

GUIDANCE ON THE
ELECTRICITY (ENVIRONMENTAL IMPACT ASSESSMENT)
(SCOTLAND) AMENDMENT
REGULATIONS 2008

Supplementary EIA guidance to support Energy Act 1989 Section 36 and 37 applications in Scotland.

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CHAPTER 1 INTRODUCTION

This note supplements the existing EIA guidance on the Scottish Government Website and provides assistance on the use of the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008, as amended to fulfil the Public Participation Directive, 2003/35/EC. The amending regulations can be found in an annex to this guidance and at the Office of Public Sector Information website, at: http://www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080246_en.pdf

The Regulations apply to:

- applications under section 36 of the Electricity Act 1989 for consent to construct, extend or operate a generating station,
- applications under section 37 of the Act to install or keep installed an electric line above ground.

This supplementary guidance note provides information on:

- i) The procedural flow of the EIA process
- ii) The form of the initial public notice
- iii) The form of the public notice when further information is submitted
- iv) The form of the public notice on additional information
- v) The form of words being inserted in decision letters on the right to challenge the decision
- vi) Some practical information on judicial review
- vii) The form of the public notice of the decision

It has been prepared for developers of power stations and installers of overhead lines, also for local planning authorities and other persons interested in the environmental consideration of a proposal.

The amending Regulations come into force on 8 September 2008. **These amendments will only apply to new applications received after 8 September 2008, not to applications currently within the system.**

The amending Regulations recognise that additional information is generated in the process e.g. the advice from statutory advisers and now seek to formally bring this into the public domain. Thus this material is now to be lodged with the relevant planning authority for public inspection with any queries on it directed to the Consents Teams. It seems reasonable that originators of such material should be the first port of call for any requests for copies of it, with the Scottish Government as the fall back.

For offshore renewables applications where there is no relevant local planning authority, local authorities closest to any proposed development are likely to receive copies of application papers and may decide to make them available for public viewing. Developers are also likely to lodge copies of their Environmental Statements in public libraries, village halls, or other local facilities. Developers may also put this material on a website for ease of reference, which is highly recommended by the Scottish Government. If members of the public and other interested parties have difficulty locating or viewing this material they should contact the Scottish Government Energy Consents Team.

The key stages of the EIA process and new procedures brought about by the amended regulations are detailed in this guidance note. All parties should align their own processes to meet the new legislative requirements.

Developers, local planning authorities and other groups and individuals with an interest can discuss the procedural requirements with members of the Scottish Government Energy Consents Team.

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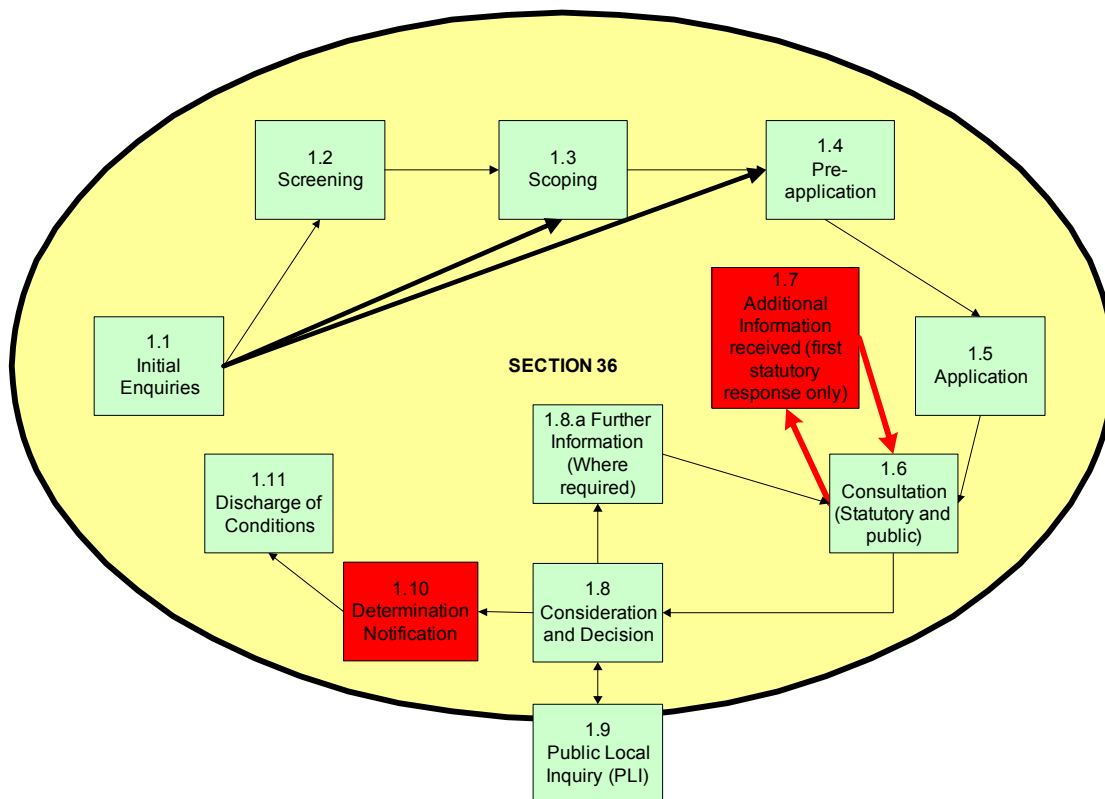
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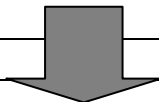
CHAPTER 2 EIA PROCESS

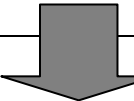
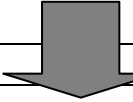
The procedural flow for applications requiring an EIA is as follows:



The timeline for applications is as below:

Process and Developer actions	Scottish Government Timescales
<p>Pre-application stage – developer undertakes preparatory work identifying location, discussing proposal with the relevant planning authority, statutory bodies, etc. Developer undertakes Environmental Impact Assessment (EIA). The developer can also consult the Scottish Government for advice at any point. It is recommended that the developer requests an EIA Scoping Opinion at this stage. If appropriate following scoping opinion, Environmental Statement (ES) prepared.</p>	<p>Screening Opinion (on need for EIA) normally takes 2 weeks</p> <p>Scoping Opinion normally takes 9 weeks, including period for stakeholders to comment</p>
<p>Pre-application Meeting – Strongly recommend that at least 3 weeks prior to submission of an application the developer</p>	<p>Shall take place a minimum of 3 weeks prior to submission.</p>

