

# The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument.

*Draft Regulations laid before the Scottish Parliament under paragraph 2 of schedule 2 of the European Communities Act 1972 for approval by resolution of the Scottish Parliament.*

## DRAFT SCOTTISH STATUTORY INSTRUMENTS

### 2017 No.

#### ROAD TRAFFIC

## The Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017

Made

2017

Coming into force

16th May 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup>, section 56 of the Finance Act 1973<sup>(2)</sup> and all other powers enabling them to do so.

They have taken into account the selection criteria in Annex III to [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment<sup>(3)</sup>.

#### Citation and commencement

1. These Regulations may be cited as the Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 and come into force on 16th May 2017.

#### Amendment of the Roads (Scotland) Act 1984

2. The Roads (Scotland) Act 1984<sup>(4)</sup> is amended in accordance with regulations 3 to 11.

#### Amendment of section 12B

3. In section 12B(2)(b) and (3)(c) (transitional power of Secretary of State as respects proposed roads)<sup>(5)</sup> for “environmental statement” in each place where it occurs substitute “EIA report”.

#### Amendment of section 12C

4. In section 12C(2)(c) and (3)(b) (transitional power of Secretary of State as respects special road schemes)<sup>(6)</sup> for “environmental statement” in each place where it occurs substitute “EIA report”.

#### Substitution of sections 20A and 20B and insertion of sections 20C to 20G

5. For sections 20A (environmental assessment of certain road construction projects)<sup>(7)</sup> and 20B (projects with significant transboundary effects)<sup>(8)</sup> substitute—

**“20A. Prohibition on certain road construction projects without an environmental impact assessment**

The Scottish Ministers must not proceed with the construction of a new road for which they are the roads authority if an environmental impact assessment is required for that project in accordance with section 20C—

- (a) unless an environmental impact assessment has been carried out, and
- (b) in carrying out such an assessment, the Scottish Ministers have taken the environmental information into account.

## 20B. Environmental impact assessment

- (1) An environmental impact assessment is a process consisting of—
- (a) the preparation of an EIA report by the Scottish Ministers;
  - (b) the carrying out of consultation, publication and notification as required by section 20C or section 55A and, where relevant, section 20F or section 55B (as it applies section 20F);
  - (c) the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information;
  - (d) the reasoned conclusion by the Scottish Ministers on the significant effects of the project on the environment, taking into account the results of the examination referred to in paragraph (c); and
  - (e) the integration of the Scottish Ministers' reasoned conclusion into the decision notice in accordance with paragraph 7 or paragraph 13 of schedule 1 of this Act.
- (2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the project, the direct and indirect significant effects of the project on the factors specified in subsection (3) and the interaction between those factors.
- (3) The factors are—
- (a) population and human health;
  - (b) biodiversity, and in particular species and habitats protected under [Directive 92/43/EEC\(9\)](#) and [Directive 2009/147/EC\(10\)](#);
  - (c) land, soil, water, air and climate, and
  - (d) material assets, cultural heritage and the landscape.
- (4) The effects to be identified, described and assessed under subsection (2) include the expected effects deriving from the vulnerability of the project to risks, so far as relevant to the project, of major accidents and disasters.
- (5) The environmental impact assessment must identify the likely significant effects of the project on the environment before a decision to proceed with the project is made.
- (6) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.
- (7) In this section and sections 20C to 20G, "the project" means a project for the construction of a new road for which the Scottish Ministers are the roads authority.

