
SCOTTISH STATUTORY INSTRUMENTS

1999 No. 1

The Environmental Impact Assessment
(Scotland) Regulations 1999

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(1);

“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(2);

“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(3) as adjusted by the Protocol signed at Brussels on 17th March 1993(4);

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

“EIA development” means development which is either—

- (a) Schedule 1 development; or

(1) S.I. 1981/829, amended by S.I. 1984/238.

(2) 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.

(3) Cm 2073.

(4) Cm 2183.

(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

(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(5);

“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⁽⁶⁾;
- (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⁽⁷⁾;
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽⁸⁾;
- (e) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽⁹⁾;
- (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⁽¹⁰⁾ 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⁽¹¹⁾.

(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.

⁽⁶⁾ 1981 c. 69.

⁽⁷⁾ See Command Paper 9424.

⁽⁸⁾ 1979 c. 46. See the definition in section 1(11).

⁽⁹⁾ S.I. 1994/2716.

⁽¹⁰⁾ 1991 c. 28.

⁽¹¹⁾ 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.

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.

(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—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (4); or
- (b) adopt an opinion to the effect that the development is EIA development;

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

(7) The person may make a request pursuant to paragraph (6) even if the authority have not received additional information which they have sought under paragraph (3).

Requests for screening directions of the Scottish Ministers

6.—(1) A person who pursuant to regulation 5(6) requests the Scottish Ministers to make a screening direction shall submit with his request—

- (a) a copy of his request to the relevant planning authority under regulation 5(1) and the documents which accompanied it;
- (b) a copy of any notification under regulation 5(3) which he has received and of any response;
- (c) a copy of any screening opinion he has received from the authority and of any accompanying statement of reasons; and
- (d) any representations that he wishes to make.

(2) When a person makes a request pursuant to regulation 5(6), he shall send to the relevant planning authority a copy of that request and of any representations he makes to the Scottish Ministers, and that authority may, within two weeks of receiving those documents, provide the Scottish Ministers with their comments on the request and representations.

(3) The Scottish Ministers shall, if they consider that they have not been provided with sufficient information to make a screening direction, notify in writing the person making the request pursuant to regulation 5(6) of the points on which they require additional information, and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Scottish Ministers shall make a screening direction within three weeks beginning with the date of receipt of a request pursuant to regulation 5(6) or such longer period as they may reasonably require.

(5) The Scottish Ministers shall send a copy of any screening direction made pursuant to paragraph (4) forthwith to the person who made the request.

CHAPTER 3

PROCEDURES CONCERNING APPLICATIONS FOR PLANNING PERMISSION

Application made to a planning authority without an environmental statement

7.—(1) Where it appears to the relevant planning authority that—

- (a) an application for planning permission which is before them for determination is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 5 shall apply as if the receipt or lodging of the application were a request made under regulation 5(1).

(2) Where an EIA application which is before a planning authority for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the authority shall notify the applicant in writing that the submission of an environmental statement is required.

(3) An authority shall notify the applicant in accordance with paragraph (2) within three weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; but where the Scottish Ministers, after the expiry of that period of three weeks or of any longer period so agreed, make a screening direction to the effect that the development is EIA development, the authority shall so notify the applicant within seven days beginning with the date the authority received a copy of that screening direction.

(4) An applicant receiving a notification pursuant to paragraph (2) may, within three weeks beginning with the date of the notification, write to the authority—

- (a) stating that he accepts their view and is providing an environmental statement; or
- (b) unless the Scottish Ministers have made a screening direction in respect of the development, stating that he is writing to them to request a screening direction.

(5) If the applicant does not write to the authority in accordance with paragraph (4), the permission sought shall, unless the Scottish Ministers have made a screening direction to the effect that the development is not EIA development, be deemed to be refused at the end of the relevant three week period, and the deemed refusal—

- (a) shall be treated as a decision of the authority for the purposes of paragraph 3(c) of Schedule 5 (registers) to the general development order; but
- (b) shall not give rise to an appeal to the Scottish Ministers by virtue of section 47 (right to appeal against planning decisions and failure to take such decisions).

(6) An authority which has given a notification in accordance with paragraph (2) shall, unless the Scottish Ministers make a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with regulation 13(3).

(7) A person who requests a screening direction pursuant to sub-paragraph (4)(b) shall send to the Scottish Ministers with his request copies of—

- (a) his application for planning permission;
- (b) all documents sent to the authority as part of the application; and
- (c) all correspondence between the applicant and the authority relating to the proposed development,

and paragraphs (2) to (5) of regulation 6 shall apply to a request under this regulation as they apply to a request made pursuant to regulation 5(6).

Application referred to the Scottish Ministers without an environmental statement

8.—(1) Where it appears to the Scottish Ministers that—

- (a) an application for planning permission which has been referred to them for determination is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the referral of the application were a request made by the applicant pursuant to regulation 5(6).

(2) Where it appears to the Scottish Ministers that an application which has been referred to them for determination is an EIA application and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the Scottish Ministers shall notify the applicant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(3) The Scottish Ministers shall notify the applicant in accordance with paragraph (2) within three weeks beginning with the date they received the application or such longer period as they may reasonably require.

(4) An applicant who receives a notification under paragraph (2) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that he proposes to provide an environmental statement.

