
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 114

**The Agriculture, Land Drainage and
Irrigation Projects (Environmental Impact
Assessment) (Scotland) Regulations 2017**

PART 2

AGRICULTURE AND IRRIGATION PROJECTS

Prohibition on granting consent without an environmental impact assessment

5. The Scottish Ministers must not grant consent for an EIA project under these Regulations unless an environmental impact assessment has been carried out in respect of that project, and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

Screening opinion for agriculture – uncultivated land and semi-natural areas

6. No person may begin or carry out a project involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes without first obtaining a screening opinion in accordance with regulations 10 to 12.

Screening opinion for irrigation project

7. No person may begin or carry out a project involving irrigation without first obtaining a screening opinion in accordance with regulations 10 to 12.

Screening opinion for agriculture – restructuring project

8.—(1) Where paragraph (2) applies, no person may begin or carry out a project involving restructuring of rural land holdings on agricultural land without first obtaining a screening opinion in accordance with regulations 10 to 12.

(2) This paragraph applies where—

- (a) the project, or any part of it, is to be carried out in a sensitive area; or
- (b) the project is to be carried out wholly outside a sensitive area and the extent of the project is equal to or exceeds the threshold applicable to it calculated in accordance with regulation 9.

Thresholds for agriculture – restructuring projects

9.—(1) The method for determining whether the extent of a project for the restructuring of rural land holdings is equal to or exceeds the threshold applicable to it shall be determined in accordance with this regulation.

(2) Where a project consists of only one of the types of project specified in column 1 of the table in schedule 1, the threshold applicable to it is that specified for that type of project in column 2 of the table in that schedule.

- (3) Where a project is made up of more than one of the types of project specified in column 1—
- (a) each relevant part of the project must be assessed so as to determine the threshold applicable to that part; and
 - (b) if any relevant part of the project equals or exceeds the threshold applicable to that part, then the entire project is to be treated as having an extent equal to or exceeding the threshold applicable to it.

Application for screening opinion

10.—(1) An application for a screening opinion must be accompanied by—

- (a) 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 whole 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;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(2) An application for a screening opinion may, in addition to the information required in accordance with paragraph (1), also be accompanied by a description of any features of the project, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.

(3) The information referred to in paragraph (1) is to be compiled taking into account, where relevant—

- (a) the selection criteria set out in schedule 2; and
- (b) the available results of any relevant assessment.

Screening opinions – time period for decision

11.—(1) Following an application for a screening opinion under regulation 10, the Scottish Ministers must adopt a screening opinion—

- (a) as soon as possible, and in any event within a period of time not exceeding 90 days beginning with the date of receipt of the application; or
- (b) where notice is given under paragraph (2), by the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.

(2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the project it is not practicable to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the application, the Scottish Ministers may extend that period by notice in writing given to the person who made the application.

(3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which they are to adopt a screening opinion pursuant to the application.

(4) The Scottish Ministers must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the person who made the application of the points on which they require further information.

(5) For the purposes of paragraph (1), the date on which an application for a screening opinion is taken to have been received is the date on which the last of the items or information required to be contained in or accompany an application for a screening opinion is received by the Scottish Ministers.

Screening opinions – determination

12.—(1) When making a determination as to whether a project is an EIA project, the Scottish Ministers must—

- (a) in all cases take into account—
 - (i) the information provided by the applicant;
 - (ii) such of the selection criteria set out in schedule 2 as are relevant to the project;
 - (iii) the available results of any relevant assessment; and
- (b) where information is provided to them by virtue of regulation 10(1) and (2) or 11(4), base their determination on that information.

(2) Where the Scottish Ministers adopt a screening opinion—

- (a) that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 2 as are relevant to the project, the main reasons for their conclusion; and
- (b) where the screening opinion is to the effect that the project is not an EIA project, the statement referred to in paragraph (a) must state any features of the project or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

(3) As soon as possible after adopting a screening opinion the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2) to the applicant.

Requirement for consent

13. No person may begin or carry out an EIA project without first obtaining consent from the Scottish Ministers.

Scoping opinion

14.—(1) After obtaining a screening opinion that a project is an EIA project and before applying for consent for an EIA project, the applicant may request the Scottish Ministers to adopt a scoping opinion.