## 20C. Environmental Impact Assessment Report

- (1) If the Scottish Ministers have under consideration the construction of a new road for which they are the roads authority they must, before details of the project are published, determine whether it falls within Annex I or II.
- (2) If the Scottish Ministers determine that the project—
- (a) falls within Annex I; or
  - (b) is a relevant project falling within Annex II, and that having regard to the selection criteria in Annex III it should be made subject to an environmental impact assessment in accordance with the Directive,
- they shall, not later than the date when details of the project are published, prepare an EIA report and publish notice of it in accordance with subsections (5) to (10) and paragraph 7(1C), or 13(1C), as the case may be, of schedule 1 of this Act.
- (3) In making a determination as to whether a project is a relevant project falling within Annex II the Scottish Ministers must—
- (a) take into account—
    - (i) such of the selection criteria set out in Annex III as are relevant to the project,
    - (ii) the available results of any relevant assessment of the effects of the project, and
  - (b) base their decision on the information set out in subsection (4).
- (4) The information referred to in subsection (3)(b) is to be compiled taking into account, where relevant, the factors set out in subsection (3)(a) and must include—
- (a) a description of the location of the project, including a plan sufficient to identify the land;
  - (b) a description of the project, including in particular—
    - (i) a description of the physical characteristics of the project and, where relevant, of demolition works,
    - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected,
  - (c) a description of the aspects of the environment likely to be significantly affected by the project; and
  - (d) a description of any likely significant effects (to the extent of the information available on such effects) of the project on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant, and
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (5) The Scottish Ministers must publish any determination made by them in accordance with subsections (1) to (4), and that determination must include—
- (a) a statement giving, with reference to such of the criteria set out in Annex III as are relevant to the project, the main reasons for the determination; and
  - (b) where the determination is to the effect that the project does not require an environmental impact assessment, the statement referred to in paragraph (a) must state any features of the project which are envisaged to avoid or prevent significant adverse effects on the environment.
- (6) An EIA report is a report prepared by the Scottish Ministers in accordance with this section which assesses the environmental impact of the project and which includes (at least)—
- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
  - (b) a description of the likely significant effects of the project on the environment;
  - (c) a description of the features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
  - (d)

a description of the reasonable alternatives studied by the Scottish Ministers, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment

- (e) a non-technical summary of the information referred to in paragraphs (a) to (d); and
- (f) any other information specified in schedule 1A of this Act relevant to the specific characteristics of the project and to the environmental features likely to be affected.

(7) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments under Union legislation or national legislation in preparing the EIA report.

(8) In order to ensure the completeness and quality of the EIA report—

- (a) the Scottish Ministers must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the Scottish Ministers outlining the relevant expertise or qualifications of such experts.

(9) The Scottish Ministers must publish notice of the EIA report so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before a decision on whether to proceed with the project is taken, and the Scottish Ministers must not make any such decision without taking into consideration any opinion so expressed to them within a period of 42 days commencing with the date of publication of notice of the EIA report.

(10) Notice under subsection (9) must state—

- (a) that the Scottish Ministers, as the relevant roads authority, are considering implementing the project;
- (b) the proposed location and nature of the project;
- (c) that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects in another EEA State;
- (d) that a copy of the EIA report may be inspected at an address in the area in which the project is proposed to be situated during the period specified under paragraph (i);
- (e) the times at which a copy of the EIA report can be so inspected;
- (f) an address from which copies of the EIA report may be obtained and from which further information about the project may be requested during the period specified under paragraph (i);
- (g) if a charge is to be made for a copy of the EIA report, the amount of the charge;
- (h) that the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and provide the address of the website where a copy of the EIA report will be available for inspection by the public during the period provided for under paragraph (i);
- (i) that any person wishing to make any representations about the project and the EIA report may do so in writing to the Scottish Ministers at a specified address within a specified period, being a period of not less than 42 days commencing with the date of publication of the notice; and
- (j) that the Scottish Ministers will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(11) The Scottish Ministers must ensure that during the period specified under subsection (10)(i)—

- (a) copies of the EIA report are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (10)(d);
- (b) copies of the EIA report are available to be obtained by any person from the address specified under subsection (10)(f); and
- (c) the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and that a copy of the EIA report is available for inspection at a specified website address.

(12) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Scottish Ministers for the supply of a copy of the EIA report—

- (a) to a person other than a consultation body; or
- (b) to a consultation body to which one copy has already been supplied free of charge.

(13) In order to ensure the completeness and quality of the EIA report the Scottish Ministers must where necessary (having regard in particular to current knowledge and methods of assessment) obtain supplementary information about any matter referred to in subsection (6) which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.

(14) Where the Scottish Ministers obtain supplementary information relating to the EIA report and such supplementary information is reasonably required to give proper consideration to the likely environmental effects of the proposed project, except insofar as such supplementary information is required for the purposes of an inquiry held under section 139, subsections (9) to (12) shall apply to such supplementary information as they apply to an EIA report (subject to any necessary modifications).

(15) The Scottish Ministers must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the EIA report before they decide whether to proceed with the project and must not make any such decision within a period of 42 days commencing with the date of sending the report to the consultation bodies.