(5) If the applicant does not write in accordance with paragraph (4), the Scottish Ministers shall be under no duty to deal with the application; and at the end of the three week period the Scottish Ministers shall inform the applicant in writing that no further action is being taken on the application.

(6) Where the Scottish Ministers have given a notification under paragraph (2), they shall determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with regulation 13(3).

Appeal to the Scottish Ministers without an environmental statement

9.—(1) Where on consideration of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) it appears to the Scottish Ministers that—

- (a) the relevant application is a Schedule 1 application or Schedule 2 application;
- (b) the development in question has not been the subject of a screening opinion or screening direction; and
- (c) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations,

paragraphs (3) and (4) of regulation 6 shall apply as if the appeal were a request made by the appellant pursuant to regulation 5(6).

(2) Where it appears to the Scottish Ministers that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, they shall notify the appellant in writing that the submission of an environmental statement is required and shall send a copy of that notification to the relevant planning authority.

(3) An appellant who receives a notification under paragraph (2) may within three weeks beginning with the date of the notification write to the Scottish Ministers stating that he proposes to provide an environmental statement.

(4) If the appellant does not write in accordance with paragraph (3), the Scottish Ministers shall be under no duty to deal with the appeal; and at the end of the three week period they shall inform the appellant that no further action is being taken on the appeal.

(5) Where the Scottish Ministers have given a notification under paragraph (2), they shall determine the appeal only by refusing planning permission if the appellant does not submit an environmental statement and comply with regulation 13(3).

CHAPTER 4

PREPARATION OF ENVIRONMENTAL STATEMENTS

Scoping opinions of the planning authority

10.—(1) A person who is minded to make an EIA application may ask the relevant planning authority to state in writing their opinion as to the information to be provided in the environmental statement (a “scoping opinion”).

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

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

(3) An authority receiving a request under paragraph (1) shall, if they consider that they have not been provided with sufficient information to adopt a scoping opinion, notify the person making the request of the points on which they require additional information.

(4) An authority shall not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the person who made the request and the consultation bodies, but shall, subject to paragraph (5), within five weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(5) Where a person has, at the same time as making a request for a screening opinion under regulation 5(1), asked the authority for an opinion under paragraph (1) above, and the authority have adopted a screening opinion to the effect that the development is EIA development, the authority shall within five weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request.

(6) Before adopting a scoping opinion, the authority shall take into account—

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

(7) Where an authority fail to adopt a scoping opinion within the relevant period mentioned in paragraph (4) or (5), the person who requested the opinion may under regulation 11(1) ask the Scottish Ministers to make a direction as to the information to be provided in the environmental statement (a “scoping direction”).

(8) Paragraph (7) applies notwithstanding that the authority may not have received additional information which they have sought under paragraph (3).

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

Scoping directions of the Scottish Ministers

11.—(1) A request made under this paragraph pursuant to regulation 10(7) shall include—

- (a) a copy of the relevant request to the relevant planning authority under regulation 10(1);
- (b) a copy of any relevant notification under regulation 10(3) and of any response;
- (c) a copy of any relevant screening opinion received by the person making the request and of any accompanying statement of reasons; and
- (d) any representations that the person making the request wishes to make.

(2) When a person makes a request under paragraph (1) he shall send to the relevant planning authority a copy of that request, but that copy need not include the matters mentioned in subparagraphs (a) to (c) of that paragraph.

(3) The Scottish Ministers shall notify in writing the person making the request of any points on which they consider the information provided pursuant to paragraph (1) is insufficient to enable them to make a scoping direction; and may request the relevant planning authority to provide such information as they can on any of those points.

(4) The Scottish Ministers shall not make a scoping direction in response to a request under paragraph (1) until they have consulted the person making the request and the consultation bodies, but shall, within five weeks beginning with the date of receipt of that request or such longer period as they may reasonably require, make a direction and send a copy to the person who made the request and to the relevant planning authority.

(5) Before making a scoping direction, the Scottish Ministers shall take into account the matters specified in regulation 10(6).

(6) Where the Scottish Ministers have made a scoping direction in response to a request under paragraph (1), neither they nor the relevant planning authority shall be precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission for the same development as was referred to in the request.

Procedure to facilitate preparation of environmental statements

12.—(1) Any person who intends to submit an environmental statement to the relevant planning authority or the Scottish Ministers under these Regulations may give notice in writing to that authority or the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) shall include the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving the notice proposes to refer in his environmental statement.

(3) The recipient of—

- (a) such notice as is mentioned in paragraph (1); or
- (b) a written statement made pursuant to regulation 7(4)(a), 8(4) or 9(3),

shall—

- (i) notify the consultation bodies in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies by paragraph (4) to make information available to that person; and
- (ii) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified.

(4) Subject to paragraph (5), the relevant planning authority and any body notified in accordance with paragraph (3) shall, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the authority or body have in their possession any information which he or they consider relevant to the preparation of the environmental statement and, if they have, the authority or body shall make that information available to that person.

(5) Paragraph (4) shall not require the disclosure of information which is capable of being treated as confidential, or must be so treated, under regulation 4 of the Environmental Information Regulations 1992(12).

