning authority notifies the developer, that—

- (a) the submission of an EIA report is required under regulations 12(1), 14(1), or 15(1) such notification must specify the date by which the EIA report and compliance with regulations 20 and 21 is required; or
- (b) additional information is required under regulation 26 such notification must specify the date by which that information is to be provided.

(13) The planning permission to which the ROMP application relates must not authorise any minerals development (unless the Scottish Ministers have made a screening direction to the effect that the ROMP development is not an EIA development) if the developer does not—

- (a) write to the planning authority in accordance with regulation 12(3);
- (b) write to the Scottish Ministers in accordance with regulation 14(3) or 15(2);
- (c) submit an EIA report and comply with regulations 20 and 21 by the date specified by the authority, or the Scottish Ministers in accordance with paragraph (12); or
- (d) provide additional information and comply with regulation 27 by the date specified by the authority or the Scottish Ministers in accordance with paragraph (12),

and the planning permission to which the ROMP application relates must not authorise any development consisting of the winning and working of minerals, or involving the depositing of mineral waste, except insofar as it imposes any restoration or aftercare condition, at the end of the relevant period referred to in regulations 12(3), 14(3) or 15(2) or on the day following the date specified or agreed by the authority for the submission of the EIA report or additional information until the developer has complied with all the provisions referred to in this paragraph which are relevant to the application or appeal in question.

(14) Particulars of the suspension of development referred to in paragraph (13) and the date that suspension ends must be entered in the appropriate part of the register as soon as reasonably practicable.

(15) Paragraph (13) does not affect any development carried out under a planning permission before the date of suspension of that development.

(16) Where it falls to—

- (a) a planning authority to determine a Schedule 1 or a Schedule 2 application, paragraph 14(6)(b) of Schedule 8, paragraph 9(8) of Schedule 9 or paragraph 6(7) of Schedule 10 to the Act do not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the planning authority has adopted a screening opinion or the Scottish Ministers have made a screening direction to the effect that the ROMP development in question is not EIA development;
- (b) a planning authority or the Scottish Ministers to determine a Schedule 1 or a Schedule 2 application—
 - (i) section 36 (register of applications, etc), and any provisions of the Development Management Procedure Regulations made by virtue of that section, have effect with any necessary amendments so that they apply to ROMP applications under paragraph 9(1) of Schedule 9 and paragraph 6(1) of Schedule 10 to the Act as they apply to applications for planning permission; and
 - (ii) where the planning authority is not the authority required to keep the register, the planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply with section 36 as applied by sub-paragraph (i), with regulation 28 as applied by paragraph (1), and with paragraph (11).

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

(18) Where it falls to the planning authority to determine an EIA application, the authority must give written notice of their determination of the ROMP application within four months beginning with the date upon which the ROMP application is made or such extended period as may be agreed in writing between the developer.

(19) For the purposes of paragraph (18) a ROMP application is not made until—

- (a) a document referred to by the developer as an EIA report;
- (b) any documents required to accompany that report; and
- (c) any additional information required under regulation 26,

has been received by the authority.

(20) Where paragraph (17)(a) applies—

- (a) paragraph 17(2) of Schedule 8, paragraph 11(1) of Schedule 9 and paragraph 9(1) of Schedule 10, to the Act (right of appeal) have effect as if there were also a right of appeal to the Scottish Ministers where the planning authority have not given written notice of their determination of the ROMP application in accordance with paragraph (18); and
- (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the four months or other period agreed pursuant to paragraph (18).

(21) In determining for the purposes of—

- (a) paragraph 14(6)(b) of Schedule 8, paragraph 9(8) of Schedule 9 and paragraph 6(7) of Schedule 10, to the Act (determination of conditions); or
- (b) paragraph 17(5) of Schedule 8, paragraph 11(2) of Schedule 9 and paragraph 9(2) of Schedule 10, to the Act (right of appeal) as applied by paragraph (20)(b),

the time which has elapsed without the planning authority giving the developer written notice of their determination in a case where the authority have notified a developer in accordance with regulation 12(1) that the submission of an EIA report is required and the Scottish Ministers have given a screening direction in relation to the ROMP development in question, no account must be taken of any period before the issue of the direction.

Applications for permission under section 242A

40.—(1) These Regulations apply to an application made (or to be made) to the Scottish Ministers under section 242A(a) (urgent Crown development) subject to the following modifications.

(2) References to “planning authority” are to be treated as references to “the planning authority or the Scottish Ministers, as appropriate”.