(16) In this section and sections 20D to 20G, paragraphs 7 and 13 of schedule 1 of this Act, and paragraph 9 of schedule 1A of this Act —

“the Directive” means Council [Directive 2011/92/EU\(11\)](#) on the assessment of the effects of certain public and private projects on the environment as amended by Council [Directive 2014/52/EU\(12\)](#);

“Annex” means an Annex to the Directive;

“relevant project” means a project for the construction of a new road where the completed works (together with any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps, or other such facilities or stores required during the period of construction)—

- (a) exceed 1 hectare in area; or
- (b) are situated in whole or in part in a sensitive area,

“sensitive area” has the meaning ascribed to that expression in regulation 2(1) of the Environmental Impact Assessment (Scotland) Regulations 1999(13); and

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

#### **20D. Co-ordination of assessments**

(1) Where the Scottish Ministers determine under section 20C(2) that a new road construction project should be made subject to an environmental impact assessment in accordance with the Directive and there is, in addition to that requirement for an environmental impact assessment to be carried out also a requirement to carry out a Habitats Regulation Assessment, the Scottish Ministers must, where appropriate, ensure that the Habitats Regulation Assessment and the environmental impact assessment are co-ordinated.

(2) In this section a "Habitats Regulation Assessment" means an assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994(14).

#### **20E. Competent authority – avoidance of conflict of interest**

(1) The Scottish Ministers must perform their duties under Part III of this Act in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are considering whether to proceed with a new road construction project they must implement within their organisation of administrative competencies an appropriate separation between conflicting functions when performing their duties under the Directive.

#### **20F. Projects with significant transboundary effects**

(1) This section applies if—

- (a) it appears to the Scottish Ministers that a project to which section 20C(2) applies is likely to have a significant effect on the environment in another EEA State, or
- (b) an EEA State the environment of which is likely to be significantly affected by such a project asks the Scottish Ministers for information about it.

(2) The Scottish Ministers must give to the relevant EEA State—

- (a) a description of the project together with any information available to them which suggests that it may have a significant effect on the environment in that EEA State,
- (b) any information which they have about the nature of the decision which may be taken on the project,
- (c) where they consider it appropriate, information about the environmental impact assessment procedure, and
- (d) a reasonable period within which to indicate whether that EEA State wishes to participate in that procedure.

(3) Subsection (2)(a) and (b) above must be complied with no later than the date of publication of the notice referred to in section 20C(5).

(4) If the EEA State indicates that it wishes to participate in the environmental impact assessment procedure, the Scottish Ministers must give it—

- (a) a copy of the EIA report where that has not already been given to that EEA State,
- (b) the information required by subsection (10) of section 20C to be included in the notice under subsection (9) of that section, and
- (c) any information about the environmental impact assessment procedure under this Part of this Act which they consider it appropriate to give and has not already been given to that EEA State.

(5) The Scottish Ministers must also—

- (a) arrange for the information which they have given to the EEA State to be made available within a reasonable time to—
  - (i) the authorities referred to in Article 6(1) of the Directive, and
  - (ii) members of the public in the EEA State who are likely to be concerned, and
- (b) ensure that those authorities and the members of the public concerned are given a reasonable opportunity to express an opinion before they decide whether to proceed with the project.

(6) In accordance with Article 7(4) of the Directive, the Scottish Ministers must—

- (a) consult the EEA State concerned regarding in particular the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate those effects, and
- (b) agree with that EEA State a reasonable period for responding to that consultation.

(7) Where an EEA State has been consulted in accordance with subsection (6) above, the Scottish Ministers must, after deciding whether to proceed with the project to which the environmental assessment relates, inform the EEA State of the decision and give it copies of the documents containing the matters referred to in paragraph 7(1B), or paragraph 13(1B) as the case may be, of schedule 1 of this Act.

#### **20G. Monitoring measures**

(1) Where the Scottish Ministers have decided to proceed with a project to construct a new road in relation to which an environmental impact assessment has been required, the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed project and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and
- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

(3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.

(4) Where mitigation measures or monitoring measures are required by a condition imposed as part of the decision to proceed with the project the Scottish Ministers must take steps to ensure that those measures are implemented.

(5) In this section "monitoring measures" means measures requiring the monitoring of any significant adverse effects on the environment of the project. "

#### **Insertion of sections 22A and 22B**

6. After section 22 (offences in relation to construction of new roads) insert—

(1) Any person who, for the purpose of procuring a particular decision in relation to a project to which section 20C applies—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular,

- (b) with intent to deceive, uses any document which is false or misleading in a material particular, or
- (c) with intent to deceive, withholds any material information,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

(3) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this section.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision declare unlawful any act or omission of the Crown which would but for subsection (3) have constituted an offence under this section.