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

CHAPTER 5

PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL STATEMENTS

Publicity for environmental statement

13.—(1) In an EIA application, when the applicant or appellant submits to the Scottish Ministers or the relevant planning authority a statement which he refers to as an environmental statement for the purposes of these Regulations, he shall serve on any party who holds a notifiable interest in neighbouring land a notice in the form set out in Schedule 5 (or in a form substantially to the like effect) stating—

- (a) that the statement may be inspected in the office of the relevant planning authority for the period of 4 weeks from the date of the said notice;
- (b) the address at which copies of the statement may be acquired;
- (c) the cost of a copy of the statement; and
- (d) that representations may be made.

(2) The parties holding a notifiable interest in neighbouring land are the owners, lessees and occupiers of the land.

(3) A statement such as is referred to in paragraph (1) shall not be taken into consideration by a planning authority or the Scottish Ministers unless it is accompanied by a certificate stating—

- (a) that notices have been served in terms of paragraph (1);
- (b) that no notification in terms of paragraph (1) is required; or
- (c) that the applicant has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of all the parties holding a notifiable interest in neighbouring land, and either—
 - (i) that the names and addresses of the parties holding a notifiable interest in neighbouring land have not been ascertained and no notice has been served in terms of paragraph (1); or

(12) S.I. 1992/3240, amended by S.I. 1998/1447.

(ii) that notices have been served in terms of paragraph (1) on one or more of the parties holding a notifiable interest in neighbouring land but that the names and addresses of the other parties holding a notifiable interest have not been ascertained.

(4) The certificate under paragraph (3) shall, where appropriate, state the names and addresses of all those parties having a notifiable interest in neighbouring land who have been notified in terms of paragraph (1).

(5) When a statement such as is referred to in paragraph (1) is submitted, the relevant planning authority or the Scottish Ministers, as the case may be, shall publish as soon as possible a notice (containing similar information to that required to be included in a notice served in accordance with paragraph (1)) in a newspaper circulating in the locality in which the neighbouring land is situated and in The Edinburgh Gazette.

(6) Where the Scottish Ministers or the planning authority are required to publish a notice in a newspaper in accordance with paragraph (5), the applicant shall pay the cost to be incurred by the Scottish Ministers or the planning authority in arranging such advertisement at the time of submitting his statement.

(7) For the purposes of this regulation, “neighbouring land” has the same meaning as in article 2(1) of the general development order.

Consultation where environmental statement received by planning authority

14.—(1) Where a planning authority receive in connection with an EIA application a statement which the applicant refers to as an environmental statement for the purposes of these Regulations, they shall—

- (a) place a copy of the statement in Part I of the register together with a copy of the related application;
- (b) send to the Scottish Ministers a copy of the application, and of any plans and other documents sent with it, and 3 copies of the statement; and
- (c) send a copy of the statement to each consultation body, consult them about it and inform them that they may make representations.

(2) Where an applicant for planning permission submits a statement such as is referred to in paragraph (1) to the relevant planning authority, he shall let them have enough copies of the environmental statement or parts thereof to enable them to comply with paragraph (1)(c) and 5 additional copies.

(3) Where under this regulation a planning authority consult any person about any statement, they shall give not less than 4 weeks' notice to such person that environmental information is to be taken into consideration, and shall not take the environmental information into consideration until after the expiration of the period of such notice.

(4) Where any person whom a planning authority are required to consult under this regulation considers that consultation with him is not required in respect of any statement relating to any case or class of case or relating to any specified area, he shall so inform the planning authority in writing and notwithstanding the foregoing provisions of this regulation the planning authority shall not be required so to consult him.

Copies of environmental statement for the Scottish Ministers

15. Where a statement which the applicant refers to as an environmental statement for the purposes of these Regulations is provided in relation to an application for planning permission which is directed to be referred to the Scottish Ministers for determination, or is to be the subject of an appeal to them, the applicant or appellant shall provide the Scottish Ministers with 3 copies of the

statement and, where relevant, the further information unless (in the case of a referred application) the planning authority have already forwarded 3 copies when referring the application.

Consultation where environmental statement received by the Scottish Ministers

16.—(1) This regulation applies where the Scottish Ministers are taking into consideration environmental information relating to an EIA application which is being determined by them by virtue of section 46 or 47 and the environmental statement has not previously been submitted to the relevant planning authority.

(2) The provisions of regulation 14(1)(c), (2), (3) and (4) shall apply to the Scottish Ministers as they apply to the planning authority, as if references to the applicant include, where the case requires, references to the appellant.

(3) The Scottish Ministers shall consult the planning authority for the area in which is situated the land to which the application relates about the statement and shall send them 2 copies of it.

(4) When the planning authority receive 2 copies of the statement under paragraph (3), they shall place one copy in Part I of the register together with a copy of the related application.

Copies of environmental statement for the public

17. Where a statement which the applicant refers to as an environmental statement for the purposes of these Regulations is provided in relation to an application for planning permission, the applicant or appellant shall ensure that a reasonable number of copies of the statement are available at the address named in the notices under regulation 13(1) as the address at which copies may be obtained.

Charges for copies of environmental statements

18. A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement made available in accordance with regulation 17.

Further information and evidence relating to environmental statements

19.—(1) The Scottish Ministers or the relevant planning authority, when dealing with an application or appeal in relation to which a statement which the applicant or appellant refers to as an environmental statement for the purposes of these Regulations has been provided, may in writing require the applicant or appellant to provide such further information as may be specified to enable the application or appeal to be determined, or concerning any matter which is required to be dealt with in the environmental statement; and where in the opinion of the Scottish Ministers or the relevant planning authority—

- (a) the applicant or appellant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in Schedule 4; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

they shall notify the applicant or appellant in writing and the applicant or appellant shall provide that further information (and such further information provided by the applicant or appellant is referred to in these Regulations as “further information”).