(3) Regulations 9(5) and (6), 12(3)(b), 17(8) and (9) and 22(1)(a) do not apply.

(4) In regulation 5 for paragraph (12) substitute—

“(12) The Scottish Ministers must send a copy of any screening direction to the planning authority for the area to which the application relates.”.

(5) Regulation 22 applies as if—

(a) in paragraph (1)(b) for “the Scottish Ministers” there were substituted “the planning authority for the area to which the application relates”;

(b) after paragraph (1) there were inserted—

“(1A) Where a planning authority receive a copy of the application and other documents referred to in paragraph (1)(b), they must place a copy of the relevant report together with a copy of the related application for public inspection at all reasonable hours in the place where the register is kept.”.

(6) For the purposes of paragraph (1) for regulation 28 there is substituted—

“Availability of opinions, directions, etc. for inspection

25.—(1) Where the Scottish Ministers—

(a) adopt a screening opinion or scoping opinion in relation to an application which may be made under section 242A;

(b) receive a request under regulation 14(1); or

(a) Section 242A was inserted into the Town and Country Planning (Scotland) Act 1997 (c.8) by section 92(1) of the Planning and Compulsory Purchase Act 2004 (c.5).

- (c) make a screening direction, scoping direction or direction under regulation 5(4), before the application is made for the development in question, the Scottish Ministers must send a copy of the opinion, request or direction to the planning authority for the area to which the application relates.

(2) Where the planning authority receive copies of an opinion, request or direction under paragraph (1) they must take steps to secure that the documents are made available for public inspection at all reasonable hours at an office of the planning authority where the register may be inspected.

(3) Documents made available under paragraph (2) must remain so available for a period of two years.”

(7) Regulation 31 applies as if—

(a) for paragraph (1) there were substituted—

“(1) Where an EIA application is determined or a draft decision is issued by the Scottish Ministers they must—

- (a) notify the planning authority for the area to which the application relates and the bodies consulted of the decision;
- (b) provide the planning authority with a statement containing—
 - (i) the content of the decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based including reasoned conclusions regarding the significant effects of the development on the environment and, if relevant, information about the participation of the public;
 - (iii) a description, where necessary, of the main measures to avoid, reduce and if possible, offset the major adverse effects of the development; and
 - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.”;

(b) for paragraph (2) there were substituted—

“(2) The planning authority must, as soon as reasonably practicable after receipt of a notification under paragraph (1)(a)—

- (a) make available for public inspection at an office of the planning authority where the register may be inspected a copy of the statement referred to in paragraph (1)(b); and
- (b) inform the public of the decision (and of where the statement referred to in paragraph (1)(b) may be inspected), by publishing in a newspaper circulating in the locality in which the land is situated or by other such means as are reasonable in the circumstances.”; and

(c) paragraph (3) were omitted.

(8) Regulation 35 applies to the determination of an application for multi-stage consent by the Scottish Ministers relating to a grant of planning permission under section 242A as it applies to the determination of an application for multi-stage consent referred to them.

Marine fish farming

41.—(1) These Regulations apply to an application for planning permission relating to fish farm development subject to the following modifications.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of “the consultation bodies” after paragraph (e) insert—

“(f) any district salmon fishery board in whose area the proposed development is to be situated; and

(g) the Scottish Ministers.”; and

(b) after the definition of “decision notice” insert ““district salmon fishery board” has the meaning given in section 43 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003(a)”.

(3) Regulation 8(2)(a) applies as if for “land” there were substituted “location of the development”.

(4) Regulation 17(2)(a) applies as if for “land” there were substituted “location of the development”.

(5) Regulation 20 does not apply and for the purposes of paragraph (1) for regulation 21 there is substituted—

“Publicity for EIA reports for fish farming

21.—(1) Where the planning authority or the Scottish Ministers receive an EIA report relating to an EIA application relating to fish farm development, they must publish as soon as possible in a local newspaper circulating in the locality in which the proposed development is to be situated and in The Edinburgh Gazette a notice stating—

- (a) that copies of the EIA report and other documents submitted with the application may, during the period of 28 days after first publication of the notice, be inspected in—
 - (i) a specified office of the planning authority, being an office of the relevant authority in the locality nearest to the proposed development; and
 - (ii) a specified Post Office being a Post Office in the locality nearest to the proposed development;
 - (iii) the address at which copies of the application and the EIA report may be obtained;
 - (iv) the cost of a copy of the EIA report;
 - (v) that representations may be made to the planning authority, at the office referred to in paragraph (1)(a)(i), within the period specified in paragraph (1)(a); and
 - (vi) the nature of possible decisions.