(5) Despite subsection (3), this section applies to a person in the public service of the Crown as it applies to other persons.

## **22B. Offences by bodies corporate etc.**

(1) Subsection (2) applies where—

- (a) an offence under section 22A has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), "relevant individual" means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
  - (i) a director, manager, secretary or similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member;
- (c) in relation to a Scottish partnership, a partner;
- (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association."

## **Substitution of sections 55A and 55B and insertion of sections 55C and 55D**

7. For sections 55A (environmental assessment of certain road improvement projects)(15) and 55B (application of section 20B)(16) substitute—

### **"55A. Environmental assessment of certain road improvement projects**

(1) If the Scottish Ministers as roads authority have under consideration—

- (a) the making of an order such as is mentioned in paragraph 1 of schedule 1 of this Act relating to the improvement of a road, or
- (b) the improvement of a road without such an order,

they must, before details of the project are published, determine whether it falls within Annex I or II.

(2) If the Scottish Ministers determine that the project—

- (a) falls within Annex I, or
- (b) is a relevant project falling within Annex II, and that having regard to the selection criteria in Annex III it should be made subject to an environmental impact assessment in accordance with the Directive,

they must, not later than the date when details of the project are published prepare an EIA report and publish notice of it in accordance with subsections (5) to (10) and paragraph 7(1C), or paragraph 13(1C) as the case may be, of schedule 1 of this Act.

(3) In making a determination as to whether a project is a relevant project falling within Annex II the Scottish Ministers must—

- (a) in all cases take into account—
  - (i) such of the selection criteria set out in Annex III as are relevant to the project, and
  - (ii) the available results of any relevant assessment of the effects of the project, and
- (b) base their decision on the information set out in subsection (4).

(4) The information referred to in subsection (3)(b) is to be compiled taking into account, where relevant, the factors set out in subsection (3)(a) and must include

- (a) a description of the location of the project, including a plan sufficient to identify the land;
- (b) a description of the project, including in particular—
  - (i) a description of the physical characteristics of the project and, where relevant, of demolition works,
  - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected,
- (c) a description of the aspects of the environment likely to be significantly affected by the project; and
- (d) a description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from—
  - (i) the expected residues and emissions and the production of waste, where relevant, and
  - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(5) The Scottish Ministers must publish any determination made by them in accordance with subsections (1) to (4), and that determination shall include—

- (a)

a statement giving, with reference to such of the criteria set out in Annex III as are relevant to the project, the main reasons for that conclusion; and

- (b) where the determination is to the effect that the project does not require an environmental impact assessment, the statement referred to in paragraph (a) must state any features of the project which are envisaged to avoid or prevent significant adverse effects on the environment.

(6) An EIA report is a report prepared by the Scottish Ministers in accordance with this section which assesses the environmental impact of the project and which includes (at least)—

- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the project on the environment;
- (c) a description of the features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the Scottish Ministers, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
- (e) a non-technical summary of the information referred to in paragraphs (a) to (d); and
- (f) any other information specified in schedule 1A of this Act relevant to the specific characteristics of the project and to the environmental features likely to be affected.

(7) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments under Union legislation or national legislation in preparing the EIA report.

(8) In order to ensure the completeness and quality of the EIA report—

- (a) the Scottish Ministers must ensure that the report is prepared by competent experts;
- (b) the EIA report must be accompanied by a statement from the Scottish Ministers outlining the relevant expertise or qualifications of such experts.

(9) The Scottish Ministers must publish notice of the EIA report so as to ensure that members of the public who are likely to be concerned are given a reasonable opportunity to express an opinion before a decision on whether to proceed with the project is taken, and the Scottish Ministers must not make any such decision without taking into consideration any opinion so expressed to them within a period of 42 days commencing with the date of publication of notice of the EIA report.