(2) A request under paragraph (1) must include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the project and of its likely impact on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information to adopt a scoping opinion, they must within the period of 28 days beginning with the date of receipt

of the request under paragraph (1) notify the person making the request of the points on which they require further information.

(4) The Scottish Ministers must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the consultation bodies.

(5) Before adopting a scoping opinion, the Scottish Ministers must take into account—

- (a) the specific characteristics of the particular project, including its location and technical capacity;
- (b) the specific characteristics of the project of the type concerned; and
- (c) the environmental features likely to be affected by the project.

(6) The Scottish Ministers must within the period of 35 days beginning with the date of receipt of that request under paragraph (1), or such longer period as they reasonably require, adopt a scoping opinion and send a copy to the person who made the request.

Procedure to facilitate preparation of EIA reports

15.—(1) An applicant who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice in writing to the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land and the nature and purpose of the project, and must indicate the main environmental consequences to which the applicant proposes to refer in the EIA report.

(3) Where the Scottish Ministers receive notice under paragraph (1) they must—

- (a) notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on those bodies by paragraph (4) to make information available to the applicant; and
- (b) inform in writing the applicant of the names and addresses of the bodies so notified.

(4) Subject to paragraphs (5) and (6), the Scottish Ministers and any body notified in accordance with paragraph (3) must, if requested by the applicant, enter into consultation with the applicant to determine whether the Scottish Ministers or the body have in their possession any information which the applicant or they consider relevant to the preparation of the EIA report, and the Scottish Ministers or body must make any such information available to the applicant.

(5) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 10(1) of the Environmental Information (Scotland) Regulations 2004(1); or
- (b) are prevented from disclosing by regulation 11(2) of those Regulations.

(6) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(2); or
- (b) are prevented from disclosing by regulation 13(1) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by the Scottish Ministers or any body notified in accordance with paragraph (3) when making information available in accordance with paragraph (4).

(1) [S.S.I. 2004/520](#), as amended by [S.S.I. 2013/127](#).

(2) [S.I. 2004/3391](#), as relevantly amended by [S.I. 2015/1897](#).

Application and EIA report

- 16.—(1) An application for consent for an EIA project must be accompanied by—
- (a) an environmental impact assessment report (referred to in these Regulations as an “EIA report”); and
 - (b) such number of copies of the application as the Scottish Ministers may reasonably require.
- (2) An EIA report is a report prepared in accordance with this regulation by the applicant 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 applicant, 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 sub-paragraphs (a) to (d); and
 - (f) any other information specified in schedule 3 relevant to the specific characteristics of the project or of the type of project in question and to the environmental features likely to be affected.
- (3) Where a scoping opinion is issued, the EIA report must be based on that scoping opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.
- (4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.
- (5) In order to ensure the completeness and quality of the EIA report—
- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
 - (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

Consultation and publication

- 17.—(1) Where the Scottish Ministers have received an application for consent for an EIA project they must—
- (a) send a copy of the application, including the EIA Report, to the consultation bodies and consult them about the EIA report and inform them how and by what date they may make representations (being a date within the period of 30 days beginning with the date on which the application was sent); and
 - (b) in order to ensure the effective participation of the public concerned in the decision-making process, publish as soon as possible a notice in accordance with paragraphs (2) to (4).
- (2) Notice under paragraph (1)(b) must—
- (a) describe the application and the project to which the EIA report relates;
 - (b) state that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;

- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
 - (d) state how copies of the EIA report may be obtained;
 - (e) state the cost of a copy of the EIA report;
 - (f) state how and by what date representations may be made (being a date within the period of 30 days beginning with the last date on which the notice is published);
 - (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice is to be given of any subsequent submission by the applicant of additional information and how representations in relation to that additional information may be made; and
 - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by whom such decisions are to be taken.
- (3) Notice under paragraph (1) must be published—
- (a) on the application website;
 - (b) in The Edinburgh Gazette; and
 - (c) in a newspaper circulating in the locality in which the project is situated.
- (4) The applicant must, at the time of submitting the report, pay the cost to be incurred by the Scottish Ministers in arranging publication of the notice in accordance with paragraph (3)(b) and (c).
- (5) The Scottish Ministers must make copies of the report and other documents submitted with the application available for inspection on the application website.