<p>arranges a single meeting with the Energy Consents Unit and statutory consultees.</p>	
<p>Application stage –</p> <p>(i) Developer to show draft advert to Energy Consents Unit approx 2 weeks before first advert</p> <p>(ii) Developer to complete the application checklist and submit along with appropriate documents prior to submission of the application.</p> <p>(iii) Once Energy Consents Unit are content the checklist has been met, the application, the ES and appropriate fee are submitted by developer to the Scottish Government.</p> <p>(iv) application advertised by developer in national and local press (for two successive weeks).</p> <p>(v) Application information circulated by the developer to statutory consultees (including planning authority) prior to advert being published and made available in public viewing place</p>	<p>(i) Energy Consents Unit will respond to Developer following submission of the draft advert within 2 working days.</p> <p>(ii) Energy Consents Unit will respond to developer offering advice on the application within 5 working days of receipt of completed checklist.</p> <p>(iii, iv, v) Energy Consents Unit issues consultation request to key stakeholders and other government departments within 2 weeks of receipt of the application.</p>
	<p><i>Indicative time 2 weeks</i></p>

<p>Consideration of the application stage –</p> <p>(i) Consultees both statutory and non statutory (including the public) have 28 days from date of second public notice to make representations on the Section 36 application and to qualify as registered objectors for any public inquiry</p> <p>(ii) When the first statutory consultation response is received it is sent to Planning Authority to place on planning register for public viewing and is also sent to applicant. Applicant provides a draft notice to consents unit, which once approved is placed in the Edinburgh Gazette, and one or more local newspapers. This allows a further 28 days from date of second public notice to make representations on the application, in light of the additional information. Subsequent statutory consultee responses also go to the planning authority for the register, and to the applicant, but no further press notices are required.</p> <p>(iii) Relevant planning authority has 4 months to inform the Scottish Ministers if it objects to the application or comment on the conditioning of the consent</p>	<p>(i) From date of second public notice all consultees and the public (except planning authority) have 28 days to send comments to Energy Consents Unit</p> <p>(ii) From date of second public notice all consultees and the public (except planning authority) have 28 days to send comments to Energy Consents Unit. However, this is likely to be within the 4 month timeframe for the council to respond and the indicative 4 month consultation period remains unchanged.</p> <p>(iii) From date of second public notice planning authority has 4 calendar months to send comments to Energy Consents Unit. Planning authority (and other statutory consultees) can request extensions, have to be agreed with developer</p>
	<p><i>Indicative time - 4 months without extension</i></p>
<p>Proposal evaluated.</p> <p>Responses from relevant planning authority, statutory and non statutory bodies and public assessed by Energy Consents Unit.</p>	<p>Energy Consents Unit takes up to 4 weeks to assess responses and decide if further information is needed</p>
	<p><i>Indicative time – 4 weeks</i></p>

<p>Further Information*</p> <p>(i) Further information from developer sought as necessary through an “addendum” to the application.</p> <p>(ii) Addendum is subject to consultation on new information, circulated to relevant stakeholders and further public consultation held as appropriate.</p>	<p>(i) No timescale for developer to submit further information. Application will be considered suspended pending submission of addendum where required.</p> <p>(ii) Once addendum received all consultees (including planning authority) have 28 days to respond unless extension granted.</p>
	<p><i>Indicative time – 4 weeks</i></p>
<p>Addendum evaluated*</p> <p>Responses from relevant planning authority, statutory and non statutory bodies and public assessed by Energy Consents Unit.</p>	<p>Energy Consents Unit takes up to 4 weeks to assess responses and decide if further information is needed</p>
	<p><i>Indicative time – 4 weeks</i></p>
<p>Referring to Public Inquiry*</p> <p>If relevant planning authority objects, and doesn’t withdraw the objection or if the objection cannot be met by condition, the Scottish Ministers must call a public local inquiry. Even if relevant planning authority does not object Scottish Ministers have discretionary power to call a public inquiry should they consider it necessary.</p>	<p>Once the proposal and any addendum have been evaluated and a Public inquiry is required, Energy Consents Unit will normally aim to refer to public local inquiry within 3 months.</p>
	<p><i>Indicative time to refer to PLI – 3 months</i></p>
<p>Holding a Public Inquiry*</p> <p>Scottish Ministers will appoint a reporter to hear the Inquiry. Public local inquiry held and reporter advises Ministers of his/her findings.</p>	<p>PLI timescales dependent on nature of enquiry and reporting timescales (can be from 6-18 months).</p>
	<p><i>Indicative time to carry out PLI – 6-18 months</i></p>

<p>Determination of the application stage</p> <p>If public inquiry called Ministers await report from Reporter. If no public inquiry Ministers proceed to determine application and decision announced.</p>	<p>Once all information, including any PLI report, has been received and assessed, Scottish Ministers will aim to move to a determination of the case within 2 further months of the final information being received.</p>
<p>Decision announcement</p> <p>Once Scottish Ministers have determined an application they will notify developers to place the decision in the Edinburgh Gazette and in one or more local papers.</p>	<p><i>Indicative Time – 2 months</i></p> <p>The decision will be placed on the Scottish Government website. Where the decision is to consent an application a full copy of the conditions associated with the consent will also be released.</p>
<p>Post-decision stage – Developer has to comply with consent conditions in order to proceed.</p>	<p><i>Indicative Time – 2 weeks</i></p> <p>For life of the consent</p>

* Stage not required in all cases

CHAPTER 3 SAMPLE PUBLIC NOTICES

Initial Application Advert

<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Pack/Ad-Template-Initial-App>

Additional Information Advert

<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Pack/Ad-Template-Add-Info>

Further Information Advert

<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Pack/Ad-Template-Addendum2008>

Notice of Decision Advert

<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Infrastructure/Energy-Consents/Pack/Ad-Template-Decision>

CHAPTER 4 JUDICIAL REVIEW

1. Judicial Review is the mechanism by which the Court of Session in Scotland supervises the proper exercise of administrative functions, including how the Scottish Government carries out its statutory function to grant or refuse consents.

