



FALKLAND ISLANDS

Planning (Environmental Impact Assessment) Regulations 2015

(S.R. & O. No. 6 OF 2015)

1. Title
2. Commencement
3. Interpretation
4. Power to direct applicant to submit EIS
5. Power to issue circulars, notes or guidance regarding EIA
6. The role of the Governor with respect to EIA
7. Procedure for complaining to the Governor regarding EIA directive
8. Effect of an EIA directive for the purposes of section 48 of the Ordinance
9. Requirement for regard to be had to the development plan
10. Supplementary guidance regarding the preparation of an EIS
11. Consequences of failure to submit an environmental impact statement



FALKLAND ISLANDS

Planning (Environmental Impact Assessment) Regulations 2015

[DATE OF COMMENCEMENT: 19 JUNE 2015]

In exercise of my powers under section 33 of the Planning Ordinance 1991, I make the following regulations —

1 Title

These regulations are the Planning (Environmental Impact Assessment) Regulations 2015.

2 Commencement

These regulations come into force on publication in the Gazette.

3 Interpretation

In these regulations—

"environmental impact assessment" or "EIA" means a process, commenced with the submission by the applicant of an environmental impact statement and based predominantly on the content of that environmental impact statement, of evaluating the harm to the environment that is likely to be caused by a proposed development;

"environmental impact statement" or "EIS" means a document submitted by an applicant for planning permission in which is set out, in a manner reflecting the findings of suitable experts, the applicant's preliminary assessment of the potential for and the likely extent and effects of harm to the environment that will be caused by the proposed development.

4 Power to direct applicant to submit EIS

(1) During the consideration of any application for planning permission, the Planning Officer may, in the Planning Officer's discretion, determine that an environmental impact assessment is necessary.

(2) On determining that an environmental impact assessment is necessary, the Planning Officer must in writing direct the applicant to submit to the Planning Officer an environmental impact statement, and such directive must include general guidance as to—

- (a) the expected content of the EIS; and
- (b) the extent to which the applicant needs to engage the services of persons with suitable expertise in preparing the EIS.

(3) An environmental impact statement must comply with any scoping opinion that may be given by the Planning Officer under regulation 10.

(4) In advising an applicant as to the required content of an environmental impact statement, the Planning Officer must pay due regard to any circulars, notes or guidance issued by the Governor under section 35(2) of the Planning Ordinance 1991.

(5) Whether or not the applicant requests a scoping opinion under regulation 10, the applicant must prepare the required environmental impact statement in a manner that complies with any circulars, notes or guidance issued by the Governor.

[S.R.&O. 20/2022/w.e.f.30/09/2022]

5 ...

[S.R.&O. 20/2022/w.e.f.30/09/2022]

6 The role of the Governor with respect to EIA

(1) The Governor must hear and determine the complaint of any applicant who contests the Planning Officer's determination that an environmental impact assessment is necessary.

(2) In hearing and determining complaints in accordance with paragraph (1), the Governor must act in accordance with paragraphs (5) and (6) of regulation 7.

[S.R.&O. 20/2022/w.e.f.30/09/2022]

7 Procedure for complaining to the Governor regarding EIA directive

(1) Subject to paragraph (2), an applicant who is aggrieved by the Planning Officer's directive regarding an EIS must, in order to have the matter heard and determined by the Governor, within 10 days of the applicant's receipt of the Planning Officer's directive write to the Governor setting out the details of the proposed development including reasons why an EIA is not necessary.

(2) An applicant who requests a scoping opinion under regulation 10 is not allowed to make a complaint to the Governor under this regulation.

(3) When making a complaint to the Governor in accordance with paragraph (1) the applicant must include documentary evidence of the directive of the Planning Officer that an environmental impact statement must be submitted.

(4) The applicant must provide the Planning Officer with a copy of the written complaint the applicant submits to the Governor in accordance with this regulation.

(5) The Governor must within a reasonable time make a determination of a complaint submitted to the Governor under this regulation and must promptly advise the applicant and the Planning Officer, in writing, of the determination.

(6) The determinations open to the Governor when acting in accordance with this regulation are that an environmental impact assessment—

- (a) is necessary and the applicant must comply with the directive of the Planning Officer to produce an environmental impact statement; or
- (b) is not necessary and-
 - (i) the applicant need not comply with the directive of the Planning Officer to produce an environmental impact statement; and
 - (ii) an assessment of the merits of the application for planning permission is capable of being and must be made even if an environmental impact statement is not produced.

8 Effect of an EIA directive for the purposes of section 48 of the Ordinance

(1) For purposes of section 48 of the Ordinance, a requirement to submit an EIS under regulation 4 halts the running of time within which a decision on an application for planning permission must be communicated to the applicant.

(2) Time shall not begin to run again for the purposes of section 48 of the Ordinance until the applicant either-

- (a) submits, as required, an environmental impact statement that satisfies the Planning Officer as to its fitness for purpose; or
- (b) is excused, by way of the Governor's determination of a complaint submitted by the applicant in accordance with regulation 7, from the requirement to submit an environmental impact statement.

9 Requirement for regard to be had to the development plan

Subject to material considerations indicating otherwise in accordance with section 25A of the Ordinance, the Planning Officer must have regard to the development plan in—

- (a) determining whether an environmental impact assessment is necessary;
- (b) assessing and evaluating the required scope of an environmental impact statement; and
- (c) determining whether a submitted environmental statement is fit for purpose.

10 Supplementary guidance regarding the preparation of an EIS

(1) An applicant who has been directed to submit an environmental impact statement and considers the general guidance provided in the directive insufficient may request of the Planning Officer an opinion, referred to as a "scoping opinion", providing more detailed guidance as to the information and analysis that the environmental impact statement is to contain in order to be fit for purpose.

(2) The Planning Officer must provide the applicant with a requested scoping opinion no later than 5 weeks after the request was made.

(3) Where a scoping opinion has been provided and the environmental impact statement submitted by the applicant does not reflect compliance with the scoping opinion, the Planning Officer-

- (a) is entitled to treat the application for planning permission as if the applicant has refused to submit an environmental impact statement and must, if the Planning Officer opts to so treat the application, act in accordance with regulation 11; or
- (b) may direct the applicant to improve and resubmit the environmental impact statement.

11 Consequences of failure to submit an environmental impact statement

(1) Where an applicant either-

- (a) refuses to submit an environmental impact statement; or
- (b) fails to submit an environmental impact statement within a reasonable time (the upper limit of which may be set by the Governor, under regulation 5, by way of circular, note or guidance),

the Planning Officer must refuse the application for planning permission on the sole ground of the applicant's refusal or failure, as the case may be.

(2) Paragraph (1) applies equally to-

- (a) a directive to submit an EIS in respect of which the applicant has not complained to the Governor under regulation 7; and
- (b) a directive to submit an EIS in respect of which the Governor has, following receipt of a complaint by the applicant under regulation 7, confirmed that an EIS is required.

(3) Where an application is refused in the circumstances set out in paragraph (1), the refusal is final and cannot be appealed.