(2) Where further information is required in accordance with paragraph (1), except insofar as such further information—

- (a) is required to be provided for the purposes of a local inquiry held under the Act and the written requirement for such further information states that it is to be provided for such purposes, or
 - (b) is required to be provided for the purposes of an appeal under section 130,
- regulations 14 and 16 to 18 shall apply to the submission of such further information as they apply to the submission of an environmental statement (subject to any necessary modifications) and regulation 13 shall similarly apply subject to substitution, in paragraph (1), of “in Schedule 6” in place of “in Schedule 5”.
- (3) The Scottish Ministers or the relevant planning authority may in writing require to be produced to them such evidence, in respect of any environmental statement which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

CHAPTER 6

AVAILABILITY OF DIRECTIONS ETC. AND NOTIFICATION OF DECISIONS

Availability of opinions, directions etc. for inspection

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

- (a) screening opinion;
 - (b) screening direction;
 - (c) scoping opinion;
 - (d) scoping direction;
 - (e) notification given under regulation 7(2), 8(2) or 9(2);
 - (f) direction under regulation 4(4);
 - (g) environmental statement, including any further information;
 - (h) statement of reasons accompanying any of the above.
- (2) Where the relevant planning authority—
- (a) adopt a screening opinion or scoping opinion; or
 - (b) receive—
 - (i) a request under regulation 10(1) or 11(2); or
 - (ii) a copy of a screening direction, scoping direction, or direction under regulation 4(4),
- before an application is made for planning permission for the development in question, the authority shall take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the appropriate register (or relevant section of that register) is kept.
- (3) Documents made available under paragraph (2) shall remain so available for a period of two years.

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

- 21.**—(1) Where an EIA application is determined by a planning authority, the authority shall—
- (a) in writing, inform the Scottish Ministers and the consultation bodies of the decision;

- (b) inform the public of the decision (and of where the statement referred to in sub-paragraph (c) may be inspected), by publishing a notice in a newspaper circulating in the locality in which the land is situated, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at the place where the appropriate register (or relevant section of that register) is kept a statement containing–
 - (i) the content of the decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based; and
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.
- (2) Where an EIA application is determined by the Scottish Ministers, they shall–
 - (a) notify the relevant planning authority and the consultation bodies of the decision; and
 - (b) provide the authority with such a statement as is mentioned in paragraph (1)(c).
- (3) The relevant planning authority shall, as soon as reasonably practicable after receipt of a notification under paragraph (2)(a), comply with sub-paragraphs (b) and (c) of paragraph (1) in relation to the decision so notified as if it were a decision of the authority.

CHAPTER 7

DEVELOPMENT BY PLANNING AUTHORITIES

Development by planning authority – preliminary

22.—(1) Before a planning authority take any action under regulation 4 of the 1981 Regulations in respect of development which appears to them to be Schedule 1 or Schedule 2 development, they shall–

- (a) consult such of the consultation bodies as they consider appropriate and then adopt a screening opinion; or
- (b) request the Scottish Ministers in writing to make a screening direction.

(2) Where a planning authority are minded to undertake development which appears to them to be Schedule 1 or Schedule 2 development and which they consider may be development–

- (a) of a description specified in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽¹³⁾ (other than development of a description specified in article 3(10) of that Order); or
- (b) for which permission would be granted but for regulation 27(1),

they shall–

- (i) consult such of the consultation bodies as they consider appropriate and then adopt a screening opinion; or
- (ii) request the Scottish Ministers in writing to make a screening direction.

(3) Any approach for consultation or request to the Scottish Ministers under paragraph (1) or (2) shall be accompanied by–

- (a) a plan sufficient to identify the land on which the development would be carried out;
- (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 authority may wish to provide or make.

⁽¹³⁾ S.I. 1992/223; relevant amending instrument is S.I. 1997/1871.

(4) Paragraphs (3) and (4) of regulation 6 shall apply to a request under paragraph (1)(b) or (2)(ii) of this regulation as they apply to a request made pursuant to regulation 5(6).

(5) Where the screening opinion of the planning authority is to the effect that their development is EIA development or the Scottish Ministers make a screening direction to that effect, the planning authority shall prepare an environmental statement in respect of the development.

(6) This regulation and regulations 23 to 26 shall not apply in a case where the notices and consultation of a planning authority under regulation 4(2) of the 1981 Regulations were given and carried out respectively, or the application of a planning authority was made, before 1st August 1999.

Provision of information to planning authority

23. In preparing an environmental statement, the planning authority shall inform the consultation bodies that they are doing so and any body so informed shall make available to the planning authority any information in their possession which they or the planning authority consider relevant to the preparation of the environmental statement.