(2) Prior to the first publication of the notice referred to in paragraph (1) the relevant authority are to—

- (a) make available in the office of the planning authority referred to in paragraph (1)(a)(i); and
- (b) send to the Post Office referred to in paragraph (1)(a)(ii), the documents referred to in paragraph (1)(a).

(3) Where the planning authority or the Scottish Ministers are required to publish a notice in accordance with paragraph (1), the developer must pay the cost to be incurred by the relevant authority in arranging the advertisement at the time of submission of the EIA report.”

(6) Where an application for planning permission relates in part to fish farm development and in part to other development, the modifications specified in this regulation apply only for the purposes of the application to the extent that it relates to fish farm development.

(a) 2003 asp 15.

PART 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

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

42.—(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 planning permission 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 copy of the decision notice.

Projects in another EEA State likely to have significant transboundary effects

43.—(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

44.—(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) serving any notice under regulation 20;
- (b) any requirement under regulation 43 including submitting information to an EEA State; and
- (c) any requirement under regulation 44 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 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

45.—(1) Where a developer so informs the Scottish Ministers or, as the case may be, the planning authority, using electronic communications, the applicant or appellant 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 opinion, application, notice or appeal 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, notice or appeal; and
- (c) that the developer’s deemed agreement under this paragraph will subsist until the developer gives notice in accordance with regulation 49 that the developer wishes to revoke the agreement.

(a) 1971 c.80.

Withdrawal of consent to use of electronic communications

46. 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 or, as the case may be, to a planning authority 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.

47. Subject to regulations 47 to 49, any notice or other document to be served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).

Application to the Court of Session

48. For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2)(a) to action of the Scottish Ministers or a planning authority which is not within the powers of the Act are to be taken to extend, as the case may be, to—

- (a) a grant of planning permission by the Scottish Ministers or the planning authority in contravention of regulation 3; and
- (b) a grant of multi-stage consent by the Scottish Ministers or the planning authority in contravention of regulation 32.

Hazardous waste and material change of use

49. A change in the use of land or buildings to a use for a purpose mentioned in paragraph 9 of Schedule 1 involves a material change in the use of that land or those buildings for the purposes of subsection (1) of section 26 (meaning of “development”).

Extension of the period for an authority’s decision on a planning application

50.—(1) In determining, for the purposes of the provisions specified in paragraph (2), the time which has elapsed without the planning authority giving notice to the developer of their decision in a case where—

- (a) the planning authority have notified a developer in accordance with regulation 12(1) that the submission of an EIA report is required; and
- (b) the Scottish Ministers have given a screening direction in relation to the development in question,

no account is to be taken of any period before the issue of the screening direction.

(2) The provisions are—

- (a) section 43A(8)(c) (right to require a review on failure to determine an application);
- (b) section 47(2) (right to appeal against planning decisions and failure to take such decisions); and
- (c) regulation 26(2) (time periods for decision) of the Development Management Procedure Regulations.

(a) Section 239 was amended by section 19(4) of the Planning etc. (Scotland) Act 2006 (asp 17).

no account is to be taken of any period before the issue of the direction.

(3) Where it falls to an authority to determine an EIA application, regulation 26 (time periods for decision) of the Development Management Procedure Regulations has effect as if—

- (a) for the reference in paragraph (2)(b) of that regulation to two months there were substituted a reference to four months; and
- (b) the reference to “validation date” is a reference to the later of—
 - (i) the date on which the application is taken to have been made in terms of regulation 14 of the Development Management Procedure Regulations; or
 - (ii) the date on which an EIA report is submitted in respect of the application.

Directions as to whether development is EIA development

51. The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2, and of a class described in the direction, is EIA development for the purposes of these Regulations.

Access to review procedure before a court

52. 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.

Competent authority – avoidance of conflict of interest

53.—(1) The planning authority or the Scottish Ministers, as the case may be, 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 planning authority or the Scottish Ministers, as the case may be, are to consider an application for EIA development made by that body, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Co-ordination of assessments

54.—(1) Where in relation to EIA development there in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations there is also a requirement to carry out a Habitats Regulation Assessment, the planning authority (or the Scottish Ministers, as the case may be) 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 48 of the Conservation (Natural Habitats, &c.) Regulations 1994.