2. The procedure is concerned with the improper exercise of power and is not a process to re-evaluate the merits of the development. Thus the court will not impose its own view on the development but in a successful judicial review the decision will usually be quashed and the Scottish Ministers will be required to remedy, the in most cases essentially 'procedural' deficiency found by the Court, and then retake the decision. As long as it is taken in a lawful way, that decision could, of course, be the same decision, for example to grant or to refuse consent.

The guidance on the Judicial Review process can be found at the Scottish Courts website:

<http://www.scotcourts.gov.uk/session/rules/Chapter58.asp>

This guidance details the legal requirements for applications for judicial review including the petition form (58.6) required to be lodged in seeking a review.

The Judicial Review may:

- (a) grant or refuse any part of the petition, with or without conditions;
- (b) make such order in relation to the decision in question as it thinks fit, whether or not such order was sought in the petition, including an order for reduction, declarator, suspension, interdict, implement, restitution, payment (whether of damages or otherwise) and any interim order;
- (c) make such order in relation to procedure as it thinks fit.

The review shall be heard by a judge nominated by the Lord President, or, where such a judge is not available, any other judge of the court .

3. You should, though, seek your own legal advice before considering a judicial review challenge. There are cost implications and legal requirements to be understood also.

CHAPTER 5 LEGISLATION

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

- <http://www.hmso.gov.uk/legislation/scotland/ssi2000/20000320.htm>

The Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008

- <http://www.legislation.gov.uk/ssi/2008/246/contents/made>

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

(c) any other person who in the opinion of the Scottish Ministers is likely to be concerned by the proposed development by reason of his specific environmental responsibilities, and give them three weeks (or such longer period as that person and the Scottish Ministers may agree) to make representations regarding the content of the scoping opinion.

(5) The Scottish Ministers shall not give a scoping opinion until they are satisfied that the requirements for consultation provided for in paragraph (4) have been met and they have considered any representations received by them pursuant to such consultation regarding the scoping opinion which they propose to give.

(6) The Scottish Ministers shall give a scoping opinion within three weeks of whichever is the latest of—

- (a) the date of receipt of the request by the Scottish Ministers;
- (b) the date of receipt by them of further information pursuant to paragraph (3);
- (c) the last date by which any person consulted under paragraph (4) is required to make representations (or if earlier, the date by which the Scottish Ministers have received the last of the representations of such persons),

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

(7) Before giving a scoping opinion the Scottish Ministers shall, having regard to current knowledge and methods of assessment, take into account—

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

(8) Where a person has, at the same time as making a request for a screening opinion under regulation 5(1), asked the Scottish Ministers for a scoping opinion under paragraph (1), and the Scottish Ministers have given a screening opinion to the effect that the development is EIA development, the Scottish Ministers shall begin the procedures relating to scoping on the date on which they give the screening opinion.

Procedure to facilitate preparation of an environmental statement

8.—(1) A prospective applicant may give the Scottish Ministers notice in writing that he intends to make an application for a section 36 consent or a section 37 consent in relation to any development and to submit an environmental statement with his application.

(2) A notice under paragraph (1) shall include the information necessary to identify, or be accompanied by documents identifying, the location and the nature and purpose of the proposed development, and shall indicate the main environmental consequences to which the prospective applicant proposes to refer to in his environmental statement.

(3) Where the Scottish Ministers receive such a notice as is mentioned in paragraph (1) they shall—

- (a) give notice to the appropriate consultative bodies (and such other persons that are in their opinion likely to be concerned by the proposed development by reason of their specific environmental responsibilities) in writing of the name and address of the prospective applicant and of the duty imposed upon them by regulation 15 to make information available to the prospective applicant;
- (b) give notice to the prospective applicant in writing of the names and addresses of the consultative bodies and persons so notified.

(4) Where an application for a section 36 consent or a section 37 consent in relation to development has been made without an environmental statement, and—

- (a) the Scottish Ministers have given notice to the applicant pursuant to regulation 3 or 6 that the development constitutes EIA development; or
- (b) the applicant has informed the Scottish Ministers that he proposes to submit an environmental statement,

the Scottish Ministers shall take the action specified in paragraph (3)(a) and (b) which shall be read as if references to the prospective applicant were references to the applicant.

PART IV

PUBLICITY AND PROCEDURES

Publicity where an application is accompanied by an environmental statement

9.—(1) In any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development has provided the Scottish Ministers with an environmental statement the applicant shall publish in two successive weeks in one or more local newspapers circulating in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development) a notice containing the information specified in paragraph (2).

(2) A notice to which paragraph (1) applies shall—

- (a) describe the application in question and state that it is accompanied by an environmental statement;
- (b) state that copies of the environmental statement may be inspected at or obtained from an address in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, an address in Scotland) and specify the amount of any payment required to be made for a copy of the environmental statement; and
- (c) state a date, not less than four weeks after the date on which the notice is to be last published in accordance with paragraph (1), by which any pers on may make representations in relation to the application in question to the Scottish Ministers and specify the address to which any such representations are to be sent.

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

(4) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an environmental statement to any person except that the copies served pursuant to regulation 11(1) or (3) shall be supplied free of charge.

Publicity of opinions, determinations and decisions

10.—(1) The Scottish Ministers shall send to 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 the Scottish Ministers consider appropriate) a copy of—

- (a) any screening opinion or determination under regulation 6; and
- (b) any scoping opinion,

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

(2) If an application for a section 36 consent or a section 37 consent is made and any documents relating to it are sent to a planning authority pursuant to paragraph (1), the planning authority shall take steps to ensure that the documents received pursuant to paragraph (1) are also placed on Part I of the register (together with a copy of any environmental statement served on the planning authority pursuant to regulation 11).