Publicity for environmental statement prepared by planning authority

- 24.**—(1) After an environmental statement has been prepared, the planning authority shall—
- (a) place a copy of the environmental statement in Part I of the register together with the copy of the notice of intention to develop required to be placed there by regulation 8 of the 1981 Regulations;
 - (b) make available copies of the environmental statement for inspection by, and sale to, the public; and
 - (c) in addition to publishing a notice in a local newspaper under regulation 4(1) of the 1981 Regulations, publish such a notice in The Edinburgh Gazette.
- (2) The notice to be so published shall contain, in addition to the information specified in regulation 4(1) of the 1981 Regulations, a statement—
- (a) that an environmental statement has been prepared;
 - (b) that copies of the environmental statement may be inspected and acquired at the same address and times as the plans of the development may be inspected;
 - (c) of the cost of a copy of the environmental statement; and
 - (d) that representations may be made in writing to the planning authority within 4 weeks of the date of publication under paragraph (1)(c) (or the later date of such publication where the notices were not published on the same day).

(3) In addition to the consultations carried out under regulation 4(2)(b) of the 1981 Regulations, the planning authority shall consult the consultation bodies on the environmental statement, shall send each of them a copy thereof and shall inform them that they may make representations.

(4) The information to be provided by the planning authority, when complying under regulation 4(2)(c) of the 1981 Regulations with the requirements of any development order or direction, shall include information to the same effect as is specified in sub-paragraphs (a) to (d) of paragraph (2) of this regulation.

Granting of planning permission to planning authority

25.—(1) No planning permission shall be deemed to have been granted under regulation 5(1) of the 1981 Regulations where, if the development were the subject of an application for planning permission, it would be an EIA application.

(2) Where paragraph (1) applies, the provisions of regulation 6 of the 1981 Regulations shall apply as if the development were one of the classes of case specified in paragraph (1) of regulation 6 of the 1981 Regulations.

(3) When complying with the provisions of regulation 6 of the 1981 Regulations in respect of a development to which paragraph (1) of this regulation applies, the planning authority shall accompany their notice of intention to develop with a copy of the environmental statement and the Scottish Ministers shall consider the environmental statement and issue a decision as to whether or not to require the planning authority to make an application to them for planning permission and shall state in their decision that they have considered the statement.

Intimation of decision

26. Where the Scottish Ministers decide under regulation 25(3) that the planning authority are not required to make an application to them for planning permission, they shall take the steps described in paragraph (2) of regulation 21 and the authority shall comply with paragraph (3) of that regulation.

CHAPTER 8

SPECIAL CASES

Restriction of grant of permission by old simplified planning zone schemes or enterprise zone orders

27.—(1) Any—

- (a) adoption or approval of a simplified planning zone scheme⁽¹⁴⁾;
- (b) order designating an enterprise zone⁽¹⁵⁾; or
- (c) approval of a modified scheme in relation to an enterprise zone,

which has effect immediately before the commencement of these Regulations to grant planning permission shall, on and after that date, cease to have effect to grant planning permission for Schedule 1 development, and cease to have effect to grant planning permission for Schedule 2 development unless either—

- (i) the relevant planning authority have adopted a screening opinion; or
- (ii) the Scottish Ministers have made a screening direction,

to the effect that the particular proposed development is not EIA development.

(2) Paragraph (1) shall not affect the completion of any development begun before the commencement of these Regulations.

Restriction of grant of permission by new simplified planning zone schemes or enterprise zone orders

28. No—

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

after the commencement of these Regulations shall—

- (i) grant planning permission for EIA development; or

⁽¹⁴⁾ See section 50 of, and Schedule 5 to, the Town and Country Planning (Scotland) Act 1997.

⁽¹⁵⁾ See sections 55 and 56 of the Town and Country Planning (Scotland) Act 1997 and Schedule 32 to the Local Government, Planning and Land Act 1980 (c. 65).

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

CHAPTER 9

UNAUTHORISED DEVELOPMENT

Prohibition on the grant of planning permission for unauthorised EIA development

29. The Scottish Ministers shall not grant planning permission under subsection (1) of section 133 (grant or modification of planning permission on appeals against enforcement notices) in respect of EIA development which is the subject of an enforcement notice under section 127 (issue of enforcement notice) (“unauthorised EIA development”) unless they have first taken the environmental information into consideration, and they shall state in their decision that they have done so.

Screening opinions of the planning authority

30.—(1) Where it appears to the planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include Schedule 1 development or Schedule 2 development, they shall, before the enforcement notice is issued, adopt a screening opinion.

(2) Where it appears to the planning authority by whom or on whose behalf an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include EIA development they shall serve with a copy of the enforcement notice a notice (“regulation 30 notice”) which shall—

- (a) include the screening opinion required by paragraph (1) and the written statement required by regulation 4(6); and
 - (b) require a person who gives notice of an appeal under section 130 to submit to the Scottish Ministers with the notice four copies of an environmental statement relating to that EIA development and to provide them with such further copies as they may require under regulation 35(2).
- (3) The authority by whom a regulation 30 notice has been served shall send a copy of it to—
- (a) the Scottish Ministers; and
 - (b) the consultation bodies.

(4) Where an authority provide the Scottish Ministers with a copy of a regulation 30 notice, they shall also provide them with a list of the other persons to whom a copy of the notice has been or is to be sent.

