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ENVIRONMENTAL IMPACT ASSESSMENT (WATER  
MANAGEMENT) (SCOTLAND) REGULATIONS 2003

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circular



SCOTTISH EXECUTIVE  
Development Department

## **Scottish Planning Series**

### **PLANNING CIRCULAR 3 2003**

# **Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003**

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## PLANNING SERIES:

- **Scottish Planning Policies (SPPs)** provide statements of Scottish Executive policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.
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Statements of Scottish Executive policy contained in SPPs and Circulars may be material considerations to be taken into account in development plan preparation and development control.

Existing National Planning Policy Guidelines (NPPGs) have continued relevance to decision making, until such time as they are replaced by a SPP. The term SPP should be interpreted as including NPPGs.

Statements of Scottish Executive location-specific planning policy, for example the West Edinburgh Planning Framework, have the same status in decision making as SPPs.

This Circular summarises the Scottish Ministers' understanding of the general effect of the relevant primary or secondary legislation although the summaries do not carry statutory authority in themselves and legal advice should always be taken in case of doubt.

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## INTRODUCTION

1. This Circular explains that water abstraction, irrigation, drainage or other agricultural water management projects which are likely to have significant environmental effects will require planning permission which takes into account the environmental impact of these activities. The Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (the 2003 Regulations) were made on 30 June 2003 and came into force on 30 September 2003. The 2003 Regulations amend the existing environmental impact assessment (EIA) provisions within the planning system, and this circular explains the effect of those amendments. This Circular should be read in conjunction with Scottish Executive Development Department Circular 15/1999 on Environmental Impact Assessment, which contains general guidance on planning requirements relating to the assessment of the effects of development projects on the environment. Where guidance is offered on the interpretation of the legislation, it should be borne in mind that only the Courts can interpret the law authoritatively.

## SUMMARY OF THE CHANGES

2. The main changes made by the 2003 Regulations are:
  - 2.1 The definition of "development" in section 26 of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act), has been amended to ensure that "Development includes the carrying out of irrigation or drainage for agriculture or of any other water management project for that purpose.";
  - 2.2 A new Class of permitted development rights (PDR), Class 18A, has been added to Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (the GPDO), granting planning permission for agricultural water management projects ;
  - 2.3 The Environmental Impact Assessment (Scotland) Regulations 1999 (the 1999 Regulations) have been amended to introduce a new threshold for irrigation projects in Schedule 2;
  - 2.4 A transitional provision is included so that the new arrangements do not apply to development permitted under the 1997 Act before the 2003 Regulations came into force.

## BACKGROUND

3. European Directive 85/337/EEC (as amended by Directive 97/11/EC) on the assessment of the effects of certain public and private projects on the environment, known as "the EIA Directive", has been implemented in the UK primarily through the planning system. Among the projects covered by the EIA Directive are water management projects for agriculture. For the most part, any such water management project likely to have significant effects on the environment will already constitute "development" under the planning system prior to amendment by the 2003 Regulations. Such projects are therefore already



subject to the requirements of the 1999 Regulations. However, a potential gap has been identified in the implementation of the EIA Directive in relation to irrigation activities which may not constitute “development” within the meaning of development in the 1997 Act.

4. In Scotland, the decision has been taken to extend the planning system in order to ensure implementation of the EIA Directive in this regard.

### **THE EFFECT OF THE CHANGES TO LEGISLATION**

5. The change to the definition of “development” in the 1997 Act referred to in paragraph 2.2 ensures that all water management projects for agricultural purposes are within the meaning of “development” and, as such, require planning permission either through being deemed to have permitted development rights or requiring express planning permission. This means that activities such as the operation of mobile water abstraction and mobile spray irrigation equipment, which previously might not have constituted recognised as “development” within the meaning of the 1997 Act, are now subject to planning control.
6. In making this change, the intention is not to require all irrigation activities to be the subject of a planning application to the planning authority for the area. Permitted Development Rights (PDR) have been introduced (Class 18A in Schedule 1 to the GPDO) which grant planning permission for water management projects for agriculture. Where the exercise of these PDR involve the erection, significant extension or the significant alteration of a building, then the prior approval procedure, which applies to other agricultural PDR for buildings (Class 18(4)(a)), applies. Again, as with other PDR for agricultural buildings, the significant alteration or the significant extension of a building may only be carried out once under PDR.
7. As with most other PDR, the rights under Class 18A are restricted where the development in question exceeds the relevant threshold in Schedule 1 or 2 to the 1999 Regulations, or the development is located in a “sensitive area”, as defined in Regulation 2 of the 1999 Regulations.

### **SCREENING OF DEVELOPMENT PROJECTS**

8. Water management projects for agriculture are listed in Schedule 2 to the 1999 Regulations. This means that where the relevant area threshold in Schedule 2 is exceeded or the development is located within a “sensitive area” the project has to be screened and development can only proceed in accordance with PDR if the planning authority has issued a screening opinion, or the Scottish Ministers have issued a screening direction, to the effect that an EIA is not required.
9. Where a screening opinion or screening direction is to the effect that an EIA is required, then a planning application will have to be made to the planning authority, accompanied by an environmental statement as required under the 1999 Regulations. Where a screening opinion or direction indicates that EIA is not required, the developer may proceed with their project in accordance with PDR if such rights are applicable to the development. It should be noted that a screening direction by the Scottish Ministers will determine whether a particular development is one which requires an EIA, despite any screening opinion issued by the planning authority in the case.