Amendment of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

55.—(1) Article 3 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(a) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph (8)—

- (a) for “the Environmental Impact Assessment (Scotland) Regulations 2011” substitute “the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017”; and

(a) S.I. 1992/223 relevantly amended by S.S.I. 1999/1.

- (b) after “EIA development” where it occurs in sub-paragraphs (a) and (b) insert “within the meaning of those Regulations”.
- (3) In paragraphs (8) and (9)—
 - (a) for “regulation 6” substitute “regulation 8”;
 - (b) for “regulation 5(10) or 7(4)” substitute “regulation 7(3) or 10(4)”;
 - (c) for “regulation 5(4)” substitute “regulation 6(4) or (5)”.
- (4) In paragraph (8A)—
 - (a) for “regulation 5(10) or 7(4)” substitute “regulation 7(3) or 10(4)”;
 - (b) for “regulation 6” substitute “regulation 8”.

Amendment of the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2008

56.—(1) The Development Management Procedure Regulations are amended in accordance with paragraphs (2) to (4).

- (2) In regulation 3 (interpretation)—
 - (a) after the definition of “dwellinghouse” insert—
 - ““EIA report” has the same meaning as in the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017;”;
 - and
 - (b) in the definition of “environmental statement” after “2011” insert “(as those Regulations had effect on 15 May 2017)”.
- (3) In regulation 5(2) (content of pre-application screening notice) for “2011” substitute “2017”.
- (4) In Schedule 2 (registers under section 36(1))—
 - (a) in paragraph 3(a) and in paragraph 4(c)(i) for “environmental statement” substitute “EIA report”;
 - (b) in paragraph 3(f) for “9(4)” substitute “12(4)” and for “2011” substitute “2017”; and
 - (c) in paragraph 4(e) for “regulation 5(11) or 45 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011” substitute—
 - “regulation 7(4) or 51 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017”.

Revocation and savings

- 57.**—(1) Subject to paragraphs (2) and (3), the 2011 Regulations are revoked.
- (2) The 2011 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of an application for planning permission where the developer has before that date—
 - (a) submitted an environmental statement (as defined in the 2011 Regulations) in connection with that application for planning permission; or
 - (b) requested the planning authority under regulation 14(1) of the 2011 Regulations to adopt a scoping opinion in respect of the development to which the application for planning permission relates.
- (3) Parts 1 and 2 of the 2011 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of request for a screening opinion under regulation 6(1) of the 2011 Regulations made to the planning authority before that date.
- (4) These Regulations (other than this regulation) do not apply in respect of an application for planning permission to which the 2011 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 2011 Regulations” means the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011.

St Andrew's House,
Edinburgh
2017

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 7(2)

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

Interpretation

In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)(a);

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15th November 1975(b); and

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is to be treated as development of the description mentioned in paragraph 2(2) of this Schedule.

Descriptions of development

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

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude-oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2.—(1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations 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).

3.—(1) Installations for the reprocessing of irradiated nuclear fuel.

(2) Installations designed—

- (a) for the production or enrichment of nuclear fuel;
- (b) for the processing of irradiated nuclear fuel or high-level radioactive waste;
- (c) for the final disposal of irradiated nuclear fuel;
- (d) solely for the final disposal of radioactive waste;
- (e) solely for the storage (planned for more than ten years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4.—(1) Integrated works for the initial smelting of cast-iron and steel.

(2) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

- (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;

(a) Command Paper 6614.

(b) Command Paper 6993.

- (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
- (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

6. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

- (a) for the production of basic organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;
- (e) for the production of basic pharmaceutical products using a chemical or biological process;
- (f) for the production of explosives.

7.—(1) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.

(2) Construction of motorways and express roads.

(3) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 kilometres or more in a continuous length.

8.—(1) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives^(a) under heading D9), or landfill of hazardous waste (that is to say, waste which is considered to be hazardous in accordance with Articles 3(2) and 7 of that Directive).

10. Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

12.—(1) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.

(2) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

13. Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2(6) of Council Directive 91/271/EEC concerning urban waste-water treatment^(b).

(a) OJ No L 312, 22.11.2008, p.3.

(b) OJ No L 135, 30.5.1991, p.40, last amended by Regulation (EC) No. 1137/2008 (OJ No L 311, 21.11.2008, p.1).

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres for the transport of—

- (a) gas, oil or chemicals;
- (b) carbon dioxide streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than—

- (a) 85,000 places for broilers or 60,000 places for hens;
- (b) 3,000 places for production pigs (over 30 kg); or
- (c) 900 places for sows.