Screening directions of the Scottish Ministers

31. Any person on whom a regulation 30 notice is served may apply to the Scottish Ministers for a screening direction and the following shall apply—

- (a) an application under this regulation shall be accompanied by—
 - (i) a copy of the regulation 30 notice;
 - (ii) a copy of the enforcement notice which accompanied it; and
 - (iii) such other information or representations as the applicant may wish to provide or make;

- (b) the applicant shall send to the authority by whom the regulation 30 notice was served, at such time as he applies to the Scottish Ministers, a copy of the application under this regulation and of any information or representations provided or made in accordance with paragraph (a)(iii);
- (c) if the Scottish Ministers consider that the information provided in accordance with paragraph (a) is insufficient to enable them to make a direction, they shall notify the applicant and the authority of the matters in respect of which they require additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice;
- (d) the Scottish Ministers shall send a copy of their direction to the applicant and to the authority and, where they conclude that the matters which are alleged to constitute the breach of planning control comprise or include EIA development, they shall send with the copy of the direction a written statement giving clearly and precisely their full reasons for that conclusion;
- (e) without prejudice to paragraph (d), where the Scottish Ministers direct that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, they shall send a copy of the direction to the consultation bodies.

Provision of information

32.—(1) The relevant planning authority and any consultation body shall, if requested by the person on whom the regulation 30 notice was served, enter into consultation with that person to determine whether the authority or body have in their possession any information which he or they consider relevant to the preparation of an environmental statement and, if they have, the authority or body shall make any such information available to that person.

(2) The provisions of paragraphs (5) and (6) of regulation 12 shall apply to information under paragraph (1) as they apply to any information falling within regulation 12(4).

Appeal to the Scottish Ministers without a screening opinion or screening direction

33.—(1) Where on consideration of an appeal under section 130 it appears to the Scottish Ministers that the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development or Schedule 2 development and, in either case, no screening opinion has been adopted and no screening direction has been made in respect of that development, they shall, before any notice is served pursuant to regulation 34(a), make such a screening direction.

(2) If the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction, they shall notify the applicant and the authority by whom the notice under section 127 was served of the matters in respect of which they require additional information; and the information so requested shall be provided by the applicant within such reasonable period as may be specified in the notice.

(3) If an appellant to whom notice has been given under paragraph (2) fails to comply with the requirements of that notice—

- (a) the application which is deemed to have been made by virtue of the appeal made under section 130 (“the deemed application”); and
- (b) the appeal in so far as it is brought under the ground mentioned in section 130(1)(a) (“the ground (a) appeal”),

shall lapse at the end of the period specified in the notice.

(4) Paragraphs (d) and (e) of regulation 31 shall apply to a screening direction made under this regulation as they apply to such a direction made under that regulation.

Appeal to the Scottish Ministers without an environmental statement

34. Where the Scottish Ministers are considering an appeal under section 130 and the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development, and the documents submitted to them for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement for the purposes of these Regulations, the following procedure shall apply—

- (a) the Scottish Ministers shall, subject to paragraph (b), within the period of three weeks beginning with the day on which they receive the appeal, or such longer period as they may reasonably require, notify the appellant in writing of the requirements of paragraph (c) below;
- (b) notice need not be given under paragraph (a) where the appellant has submitted a statement which he refers to as an environmental statement for the purposes of these Regulations to the Scottish Ministers for the purposes of an appeal under section 47 (right to appeal against planning decisions and failure to take such decisions) which—
 - (i) relates to the development to which the appeal under section 130 relates; and
 - (ii) is to be determined at the same time as that appeal under section 130;and that statement, any further information, and the representations (if any) made in relation to it shall be treated as the environmental statement and representations for the purpose of regulation 29;
- (c) the requirements of this paragraph are that the appellant shall, within the period specified in the notice or such longer period as the Scottish Ministers may allow, submit to them such number of copies of an environmental statement relating to the unauthorised EIA development in question as may be so specified;
- (d) the Scottish Ministers shall send to the relevant planning authority a copy of any notice sent to the appellant under paragraph (a);
- (e) if an appellant to whom notice has been given under paragraph (a) fails to comply with the requirements of paragraph (c), the deemed application and the ground (a) appeal (if any) shall lapse at the end of the period specified or allowed (as the case may be);
- (f) as soon as reasonably practicable after the occurrence of the event mentioned in paragraph (e), the Scottish Ministers shall notify the appellant and the planning authority in writing that the deemed application and the ground (a) appeal (if any) have lapsed.

Procedure where an environmental statement is submitted to the Scottish Ministers

35.—(1) Where the Scottish Ministers receive (otherwise than as mentioned in regulation 34(b)) in connection with an enforcement appeal a statement which the appellant refers to as an environmental statement for the purposes of these Regulations, they shall send a copy of that statement to the relevant planning authority and the consultation bodies, advise them that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal (if any), and inform them that they may make representations.

(2) The appellant shall provide the Scottish Ministers with such copies of the statement referred to in paragraph (1) as they may require to enable them to fulfil their obligations under that paragraph.

Further information and evidence respecting environmental statements

36.—(1) Paragraphs (1) and (3) of regulation 19 shall apply to statements provided in accordance with this Chapter with the following modifications—

- (a) where the Scottish Ministers notify the appellant under regulation 19(1), the appellant shall provide the further information within such period as they may specify in the notice or such longer period as they may allow;
 - (b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allowed (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.
- (2) Regulation 35 shall apply in relation to further information received by the Scottish Ministers in accordance with paragraph (1) as it applies to such a statement as is referred to in that regulation.