(3) Where an application for a section 36 consent or a section 37 consent which relates to EIA development is determined by the Scottish Ministers, the Scottish Ministers shall inform the public by issuing a press notice (or by such other means as they consider appropriate) and shall send to the planning authority within whose area the land which is the subject of the application is situated (or, in relation to a development in, on, over or under the sea, such planning authority or planning authorities as the Scottish Ministers consider appropriate) a statement containing—

- (a) the content of any decision and any conditions attached to any consent granted;
- (b) the main reasons and considerations on which the decision is based; and
- (c) a description where necessary of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development,

and that planning authority shall make such statement available for public inspection at all reasonable hours at a place where the register is kept.

(4) The Scottish Ministers shall also make the information contained in the press or other notice issued pursuant to paragraph (3) available to any EEA State consulted in accordance with regulation 12.

Procedure where Scottish Ministers receive an environmental statement

11.—(1) Where an applicant submits to the Scottish Ministers an environmental statement relating to an application for a section 36 consent or section 37 consent and also serves a copy of the environmental statement on any appropriate consultative body, he shall—

- (a) serve with it a copy of the application and any plan submitted with it (unless he has already served those documents on the consultative body in question);
- (b) inform the consultative body that representations may be made to the Scottish Ministers; and
- (c) inform the Scottish Ministers of the name of every consultative body whom he has so served and of the date on which he did so.

(2) Where the Scottish Ministers receive an environmental statement in connection with an application for a section 36 consent or section 37 consent they shall, within two weeks of receiving the environmental statement—

- (a) give notice to—
 - (i) the appropriate consultative bodies upon whom the applicant has not served a copy of the environmental statement; and
 - (ii) any other person that in their opinion is likely to be concerned by the proposed development by reason of his specific environmental responsibilities

that an environmental statement will be taken into consideration in determining the application, ascertain whether any such consultative body or person wishes to receive a copy of the environmental statement and inform them that they may make representations or express their views; and

- (b) give the applicant notice of the copies of the environmental statement required by those consultative bodies or persons and of the names and addresses of the consultative bodies or persons concerned.

(3) The applicant shall serve copies of the environmental statement on any consultative body or person of whom he receives notice pursuant to paragraph (2)(b) and shall inform the Scottish Ministers of the date on which he did so.

(4) The Scottish Ministers shall not determine the application until the later of fourteen days from the last date on which a copy of the environmental statement was served in accordance with this regulation and the date stated on the notice published by the applicant pursuant to regulation 9(1).

Projects affecting other EEA States

12.—(1) Where—

- (a) an applicant submits to the Scottish Ministers an application for EIA development and it appears to the Scottish Ministers that the proposed EIA development is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by any proposed EIA development so requests,

the Scottish Ministers shall send to the EEA State in question as soon as possible and no later than the date on which the environmental statement in respect of that proposed EIA development is made available to the public in accordance with regulation 9 (except in a case where a request is made by an EEA State after that date)—

- (i) a description of the proposed EIA development, together with any available information on its possible significant effects on the environment in the other EEA State; and
- (ii) a notice explaining the nature of the decision as to whether or not to grant consent for the proposed EIA development and informing the EEA State in question that it may, within such reasonable period as may be specified in the notice, indicate that it wishes to participate in the procedure provided by these Regulations.

(2) Where an EEA State indicates that it wishes to participate in the procedure provided by these Regulations in relation to the proposed EIA development, the Scottish Ministers shall, save to the extent they have already done so, send to that EEA State—

- (a) a copy of the application for consent in respect of the proposed EIA development;
- (b) the environmental statement in respect of the proposed EIA development; and
- (c) to the extent that it is not included in the items referred to in sub-paragraph (a) or (b) and subject to regulation 15(2), any other available information which is relevant to the proposed EIA development.

(3) The Scottish Ministers shall also—

- (a) arrange for the information referred to in paragraph (1) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of Council Directive [85/337/EEC](#)(9) 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 consent for the development is given, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.

(4) The Scottish Ministers shall enter into consultations with the EEA State concerned, for such reasonable period as may have been agreed with that EEA State, regarding, among other things, the possible significant effects of the proposed EIA development on the environment in that EEA State and the measures envisaged to reduce or eliminate such effects.

(9) O.J. No. L 175, 5.7.85, p.40, amended by Council Directive [97/11/EC](#) O.J. No. L 73, 14.3.97, p.5.

(5) Where the Scottish Ministers notify an applicant for EIA development that the provisions of this regulation apply in respect of the development, the applicant shall not make available to the public in accordance with regulation 9 the items referred to in that regulation until the Scottish Ministers have notified the applicant that they have sent to the EEA State concerned the information referred to in paragraph (1)(i) and (ii).

Further information and evidence in respect of an environmental statement

13.—(1) The Scottish Ministers, when dealing with an application for a section 36 consent or a section 37 consent in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as may be specified concerning any matter which is required to be, or may be, dealt with in the environmental statement.

(2) The Scottish Ministers may in writing require an applicant to produce such evidence as they may reasonably call for to verify any information in the applicant's environmental statement.

Publicity in relation to further information and timing of determination

14.—(1) In any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development is required in accordance with regulation 13 to provide further information the applicant shall publish in two successive weeks in one or more local newspapers circulating in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development) a notice containing the information specified in paragraph (2).

(2) A notice to which paragraph (1) applies shall—

- (a) describe the application in question and state that further information is available supplementing the environmental statement which has already been produced;
- (b) state that copies of the further information may be inspected at or obtained from an address in the locality in which the land to which the application relates is situated (or, if the proposed development is in, on, over or under the sea, an address in Scotland) and specify the amount of any payment required to be made for a copy of the further information; and
- (c) state a date not less than four weeks after the date on which the notice is to be last published in accordance with paragraph (1) by which any person may make representations in relation to the further information to the Scottish Ministers and specify the address to which any such representations are to be sent.

(3) The applicant shall serve a copy of the further information on any person on whom was served a copy of the environmental statement under regulation 11(1) or (3) together with a copy of the notice mentioned in paragraph (1).

(4) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the further information to any person except that the copies served pursuant to paragraph (3) shall be supplied free of charge.

(5) The Scottish Ministers shall not determine the application until the later of fourteen days from the last date on which a copy of the further information was served in accordance with this regulation or the date stated in the notice published pursuant to paragraph (1).