18. Industrial plants for—

- (a) the production of pulp from timber or similar fibrous materials;
- (b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

19A. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

20. Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

21. Storage sites pursuant to the CCS Directive.

22. Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations referred to in this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

23. Any change to or extension of development listed in 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)

DESCRIPTIONS OF DEVELOPMENT AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 DEVELOPMENT”

1. In the table below—

“area of the works” includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“controlled waters” has the same meaning as in section 30A(1) of the Control of Pollution Act 1974(a); and

“floorspace” means the floorspace in a building or buildings.

2. The table below sets out the descriptions of development and applicable thresholds and criteria for the purposes of classifying development as Schedule 2 development.

TABLE

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
The carrying out of development to provide any of the following:—	
1. Agriculture and aquaculture	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the development exceeds 0.5 hectare.
(b) Water management projects for agriculture, including drainage projects, but excluding irrigation projects;	The area of the works exceeds one hectare.
(c) Intensive livestock installations (unless otherwise included in Schedule 1);	The area of floorspace exceeds 500 square metres.
(d) Intensive fish farming;	<p>(a) the installation resulting from the development is designed to produce more than 10 tonnes of dead fish weight per year;</p> <p>(b) where the development is situated in marine waters, the development is designed to hold a biomass of 100 tonnes or greater; or</p> <p>(c) the development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations.</p>

(a) Section 30A was inserted by the Water Act 1989 (c.15), Schedule 23, paragraph 4 and amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 29(2), and Schedule 4.

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(e) Reclamation of land from the sea.	All development.
2. Extractive industry	
(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1);	All development except the construction of buildings or other ancillary structures where the floorspace does not exceed 1,000 square metres.
(b) Underground mining;	
(c) Extraction of minerals by marine or fluvial dredging;	All development.
(a) Deep drillings, in particular—	(i) in relation to any type of drilling, the area of the works exceeds 1 hectare; or
(i) Geothermal drilling;	(ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waters.
(ii) Drilling for the storage of nuclear waste material;	
(iii) Drilling for water supplies;	
with the exception of drillings for investigating the stability of the soil.	
(b) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.
3. Energy industry	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(ba) Transmission of electrical energy by overhead cables (unless included in Schedule 1);	The area of the works exceeds 1 hectare; or the purpose of which installation is to connect the electric line to a power station subject to an EIA; an electric line installed above ground with a voltage of 132 kilovolts or more, the installation of which (or the keeping installed of which) will require a section 37 consent
(c) Surface storage of natural gas;	(i) the area of any building, deposit or structure exceeds 500 square metres; or
(d) Underground storage of combustible gases;	(ii) a building, deposit or structure is to be sited within 100 metres of any

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<p>(e) Surface storage of fossil fuels;</p> <p>(f) Industrial briquetting of coal and lignite;</p> <p>(g) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);</p> <p>(h) Installations for hydroelectric energy production;</p> <p>(i) Installations for the harnessing of wind power for energy production (wind farms);</p> <p>(j) installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations not referred to in Schedule 1.</p>	<p>controlled waters.</p> <p>The area of floorspace exceeds 1,000 square metres.</p> <p>(i) the area of floorspace exceeds 1,000 square metres; or</p> <p>(ii) the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993(a).</p> <p>The installation is designed to produce more than 0.5 megawatts.</p> <p>(i) the development involves the installation of more than 2 turbines; or</p> <p>(ii) the hub height of any turbine or height of any other structure exceeds 15 metres.</p> <p>All development.</p>
<p>4. Production and processing of metals</p> <p>(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;</p> <p>(b) Installations for the processing of ferrous metals—</p> <p>(i) hot-rolling mills;</p> <p>(ii) smitheries with hammers;</p> <p>(iii) application of protective fused metal coats;</p> <p>(c) Ferrous metal foundries;</p> <p>(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);</p>	<p>The area of floorspace exceeds 1,000 square metres.</p>

(a) 1993 c.12.