Additional information

18.—(1) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the applicant supplementary information about a matter to be included in the EIA report in accordance with regulation 4(2) 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.

(2) The applicant must provide the information, and such information provided is referred to in these Regulations as “supplementary information”.

(3) Where additional information is provided, regulation 17 applies to the provision of such information as it applies to the submission of an EIA report as if references to the report were references to the additional information.

Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom

19.—(1) This regulation applies where—

- (a) it comes to the attention of the Scottish Ministers that a project proposed to be carried out in Scotland is an EIA project and is likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
- (b) an EEA State other than the United Kingdom likely to be significantly affected by such a project so requests.

(2) The Scottish Ministers must—

- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (b) below, the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);

- (b) publish the information in sub-paragraph (a) above in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
 - (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (3) The particulars referred to in paragraph (2)(a) are—
- (a) a description of the project, together with any available information on its possible significant effect on the environment in another EEA State; and
 - (b) information on the nature of the decision which may be taken.
- (4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must as soon as possible send to that EEA State the following information:—
- (a) a copy of the application concerned (which includes the EIA report); and
 - (b) 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 (2)(a).
- (5) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the applicant 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 consent is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.
- (6) The Scottish Ministers must in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the project 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.
- (7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a copy of the decision notice.

Projects in another EEA State likely to have significant transboundary effects

20.—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
- (b) determine in agreement with that EEA State a reasonable period, before consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and

- (c) so far as they have received such information, notify the consultation bodies 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 effects that have been identified.
- (2) The Scottish Ministers must 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; and
 - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before 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.

Availability of opinions etc. for inspection

21.—(1) Where any document mentioned in paragraph (2) is received, issued or adopted by the Scottish Ministers, the Scottish Ministers must make copies of that document available for inspection—

- (a) on the application website; and
- (b) at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.
- (2) The documents are any—
 - (a) request under regulation 14(1);
 - (b) direction given under regulation 3(3) or (4);
 - (c) screening opinion;
 - (d) scoping opinion;
 - (e) EIA report and any additional information; and
 - (f) statement of reasons accompanying any of the above.
- (3) Documents made available under paragraph (1) must remain so available for a period of 2 years.

Decision notice

22.—(1) The Scottish Ministers must determine an application for consent for an EIA project as soon as reasonably practicable but in any event within the period of 6 months beginning with the date on which it receives the application; but may determine it within such other time period as may be agreed with the applicant.

(2) Where an application for consent for an EIA project is determined by the Scottish Ministers the notification of the decision to be given to the applicant (referred to in these Regulations as “the decision notice”) must include the information specified in paragraph (3).

- (3) The information is—
 - (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; and
- (e) a summary of—
 - (i) the environmental information; and
 - (ii) the results of the consultations and information gathered pursuant to regulations 17, 18, and where relevant, regulations 19 and 20 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 20, have been incorporated or otherwise addressed;
- (f) if the decision is to grant consent—
 - (i) any conditions to which the decision is subject;
 - (ii) the reasoned conclusion referred to in regulation 4(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 mitigation measures; and
 - (v) a description of any monitoring measures required under regulation 24; and
- (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(4) Where regulation 4(6) applies, the decision notice must describe the matters in respect of which the Scottish Ministers consider that the effects of the project are not identifiable at the time of their determination of the EIA application.

(5) For the purposes of paragraph (3)(f)(iii) the reasoned conclusion referred to in regulation 4(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.

(6) In this regulation and in regulation 24—

“mitigation measures” means 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 including any such features or measures required by virtue of a condition imposed on the grant of consent; and

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the project including any such measures required by virtue of a condition imposed on the grant of consent for an EIA project.

Conditions and restrictions on the granting of consent

23.—(1) The Scottish Ministers must not grant consent for an EIA project which would involve doing anything which would be unlawful under regulation 39, 41 or 43 of the Habitats Regulations (which does not include anything for which a licence has been granted under regulation 44 of those Regulations).

