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## EXPLANATORY NOTE

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

These Regulations implement, in relation to projects on uncultivated land and semi-natural areas in Scotland, Council Directive [85/337/EEC](#) (as amended by Council Directive [97/11/EEC](#)) on the assessment of the effects of certain public and private projects on the environment and Council Directive [92/43/EEC](#) (as last amended by Council Directive [97/62/EC](#)) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) insofar as it applies to such projects.

The definition of “project” identifies those activities which are subject to the requirements of the Regulations. Regulation 4 prevents any projects from being undertaken unless a screening decision is first obtained. The screening decision determines whether the project is one which is likely to have a significant effect on the environment. This will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”). A project which has been so determined is defined as a “relevant project” in the Regulations. The screening decision must be reached in accordance principally with the selection criteria set out in Schedule 1 to these Regulations. The procedural requirements in respect of screening decisions are set out in regulation 5.

Regulation 6 prohibits a relevant project from being carried out without consent first having been obtained from the Scottish Ministers.

Regulation 7 entitles the prospective applicant for consent to obtain an opinion from the Scottish Ministers as to the information which will be required as part of the environmental statement to accompany the application for consent.

Regulation 8 requires the environmental bodies referred to provide any relevant information in their possession to the applicant for consent.

Regulations 9 and 10 contain the procedural requirements for the application for consent. The application is required to include the environmental statement which is defined as a statement which includes the information in Part II of Schedule 2 to the Regulations and such of the information in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project.

Regulation 11 contains provisions for notifying other States which are parties to the Agreement on the European Economic Area of projects likely to have environmental effects on those States.

Regulation 12 specifies how decisions under the Regulations are to be made in respect of projects located partly in Scotland and partly in England.

Regulation 13 prescribes how the Scottish Ministers shall decide whether to grant consent for a project. It requires them to take into account all of the information and representations provided in accordance with the Regulations.

The Scottish Ministers may not grant consent for a project which would involve activities prohibited under those provisions of the Habitats Regulations which implement Articles 12, 13, 15 and 16 (requirements for protection of species) of the Habitats Directive. Neither may they grant consent for a project which would adversely affect the integrity of a European site (as defined in the Habitats Regulations). These provisions implement Article 6(3) of the Habitats Directive. The provisions in these Regulations are consistent with those in the Habitats Regulations as applied to other consent regimes (regulation 13(3) to (9)).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Regulation 13(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

Regulation 13(12) contains procedural requirements to be complied with in granting or refusing consent and regulation 13(13) makes provision for a case where the Scottish Ministers intend to grant consent for any project which consists of an operation likely to damage a site of special scientific interest against the advice of Scottish Natural Heritage.

Regulation 14 and Schedule 3 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

An applicant for a screening decision or for consent for a relevant project (or a person interested in a project subject to a revocation or modification under the review provisions contained in Schedule 3) may appeal against an adverse decision to the Scottish Ministers. An appellant is entitled to be heard by a person appointed by the Scottish Ministers by way of a hearing or an inquiry. The general appeal provisions are contained in regulation 15 and the procedures for determination by written representations and by inquiry are contained in regulations 16 and 17 respectively.

Persons aggrieved by decisions under regulations 15, 16 or 17 may appeal to the sheriff by way of summary application (regulation 18).

Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under the Regulations. It is also an offence under the Regulations to make false or misleading statements in order to obtain a particular decision (regulations 19 to 21).

If the Scottish Ministers wish to ensure that unauthorised works are stopped with immediate effect, they can, under regulation 22, serve a stop notice on the person carrying out the works or on any person with an interest in the land upon which the works are taking place. An appeal against a stop notice lies to the sheriff. Non-compliance with the stop notice is an offence (regulation 23).

Regulation 24 contains a power for the Scottish Ministers to serve a notice requiring a person they believe to be responsible for committing an offence in connection with works, to reinstate the land to its former condition. An appeal against a reinstatement notice lies to the sheriff. Failure to comply with the requirements of a reinstatement notice is an offence.

Regulation 25 contains powers of entry in connection with carrying out the functions of the Scottish Ministers under the Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

Regulation 26 makes provision in relation to offences committed by bodies corporate.