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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 614**

The Environmental Impact Assessment  
(Scotland) Amendment Regulations 2006

PART II

PLANNING AND DRAINAGE WORKS

**Drainage Works**

4.—(1) In regulation 55(a) (interpretation)—

(a) after the definition of “the Act” insert—

““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;

“further information” has the meaning given in regulation 60(3);”;

(b) after the definition of “local authority” insert:—

““sensitive area” means any of the following—

- (a) land notified under sections 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004<sup>(1)</sup>;
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, & c.) Regulations 1994<sup>(2)</sup>;
- (d) an area designated 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<sup>(3)</sup>;
- (e) 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<sup>(4)</sup>.”.

(c) omit the definition of “site of special scientific interest”.

(2) In regulation 55(c)(ii) for “environmental information” substitute “the Directive”.

(3) In regulation 59 (submission and publication of environmental statement)—

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(1) 2004 asp 6.

(2) S.I.1994/2716.

(3) 1972 c. 52. The Town and Country Planning (Scotland) Act 1972 (“the 1972 Act”) was repealed by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 8) (“the 1997 Act”) subject to a saving in respect of any area which on 1st April 1992 was designated as a National Scenic Area under section 262C of the 1972 Act; Section 5 of and Paragraph 11 of Schedule 3 to the 1997 Act.

(4) 2000 asp 10.

- (a) in paragraph (1)(b) for “site of special scientific interest” substitute “sensitive area”;
- (b) in paragraph (2) after “the Scottish Ministers shall” insert “as soon as possible”;
- (c) in paragraph 2(a) after “statement” insert “, any other documents submitted with the application and if relevant that regulation 60B(1) applies,”; and
- (d) in paragraph 2(b)–
  - (i) after “statement” insert “and any other documents submitted with the application”;
  - and
  - (ii) after “to” where it first occurs insert “, and if relevant notify of the fact that regulation 60(B)(1) applies,”.
- (4) In regulation 60 (further information respecting environmental statement)–
  - (a) after paragraph (2) insert–
    - “(3) Where the Scottish Ministers have received further information relating to the application for the improvement order or the environmental statement–
      - (a) provided by the owner of the agricultural land in compliance with paragraph (1);
      - or
      - (b) provided by the owner of the agricultural land on a voluntary basis or by any other person after the owner of the agricultural land has submitted an environmental statement and application under section 1 of the Act,
  - the Scottish Ministers shall within a reasonable time of receipt of such information notify and publicise the further information received in the same manner as a draft improvement order under paragraph 1 of the First Schedule to the Act (and such further information is referred to in this Part of these Regulations as “further information”).”; and
  - (b) in paragraph (2)(c) for “reasonable” substitute “reasonably”.
- (5) After regulation 60 (further information respecting environmental statement) insert–

**“Duties to inform the public of final decisions**

**60A.** Where an application for an improvement order to which this Part applies is determined by the Scottish Ministers they shall–

- (a) in writing, inform the local authorities and other statutory bodies affected or likely to be concerned by the drainage works by reason of their specific environmental responsibilities, including the consultation bodies, of the decision and provide those persons with a copy of such a statement as mentioned in sub-paragraph (c);
- (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 a place specified by them 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 including, if relevant, information about the participation of the public;
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset any major adverse environmental effects of the drainage works;
  - and

- (iv) information on the right to challenge the decision and the procedures for doing so.

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

#### **60B.—(1) Where—**

- (a) it comes to the attention of the Scottish Ministers that an application for an improvement order made under section 1 of the Act to which this Part applies is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be so significantly affected by such an improvement order so requests,

the Scottish Ministers shall—

- (i) send to the EEA State, as soon as possible and no later than the date of publication of the environmental statement and any other documents under regulation 59(2) the particulars mentioned in paragraph (2) and, if they think fit, the information referred to in paragraph (3); and
- (ii) 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 proposal for an improvement order, together with any available information on the possible significant effect of the proposed works on the environment in the other 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)(ii), 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 for the improvement order concerned;
- (b) a copy of the environmental statement in respect of the improvement order 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) and any other documents submitted with the application and any further information submitted by the applicant or any other person relating to the environmental statement 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 the improvement order is made, 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 drainage works 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 including, if relevant, information about the participation of the public; and
  - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the drainage works.

**Projects in another EEA State likely to have significant effects on the environment in Scotland**

**60C.**—(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 the public concerned 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;
  - (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; and
  - (c) so far as they have received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant EEA state; and in particular—
    - (i) any conditions attached to it;
    - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
    - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse affects that have been identified.”.
- (6) For regulation 61 (confidentiality) substitute—

**“Confidentiality**

**61.** Any person required to provide information under this Part shall not be required to provide information which—

- (a) in relation to a person to which the Environmental Information (Scotland) Regulations 2004<sup>(5)</sup> apply, the person may refuse to disclose under regulation 10 of those Regulations or is prevented from disclosing by regulation 11 of those Regulations; and
- (b) in relation to a person to which the Environmental Information Regulations 2004<sup>(6)</sup> apply, the person may refuse to disclose under regulation 12 of those Regulations or is prevented from disclosing by regulation 13 of those Regulations.”.

(7) In regulation 62(1) (charges) for “an environmental statement” in both places where it occurs substitute “any documents”.

(8) After regulation 62 (charges) insert—

**“Access to review procedure before a court**

**62A.** Any non-governmental organisation promoting environmental protection and meeting any requirements under the law shall be deemed to have an interest for the purposes of Article 10a(a) of the Directive and rights capable of being impaired for the purposes of Article 10a(b) of the Directive.”.

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(5) S.S.I. 2004/520.

(6) S.I. 2004/3391.