PART V

MISCELLANEOUS

Provision of information

15.—(1) Subject to paragraph (2), the consultative bodies (and any other person notified in accordance with regulation 11(2)(a)(ii)) shall, if requested by the applicant (or prospective applicant), or may without such a request, enter into consultation with the applicant to determine whether they have in their possession any information which they or the applicant consider relevant to the preparation of an environmental statement and, if they have any such information, they shall make it available to the applicant.

(2) Nothing in these Regulations shall require the disclosure of information which is subject to an obligation of confidentiality under the law of Scotland (including any information which is capable of being treated as confidential or must be so treated under regulation 4 of the Environmental Information Regulations 1992(**10**)).

Service of notices

16. Any notice or other document to be sent, served or given under these Regulations may be sent, served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given;
- (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address; or
- (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

Revocation, transitional and savings

17.—(1) Subject to paragraph (2), Parts I, III and VII of the Environmental Assessment (Scotland) Regulations 1988(**11**) are hereby revoked.

(2) The Regulations referred to in paragraph (1) shall continue to apply to any application for a section 36 consent or a section 37 consent within the meaning of those Regulations which was received before the date on which these Regulations come into force.

St Andrew's House, Edinburgh
11th September 2000

NICOL STEPHEN
Authorised to sign by the Scottish Ministers

(10) S.I. 1992/3240, as amended by S.I. 1998/1447 and 1999/672.

(11) S.I. 1988/1221 as amended by S.I. 1994/2012, S.I. 1996/972 and 1997/1870.

SCHEDULE 1

Regulation 2(1)

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

Descriptions of development

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

- (a) a generating station, the construction of which (or the operation of which) will require a section 36 consent and which is either—
 - (i) a nuclear generating station; or
 - (ii) a non-nuclear generating station with a heat output of 300 megawatts or more; or
- (b) an electric line installed above ground with (a) a voltage of 220 kilovolts or more and (b) a length of more than 15 kilometres, the installation of which (or the keeping installed of which) will require a section 37 consent.

SCHEDULE 2

Regulation 2(1)

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

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

- (a) a generating station, the construction of which (or the operation of which) will require a section 36 consent but which is not Schedule 1 development;
- (b) the extension of any generating station, where such extension will require a section 36 consent;
- (c) an electric line installed above ground, the purpose of which installation is to connect the said line to a power station subject to an EIA;
- (d) 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 but which is not Schedule 1 development; or
- (e) an electric line installed above ground in a sensitive area, the installation of which (or the keeping installed of which) will require a section 37 consent but which is not Schedule 1 development and does not fall within paragraph (d) of this Schedule.

For the purpose of this Schedule “sensitive area” means any of the following—

- (i) land notified under section 28(1) (areas of special scientific interest) of the Wildlife and Countryside Act 1981(12);
- (ii) land to which section 29(3) (nature conservation orders) of the Wildlife and Countryside Act 1981 applies(13);
- (iii) 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(14);
- (iv) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(15);
- (v) 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(16) 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(17);

- (vi) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, etc.) Regulations 1994(18).

SCHEDULE 3

Regulation 3(3)(b) and (4)

MATTERS TO BE TAKEN INTO ACCOUNT UNDER REGULATION 3(3) AND (4)

Characteristics of development

1. The characteristics of development must be considered, having regard, in particular, to—
 - (a) the size of the development;
 - (b) the cumulation with other developments;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances; and
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

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 land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under EEA States' legislation;
 - (vi) special protection areas designated by EEA States pursuant to Directives [79/409/EEC\(19\)](#) and [92/43/EEC\(20\)](#);
 - (vii) areas in which the environmental quality standards laid down in legislation of the Communities have already been exceeded;
 - (viii) densely populated areas; and
 - (ix) landscapes of historical, cultural and archaeological significance.

Characteristics of the potential impact

3. The potential significant effects of development must be considered in relation to criteria set out under 1 and 2 above, and having regard, in particular, to—

(19) O.J. No. L 103, 25.4.79, p.1.

(20) O.J. No. L 206, 22.7.92, p.7.

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 4

Regulation 4(1)

CONTENT OF AN ENVIRONMENTAL STATEMENT

PART I

1. Description of the development, including in particular–

- (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, nature and quality of the materials used;
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed development.

2. A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

3. A description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from–

- (a) the existence of the development;
- (b) the use of natural resources;
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant of the forecasting methods used to assess the effects on the environment.

4. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

6. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

PART II

1. A description of the development comprising information on the site, design and size of the development.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
 3. The data required to identify and assess the main effects which the development is likely to have on the environment.
 4. The main alternatives studied by the applicant and the main reasons for his choice, taking into account the environmental effects.
 5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive [85/337/EEC](#) (O.J. No. L 175, 5.7.85, p.40) as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.97, p.5) on the assessment of certain public and private projects on the environment insofar as it relates to applications for consent to construct, extend or operate a power station or install or keep installed overhead electricity lines under sections 36 and 37 of the Electricity Act 1989.

These Regulations revoke Parts I, III and VII of the Environmental Assessment (Scotland) Regulations 1988 (as amended by the Environmental Assessment (Scotland) Regulations 1994, the Special Waste Regulations 1996 and the Environmental Assessment (Scotland) Regulations 1997) (“the 1988 Regulations”), subject to savings in respect of applications for consent which are received prior to 25th September 2000.

The 1988 Regulations, implemented Directive [85/337/EEC](#) in its original form. These Regulations substantially remake the provisions of the 1988 Regulations, with the amendments necessary to implement Directive [97/11/EC](#).

The main changes made by Directive [97/11/EC](#) that are relevant to these Regulations are as follows—

- (a) overhead electrical power lines with a voltage of 220 kilovolts or more and a length of more than 15 kilometres have been added to the list of projects for which environmental impact assessment (EIA) is mandatory;
- (b) a case by case examination or determination set by reference to specified criteria is required in relation to every project of the extended types specified in Annex II to the Directive (Schedule 2 to these Regulations);
- (c) advice on the content of an environmental statement must be given to any developer who requests it;
- (d) the Scottish Ministers (a competent authority for the purposes of the Directive) must give reasons for their decision on granting or refusing development consent for a development for which EIA is required; and
- (e) detailed procedures are established for consulting other European Economic Area States on projects which are likely to have significant environmental effects in their territories.