(2) Paragraphs (3) to (7) apply to a decision by the Scottish Ministers whether or not to grant consent for an EIA project which is likely to have a significant effect upon a European site (either alone or in combination with other projects) (referred to in those paragraphs as “a European site project”).

(3) Subject to paragraphs (5) and (6), the Scottish Ministers may grant consent for the European site project only if they have considered its implications for the European site and are satisfied that the European site project will not adversely affect the integrity of that site.

(4) The consideration of implications to be undertaken under paragraph (3) must involve an appropriate assessment of the implications of the European site project for the European site in view of the conservation objectives of the site.

(5) If the Scottish Ministers are satisfied that, there being no alternative solutions, the European site project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (6), may be of a social or economic nature), they may grant consent for the European site project, notwithstanding a negative assessment of the implications for a European site.

(6) Where a European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (5) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other reasons which in the opinion of the European Commission are in the case of the site concerned imperative reasons of overriding public interest.

(7) Where in accordance with paragraph (5), consent is granted for a European site project notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (as defined in the Habitats Regulations) is protected.

(8) Any consent for an EIA project granted must be subject to the conditions required by paragraph (9) and to such additional conditions as the Scottish Ministers may think fit.

(9) Every consent for an EIA project must be granted subject to conditions to the effect that—

- (a) the consent shall lapse if the EIA project has not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
- (b) if the EIA project has not been completed (which, for these purposes, shall mean that works permitted by the consent have been carried out and completed and all changes in the use or level of use of the relevant land permitted by the consent have been implemented) within the period of 3 years beginning with the date on which the consent was granted, the consent shall expire and the Scottish Ministers may require operations or uses implemented pursuant to the consent to cease until they have granted further consent in accordance with subparagraph (d);
- (c) the consent authorises the EIA project only as described in the application for consent for an EIA project, subject to any amendments approved by the Scottish Ministers, and any material change in the operations or uses so authorised shall require further consent in accordance with subparagraph (d);
- (d) applications for further consent under conditions in sub-paragraph (b) or (c) must be subject to such of the requirements of these Regulations as the Scottish Ministers think fit.

Monitoring measures

24.—(1) Where an application for consent for an EIA project is determined by the Scottish Ministers and the decision is to grant consent, 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 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, the Scottish Ministers must take steps to ensure that those measures are implemented.

Notification of decision

25. Where an application for consent for an EIA project is determined by the Scottish Ministers, they must—

- (a) inform the public and consultation authorities of the decision, and of where a copy of decision notice 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
- (b) make a copy of the decision notice available for public inspection—
 - (i) on the application website; and
 - (ii) at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.

Prohibition on granting an application for multi-stage consent without an environmental impact assessment

26. The Scottish Ministers must not grant an application for multi-stage consent in respect of an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such an assessment the Scottish Ministers must take the environmental information into account.

Application for multi-stage consent where EIA report previously provided

27.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of an application for multi-stage consent where a report referred to by the applicant as an EIA report has previously been submitted by the applicant in relation to the project.

- (2) Where this regulation applies—
- (a) if it appears to the Scottish Ministers that the project, or the part of the project to which the application for multi-stage consent relates, as the case may be, may have significant effects on the environment that have not previously been identified and assessed; and
 - (b) the applicant has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the Scottish Ministers must seek supplementary information from the applicant in accordance with regulation 18 in respect of such effects.

Modification of regulations relating to application for multi-stage consent

28.—(1) These Regulations apply to an application for multi-stage consent as if—

- (a) references to an application for consent for an EIA project were references to an application for multi-stage consent; and
- (b) in regulation 19(5)(b) the reference to “consent” were a reference to “multi-stage consent”.

(2) Regulation 22(3)(d), (e) and (g) applies in respect of the notification of a decision on an application for multi-stage consent only where additional information has been provided by the applicant in connection with that application.