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<ul style="list-style-type: none"> (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process; (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines; (g) Shipyards; (h) Installations for the construction and repair of aircraft; (i) Manufacture of railway equipment; (j) Swaging by explosives; (k) Installations for the roasting and sintering of metallic ores. 	
<p>5. Mineral industry</p> <ul style="list-style-type: none"> (a) Coke ovens (dry coal distillation); (b) Installations for the manufacture of cement; (c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1); (d) Installations for the manufacture of glass including glass fibre; (e) Installations for smelting mineral substances including the production of mineral fibres; (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain. 	<p>The area of floorspace exceeds 1,000 square metres.</p>
<p>6. Chemical industry (unless included in Schedule 1)</p> <ul style="list-style-type: none"> (a) Treatment of intermediate products and production of chemicals; (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides; (c) Storage facilities for petroleum, petrochemical and chemical products. 	<p>The area of floorspace exceeds 1,000 square metres.</p> <p>(i) The area of any building or structure exceeds 0.05 hectare; or</p>

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
	(ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.
<p>7. Food industry</p> <p>(a) Manufacture of vegetable and animal oils and fats;</p> <p>(b) Packing and canning of animal and vegetable products;</p> <p>(c) Manufacture of dairy products;</p> <p>(d) Brewing and malting;</p> <p>(e) Confectionery and syrup manufacture;</p> <p>(f) Installations for the slaughter of animals;</p> <p>(g) Industrial starch manufacturing installations;</p> <p>(h) Fish-meal and fish-oil factories;</p> <p>(i) Sugar factories.</p>	The area of floorspace exceeds 1,000 square metres.
<p>8. Textile, leather, wood and paper industries</p> <p>(a) Industrial plants for the production of paper and board (unless included in Schedule 1);</p> <p>(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;</p> <p>(c) Plants for the tanning of hides and skins;</p> <p>(d) Cellulose-processing and production installations.</p>	The area of floorspace exceeds 1,000 square metres.
<p>9. Rubber industry</p> <p>Manufacturing and treatment of elastomer-based products.</p>	The area of floorspace exceeds 1,000 square metres.
<p>10. Infrastructure projects</p> <p>(a) Industrial estate development projects;</p> <p>(b) Urban development projects, including the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas;</p> <p>(c) Construction of intermodal transshipment</p>	The area of the development exceeds 0.5 hectare.

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
facilities and of intermodal terminals (unless included in Schedule 1);	
(d) Construction of railways (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in Schedule 1);	(i) The development involves an extension to a runway; or
	(ii) the area of the works exceeds 1 hectare.
(f) Construction of roads (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(g) Construction of harbours and port installations, including fishing harbours (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(h) Inland-waterway construction not included in Schedule 1, canalisation and flood-relief works;	The area of the works exceeds 1 hectare.
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1);	
(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;	
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1);	(i) the area of the work exceeds 1 hectare; or
	(ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.
(l) Installations of long-distance aqueducts;	
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	All development.
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1;	The area of the works exceeds 1 hectare.
(o) Works for the transfer of water resources between river basins not included in Schedule 1;	

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(p) Motorway service areas.	The area of the development exceeds 0.5 hectare.
<p>11. Other projects</p> <p>(a) Permanent racing and test tracks for motorized vehicles;</p> <p>(b) Installations for the disposal of waste (unless included in Schedule 1);</p> <p>(c) Waste-water treatment plants (unless included in Schedule 1);</p> <p>(d) Sludge-deposition sites;</p> <p>(e) Storage of scrap iron, including scrap vehicles;</p> <p>(f) Test benches for engines, turbines or reactors;</p> <p>(g) Installations for the manufacture of artificial mineral fibres;</p> <p>(h) Installations for the recovery or destruction of explosive substances;</p> <p>(i) Knackers' yards.</p>	<p>The area of the development exceeds 1 hectare.</p> <p>(i) The disposal is by incineration; or</p> <p>(ii) the area of the development exceeds 0.5 hectare; or</p> <p>(iii) the installation is to be sited within 100 metres of any controlled waters.</p> <p>The area of the development exceeds 1,000 square metres.</p> <p>(i) The area of deposit or storage exceeds 0.5 hectare; or</p> <p>(ii) a deposit is to be made or scrap stored within 100 metres of any controlled waters.</p> <p>The area of floorspace exceeds 1,000 square metres.</p>
<p>12. Tourism and leisure</p> <p>(a) Ski-runs, ski-lifts and cable cars and associated developments;</p> <p>(b) Marinas;</p> <p>(c) Holiday villages and hotel complexes outside urban areas and associated developments;</p> <p>(d) Theme parks;</p> <p>(e) Permanent camp sites and caravan sites;</p>	<p>(i) The area of the works exceeds 1 hectare; or</p> <p>(ii) the height of any building or other structure exceeds 15 metres.</p> <p>The area of the enclosed water surface exceeds 1,000 square metres.</p> <p>The area of the development exceeds 0.5 hectare.</p> <p>The area of the development exceeds 1 hectare.</p>

