
SCOTTISH STATUTORY INSTRUMENTS

1999 No. 43

FORESTRY

**The Environmental Impact Assessment
(Forestry) (Scotland) Regulations 1999**

Made - - - - 3rd September 1999
*Laid before the Scottish
Parliament* - - - - 3rd September 1999
Coming into force - - 6th September 1999

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(1) and of all other powers enabling them in that behalf, and having taken into account the selection criteria in Annex III to Council Directive 85/337/EEC(2) as amended by Council Directive 97/11/EC(3) hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 and shall come into force on 6th September 1999.

(2) These Regulations apply to Scotland.

Interpretation

2.—(1) In these Regulations—

“afforestation” means initial afforestation (which has the same meaning as in paragraph 1(d) of Annex II to the Directive);

“the Commissioners” means the Forestry Commissioners;

“countryside body” means Scottish Natural Heritage (established under section 1 of the Natural Heritage (Scotland) Act 1991(4) and the Scottish Environment Protection Agency (established under section 20 of the Environment Act 1995(5);

(1) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15; functions of the Secretary of State under section 2(2) were transferred to the Scottish Ministers by virtue of section 53 of that Act.
(2) OJ No.L175, 5.7.85, p.40.
(3) OJ No.L73, 14.3.97, p.5.
(4) 1991 c. 28.
(5) 1995 c. 25.

“deforestation” means deforestation for the purposes of conversion to another type of land use (which terms have the same meaning as in paragraph 1(d) of Annex II to the Directive);

“development” means development within the meaning of section 26 of the Town and Country Planning (Scotland) Act 1997⁽⁶⁾

“the Directive” means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed in Brussels on 17th March 1993;

“environmental information” means information in the environmental statement and any other information provided in accordance with these Regulations in relation to an application for consent or an appeal under regulation 17 or 21 relating to the likely environmental affects of the project which is the subject of the application or, as the case may be, appeal;

“environmental statement” means a statement—

- (a) that includes such of the information referred to in Part I of Schedule I as is reasonably required to assess the environmental effects of the project and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) that includes at least the information referred to in Part II of Schedule 1;

“forest quarry works” means operations on land used or to be used for the purposes of forestry, or on land held or occupied with that land, to obtain the materials required for forest road works;

“forest road works” means the formation, alteration or maintenance of private ways on land used or to be used for the purposes of forestry;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁷⁾

“project” means the execution of construction works or of other installations or schemes or other intervention in the natural surroundings or landscape including those involving the extraction of mineral resources;

“proposer” means person who proposes to carry out a project;

“relevant project” shall be construed in accordance with regulation 3 below.

(2) In these regulations, any reference to an enforcement notice shall be construed as including, as the context requires, a reference to a notice of variation under regulation 20(6)(a) or to an enforcement notice as so varied.

(3) Any reference in these Regulations (other than regulation 22) to consent is a reference to the consent of the Commissioners required by regulation 4, and—

- (a) (where the context permits) includes consent by the appropriate Authority on an appeal under regulation 17; and
- (b) in regulations 4 and 20 to 23 includes (in accordance with regulation 25(9)) consent granted under the Environmental Assessment (Forestry) Regulations 1998⁽⁸⁾

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

⁽⁶⁾ 1997 c. 8.

⁽⁷⁾ 1994 c. 39.

⁽⁸⁾ S.I.1998/1731.

Interpretation of “relevant project”

- 3.—(1) For the purposes of these Regulations, a project is a relevant project if—
- (a) it is a project of a type specified in paragraph (2) of this regulation;
 - (b) subject to paragraph (3) of this regulation, it is likely, by virtue of factors such as its nature, size or location, to have significant effects on the environment; and
 - (c) the carrying out of the project—
 - (i) does not involve development; or
 - (ii) involves development which is not mentioned in Schedule 1 to, or in column 1 of the table in Schedule 2 to, the Environmental Impact Assessment (Scotland) Regulations 1999⁽⁹⁾ or
 - (iii) involves development for which planning permission is granted by Part 7 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽¹⁰⁾.
- (2) The types of project referred to in paragraph (1)(a) above are—
- (a) afforestation;
 - (b) deforestation;
 - (c) forest road works;
 - (d) forest quarry works.

(3) For the purposes of paragraph (1)(b) above, and subject to regulations 6(3) and 7(6), a project shall be taken not to be likely to have significant effects on the environment if the area covered, or to be covered, by the project does not exceed any relevant threshold set out in Schedule 2.

