SCOTTISH STATUTORY INSTRUMENTS

2000 No. 320

ELECTRICITY

The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000

Made - - - -	*11th September 2000*
Laid before the Scottish Parliament - - - -	*14th September 2000*
Coming into force - -	*5th October 2000*

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(**1**) in relation to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART 1

GENERAL

Citation, commencement, application and extent

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 and shall come into force on 5th October 2000.

(2) These Regulations apply in the case of–

(a) any application under section 36 of the Electricity Act 1989(**2**) for consent to construct, extend or operate a generating station; or

(b) any application under section 37 of the Electricity Act 1989 for consent to install or keep installed an electric line above ground,

which is received by the Scottish Ministers on or after the date on which these Regulations come into force.

(3) These Regulations extend to Scotland only.

(**1**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1989 c. 29; the functions of the Secretary of State under sections 36 and 37 were transferred to the Scottish Ministers by virtue of The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 S.I.1999/1750, Schedule 1.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Electricity Act 1989 and references to sections are references to sections of the Act;

"the consultative bodies" means–

(a) the planning authority for the area where the land is situated;

(b) Scottish Natural Heritage(**3**); and

(c) where the application or proposed application relates to a section 36 consent, the Scottish Environment Protection Agency(**4**);

"development" means the carrying out of building, engineering or other operations in, on, over or under land or sea in pursuance of any application to which these Regulations apply;

"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(**5**) as adjusted by the Protocol signed at Brussels on 17th March 1993;(**6**)

"EIA development" means development which is–

(a) Schedule 1 development;

(b) Schedule 2 development which falls within regulation 3(2); or

(c) any other development which the Scottish Ministers determine is EIA development in accordance with regulation 3(4) or 6;

"electric line" has the same meaning as in section 64;

"environmental information" means the environmental statement prepared by the applicant, any representations duly made by any consultative body or any other person consulted pursuant to regulation 11(2)(a)(ii) and any representations duly made by any other person about the likely environmental effects of the proposed development;

"environmental statement" means a statement prepared in respect of development in accordance with regulation 4(1) (including any further information submitted by the applicant pursuant to a requirement under regulation 13(1));

"generating station" has the same meaning as in section 64;

"planning authority" has the same meaning as is assigned to "relevant planning authority" by paragraph (b) of paragraph 2(6) of Schedule 8 to the Act(**7**);

"register" means the register kept pursuant to section 36 of the Town and Country Planning (Scotland) Act 1997(**8**);

"Schedule 1 development" means development of a description set out in Schedule 1;

"Schedule 2 development" means development of a description set out in Schedule 2;

"scoping opinion" means a written statement of opinion of the Scottish Ministers given in accordance with regulation 7;

"screening opinion" means a written statement of opinion of the Scottish Ministers as to whether the development in question is EIA development;

(**3**) See section 1(1) of the Natural Heritage (Scotland) Act 1991 (c. 28).
(**4**) See section 20(1) of the Environmental Act 1995 (c. 25).
(**5**) Cm 2073.
(**6**) Cm 2183.
(**7**) Paragraph 2(6) of Schedule 8 to the Act was amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), Schedule 2.
(**8**) 1997 c. 8.

"section 36 consent" means a consent under section 36 to construct, extend or operate a generating station; and

"section 37 consent" means a consent under section 37 to install or keep installed an electric line above ground.

(2) In these Regulations any reference to a numbered regulation or Schedule is a reference to the regulation in or the Schedule to these Regulations bearing that number and any reference in a regulation to a paragraph is a reference to a paragraph of that regulation.

Prohibition of grant of consent without consideration of environmental information

3.—(1) The Scottish Ministers shall not grant a section 36 consent or a section 37 consent which relates to EIA development unless the requirements of regulation 4 have been satisfied.

(2) Schedule 2 development shall constitute EIA development if one of the events set out in paragraph (3) has occurred.

(3) The events referred to in paragraph (2) are–

(a) the submission by the applicant in relation to the proposed development of a document referred to by the applicant as an environmental statement for the purposes of these Regulations; or

(b) a determination by the Scottish Ministers (whether pursuant to a request for a screening opinion or regulation 6), having taken into account such of the criteria set out in Schedule 3 as are relevant to the development, that the application relates to EIA development as the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

(4) In spite of the fact that any development is not Schedule 1 development or Schedule 2 development, the Scottish Ministers may, having taken into account such of the criteria set out in Schedule 3 as are relevant to the development, make a determination (whether pursuant to a request for a screening opinion or regulation 6) that an application for a section 36 consent or a section 37 consent is for EIA development as the development is likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

Procedure for grant of consent where environmental statement is required

4.—(1) An applicant shall submit in relation to any application for a section 36 consent or a section 37 consent which relates to EIA development an environmental statement which includes–

(a) the information referred to in Part II of Schedule 4; and

(b) such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile taking into account the terms of any scoping opinion given.