Review of decisions and consents

29. Schedule 4 applies to—

- (a) any decision that a project is not an EIA project; and
- (b) any consent for an EIA project,

where, after the date of the decision or grant of consent, a site becomes a European site and in the opinion of the Scottish Ministers the carrying out or completion (having the same meaning as in regulation 23(9)(b)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

Appeals to the Scottish Ministers

30.—(1) The following persons:—

- (a) a person who has applied for a screening opinion in respect of a project which the Scottish Ministers have decided is an EIA project;
- (b) a person who has applied for consent for an EIA project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 23(9));
- (c) a person upon whom a notice of a decision (being a revocation of a decision that a project is not an EIA project) or the revocation or modification of a consent for an EIA project has been notified in accordance with paragraph 3 of schedule 4; and
- (d) a person upon whom a notice requiring reinstatement works has been notified in accordance with paragraph 5 of schedule 4,

may by notice appeal to the Scottish Ministers against the consent or decision as the case may be (in this regulation referred to as “the relevant decision”) in accordance with this regulation and when making the relevant decision the Scottish Ministers must advise all persons with a right of appeal under this paragraph of that right.

(2) A person to whom paragraph (1) applies (in this regulation referred to as “the appellant”) must serve notice of an appeal on the Scottish Ministers within the period of 3 months beginning with the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal must include—

- (a) a description of the relevant decision;
- (b) a statement of the grounds of appeal; and
- (c) a statement indicating whether the appellant wishes the appeal to be disposed of on the basis of written representations or to be in the form of a hearing or an inquiry.

(4) Where a notice of an appeal is served in relation to a decision referred to in paragraph (1) (c) or (d), the revocation or modification concerned shall not take effect or the reinstatement works

shall not require to commence (as the case may be) until the expiry of the period of appeal following final determination or until the withdrawal of the appeal.

(5) As soon as reasonably practicable after receipt of notice of an appeal, the Scottish Ministers must serve copies of the notice (or arrange for copies to be served) on—

- (a) such of the consultation bodies as they think fit;
- (b) any person who made representations in respect of the relevant decision;
- (c) any EEA State consulted pursuant to regulation 19(6);
- (d) any authority or person who forwarded their opinion to the Scottish Ministers pursuant to regulation 19(5)(b); and
- (e) any other person who appears to them to have a particular interest in the subject matter of the appeal.

(6) A person upon whom a copy of a notice of an appeal has been served in accordance with paragraph (5) may not make representations in respect of the appeal to the Scottish Ministers unless the Scottish Ministers are notified by that person of that person's wish to do so within the period of 21 days beginning with the date on which a copy of the notice was served upon that person.

Hearing procedure

31.—(1) Before determining an appeal made under regulation 30(1), the Scottish Ministers may afford the appellant and any interested party an opportunity of appearing before and being heard by a person appointed by them (in this regulation referred to as “the appointed person”) and they must do so in any case where a request is made by the appellant to be so heard.

(2) If the Scottish Ministers cause a hearing to be held, they—

- (a) must give the appellant and any interested person at least 42 days written notice (or such shorter period of notice as they may agree with the appellant and the interested parties) of the date, time and place fixed for the holding of the hearing; and
- (b) may require a site visit.

(3) The Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice—
 - (i) on the application website;
 - (ii) in The Edinburgh Gazette; and
 - (iii) in a newspaper circulating in the locality in which the project is situated; and
- (b) serve a copy of that notice on every interested person.

(4) The Scottish Ministers may vary the date fixed for the holding of any hearing and paragraphs (2) and (3) apply to the variation of a date as they applied to the date originally fixed.

(5) The Scottish Ministers may also vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to them to be reasonable.

(6) The persons entitled to be heard at any hearing are the appellant and any interested person.

(7) Nothing in paragraph (6) prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(8) After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must include the conclusions and recommendations of that person or the reasons for not making any recommendation.

Determination of appeals by written representations

32.—(1) This regulation applies to an appeal made under regulation 30(1) which is to be determined by written representations.

(2) Within a period of 42 days beginning with the date of receipt of notice that the appeal is to be determined by written representations, the appellant must either serve on the Scottish Ministers any further representations that the appellant wishes to be considered by the Scottish Ministers or must notify the Scottish Ministers that the appellant wishes to rely on the information already supplied by that appellant, and the Scottish Ministers must either send to the interested persons copies of any further representations made by the appellant or must notify them that the appellant does not intend to make further representations as the case may be.

