SCOTTISH STATUTORY INSTRUMENTS

1999 No. 1

TOWN AND COUNTRY PLANNING
ROADS AND BRIDGES
LAND DRAINAGE

The Environmental Impact Assessment (Scotland) Regulations 1999

Made - - - -	*8th July 1999*
Laid before the Scottish Parliament - - - -	*9th July 1999*
Coming into force - -	*1st August 1999*

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(**1**) and section 40 of the Town and Country Planning (Scotland) Act 1997(**2**) and of all other powers enabling him in that behalf, and having taken into account the selection criteria in Annex III to Council Directive 85/337/EEC(**3**) as amended by Council Directive 97/11/EC(**4**), hereby make the following Regulations:

PART I

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Environmental Impact Assessment (Scotland) Regulations 1999 and shall come into force on 1st August 1999.

(**1**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15; functions of the Secretary of State under section 2(2) were transferred to the Scottish Ministers by virtue of section 53 of that Act.
(**2**) 1997 c. 8; the functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.
(**3**) O.J. No. L175, 5.7.1985, p.40.
(**4**) O.J. No. L73, 14.3.1997, p.5.

PART II

TOWN AND COUNTRY PLANNING

CHAPTER 1

GENERAL

Interpretation

2.—(1) In this Part, except where the context otherwise requires–

"the Act" means the Town and Country Planning (Scotland) Act 1997 and references to sections are references to sections of that Act;

"the 1981 Regulations" means the Town and Country Planning (Development by Planning Authorities) (Scotland) Regulations 1981(**5**);

"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) the water and sewerage authority or authorities for the area in which the development is to take place;

(d) the Scottish Environment Protection Agency;

(e) the Health and Safety Executive;

(f) the Scottish Ministers;

"the Directive" means Council Directive 85/337/EEC(**6**);

"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(**7**) as adjusted by the Protocol signed at Brussels on 17th March 1993(**8**);

"EIA application" means an application for planning permission for EIA development;

"EIA development" means development which is either–

(a) Schedule 1 development; or

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

"environmental information" means the environmental statement, including any further 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;

"environmental statement" means a statement–

(a) that includes 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 the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

(**5**) S.I. 1981/829, amended by S.I. 1984/238.
(**6**) O.J. No. L175, 5.7.1985, p.40. Council Directive 85/337/EEC was amended by Council Directive 97/11/EC, O.J. No. L73, 14.3.97, p.5.
(**7**) Cm 2073.
(**8**) Cm 2183.

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

"exempt development" means development which comprises or forms part of a project serving national defence purposes or in respect of which the Scottish Ministers have made a direction under regulation 4(4);

"further information" has the meaning given in regulation 19(1);

"general development order" means the Town and Country Planning (General Development Procedure) (Scotland) Order 1992(**9**);

"the land" means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

"register" means a register kept pursuant to section 36 (registers of applications etc.) and "appropriate register" means the register on which particulars of an application for planning permission for the relevant development have been placed or would fall to be placed if such an application were made;

"relevant planning authority" means the body to whom it falls, fell, or would, but for a direction under section 46 (call-in of applications by Secretary of State), fall to determine an application for planning permission for the development in question;

"reporter" means a person appointed by the Scottish Ministers under Schedule 4 to the Act to determine an appeal under section 47 or 130, or to report to them on an application for planning permission referred to them under section 46 or which is the subject of an appeal under section 47 or 130;

"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 the table in 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" and "scoping opinion" have the meanings given in regulation 10;

"screening direction" means a direction made by the Secretary of State as to whether development is EIA development;

"screening opinion" means a written statement of the opinion of the relevant planning authority as to whether development is EIA development;

"sensitive area" means any of the following–

(a) land notified under subsection (1) of section 28 (areas of special scientific interest) of the Wildlife and Countryside Act 1981(**10**);

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

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

(**9**) S.I. 1992/224, amended by S.I. 1992/2083, 1993/1039, 1994/2585 and 3293, 1996/467 and 1997/749.
(**10**) 1981 c. 69.
(**11**) *See* Command Paper 9424.

(d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(**12**);

(e) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(**13**);

(f) an area designated as a Natural Heritage Area by a direction made by the Secretary of State or the Scottish Ministers under section 6(2) of the Natural Heritage (Scotland) Act 1991(**14**) or as a National Scenic Area by a direction made by the Secretary of State under section 262C of the Town and Country Planning (Scotland) Act 1972(**15**).

(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, any reference to a Council Directive is a reference to that Directive as amended at the date these Regulations were made.

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

Prohibition on granting planning permission without consideration of environmental information

3.—(1) This regulation applies to every EIA application received by the authority with whom it is lodged on or after the commencement of these Regulations and, for the purposes of this paragraph, the date of receipt of an application by an authority shall be determined in accordance with paragraph (3) of article 14 (time periods for decision) of the general development order.

(2) The relevant planning authority or the Scottish Ministers shall not grant planning permission pursuant to an application to which this regulation applies unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

CHAPTER 2

SCREENING

General provisions relating to screening

4.—(1) Subject to paragraphs (3) and (4), the occurrence of an event mentioned in paragraph (2) shall 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 applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or

(b) the adoption by the relevant planning authority of a screening opinion to the effect that the development is EIA development.

(**12**) 1979 c. 46. *See* the definition in section 1(11).
(**13**) S.I. 1994/2716.
(**14**) 1991 c. 28.
(**15**) 1972 c. 52; section 6(9) of the Natural Heritage (Scotland) Act 1991 contained a saving provision for any areas which were designated as National Scenic Areas under section 262C of the Town and Country Planning (Scotland) Act 1972 as at the date of repeal of that section by section 27 of, and Schedule 11 to, that 1991 Act.

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

(4) The Scottish Ministers may direct that particular proposed development is exempted from the application of these Regulations in accordance with Article 2(3) of the Directive (but without prejudice to Article 7 of the Directive) and shall send a copy of any such direction to the relevant planning authority.

(5) Where a planning authority or the Scottish Ministers have to decide under these Regulations whether Schedule 2 development is EIA development, they shall take into account in making that decision such of the selection criteria set out in Schedule 3 as are relevant to the development.

(6) Where–

(a) a planning authority adopt a screening opinion; or

(b) the Scottish Ministers make a screening direction under these Regulations;

to the effect that development is EIA development–

(i) that opinion or direction shall be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and

(ii) the authority or the Scottish Ministers, as the case may be, shall send a copy of the opinion or direction and a copy of the written statement required by sub-paragraph (i) to the person who proposes to carry out, or who has carried out, the development in question.

(7) The Scottish Ministers may make a screening direction irrespective of whether they have received a request to do so.

(8) 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.

(9) The Scottish Ministers shall send a copy of any screening direction to the relevant planning authority.

Requests for screening opinions of the planning authority

5.—(1) A person who is minded to carry out development may request the relevant planning authority to adopt a screening opinion.

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

(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) An authority receiving a request for a screening opinion shall, if they consider that they have not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which they require additional information.

(4) An authority shall adopt a screening opinion within three weeks beginning with the date of receipt of a request made pursuant to paragraph (1) or such longer period as may be agreed in writing with the person making the request.

(5) An authority which adopts a screening opinion pursuant to paragraph (4) shall forthwith send a copy to the person who made the request.

(6) Where an authority–