Publicity for environmental statements or further information

37.—(1) Where an authority receive a copy of a statement or further information by virtue of regulation 35, they shall publish in a local newspaper circulating in the locality in which the land is situated a notice stating—

- (a) the name of the appellant and that he has appealed to the Scottish Ministers against the enforcement notice;
- (b) the address or location of the land to which the notice relates and the nature of the development;
- (c) that a copy of the statement or further information may be inspected by members of the public at all reasonable hours;
- (d) an address in the locality in which the land is situated at which the statement or further information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 21 days later than the date on which the notice is published);
- (e) that any person wishing to make representations about any matter dealt with in the statement or further information should make them in writing, no later than 14 days after the date specified in accordance with sub-paragraph (d), to the Scottish Ministers; and
- (f) the address to which any such representations should be sent.

(2) The authority shall as soon as practicable after publication of a notice in accordance with paragraph (1) send to the Scottish Ministers a copy of the notice certified by or on behalf of the authority as having been published in a named newspaper on a date specified in the certificate.

(3) Where the Scottish Ministers receive a certificate under paragraph (2), they shall not determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 14 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection.

Public inspection of documents

38.—(1) The relevant planning authority shall make available for public inspection at all reasonable hours at the place where the appropriate register (or relevant part of that register) is kept a copy of—

- (a) every regulation 30 notice given by the authority;
- (b) every direction received by the authority under regulation 31(d) or 33(4);
- (c) every notice received by the authority under regulation 34(d); and
- (d) every statement and all further information received by the authority under regulation 35;

and copies of those documents shall remain so available for a period of two years or until they are entered in Part II of the register in accordance with paragraph (2), whichever is the sooner.

(2) Where particulars of any planning permission granted by the Scottish Ministers under section 130 are entered in Part II of the register, the relevant planning authority shall take steps to secure that that Part also contains a copy of any of the documents referred to in paragraph (1) as are relevant to the development for which planning permission has been granted.

(3) The provisions of paragraphs (2) and (3) of regulation 21 apply to a deemed application and a grant of planning permission under section 130 as they apply to an application for and grant of planning permission under Part III of the Act.

Unauthorised development with significant transboundary effects

39. Regulation 40 shall apply to unauthorised EIA development as if—

(a) for regulation 40(1)(a) there were substituted—

“(a) on consideration of an appeal under section 130, the Scottish Ministers are of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA State; or”;

(b) in regulation 40(3)(a) the words “a copy of the application concerned” were replaced by the words “a description of the development concerned”;

(c) in regulation 40(3)(b) the words “to which that application relates” were omitted; and

(d) in regulation 40(6) the word “application” was replaced by the word “appeal”.

CHAPTER 10

DEVELOPMENT WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

Development in Scotland likely to have significant effects in another EEA State

40.—(1) Where—

(a) it comes to the attention of the Scottish Ministers that development proposed to be carried out in Scotland is the subject of an EIA application and is likely to have significant effects on the environment in another EEA State; or

(b) another EEA State likely to be significantly affected by such development so requests, the Scottish Ministers shall—

(i) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if they think fit, the information referred to in paragraph (3);

(ii) publish the information in sub-paragraph (i) above in a notice placed in The Edinburgh Gazette indicating the address where additional information is available; and

(iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(2) The particulars referred to in paragraph (1)(i) are—

(a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and

(b) information on the nature of the decision which may be taken.

(3) Where an EEA State indicates, in accordance with paragraph (1)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers shall as soon as possible send to that EEA State the following information—

(a) a copy of the application concerned;

- (b) a copy of the environmental statement in respect of the development to which that application relates; and
 - (c) relevant information regarding the procedure under these Regulations,
- but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (1)(i).
- (4) The Scottish Ministers, insofar as they are concerned, shall also—
 - (a) arrange for the particulars and information referred to in paragraphs (2) and (3) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before planning permission for the development is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.
 - (5) The Scottish Ministers shall, in accordance with Article 7(4) of the Directive—
 - (a) enter into consultations with the EEA State concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
 - (6) Where an EEA State has been consulted in accordance with paragraph (5), on the determination of the application concerned the Scottish Ministers shall inform the EEA State of the decision and shall forward to it a statement of—
 - (a) the content of the decision and any conditions attached thereto;
 - (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.

Projects in another EEA State likely to have significant transboundary effects

41.—(1) Where the Scottish Ministers receive from another EEA State pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers shall, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, inter alia, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive.
- (2) The Scottish Ministers, insofar as they are concerned, shall also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
 - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before development consent for the project is granted, to forward to the competent

authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

CHAPTER 11 MISCELLANEOUS

Service of notices etc.

42. Any notice or other document to be sent, served or given under these Regulations may be served or given in a manner specified in section 271 (service of notices).

Application to the Court of Session

43. For the purposes of Part XI of the Act (validity), the references in section 239(1)(b) and (2) to action of the Scottish Ministers which is not within the powers of the Act shall be taken to extend to a grant of planning permission by the Scottish Ministers in contravention of regulation 3 or 29.