(10) Notice under subsection (9) must state—

- (a) that the Scottish Ministers, as the relevant roads authority, are considering implementing the project;
- (b) the proposed location and nature of the project;
- (c) that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects in another EEA State;
- (d) that a copy of the EIA report may be inspected at an address in the area in which the project is proposed to be situated during the period provided under paragraph (i);
- (e) the times at which a copy of the EIA report can be so inspected;
- (f) an address from which copies of the EIA report may be obtained and from which further information about the project may be requested during the period provided under paragraph (i);
- (g) if a charge is to be made for a copy of the EIA report, the amount of the charge;
- (h) that the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and the address of the website where a copy of the EIA report will be available for inspection by the public during the period specified in paragraph (i);
- (i) that any person wishing to make any representations about the project and the EIA report may do so in writing to the Scottish Ministers at a specified address within a specified period, being a period of not less than 42 days commencing with the date of publication of the notice; and
- (j) that the Scottish Ministers will take into consideration any representations so made before deciding whether or not to proceed with the project with or without modifications.

(11) The Scottish Ministers must ensure that during the period specified under subsection (10)(i)—

- (a) copies of the EIA report are available for inspection by any person free of charge at all reasonable hours at the address specified under subsection (10)(d);
- (b) copies of the EIA report are available to be obtained by any person from the address specified under subsection (10)(f);
- (c) the Scottish Ministers use a website for the purpose of giving information to the public about projects of a category into which the project in question falls, and that a copy of the EIA report is available for inspection at a specified website address.

(12) A reasonable charge reflecting the costs of printing, copying and distribution may be made by the Scottish Ministers for the supply of a copy of the EIA report—

- (a) to a person other than a consultation body; or
- (b) to a consultation body to which a copy has already been supplied free of charge.

(13) In order to ensure the completeness and quality of the EIA report the Scottish Ministers must where necessary (having regard in particular to current knowledge and methods of assessment) obtain supplementary information about any matter referred to in subsection (6) which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.

(14) Where the Scottish Ministers obtain supplementary information in accordance with subsection (13), except insofar as such supplementary information is required for the purposes of an inquiry held under section 139, subsections (9) to (12) apply to such supplementary information as they apply to an EIA report (subject to any necessary modifications).

(15) The Scottish Ministers must ensure that the consultation bodies are given an opportunity to express an opinion on the project and the EIA report before they decide whether to proceed with the project, and the Scottish Ministers must not make any such decision within a period of 42 days commencing with the date of sending the report to the consultation bodies.

(16) In this section, the expressions “the Directive”, “Annex”, “relevant project”, “sensitive area” and “Union legislation” shall have the meanings assigned to those expressions in section 20C(16) with the proviso that in the definition of “relevant project” the reference to the construction of a new road shall be a reference to the improvement of a road and cognate expressions shall be construed accordingly.

**55B. Application of sections 20A, 20B, 20D, 20E, 20F and 20G to projects under section 55A**

The provisions of sections 20A, 20B and 20D to 20G apply to a project to which section 55A as they apply to a project in terms of sections 20A, 20B and 20D to 20G.

**55C. Offences**

(1) Any person who, for the purpose of procuring a particular decision in relation to a project to which section 55A applies—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information,

commits an offence.

(2) A person who commits an offence under subsection (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this section.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision declare unlawful any act or omission of the Crown which would but for subsection (3) have constituted an offence under this section.

(5) Despite subsection (3), this section applies to a person in the public service of the Crown as it applies to other persons.

**55D. Offences by bodies corporate etc.**

(1) Subsection (2) applies where—

- (a) an offence under section 55C has been committed by—
  - (i) a body corporate,
  - (ii) a Scottish partnership, or
  - (iii) an unincorporated association other than a Scottish partnership, and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
  - (i) a relevant individual, or
  - (ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In subsection (1), “relevant individual” means—

- (a) in relation to a body corporate (other than a limited liability partnership)—
  - (i) a director, manager, secretary or similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member;
- (c) in relation to a Scottish partnership, a partner;
- (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.”.

**Amendment of section 151**

8. In section 151(1) (interpretation)—

(a) in the definition of “consultation bodies”—

- (i) after “Historic Environment Scotland;”(17) omit “and”; and
- (ii) at the end insert—

“(f) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed project by reason of that body’s specific environmental responsibilities or local and regional competencies;”.