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>																																																				
(f) Golf courses and associated developments.	The area of the development exceeds 1 hectare.																																																				
13. Any change to or extension of development of a description mentioned in paragraphs 1 to 12 of Column 1 of this table where that development is already authorised, executed or in the process of being executed.	The thresholds and criteria in the corresponding part of Column 2 of this table applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.																																																				
14. Any change to or extension of development of a description mentioned in Schedule 1 (other than a change or extension falling within paragraph 23 of Schedule 1) where that development is already authorised, executed or in the process of being executed.	<p>The thresholds and criteria in Column 2 of the paragraph of this table indicated below applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.</p> <table border="0"> <thead> <tr> <th>Paragraph in Schedule 1</th> <th>Paragraph of this table</th> </tr> </thead> <tbody> <tr><td>1</td><td>6(a)</td></tr> <tr><td>2(1)</td><td>3(a)</td></tr> <tr><td>2(2)</td><td>3(g)</td></tr> <tr><td>3</td><td>3(g)</td></tr> <tr><td>4</td><td>4</td></tr> <tr><td>5</td><td>5</td></tr> <tr><td>6</td><td>6(a)</td></tr> <tr><td>7(1)</td><td>10(d) (in relation to railways) or 10(e) (in relation to airports)</td></tr> <tr><td>7(2) and (3)</td><td>10(f)</td></tr> <tr><td>8(1)</td><td>10(h)</td></tr> <tr><td>8(2)</td><td>10(g)</td></tr> <tr><td>9</td><td>11(b)</td></tr> <tr><td>10</td><td>11(b)</td></tr> <tr><td>11</td><td>10(n)</td></tr> <tr><td>12</td><td>10(o)</td></tr> <tr><td>13</td><td>11(c)</td></tr> <tr><td>14</td><td>2(e)</td></tr> <tr><td>15</td><td>10(i)</td></tr> <tr><td>16</td><td>10(k)</td></tr> <tr><td>17</td><td>1(c)</td></tr> <tr><td>18</td><td>8(a)</td></tr> <tr><td>19</td><td>2(a)</td></tr> <tr><td>20</td><td>6(c)</td></tr> <tr><td>21</td><td>3(j)</td></tr> <tr><td>22</td><td>3(j)</td></tr> </tbody> </table>	Paragraph in Schedule 1	Paragraph of this table	1	6(a)	2(1)	3(a)	2(2)	3(g)	3	3(g)	4	4	5	5	6	6(a)	7(1)	10(d) (in relation to railways) or 10(e) (in relation to airports)	7(2) and (3)	10(f)	8(1)	10(h)	8(2)	10(g)	9	11(b)	10	11(b)	11	10(n)	12	10(o)	13	11(c)	14	2(e)	15	10(i)	16	10(k)	17	1(c)	18	8(a)	19	2(a)	20	6(c)	21	3(j)	22	3(j)
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15. Development of a description mentioned in Schedule 1, undertaken exclusively or mainly	All development.																																																				

<i>Column 1</i>	<i>Column 2</i>
<i>Description of development</i>	<i>Applicable thresholds and criteria</i>
for the development and testing of new methods or products and not used for more than two years.	

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 3A(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 development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project 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 development 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 projects, 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 project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project 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 project.

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 paragraphs 1 to 8.

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

SCHEDULE 5

Regulation 20(2)

FORM OF NOTICE UNDER REGULATION 17

THE TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)
SCOTLAND REGULATIONS 2011
NOTICE UNDER REGULATION 17

The proposed development at (a) is subject to environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2016.

Notice is hereby given that [*an EIA report] [*additional information in relation to an EIA report] has been submitted to (b) by (c) relating to [* the planning application] [* an application for approval, consent or agreement imposed on planning permission] in respect of (d) [*notified to you under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 on (e)].

Possible decisions relating to the application are:—

- (a) approval of the application without conditions;
- (b) approval of the application with conditions;
- (c) refusal of the application.

A copy of the [*EIA report] [*additional information together with the EIA report], the associated application [*and relevant 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 [30] days beginning with the date of this notice.

Copies of the [*EIA report] [*additional information] may be purchased from (h) at a cost of (j).

Any person who wishes to make representations to (b) about the [*EIA report] [*additional information] should make them in writing within that period [*to the Council at (f)] [*to the Scottish Ministers at (k)].