(2) In relation to any application for a section 36 consent or a section 37 consent which relates to EIA development, the Scottish Ministers shall not grant the required consent unless–

(a) they are satisfied that the applicant has complied with his obligations under paragraph (1);

(b) they have taken into consideration the environmental information (including without limitation any views expressed by other EEA States under regulation 12) and state in their decision in relation to that consent that they have done so; and

(c) the procedures laid down in regulations 9, 11, 12, 13 and 14 have been followed in so far as they are applicable.

PART II

SCREENING

Procedures for a screening opinion by the Scottish Ministers

5.—(1) A person who is minded to apply for a section 36 consent or a section 37 consent for development which he considers may be EIA development may make a written request to the Scottish Ministers for a screening opinion.

(2) A request for a screening opinion shall be accompanied by–

(a) a plan sufficient to identify the site which is the subject of the proposed development;

(b) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment; and

(c) such further information or representations as the person making the request may wish to provide or make.

(3) The Scottish Ministers, on receiving a request for a screening opinion shall, if they consider that they have not been provided with sufficient information to give an opinion, within three weeks of the receipt of the request by them give notice to the person making the request of the particular points on which they require further information.

(4) Where the Scottish Ministers consider that they have sufficient information they shall consult the planning authority within whose area the land which is the subject of the proposed application is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or planning authorities as they consider appropriate), as to its views on whether the proposed development is EIA development unless the person requesting a screening opinion has already conveyed that authority's views to the Scottish Ministers.

(5) A planning authority shall give its views to the Scottish Ministers within three weeks of the date on which it was consulted under paragraph (4) (or such longer period as the Scottish Ministers may determine).

(6) When the Scottish Ministers consider that they have sufficient information they shall give a screening opinion within three weeks of whichever is the later of–

(a) the date of receipt of the request by the Scottish Ministers;

(b) the date by which they have received all the further information required by them under paragraph (3); and

(c) the date by which the planning authority is required to give its views under paragraph (5), (or, if earlier, the date by which the Scottish Ministers have received the views of the planning authority),

or within such longer period as may be agreed in writing with the person making the request.

(7) Where the Scottish Ministers determine that the application for consent is for EIA development, they shall provide with the screening opinion a written statement giving full reasons for their determination.

Application made without an environmental statement

6.—(1) Where an application is made to the Scottish Ministers for a section 36 consent or a section 37 consent but–

(a) the application is not accompanied by a document referred to by the applicant as an environmental statement; and

(b) the proposed development has not previously been the subject of a screening opinion,

the Scottish Ministers shall make a determination as to whether or not the application for consent is for EIA development within three weeks of whichever is the latest of–

(i) the date of receipt of the application by the Scottish Ministers;

(ii) the date by which they have received all the further information pursuant to a notice under regulation 5(3) as applied by paragraph (2); and

(iii) the date by which the planning authority is required to give its views under regulation 5(5) as applied by paragraph (2), (or, if earlier, the date by which the Scottish Ministers have received the views of the planning authority),

or within such longer period as may be agreed in writing with the applicant and give notice to the applicant in writing accordingly, giving full reasons for their determination.

(2) When making any determination under paragraph (1) the Scottish Ministers may have recourse to procedures laid down in regulation 5 as if the applicant had made a request for a screening opinion and in particular may require the applicant to provide the information set out in regulation 5(2), may require further information in accordance with regulation 5(3) and consult the relevant planning authority in accordance with regulation 5(4).

(3) The applicant may, within three weeks beginning with the date on which a notice is given pursuant to paragraph (1) that the proposed development is EIA development, write to the Scottish Ministers to inform them that he proposes to provide an environmental statement.

(4) If pursuant to paragraph (1) the Scottish Ministers determine that the proposed development is EIA development and the applicant takes no action in accordance with paragraph (3) the consent applied for shall be deemed to be refused at the end of the three week period referred to in paragraph (3).

PART III

PREPARATION OF AN ENVIRONMENTAL STATEMENT

Procedure for a scoping opinion by Scottish Ministers

7.—(1) A person who is minded to apply for a section 36 consent or a section 37 consent for development which is or may be EIA development may ask the Scottish Ministers to state in writing their opinion as to the information to be provided in the environmental statement (a "scoping opinion").

(2) A request for a scoping opinion shall be accompanied by–

(a) a plan sufficient to identify the site which is the subject of the proposed development;

(b) a brief description of the nature and purpose of the proposed development and of its possible effects on the environment; and

(c) such further information or representations as the person making the request may wish to provide or make.

(3) The Scottish Ministers, on receiving a request for a scoping opinion shall, if they consider that they have not been provided with sufficient information to give an opinion, within three weeks of the receipt of the request by them give notice to the person making the request of the particular points on which they require further information.

(4) When the Scottish Ministers consider that they have sufficient information they shall consult–

(a) the person making the request under paragraph (1);

(b) the appropriate consultative bodies; and