(b) for the definition of “environmental impact assessment”(18) substitute—

““environmental impact assessment” means an assessment carried out in accordance with section 20B of this Act;”;

(c) after the definition of “environmental impact assessment” insert—

““environmental information” means—

- (a) any EIA report required under section 20C(6) or (as the case may be) section 55A(6);
- (b) any supplementary information obtained under section 20C(13) or (as the case may be) section 55A(13);
- (c) any representations made by any body required under this Act to be given notice of, or to be invited to express an opinion on, a project for which an environmental impact assessment is required following on from a determination under section 20C(1) or (as the case may be) section 55A(1); and
- (d) any representations duly made by any other person about the environmental effects of the project which is the subject of that environmental impact assessment;”;

(d) for the definition of “environmental statement”(19) substitute—

““EIA report” means an environmental impact assessment report prepared in accordance with section 20C or 55A of this Act;”.

**Amendment of paragraph 7 of schedule 1**

9. In paragraph 7 of schedule 1 (procedures for making or confirming certain orders or schemes)—

(a) in sub-paragraph (1A)(20)—

- (i) for “environmental statement” substitute “EIA report”;

- (ii) in heads (a) to (c) for "statement" substitute "report"; and
  - (iii) in head (c) for "20B" substitute "20F";
- (b) for sub-paragraph (1B)(21) substitute—
- "(1B) When the Scottish Ministers have decided whether to proceed with the project in relation to which an environmental impact assessment has been made they must publish their decision together with a statement confirming they have complied with sub-paragraph (1A) and must notify the consultation bodies by sending to them copies of documents containing—
- (a) a description of the project,
  - (b) the terms of the decision,
  - (c) the main reasons and considerations on which the decision is based,
  - (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures,
  - (e) a summary of—
    - (i) the environmental information, and
    - (ii) the results of the consultations and information gathered pursuant to section 20C and, where relevant, section 20F, and how those results, in particular comments received from another EEA State pursuant to consultation under section 20F, have been incorporated or otherwise addressed,
  - (f) if the decision is to proceed with the project—
    - (i) any conditions to which the decision is subject,
    - (ii) the reasoned conclusion referred to in section 20B(1)(d),
    - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date,
    - (iv) a description of any features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment,
    - (v) a description of any monitoring measures required under section 20G, and
  - (g) information regarding the right to challenge the validity of the decision and the procedures for doing so,
- and at the same time must make such documents available to the public.";
- (c) after sub-paragraph (1BA)(22) insert—
- "(1BB) For the purposes of sub-paragraph (1B)(f)(iii) the reasoned conclusion referred to in section 20B(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the project on the environment.";
- (d) for sub-paragraph (1C)(23) substitute—
- "(1C) Any requirement for publication in connection with an environmental impact assessment shall be met by publication—
- (a) in the Edinburgh Gazette,
  - (b) in at least one local newspaper circulating in the area in which the project is situated, and
  - (c) on the website the Scottish Ministers use for the purpose of giving information to the public about projects of a category into which the project in question falls."; and
- (e) in sub-paragraph (1D)(24) for "10a" in each place where it occurs substitute "11".

#### **Amendment of paragraph 13 of schedule 1**

##### **10. In paragraph 13 of schedule 1—**

- (a) in sub-paragraph (1A)(25)—
  - (i) for "environmental statement" substitute "EIA report";
  - (ii) in heads (a) to (c) for "statement" substitute "report"; and
  - (iii) in head (c) for "20B" substitute "20F";
- (b) for sub-paragraph (1B)(26) substitute—
 

"(1B) When the Scottish Ministers have decided whether to proceed with the project in relation to which an environmental impact assessment has been made they shall publish their decision together with a statement confirming they have complied with sub-paragraph (1A) and shall notify the consultation bodies by sending to them copies of, and make available to the public, documents containing—

  - (a) a description of the project;
  - (b) the terms of the decision;
  - (c) the main reasons and considerations on which the decision is based;
  - (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
  - (e) a summary of—
    - (i) the environmental information; and
    - (ii) the results of the consultations and information gathered pursuant to section 20C and, where relevant, section 20F, and how those results, in particular comments received from another EEA State pursuant to consultation under section 20F, have been incorporated or otherwise addressed;
  - (f) if the decision is to proceed with the project—
    - (i) any conditions to which the decision is subject;
    - (ii) the reasoned conclusion referred to in section 20B(1)(d);
    - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date;
    - (iv) a description of any features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment; and
    - (v) a description of any monitoring measures required under section 20G; and
  - (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.";

- (c) after sub-paragraph (1BA)(27) insert—
- “(1BB) For the purposes of sub-paragraph (1B)(f)(iii) the reasoned conclusion referred to in section 20B(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the project on the environment.”;
- (d) for sub-paragraph (1C)(28) substitute—
- “(1C) Any requirement for publication in connection with an environmental impact assessment shall be met by publication—
- (a) in the Edinburgh Gazette;
  - (b) in at least one local newspaper circulating in the area in which the project is situated; and
  - (c) on the website the Scottish Ministers use for the purpose of giving information to the public about projects of a category into which the project in question falls.”; and
- (e) in sub-paragraph (1D) for “Article 10a(a)” and “Article 10a(b)” substitute “11”.