Hazardous waste and material change of use

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

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

45.—(1) In determining for the purposes of section 47 (right to appeal against planning decisions and failure to take such decisions) the time which has elapsed without the relevant planning authority giving notice to the applicant of their decision in a case where—

- (a) the authority have notified an applicant in accordance with regulation 7(2) that the submission of an environmental statement is required; and
- (b) the Scottish Ministers have given a screening direction in relation to the development in question,

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

(2) Where it falls to an authority to determine an EIA application, article 14 (time periods for decision) of the general development order shall have effect as if—

- (a) for the reference in paragraph (2) of that article to two months there were substituted a reference to four months; and
- (b) after paragraph (3) of that article there were inserted—

“(4) In any case where an environmental statement (within the meaning of regulation 2(1) of the Environmental Impact Assessment (Scotland) Regulations 1999) is required to be submitted in respect of an application, the date determined under paragraph (3) shall be the date on which that statement and the documents which require to accompany it were submitted (if that date is later than would otherwise be determined under paragraph (3)).”.

Extension of the power to provide in a development order for the giving of directions as respects the manner in which planning applications are dealt with

46. The provisions enabling the Scottish Ministers to give directions which may be included in a development order by virtue of section 31 (permission granted by development order) shall include provisions enabling him to direct that development which is both of a description mentioned in

Column 1 of the table in Schedule 2, and of a class described in the direction, is EIA development for the purposes of these Regulations.

Miscellaneous and consequential amendments

47.—(1) In section 26(2)(b) of the Act, after the words “improvement of the road” there are inserted the words “but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment”.

(2) In article 3(5) of the Town and Country Planning (Use Classes) (Scotland) Order 1997(16), after sub-paragraph (j) there is inserted the following sub-paragraph:—

“(k) as a waste disposal installation for the incineration, chemical treatment (as defined in Annex IIA to Directive 75/442/EEC(17) under heading D9), or landfill of waste to which Directive 91/689/EEC(18) applies”.

(3) In article 2 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(19), the definitions of “annex 1 application”, “annex 2 application” and “Environmental Assessment Regulations” shall be deleted.

(4) For paragraphs (8) and (9) of article 3 (permitted development) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, there is substituted—

“(8) Subject to paragraph (10), Schedule 1 development or Schedule 2 development within the meaning of the Environmental Impact Assessment (Scotland) Regulations 1999 (“the EIA Regulations”) is not permitted by this Order unless—

- (a) the planning authority have adopted a screening opinion under regulation 5 of those Regulations that the development is not EIA development;
- (b) the Scottish Ministers have made a screening direction under regulation 4(7) or 6(4) of those Regulations that the development is not EIA development; or
- (c) the Scottish Ministers have given a direction under regulation 4(4) of those Regulations that the development is exempted from the application of these Regulations.

(9) Where—

- (a) the planning authority have adopted a screening opinion pursuant to regulation 5 of the EIA Regulations that development is EIA development and the Scottish Ministers have in relation to that development neither made a screening direction to the contrary under regulation 4(7) or 6(4) of those Regulations nor directed under regulation 4(4) of those Regulations that the development is exempted from the application of those Regulations; or

(b) the Scottish Ministers have directed that development is EIA development,

that development shall be treated, for the purposes of paragraph (8), as development which is not permitted by this Order.”.

(5) In article 3(10) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992—

- (a) sub-paragraphs (a) and (c) shall be deleted;

(16) S.I. 1997/3061, as amended by S.I. 1998/1196.

(17) O.J. No. L194, 25.7.1975, p.39. Council Directive 75/442/EEC was amended by Council Directive 91/156/EEC (O.J. No. L78, 26.3.1991, p.32) and by Commission Decision 94/3/EC (O.J. No. L5, 7.1.1994, p.15).

(18) O.J. No. L337, 31.12.1991, p.20. Council Directive 91/689/EEC was amended by Council Directive 94/31/EC (O.J. No. L168, 2.7.1994, p.28).

(19) S.I. 1992/223; relevant amendment instrument is S.I. 1997/1871.

(b) in sub-paragraph (b), for “V of the Environmental Assessment Regulations” there is substituted “IV of the Environmental Impact Assessment (Scotland) Regulations 1999”; and

(c) in sub-paragraphs (e) and (f), for “1st September 1997” there is substituted “1st August 1999”.

(6) For Class 31 in Part 12 in Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, there is substituted—

“ Class 31.

The carrying out by a roads authority—

(a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where said works involve development by virtue of section 26(2)(b) of the Act; or

(b) on land outside but adjoining the boundary of an existing road of works required for or incidental to the maintenance or improvement of the road.”.

(7) For article 16 of the general development order, there is substituted—

“16. The Scottish Ministers may give directions that development which is both of a description set out in Column 1 of the table in Schedule 2 to the Environmental Impact Assessment (Scotland) Regulations 1999 and of a class described in the direction is EIA development for the purposes of those Regulations.”.

(8) In the Public Gas Transporter Pipe-Line Works (Environmental Impact Assessment) Regulations 1999(20)—

(a) in regulation 2(1), for the definition of “the 1988 Scottish EIA Regulations” there is substituted the following definition:—

““the 1999 Scottish EIA Regulations” means the Environmental Impact Assessment (Scotland) Regulations 1999;” and

(b) in regulation 5(3)—

(i) for “1988”, where it first occurs, there is substituted “1999”;

(ii) in sub-paragraph (a), for the words after “whether” there is substituted “the pipe-line works in question are, or are not, EIA development within the meaning of the 1999 Scottish EIA Regulations”; and

(iii) for sub-paragraph (b), there is substituted the following sub-paragraph:—

“(b) be treated for the purposes of those Regulations as if it were a direction by the Scottish Ministers under regulation 6 of the 1999 Scottish EIA Regulations.”.