Restriction on relevant projects

- 4.—(1) Subject to paragraph (2) below, no person shall carry out, on any land, work or operations relating to a relevant project unless—
- (a) consent has been granted for that project by the Commissioners or by the Scottish Ministers; and
 - (b) the project is carried out in accordance with the consent (including the conditions to which the consent is subject).
- (2) In accordance with Article 2(3) of the Directive, the Commissioners may direct that a particular project is exempted from the application of these Regulations.
- (3) A direction under paragraph (2) shall be in writing and shall be accompanied by a statement of the Commissioners' reasons for making it.
- (4) No direction shall be made under paragraph (2) above where it appears to the Commissioners that the project would be likely to have significant effects on the environment in another EEA State.

Application for an opinion whether a project is a relevant project

- 5.—(1) The proposer may apply in writing to the Commissioners for their opinion whether a project is a relevant project.
- (2) An application under paragraph (1) above shall include or be accompanied by—

⁽⁹⁾ S.S.I.1999/1.

⁽¹⁰⁾ S.I.1992/223, amended by S.I.1992/1078 and 2084, 1993/1036, 1994/1442, 2576 and 3294, 1996/252, 1266 and 3023 and as read with Part IV of S.I.1994/2716.

- (a) a map or plan sufficient to identify the land that is the subject of the proposed project and the extent of the proposed project;
- (b) a brief description of the nature of the proposed project and of its possible effects on the environment; and
- (c) such further information or representations as the proposer may wish to provide or make.

(3) The Commissioners shall, if they consider that they have not been provided with sufficient information to enable them to give an opinion under paragraph (1) above, notify the proposer in writing of the matters on which they require further information and the proposer shall supply that further information to the Commissioners within such period as the Commissioners may reasonably require.

Opinions of the Commissioners

6.—(1) Where the proposer applies to the Commissioners under regulation 5, they shall give to the proposer written notice of their opinion within—

- (a) 28 days beginning with the date of their receipt of the application or, where they notify the proposer under regulation 5(3) that they require further information, the date of their receipt of that information; or
- (b) such longer period as may be agreed in writing between the Commissioners and the proposer.

(2) Subject to paragraph (3), in considering, for the purpose of forming their opinion, whether the project is likely to have significant effects on the environment the Commissioners shall take into account the selection criteria in Schedule 3.

(3) In a case where the project does not exceed any relevant threshold set out in Schedule 2, the Commissioners shall form their opinion in accordance with regulation 3(3) except where, in their opinion, there are exceptional circumstances which, taking account of the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.

(4) Where the opinion of the Commissioners is that the project is a relevant project, the Commissioners shall include in, or provide with, their opinion a written statement of their reasons for being of that opinion.

(5) The Commissioners may, in the absence of an application, give their opinion whether or not a project is or would be a relevant project and where they give an opinion under this paragraph—

- (a) they shall give written notice of their opinion to any person who reasonably appears to them to be the proposer; and
- (b) paragraphs (2), (3), (4) and (6) of this regulation shall apply as they do to an opinion given in relation to an application under regulation 5(1).

(6) In paragraph (3), the reference to circumstances which are, in the opinion of the Commissioners, exceptional shall be construed in accordance with paragraph 4 of Schedule 2.

Directions by the Scottish Ministers

7.—(1) The proposer may apply in writing to the Scottish Ministers for a direction whether a project is a relevant project where—

- (a) the Commissioners give notice of their opinion under regulation 6(1) or regulation 6(5) that the project is or would be a relevant project; or
- (b) the Commissioners fail to give notice of their opinion within the period of time required by regulation 6(1).

(2) An application under paragraph (1) above shall be accompanied by, or by copies of—

any application by the proposer to the Commissioners under regulation 5(1) and any documents supplied to the Commissioners by the proposer in connection with that application, and

- (b) in a case falling within paragraph (1)(a) above, the opinion of the Commissioners and any written statement of reasons which they provided with it,

and may include such further information or representations as the proposer may wish to provide or make.

(3) Where the Scottish Ministers consider that the documents supplied under paragraph (2) above do not provide sufficient information to enable a direction to be given, the Scottish Ministers—

- (a) shall notify the proposer in writing of the matters on which further information is required; and
- (b) may seek further information on those matters from the Commissioners and the Commissioners shall supply that further information to the Scottish Ministers if it is in their possession.

(4) The Scottish Ministers shall give a direction within 28 days (or such longer period as they may reasonably require) beginning with—

- (a) the date of receipt of the application under paragraph (1) above; or
- (b) where the Scottish Ministers have required or sought further information under paragraph (3) above, the date of receipt by them of that information.