(3) Any of the interested persons who wish to make representations in respect of the appeal must, within a period of 28 days beginning with the date of receipt of further representations made by the appellant or of notification that the appellant does not wish to make further representations, as the case may be, serve such representations on the Scottish Ministers, who must send copies of the representations served upon them to the appellant and to the other interested persons.

(4) The Scottish Ministers must allow the appellant and the other interested persons a period of not less than 14 days beginning with the date of receipt of representations made in accordance with paragraph (3), in which to respond to those representations.

(5) No earlier than the expiry of the period specified in paragraph (4), the Scottish Ministers must determine the appeal and must notify the decision and the reasons for it to the appellant and to the interested persons.

Determination and publication of appeal

33.—(1) On determining an appeal made under regulation 30(1), the Scottish Ministers may quash or confirm the relevant decision, and if they affirm it they may do so in its original form or with such modifications as they think fit.

(2) The Scottish Ministers must give notice to the appellant and any interested person of their determination of the appeal and their reasons for that determination, and must provide the appellant and any interested person with a copy of any report made under regulation 31(8).

(3) The Scottish Ministers must make copies of—

- (a) the decision and the reasons for the decision; and
- (b) the report made under regulation 31(8),

available for inspection on the application website and at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.

Access to review procedures before a court

34. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive.

Competent authority – avoidance of conflict of interest

35.—(1) The Scottish Ministers must perform their duties arising under these Regulations 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 to consider an application for consent for an EIA project made by Scottish Ministers, they are to implement within their organisation of administrative

competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Co-ordination of assessments

36.—(1) Where in relation to an EIA project there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulations Assessment, the Scottish Ministers must where appropriate ensure that the Habitats Regulations Assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, “Habitats Regulations Assessment” means an assessment under regulation 48 of the Habitats Regulations.

Offences

37. Any person who begins or carries out a project without first obtaining either a decision that the project is not an EIA project or a decision granting consent for an EIA project in accordance with these Regulations commits an offence under this regulation and is liable—

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

unless the project is an exempt project under regulation 3.

38. Any person who carries out work in contravention of any condition of a consent for an EIA project granted in accordance with these Regulations commits an offence and is liable—

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

39.—(1) Any person who, for the purpose of procuring a particular decision on an application made under these Regulations—

- (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 paragraph (1) above is liable—

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

Application to Crown

40.—(1) No act or omission of the Crown constitutes an offence under these Regulations.

(2) 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 paragraph (1) have constituted an offence under this regulation.

(3) Despite paragraph (1), this regulation applies to a person in the public service of the Crown as it applies to other persons.

Stop notices

41.—(1) Where it appears to the Scottish Ministers that an offence has been committed under regulation 37, 38 or 39 and they consider that the potential harm to the environment of work to which the offence relates is such that the work should cease with immediate effect, they may serve a notice (in these Regulations referred to as a “stop notice”) prohibiting all or any part of such work (the “prohibited work”).

(2) The Scottish Ministers may serve a stop notice on any person who appears to them to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) The Scottish Ministers may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on those persons served with the stop notice.

(4) A stop notice shall take effect no earlier than the time and date specified in the notice which, except in an emergency, shall not be less than 24 hours after it has been served.

(5) A stop notice shall cease to have effect—

- (a) if a notice of withdrawal is served in accordance with paragraph (3);
- (b) if the Scottish Ministers grant consent for the prohibited work;
- (c) if the Scottish Ministers decide that the prohibited work is not an EIA project; or
- (d) in accordance with an order of the sheriff in relation to an appeal under paragraph (6).

(6) A person on whom a stop notice is served may appeal to the sheriff in relation to that notice within a period of 21 days beginning with the date of service of the notice.

(7) The making of an appeal under paragraph (6) shall not have the effect of suspending the effect of the stop notice.

(8) On determination of the appeal, the sheriff may by order quash or affirm the stop notice and, if affirming it, may do so either in its original form or with such modifications as may in the circumstances be thought fit.

Offences – contravention of a stop notice

42.—(1) Any person who contravenes a stop notice that has been served on that person commits an offence.