Regulations 3 and 4 of these Regulations (together with certain definitions in regulation 2(1) and with Schedules 1 and 2) set out what constitutes EIA development and prohibit the granting of consent under section 36 or 37 of the Electricity Act 1989 unless the Scottish Ministers have taken

into account the environmental information (defined in regulation 2) which is before them. All development listed in Schedule 1 is EIA development. Development listed in Schedule 2 constitutes EIA development if it is likely to have significant effects on the environment.

Regulations 5 and 6 set out the procedures for determining whether or not particular development is EIA development. A person who intends to put in an application for consent may apply for a “screening opinion” from the Scottish Ministers. If the Scottish Ministers determine that the development does not constitute EIA development, they must notify the developer and provide a written statement, giving full reasons for their determination.

Regulation 7 enables a person to seek a “scoping opinion” from the Scottish Ministers on the information to be included in an environmental statement. The types of information which may be required are set out in Schedule 4 to these Regulations. The Scottish Ministers must consult those persons defined in regulation 2 as consultative bodies before adopting a scoping opinion.

Regulation 8 sets out procedures to facilitate the production of an environmental statement. The consultative bodies are notified of the proposed development and the name and address of the applicant, so that they must provide him with any information relevant to the environmental statement in accordance with regulation 15.

Regulation 9 sets out the procedures for publicity which the applicant is required to comply with. Regulation 10 sets out the procedures for publicising the opinions, determinations and decisions of the Scottish Ministers. Regulation 11 sets out the procedures for serving a copy of the environmental statement on the consultative bodies. Regulation 12 provides for consultation with other member states of the European Economic Area.

Regulation 13 sets out the procedures whereby the Scottish Ministers may require further information from the applicant and regulation 14 sets out the procedures for publicity which the applicant is required to comply with in relation to any such further information.

Regulation 15 sets out the obligation of the consultative bodies, and any other person who the Scottish Ministers have specifically determined is to be consulted as part of the consultation process, to provide to the applicant information which is relevant to the environmental statement. Regulation 16 deals with service of notices and regulation 17 deals with revocation, transitional and savings.

A regulatory impact assessment is available from Energy Division, Scottish Executive, 2nd Floor, Meridian Court, 5 Cadogan Street, Glasgow G2 6AT (telephone 0141 242 5797).

2008 No. 246

ELECTRICITY

**The Electricity Works (Environmental Impact Assessment)
(Scotland) Amendment Regulations 2008**

Made - - - - - *12th June 2008*

Laid before the Scottish Parliament *13th June 2008*

Coming into force - - - *8th September 2008*

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2008 and come into force on 8th September 2008.

(2) In these Regulations “the principal Regulations” means the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000(b).

Amendments to regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation)–

(a) after the definition of “the Act” insert–

““additional information” means substantive information relating to the environmental statement which–

(a) is provided by the applicant or a consultative body to the Scottish Ministers–

(i) after the date of receipt by the Scottish Ministers of a document referred to by the applicant as an environmental statement; and

(ii) before determination by the Scottish Ministers of the application for a section 36 consent or a section 37 consent in respect of the development; and

(b) is not information falling within paragraphs (b) or (c) of the definition of “environmental statement”;;

(b) in the definition of “the consultative bodies”–

(i) at the end of paragraph (b), omit “and”; and

(a) 1972 c.68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51). Section 2(2) of this Act was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3) and section 27 of the Legislative and Regulatory Reform Act 2006 (c.51). Functions relating to the implementation of Council Directive 85/337/EC on the assessment of the effects of certain electricity works projects on the environment are exercisable concurrently by the Scottish Ministers and Secretary of State by virtue of S.S.I. 1999/1750, article 3 and Schedule 2.

(b) S.I. 2000/320.

- (ii) at the end of paragraph (c), insert–
 - “; and
 - (d) other bodies designated by statutory provision as having specific environmental responsibilities whom the Scottish Ministers consider are likely to have an interest in the application or proposed application”;
- (c) for the definition of “EEA State” substitute–
 - ““EEA State” has the meaning given by Schedule 1 to the Interpretation Act 1978(a);”;
- (d) for the definition of “environmental information” substitute–
 - ““environmental information” means–
 - (a) the environmental statement prepared by the applicant;
 - (b) additional information; and
 - (c) any representations duly made by any consultative body or any other person about the likely environmental effects of the proposed development;”;
- (e) for the definition of “environmental statement” substitute–
 - ““environmental statement” means–
 - (a) a statement prepared in respect of development pursuant to regulation 4(1);
 - (b) any information–
 - (i) provided to the Scottish Ministers by the applicant in order to supplement the statement referred to in paragraph (a); and
 - (ii) made available to the Scottish Ministers no later than fourteen days after the date of receipt by the Scottish Ministers of that statement; and
 - (c) any further information submitted by the applicant pursuant to a requirement under regulation 13(1);”;
- (f) in the definition of “scoping opinion” for “given in accordance with regulation 7” substitute “as to the information to be provided in an environmental statement”.

Amendment to regulation 4 of the principal Regulations

3. In regulation 4(2)(c) of the principal Regulations (procedure for grant of consent where environmental statement is required) for “9, 11, 12, 13 and 14” substitute “9, 10(2A), 11, 12, 13, 14 and 14A”.

Amendment to regulation 6 of the principal Regulations

4. In regulation 6(1)(b)(ii) of the principal Regulations (application made without an environmental statement) omit “pursuant to a notice”.

Amendments to regulation 7 of the principal Regulations

5. In regulation 7 of the principal Regulations (procedure for a scoping opinion by Scottish Ministers)–

- (a) in paragraph (1) for “to state in writing their opinion as to the information to be provided in the environmental statement (a “scoping opinion”)” substitute “for a scoping opinion”; and
- (b) in paragraph (4)(b), omit “appropriate”.

(a) 1978 c.30. The definition of “EEA State” was inserted into Schedule 1 of that Act by section 26(1) of the Legislative and Regulatory Reform Act 2006 (c.51).

Amendments to regulation 8 of the principal Regulations

6. In regulation 8(3)(a) of the principal Regulations (procedure to facilitate preparation of an environmental statement) omit “appropriate”.