#### Insertion of schedule 1A

11. After schedule 1 insert the schedule 1A contained in the schedule of these Regulations.

#### Transitional and savings

12.—(1) Where the Scottish Ministers had made a determination under section 20A(2)(b) or section 55A(2)(b) of the Roads (Scotland) Act 1984 prior to 16th May 2017, subsections (2) and (3) of those sections continue to have effect as they did immediately before that date.

(2) Sections 20A, 20B, 55A and 55B, and paragraphs 7 and 13 of schedule 1 of that Act continue to have effect as they did immediately before 16th May 2017 where, prior to that date—

- (a) the procedure referred to in article 5(2) of Council Directive 2011/92/EU(29) was initiated; or
- (b) the environmental statement prepared in accordance with section 20A(2) and (5) or section 55A(2) and (5) was published.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

## SCHEDULE 1

Regulation 11

### “SCHEDULE 1A INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

1. A description of the proposed project, including in particular:
  - (a) a description of the location of the project,
  - (b) a description of the physical characteristics of all the works covered by the application, including, where relevant, demolition works, and the land use requirements during the construction and operational phases,
  - (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used,
  - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in section 20B(3) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the proposed project on the environment resulting from, inter alia:
  - (a) the construction and existence of the project, including, where relevant, demolition works,
  - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources,
  - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste,
  - (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters),
  - (e) the cumulation of effects with other existing and/or approved development projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources,
  - (f) the impact of the proposed project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change,

(g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in section 20B(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the proposed project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the proposed project on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as [Directive 2012/18/EU](#) of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under points 1 to 9.

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

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Roads (Scotland) Act 1984 ("the Act").

The Regulations implement, in relation to construction projects for new roads to which Part III of the Act applies, and improvement and maintenance projects for roads to which Part IV of the Act applies, [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment as amended by Council [Directive 2014/52/EU](#).

Regulation 5 substitutes new sections 20A to 20G into Part III of the Act to include the following requirements –

- Section 20A prohibits the Scottish Ministers as roads authority from proceeding with a project for the construction of a new road for which an environmental impact assessment is required unless an environmental impact assessment has been carried out.
- Section 20B sets out the requirements for an environmental impact assessment.
- Section 20C sets out the procedures for determining whether an environmental impact assessment is required in relation to a project for the construction of a new road, the content and publication requirements for the environmental impact assessment report, and the consultation requirements on the Scottish Ministers as roads authority for the project.
- Section 20D requires the Scottish Ministers, where appropriate, to co-ordinate the environmental impact assessment with any assessment to be carried out in accordance with the Conservation (Natural Habitats, &c.) Regulations 1994.
- Section 20E requires the Scottish Ministers as competent authority to carry out their duties in a manner which will not give rise to conflicts of interest.
- Section 20F sets out the procedures to be followed where a project for the construction of a new road is likely to have a significant effect on the environment of another EEA State.
- Section 20G sets out requirements for the Scottish Ministers as roads authority to ensure that the effects of a new road construction project on the environment are monitored, where appropriate.

Regulation 6 inserts a new section 22A and 22B into Part III of the Act to make providing false information, or withholding material information with intent to deceive, for the purposes of procuring a particular decision in relation to a project for the construction of a new road, a criminal offence.

Regulation 7 substitutes new section 55A, 55B, 55C and 55D into Part IV of the Act to include the following requirements–

- Section 55A mirrors section 20C for the purposes of roads improvement and maintenance projects for which the Scottish Ministers are roads authority.
- Section 55B applies the requirements of sections 20A, 20B and 20D to 20G to roads improvement and maintenance projects for which the Scottish Ministers are roads authority.
- Section 55C makes providing false information, or withholding material information with intent to deceive, for the purposes of procuring a particular decision in relation to a project for the improvement or maintenance of a road, a criminal offence.