(5) Subject to paragraph (6), in considering, for the purpose of deciding on a direction, whether the project is likely to have significant effects on the environment, the Scottish Ministers shall take into account the selection criteria in Schedule 3.

(6) In a case where the project does not exceed any relevant threshold set out in Schedule 2, the Scottish Ministers shall make its decision in accordance with regulation 3(3) except where, in its opinion, there are exceptional circumstances which, taking account of the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.

(7) The Scottish Ministers shall provide the proposer and the Commissioners with a written statement of the direction including, where the direction is that the project is or would be a relevant project, the reasons for that direction.

(8) The Scottish Ministers may, in the absence of an application, give a direction whether or not a project is or would be a relevant project and where a direction is given under this paragraph—

- (a) a written statement of the direction shall be provided to the Commissioners and to any person who reasonably appears to the Scottish Ministers to be the proposer; and
- (b) paragraphs (5), (6), (7) and (9) of this regulation shall apply as they do to a direction given in relation to an application under paragraph (1).

(9) In paragraph (6), the reference to circumstances which are, in the opinion of the Scottish Ministers, exceptional shall be construed in accordance with paragraph 4 of Schedule 2.

Effect of directions and opinions

8.—(1) This paragraph applies to a direction given under regulation 7 that a project is not or would not be a relevant project or, in the absence of a direction under that regulation, to an opinion given under regulation 6 to that effect.

(2) A direction or opinion to which paragraph (1) above applies—

- (a) shall have the effect of determining for the purpose of these Regulations that the project specified in the direction or opinion (but only that project) is not or would not be a relevant project; but

(b) shall cease to have effect (without prejudice to the availability of a further direction or opinion) on the expiry of—

(i) the period five years beginning with the date on which the direction or opinion is given, or

(ii) such shorter period as may be specified in the direction or opinion,
if the work relating to the project has not been completed within that period.

(3) This paragraph applies to a direction given under regulation 7 that a project is or would be a relevant project or, in the absence of a direction under that regulation, to an opinion given under regulation 6 to that effect.

(4) A direction or opinion to which paragraph (3) applies shall have the effect of determining for the purposes of these Regulations that the project specified in the direction or opinion is or would be a relevant project.

Request as to the information to be included in an environmental statement

9.—(1) Before applying for consent to carry out work in relation to a project, a proposer may request the Commissioners to give their opinion as to the information to be contained in the environmental statement required for that project.

(2) Where a proposer requests an opinion under paragraph (1) above before a determination has been made whether the project is or would be a relevant project, the Commissioners shall deal with the request as if the project is a relevant project.

(3) Before giving an opinion under paragraph (1) above, the Commissioners shall consult the proposer, the countryside bodies and any relevant local authority.

(4) The Commissioners shall, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be agreed in writing with the proposer, give their opinion under paragraph (1) above and shall send a copy to the proposer.

(5) Where the Commissioners fail to give their opinion under paragraph (1) above within the relevant period, the proposer may request the Scottish Ministers to make a direction as to the information to be contained in the environmental statement required for the project.

(6) Before making a direction under paragraph (5) above, the Scottish Ministers shall consult the proposer, the countryside bodies and any relevant local authority.

(7) The Scottish Ministers shall, within a period of five weeks beginning with the date of the receipt of the request or such longer period as may be required for the purpose, make a direction under paragraph (5) above and shall send a copy to the proposer and to the Commissioners.

(8) In paragraphs (3) and (6), “relevant local authority” means a local authority for the area in which it is proposed to carry out the project which appears to the Commissioners or, as the case may be, the Scottish Ministers to have an interest in the issue of what information the environmental statement should contain.

Applications for consent

10.—(1) An application for consent shall be made in writing to the Commissioners and shall be accompanied by—

(a) a map or plan sufficient to identify the land on which the relevant project would be carried out and the extent of any planting, regeneration, construction, works or operations;

(b) a description of the nature of the relevant project;

(c) an environmental statement in respect of the relevant project; and

(d) a copy of the notice to be published in accordance with regulation 13(1).

(2) An applicant for consent shall supply to the Commissioners such number of copies of the application and the documents accompanying it as the Commissioners reasonably may require.

Provision of further information

11. Where in the opinion of the Commissioners—

- (a) further information is reasonably required for their proper consideration of the likely environmental effects of the relevant project to which an application for consent relates, and
- (b) the applicant could (having regard in particular to current knowledge and methods of assessment) provide such information,

the Commissioners shall notify the applicant in writing of the matter on which they require further information and the applicant shall provide that further information.