Amendments to regulation 9 of the principal Regulations

7. In regulation 9 of the principal Regulations (publicity where an application is accompanied by an environmental statement)–

(a) for paragraph (1) substitute–

“(1) Subject to regulation 12(5), in any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development has provided the Scottish Ministers with an environmental statement the applicant shall, as soon after provision of that statement as is reasonably practicable, publish in accordance with paragraph (1A) a notice containing the information specified in paragraph (2).

(1A) A notice to which paragraph (1) applies shall be published in two successive weeks in–

(a) the Edinburgh Gazette; and

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

(b) for paragraph (2)(a) substitute–

“(a) describe the application in question, state that it is accompanied by an environmental statement and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;”;

(c) at the end of paragraph (2)(b) omit “and”;

(d) in paragraph (2)(c) for “paragraph (1)” substitute “paragraph (1A)”;

(e) after paragraph (2)(c) insert–

“(d) describe the procedures under regulations 14 and 14A in accordance with which any person may make representations in relation to–

(i) further information provided by the applicant pursuant to a requirement imposed under regulation 13(1); or

(ii) additional information;

(e) describe the circumstances under the Act in which the Scottish Ministers may cause a public inquiry to be held into the application; and

(f) set out the nature of possible decisions to be taken in relation to the application.”;

and

(f) in paragraph (4) for “regulation 11(1) or (3)” substitute “regulation 11(1), (3) or (3A)”.

Amendments to regulation 10 of the principal Regulations

8.—(1) For the heading to regulation 10 of the principal Regulations (publicity of opinions, determinations and decisions) substitute–

“Publicity of determinations and provision of information to the planning authority”.

(2) In regulation 10 of the principal Regulations–

(a) in paragraph (2) omit “(together with a copy of any environmental statement served on the planning authority pursuant to regulation 11)”;

(b) after paragraph (2) insert–

“(2A) If a planning authority receives a copy of–

- (a) an environmental statement pursuant to regulation 11(3A);
- (b) further information pursuant to regulation 14(3);
- (c) additional information pursuant to regulation 14A(1)(a); or
- (d) a notice pursuant to regulation 14(3) or 14A(5),

the planning authority shall ensure that it is placed on Part I of the register until such time as the planning authority receives a statement pursuant to paragraph (3) when the planning authority shall place it on Part II of the register.”;

- (c) for paragraph (3) substitute–

“(3) Where an application for a section 36 consent or a section 37 consent which relates to EIA development is determined by the Scottish Ministers, the Scottish Ministers shall send to–

- (a) the planning authority or authorities to which a copy of the environmental statement pertaining to the application was provided under regulation 11(3A); and
- (b) the applicant,

a statement containing the information specified in paragraph (3A), and the planning authority or authorities referred to in sub-paragraph (a) shall make that statement available for public inspection at all reasonable hours at the place where the register is kept.

(3A) A statement to which paragraph (3) applies shall contain the following information–

- (a) the content of the Scottish Ministers’ determination and any conditions attached to any consent granted;
- (b) a summary of the main concerns and opinions expressed by the persons affected, or likely to be affected by, or having an interest in the application;
- (c) in the light of the concerns and opinions referred to in sub-paragraph (b), the main reasons and considerations on which the Scottish Ministers’ determination is based;
- (d) a description where necessary of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; and
- (e) the availability of judicial review procedures, including details of where further information in relation to such procedures can be obtained.”;

- (d) in paragraph (4) for “information contained in the press or other notice issued pursuant to” substitute “statement provided in accordance with”; and

- (e) after paragraph (4) insert–

“(5) Where an applicant receives a statement in accordance with paragraph (3) the applicant shall, as soon as is reasonably practicable, publish a notice in accordance with paragraph (6) specifying that–

- (a) the application has been determined;
- (b) a section 36 consent or section 37 consent has either been granted or refused; and
- (c) the statement containing the information referred to in paragraph (3A) is available for public inspection at the planning authority or authorities to which a copy of the environmental statement pertaining to the application was provided under regulation 11(3A).

(6) A notice to which paragraph (5) applies shall be published in two successive weeks in–

- (a) the Edinburgh Gazette; and
- (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on,

over or under the sea, such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).”.

Amendments to regulation 11 of the principal Regulations

9. In regulation 11 of the principal Regulations (procedure where Scottish Ministers receive an environmental statement)–

- (a) in paragraph (1) and (2)(a)(i) omit “appropriate”; and
- (b) after paragraph (3) insert–

“(3A) Where an applicant submits an environmental statement to the Scottish Ministers relating to an application for a section 36 consent or a section 37 consent, the applicant shall serve a copy of the environmental statement on the planning authority within whose area the land which is the subject of the proposed development is situated (or, in relation to a proposed development in, on, over or under the sea, such planning authority or authorities as the Scottish Ministers shall direct) and shall inform the Scottish Ministers of the date on which the applicant did so.”.

Amendment to regulation 12 of the principal Regulations

10. In regulation 12(2)(a) of the principal Regulations (projects affecting other EEA States) for “application for consent in respect of the proposed EIA development” substitute “notice published in accordance with regulation 9(1)”.

Amendments to regulation 14 of the principal Regulations

11. In regulation 14 of the principal Regulations (publicity in relation to further information and timing of determination)–

- (a) for paragraph (1) substitute–

“(1) In any case where an applicant for a section 36 consent or a section 37 consent which relates to EIA development is required in accordance with regulation 13(1) to provide further information the applicant shall publish in accordance with paragraph (1A) a notice containing the information specified in paragraph (2).

(1A) A notice to which paragraph (1) applies shall be published in two successive weeks in–

- (a) the Edinburgh Gazette; and
 - (b) one or more newspapers circulating in the locality in which the land to which the application relates is situated (or, in relation to a proposed development in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed development).”;
- (b) in paragraph (2)(a) for “is available supplementing the environmental statement which has already been produced” substitute “has been provided”;
 - (c) in paragraph (2)(c) for “paragraph (1)” substitute “paragraph (1A)”; and
 - (d) in paragraph (3) for “regulation 11(1) or (3)” substitute “regulation 11(1), (3) or (3A)”.