**INFORMATION TO BE SUBMITTED TO THE PLANNING AUTHORITY FOR SCREENING PURPOSES**

10. The EIA Regulations require that a request for a screening opinion must be accompanied by all of the following :-
  - (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) any other information or representations that the person making the request may wish to provide or make.
11. In addition, screening requests for irrigation projects should be based upon assumptions about a typical year's water abstraction and irrigation. A plan should be provided to indicate the location of abstraction points and the area to be irrigated. Information about the proposed pattern of water abstraction and irrigation including the proposed rate, duration and frequency of abstraction and irrigation over the course of the year should also be provided. Scottish Executive Development Department Circular 15/1999 on Environmental Impact Assessment provides general guidance on screening, the definition of "sensitive areas" (Which are also listed at paragraph 20 below, including a new addition "national parks") and the extent to which the EIA regulations qualify permitted development rights. If farmers are concerned about whether their land falls within one of the "sensitive areas", they should check with the planning authority in the first instance.

**CONSULTATION BY THE PLANNING AUTHORITY ON THE SCREENING OPINION**

12. The EIA Regulations do not require planning authorities to consult other bodies in their consideration of requests for screening opinions. However, as irrigation and water abstraction raise particular environmental issues, planning authorities may wish in some cases to consult other bodies such as other adjoining planning authorities, the Scottish Environment Protection Agency, Scottish Water and Scottish Natural Heritage. The decision on whether to consult other bodies in considering requests for screening opinions and decisions on individual screening opinions is for planning authorities.

**RIGHT TO ASK SCOTTISH MINISTERS FOR A DIRECTION ON EIA**

13. The EIA Regulations provide that in the circumstances where :-
  - (a) the planning authority fails to adopt a screening opinion within three weeks of receiving a request ; or
  - (b) the planning authority adopts 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. Again, it should be noted that irrigation projects which require to be screened cannot be carried out under permitted development rights,



unless a screening opinion or screening direction to the effect that EIA is not required has been issued.

14. It is necessary to recognise that with the initial number of requests for screening opinions likely to be received that it will be preferable for applicants to agree with planning authorities wherever possible on extension of the minimum three week period allowed for adopting screening opinions rather than appealing immediately to Scottish Ministers for a screening direction. Otherwise if Scottish Ministers receive a multitude of requests for screening directions immediately after the coming into force of the new Regulations this will be likely to cause substantial delay in processing such requests.

#### **NATURE OF PLANNING APPLICATION WITH ENVIRONMENTAL STATEMENT IF REQUIRED**

15. As with the request for a screening opinion, the information provided in the planning application should be based upon assumptions about a typical year's water abstraction and irrigation. A plan should be provided to indicate the location of abstraction points and the area to be irrigated. The planning application should also provide information about the proposed pattern of water abstraction and irrigation including the proposed rate, duration and frequency of abstraction and irrigation over the course of the year. The supporting documentation that was submitted with the request for a screening opinion will have to be augmented by the inclusion of an Environmental Statement when an application for planning permission is submitted. Regulation 2(1) of the EIA Regulations stipulates that an "environmental statement" means a statement that :-

(a) 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) includes at least the information referred to Part II of Schedule 4.

#### **SCREENING OPINIONS AND PLANNING PERMISSIONS**

16. A screening opinion or screening direction made by Ministers or a planning permission granted by a planning authority for water management projects, and in particular for activities such as abstraction and irrigation, shall remain valid as long as there is no material change in the nature and pattern of the activities. Significant changes in the pattern of water extraction or irrigation may require a request for an additional screening opinion. What constitutes a significant change in the pattern of water abstraction and irrigation will have to be determined in the circumstances of each individual case and developers should seek the advice of planning authorities on the need to request additional screening opinions.

#### **FEES**

17. Requests for screening opinions are not subject to the charging of fees. It is intended to introduce a flat fee rate for planning applications for agricultural water

management projects when the fee regulations are next amended in the early part of next year.

### **TRANSITIONAL**

18. Under existing planning legislation and regulations some water management projects likely to have significant effects on the environment will already be considered to be "development" for planning purposes and will therefore be subject to the provisions of the 1999 EIA regulations. But this definition of "development" for water management projects is expressed in terms of the erection or extension or alteration of buildings, that is fixed installations such as a permanent pumphouse and a network of pipes to distribute water. Any such permanent water management installations should already have received planning permission either through being deemed to be permitted development, or where EIA is required under the provisions of the 1999 EIA regulations through express planning permission. Any such development which already meets the requirements of the 1999 EIA regulations will not be affected by the provisions of the new EIA Water Management regulations.
19. The extension of the definition of "development" introduced by the 2003 regulations is intended to apply to mobile water abstraction and irrigation equipment which would not necessarily have been considered previously to constitute "development". The coming into force of the 2003 regulations on 30 September should therefore only give rise to requests for the screening of mobile water abstraction and irrigation equipment and new proposals for more permanent structures for agricultural water management. Water management projects for agriculture which would have constituted "development" prior to the coming into force of the 2003 regulations should already have been submitted for screening if necessary in accordance with the provisions of the 1999 EIA regulations.

### **SENSITIVE AREAS**

20. Sensitive areas are defined in Regulation 2 of the 1999 EIA regulations as being 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;
  - (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 ;



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

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

(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 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.

Planning authorities can advise on whether land lies within a defined sensitive area.

(g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000.

#### **WATER FRAMEWORK DIRECTIVE**

21. It should be noted that that the recently enacted Water Environment and Water Services (Scotland) Act 2003, which implements the European Water Framework Directive in Scotland, gives Scottish Ministers powers to introduce comprehensive controls over all forms of water abstraction in order to protect the integrity of the water environment. Scottish Ministers intend to commence the introduction of these controls in 2005. These regulations are intended to be an interim measure pending the introduction of new controls.

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