(2) An offence under this regulation may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice shall mean causing or permitting its contravention.

(4) A person guilty of an offence under this regulation is liable—

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

(5) In proceedings for an offence under this regulation it shall be a defence for the accused to prove that—

- (a) the stop notice was not served on the accused; and
- (b) the accused did not know, and could not reasonably have been expected to know, of its existence.

Reinstatement

43.—(1) Where it appears to the Scottish Ministers that an offence has been committed under regulation 37, 38 or 39, they may serve a notice (in these Regulations referred to as “a reinstatement notice”) upon the person who appears to them to be responsible for committing the offence requiring that person to reinstate, to their reasonable satisfaction, the relevant land to the condition it was in before the project was commenced and specifying the period within which the reinstatement is required to be carried out.

(2) Where the condition of the relevant land before the project was commenced cannot be determined with reasonable accuracy, or where it is not possible to return the relevant land to the same condition it was in before the project commenced, the reinstatement notice shall impose such requirements for the purposes of reinstatement as shall, in the opinion of the Scottish Ministers (after consultation with such of the consultation bodies as they think fit), be reasonable in the circumstances.

(3) A person served with a notice under paragraph (1) may, within the period of 21 days beginning with the date on which the notice is served, appeal to the sheriff on any of the following grounds:—

- (a) the notice or any requirement in the notice is not within the power conferred by this regulation;
- (b) there has been some material informality, defect or error in, or in connection with, the notice; or
- (c) any of the requirements of the notice are unreasonable.

(4) Where an appeal is made in accordance with this regulation, the reinstatement notice shall be of no effect until the date of determination or abandonment of the appeal or any appeal therefrom by the applicant or the appellant, as the case may be.

(5) For the purposes of paragraph (4), the “date of determination” means—

- (a) in the case of an appeal from the sheriff or where there is a further right of appeal in relation to that determination, the date of expiry of the period within which an appeal may be taken; or
- (b) in the case where there is no such right of appeal, the date of final determination.

(6) If any person, without reasonable excuse, fails to comply with any requirement of a reinstatement notice served under paragraph (1), that person commits an offence and is liable on summary conviction—

- (a) to a fine not exceeding the statutory maximum; and
- (b) if the failure is continued after conviction, to a further fine not exceeding one twentieth of the sum equivalent to level 5 on the standard scale for every day on which the failure is so continued.

Powers of entry and default powers

44.—(1) Any person duly authorised in writing by the Scottish Ministers may, at a reasonable time, enter and inspect any land for the purpose of—

- (a) ascertaining whether an offence under regulation 37, 38, 39, 42 or 43 has been committed on or in connection with that land;
- (b) serving a reinstatement notice under regulation 43 in respect of that land; or
- (c) exercising any functions under schedule 4, if there are reasonable grounds for entering for the purpose in question.

(2) Any person duly authorised in writing by the Scottish Ministers who has reasonable grounds for suspecting that a person has committed an offence under regulation 39, may enter any premises,

other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, the person believed to be responsible for committing the offence, and may inspect and take copies of any records which that authorised person has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a reinstatement notice or by notice served in accordance with paragraph 5 of schedule 4 have not been taken within the period specified in the notice—

- (a) any person duly authorised in writing by the Scottish Ministers may, at a reasonable time, enter the land to which the notice relates; and
- (b) may recover from the person in default as a debt the expenses reasonably incurred in doing so.

(4) A person authorised under paragraph (1), (2) or (3) to enter any land or premises must, if so requested, produce evidence of the authority of that person before so entering.

(5) A person authorised under paragraph (1), (2) or (3) to enter any land or premises may be accompanied by such other person as is considered necessary.

(6) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1), (2) or (3) must give to that person such assistance as the authorised person may reasonably request so as to enable the exercise of any power conferred upon such authorised person by this regulation.

(7) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation, or who fails without reasonable excuse to comply with a request made under paragraph (6) commits an offence and is liable on summary conviction to a fine not exceeding the statutory maximum.

Offences by bodies corporate

45.—(1) Subsection (2) applies where—

- (a) an offence under these Regulations 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, Scottish partnership or unincorporated association commits an 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—
 - (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 Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.