Insertion of new regulation 14A of the principal Regulations

12. After regulation 14 of the principal Regulations insert—

“Additional information and timing of determination

14A.—(1) Where additional information is made available to the Scottish Ministers they shall—

- (a) serve a copy of the additional information on the planning authority or authorities on whom was served a copy of the environmental statement under regulation 11(3A); and
- (b) notify the applicant that additional information has been served on the planning authority or authorities in accordance with paragraph (a).

(2) On the first occasion on which the applicant is notified of the service of additional information in accordance with paragraph (1)(b), the applicant shall—

- (a) publish in accordance with paragraph (3) a notice containing the information specified in paragraph (4); and
- (b) serve a copy of that notice on the Scottish Ministers.

(3) A notice to which paragraph (2)(a) applies shall be published in two successive weeks in—

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

(4) A notice to which paragraph (2)(a) applies shall—

- (a) describe the application in question and state that the Scottish Ministers have received additional information;
- (b) identify the planning authority or authorities to which the Scottish Ministers are required to forward a copy of the additional information pursuant to paragraph (1)(a);
- (c) state that the planning authority or authorities identified in sub-paragraph (b) are required to place the additional information on the register;
- (d) state that requests for copies of the additional information may be sent to the Scottish Ministers and specify an address for that purpose;
- (e) state a date not less than four weeks after the date on which the notice is to be last published in accordance with paragraph (3) by which any person may make representations to the Scottish Ministers in relation to the additional information and specify the address to which any such representations are to be sent; and
- (f) state that the details given pursuant to sub-paragraphs (b) to (d) will also apply in respect of any additional information received by the Scottish Ministers after publication of the notice.

(5) On receipt of a notice pursuant to paragraph (2)(b) the Scottish Ministers shall serve a copy of that notice on any person on whom was served a copy of the environmental statement under regulation 11(1), (3) or (3A).

(6) The Scottish Ministers shall not determine the application until after the later of—

- (a) fourteen days from the last date on which a copy of the notice published pursuant to paragraph (2)(a) was served in accordance with paragraph (5); and
- (b) the date stated in the notice published pursuant to paragraph (2)(a).”.

Amendments to Schedules 1 and 2 to the principal Regulations

13.—(1) In Schedule 1 to the principal Regulations (descriptions of development for the purposes of the definition of “Schedule 1 Development”)—

- (a) for “either of the following” substitute “any of the following”; and
- (b) after paragraph (b) insert—
 - “; or
 - (c) 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.”.

(2) In Schedule 2 to the principal Regulations (description of development for the purposes of the definition of “Schedule 2 Development”)—

- (a) omit paragraph (b);
- (b) at the end of paragraph (d), omit “or”;
- (c) after paragraph (e) insert—
 - “; or
 - (f) any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph (c) of that Schedule) or this Schedule where that development is already authorised, executed, or in the process of being executed, and the change or extensions may have significant adverse effects on the environment.”.

JIM MATHER

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
12th June 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2000 (S.I. 2000/320) (“the principal Regulations”), which extend to Scotland only.

The principal Regulations implement Council Directive 85/337/EEC(a) on the assessment of the effects of certain public and private projects on the environment (as amended by Council Directive 97/11/EC(b)) in relation to applications under sections 36 or 37 of the Electricity Act 1989 (c.29) in Scotland for consent to construct, extend or operate a generating station or for consent to install or keep installed an electric line above ground.

These Regulations implement, as regards the principal Regulations, the amendments to Council Directive 85/337/EEC made by Article 3 of Directive 2003/35/EC(c) of the European Parliament and of the Council. Article 3 of that Directive provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends with regard to public participation and access to justice Council Directive 85/337/EEC.

Regulation 2 amends regulation 2 of the principal Regulations by inserting a definition for “additional information”. It also amends the definitions of “the consultative bodies”, “EEA State”, “environmental information”, “environmental statement” and “scoping opinion”.

Regulation 3 amends regulation 4 of the principal Regulations by adding to the list of procedures that must be followed before the Scottish Ministers may grant a section 36 consent or a section 37 consent.

Regulations 4, 5 and 6 make minor drafting changes to regulations 6, 7 and 8 respectively of the principal Regulations.

Regulation 7 amends regulation 9 of the principal Regulations. The amendments increase the information to be contained in the notice to be published where an environmental statement is submitted to the Scottish Ministers. The amendments also impose new requirements as to the timing of the publication of the notice and for publication of the notice in the Edinburgh Gazette.

Regulation 8 amends regulation 10 of the principal Regulations. The amendments widen the range of documents to be placed on the planning register following receipt by the planning authority. The amendments also increase the information to be included in the statement of the Scottish Ministers’ determination of the application and impose a new requirement for the applicant to publish notice of the determination in the Edinburgh Gazette and in one or more local papers.

Regulation 9 amends regulation 11 of the principal Regulations. The amendments require the applicant to serve a copy of the environmental statement on the planning authority and to inform the Scottish Ministers when this has been done.

Regulation 10 amends regulation 12 of the principal Regulations. It amends the list of documents that the Scottish Ministers must send to any EEA State likely to be significantly affected by the proposed development.

Regulation 11 amends regulation 14 of the principal Regulations. The amendments impose a new requirement for the notice of further information to be published in the Edinburgh Gazette and require the applicant to serve a copy of the further information together with a copy of the notice of further information on the principal planning authority.

(a) O.J. No. L 175, 5.7.1985, p.40.

(b) O.J. No. L 73, 14.3.1997, p.5.

(c) O.J. No. L 156, 25.6.2003, p.17.

Regulation 12 inserts a new regulation 14A into the principal Regulations. The new regulation sets out the procedure which the Scottish Ministers must follow following receipt of “additional information” and the notice that the applicant must publish relating to “additional information”.

Regulation 13 amends Schedules 1 and 2 to the principal Regulations. The amendments concern the descriptions of development in respect of which an environmental statement is required.

A Regulatory Impact Assessment and Transposition Note has been prepared in connection with these Regulations and placed in the Scottish Parliament Information Centre. Copies can also be obtained from the Scottish Government Enterprise Energy and Tourism Directorate, Meridian Court, Cadogan Street, Glasgow G2 6AT.