Regulation 8 updates section 151 (interpretation) of the Act to account for changes to the Act made by these Regulations.

Regulations 9 and 10 update paragraphs 7 (new road construction projects) and 13 (road improvement and maintenance projects) of schedule 1 of the Act in relation to the procedures and information to be included in decision notices issued by the Scottish Ministers as roads authority for the project.

Regulation 11 inserts a new schedule 1A into the Act as regards information to be provided in environmental impact assessment reports.

Regulation 12 contains transitional and saving provisions.

A Business and Regulatory impact assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF.

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- (1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) ("the 1998 Act"), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) ("the 2006 Act"). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) [1973 c.51](#). Section 56(1) was amended by [S.I. 2011/1043](#). The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of [S.I. 1999/1820](#) and the functions conferred upon the Minister of the Crown under section 56, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c.46\)](#) ("the 1998 Act"). The requirement to obtain Treasury consent was removed by section 55 of the 1998 Act.
- (3) OJ L 26, 28.1.2012, p.1).
- (4) [1984 c.54](#). Sections 20A and 55A were substituted by the Environmental Impact Assessment (Scotland) Regulations 1999 ("the 1999 Regulations") ([S.S.I. 1999/1](#)). The 1999 Regulations inserted sections 20B and 55B, and amended section 151 and paragraphs 7 and 13 of schedule 1. The Environmental Impact Assessment

(Scotland) Amendment Regulations 2006/614 ([S.S.I. 2006/614](#)) amended sections 20A, 20B 55A and 151, and paragraphs 7 and 13 of schedule 1. Section 20B, and paragraphs 7 and 13 of schedule 1 have been further amended for purposes not relevant to these Regulations.

- (5) Section 12B was inserted by section 38(2) of the Local Government etc. (Scotland) Act [1994 \(c.49\)](#) ("the 1994 Act") and amended by paragraph 38 of schedule 2 of the Planning (Consequential Provisions) (Scotland) Act [1997 \(c.11\)](#).
- (6) Section 12C was inserted by section 38(2) of the 1994 Act.
- (7) Section 20A was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (8) Section 20B was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#) and [S.S.I. 2013/177](#).
- (9) OJ L 206, 22.7.1992, p.7.
- (10) OJ L 20, 26.1.2010, p.7.
- (11) OJ L 26, 28.1.2012, p.1.
- (12) OJ L 124, 25.4.2014, p.1.
- (13) [S.S.I. 1999/1](#) as relevantly amended by the Environmental Impact Assessment (Scotland) Amendment Regulations 2002 ([S.S.I. 2002/324](#)), regulation 2(2)(d), the Environmental Impact Assessment (Scotland) Amendment Regulations 2006 ([S.S.I. 2006/614](#)), regulation 3(1)(f) and the National Scenic Areas (Consequential Modifications) (Scotland) Order 2010 ([S.S.I. 2010/460](#)), article 6(2).
- (14) [S.I. 1994/2716](#) to which there are amendments not relevant to these Regulations.
- (15) Section 55A was substituted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (16) Section 55B was substituted by [S.S.I. 1999/1](#).
- (17) The definition of "consultation bodies" was inserted by [S.S.I. 1999/1](#) and the entry for "Historic Environment Scotland" was substituted by [S.S.I. 2015/271](#).
- (18) The definition of "environmental impact assessment" was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (19) The definition of "environmental statement" was inserted by [S.S.I. 1999/1](#).
- (20) Sub-paragraph (1A) was substituted by [S.S.I. 2006/614](#).
- (21) Sub-paragraph (1B) was substituted by [S.S.I. 2006/614](#).
- (22) Sub-paragraph (1BA) was inserted by the Transport and Works (Scotland) Act 2007 ([asp 8](#)), section 24.
- (23) Sub-paragraph (1C) was inserted by [S.S.I. 1999/1](#).
- (24) Sub-paragraph (1D) was inserted by [S.S.I. 2006/614](#).
- (25) Sub-paragraph (1A) was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (26) Sub-paragraph (1B) was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (27) Sub-paragraph (1BA) was inserted by the Transport and Works (Scotland) Act 2007 ([asp 8](#)), section 24.
- (28) Sub-paragraph (1C) was inserted by [S.S.I. 1999/1](#) and amended by [S.S.I. 2006/614](#).
- (29) OJ L 26, 28.1.2012, p.1.

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