Signed

*On behalf of

Date

Notes

- (d) Insert address for location of the development.
- (e) Insert name of planning authority or insert the Scottish Ministers as appropriate.
- (f) Insert name of applicant.
- (g) Insert description of proposed development.
- (h) Insert date of notification under the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013.
- (i) Insert address of planning authority.
- (j) Insert the application website address and any other address in the locality at which the EIA report and additional information may be inspected.

- (k) Insert address where copies of the additional information are available.
- (l) Insert cost of a copy of the additional information.
- (m) Address to be supplied by the Scottish Ministers

*Delete where inappropriate.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact and update, with amendments and savings, the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“the 2011 Regulations”). These Regulations apply in relation to Scotland only.

These Regulations implement, in relation to town and country planning in Scotland, Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (OJ [L 73, 14.3.1997, p.5]).

The Regulations impose procedural requirements in relation to the consideration of applications for planning permission under the Act, development by planning authorities and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in Schedule 1 requires EIA. Development in Column 1 of the table in Schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table (“Schedule 2 development”) requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the Regulations as “EIA development”.

Regulation 3 prohibits the grant of planning permission for EIA development unless an environmental impact assessment to be carried out and that the planning authority or the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. Regulation 32 makes equivalent provision in relation to the determination of an application for multi-stage consent.

Regulation 4 sets out what the environmental assessment process comprises and regulation 5 sets out the content of a EIA report.

Part 2 sets out procedures for determining whether development is EIA development. Regulation 6 sets out which events will establish that development is EIA development. Regulation 6 enables a request to be made to the planning authority for a “screening opinion” or to the Scottish Ministers for a “screening direction”. Regulation 7 makes general provision in relation to such an opinion or direction, including that any opinion or direction must be made by reference to the criteria in Schedule 3. Part 3 sets out procedures to be followed where the planning authority or Scottish Ministers are considering an application for planning permission for EIA development, or an appeal relating to such an application, without an EIA report.

Regulations 17 and 18 enable a person to seek an opinion from the planning authority (“a scoping opinion”) or the Scottish Ministers (a “scoping direction”) on the information to be included in an EIA report. The types of information which may be required are set out in Schedule 4. The planning authority or the Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion or scoping direction. Regulation 19 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the applicant.

Regulations 20 and 21 require publication of notice of the lodging of an EIA report to be given. Regulations 22 and 24 provide for consultation where an EIA report is received by the planning authority or the Scottish Ministers respectively. Regulations 23 and 25 are concerned with the provision of copies of an EIA report.

Regulation 26 contains procedures for the provision by the applicant of information additional to that contained in the EIA report. Regulation 27 provides that additional information provided by the applicant or the appellant as the case may be which becomes available after the initial gathering of information for an EIA report has taken place will also require to be publicised.

Regulation 28 provides for documents to be placed on the planning register or otherwise made available to the public. Regulation 29 requires planning authorities and the Scottish Ministers to

provide information about decisions taken following the consideration of environmental information in accordance with the Regulations.

Part 8 makes provision relating to applications for multi-stage consent which essentially mirror the provisions in the Regulations relating to applications for the grant of planning permission. Regulations 34 and 35 require the planning authority or the Scottish Ministers as the case may be to undertake screening in certain circumstances where considering an application for multi-stage consent. Regulation 36 modifies the application of the Regulations as they apply to applications for multi-stage consent. Part 9 makes provision for special cases.

Regulation 38 restricts the grant of planning permission by simplified planning zone schemes or enterprise zone orders. Regulations 39, 40 and 41 respectively modify the application of the Regulations as they apply to ROMP applications, applications made under section 242A of the Act and for planning permission for marine fish farms. Regulations 42 and 43 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulations 44 to 46 allow the use of electronic communication. Regulation 41 provides for the service of notices under the Regulations. Regulation 48 provides that a grant of permission in contravention of regulation 3 or 32 shall be treated, for the purpose of section 239 of the Town and Country Planning (Scotland) Act 1997, as an act which is not within the powers of that Act. Regulation 49 provides that beginning specified operations to dispose of hazardous waste constitutes “development” under section 26 of the 1997 Act. Regulation 50 extends the time allowed to a planning authority to consider an application for planning permission for EIA development. Regulation 51 enables the Scottish Ministers to make directions that certain classes of development are EIA development. Regulation 52 makes provision to extend access to justice to environmental non governmental organisations. Regulations 55 and 56 amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 / Regulation 57 revokes 2011 Regulations subject to some saving provisions.]