Assistance in preparation of environmental statements

12.—(1) Subject to paragraphs (2) and (3) below, the Commissioners, each of the countryside bodies and the local authority for the area in which it is proposed to carry out the project shall, if requested by an applicant for consent, and may without such a request, enter into consultation with an applicant for consent to determine whether the Commissioners, the countryside body or the local authority have in their possession any information which may be relevant to the preparation of the environmental statement and if the Commissioners, the countryside body or local authority have such information, they shall make it available to the applicant.

(2) Paragraph (1) above shall not require disclosure of information which is capable of being treated as confidential, or must be so treated, under regulation 4 of the Environmental Information Regulations 1992(**11**).

(3) Paragraph (1) above shall not prevent the Commissioners or a countryside body imposing a charge reflecting the cost of making the information available (including the identification, preparation and copying of any information) or making the payment of such a charge a condition of providing the information.

Publicity

13.—(1) A person who makes an application for consent under regulation 10 or who provides further information under regulation 11 shall publish a notice in accordance with paragraph (2) below in at least two newspapers specified by the Commissioners for the purposes of ensuring—

- (a) the application for consent or, as the case may be, the information provided under regulation 11, is made available to the public; and
- (b) the public concerned is given an opportunity to express an opinion before the application for consent is determined.

(2) A notice required by paragraph (1) above shall—

- (a) state that the application has been made or, as the case may be, that the further information has been furnished to the Commissioners;
- (b) specify an office of the Commissioners or other place nominated by them at which copies of the application or the further information may be inspected free of charge at all reasonable hours within 28 days beginning with the date of publication of the notice;

- (c) specify an address at which copies of the application or the further information may be obtained from the applicant and if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying) of the charge; and
- (d) state that any person wishing to make representations regarding the application or the further information should make them in writing to the Commissioners at an address nominated by them and specified in the notice, within 28 days beginning with the date of publication of the notice.

(3) On receipt of an application for consent under regulation 10, or of further information under regulation 11, the Commissioners shall provide copies of the application or, as the case may be, the further information, together with a notice stating that any representations regarding the application or the further information should be made in writing to the Commissioners within 28 days beginning with the date of the notice, to—

- (a) the countryside bodies; and
- (b) any local authority or other public authority which appears to the Commissioners to have an interest in the application.

(4) In this regulation, reference to an application includes a reference to the documents accompanying that application.

Information for another EEA State

14.—(1) Where it appears to the Commissioners that a project in relation to which they have received an application for consent would be likely to have significant effects on the environment of another EEA State, or where another EEA State likely to be significantly affected so requests, the Commissioners shall provide a copy of the environmental statement relating to the project to the Scottish Ministers.

(2) Where it appears to the Scottish Ministers that a project would be likely to have significant effects on the environment of another EEA State, or where another EEA State likely to be significantly affected so requests, they shall—

- (a) send to the EEA State as soon as possible, and no later than the date of its publication as required by sub-paragraph (b) of this paragraph, the information mentioned in paragraph (3) of this regulation and, if the Scottish Ministers think fit, the information mentioned in paragraph (4) of this regulation;
- (b) publish the information referred to in sub-paragraph (a) above in a notice placed in the Edinburgh Gazette with an indication of where further information is available;
- (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; and
- (d) inform the applicant for consent.

(3) The information referred to in paragraph (2)(a) of this regulation is—

- (a) a description of the project, together with any available information on its possible significant effects 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 shall as soon as possible send to that EEA State the following information—

- (a) a copy of the application for consent;
- (b) a copy of the environmental statement; 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 (2) of this regulation.
- (5) The Scottish Ministers shall also—
 - (a) arrange for the information referred to in paragraphs (3) and (4) of this regulation 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 determination of the application for consent, to forward to them, within a reasonable time, their opinion on the information supplied.
- (6) 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 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 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; and
 - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

Determination of applications

15.—(1) Where an application is made to the Commissioners for consent, they may, subject to the provisions of this regulation—

- (a) grant consent either subject only to the conditions required by regulation 18 or also subject to such further conditions as they see fit; or
- (b) refuse consent.

(2) The Commissioners shall not determine an application until after the expiry of the periods referred to in regulation 13 during which representations may be sent to the Commissioners or where appropriate any period of consultation with an EEA State in accordance with regulation 14.

(3) In determining an application, the Commissioners shall take into consideration the environmental information, any representations received by them in relation to the application and any other material consideration, including in particular their assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

Notification of decisions

16. Where an application for consent has been determined by the Commissioners they shall—

- (a) give notice in writing of their decision to the applicant and any person from whom they received representations in relation to the application, stating that they have taken into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based; and

- (b) publish a notice of their decision in the newspapers in which notice of the application was published in accordance with regulation 13(1) which gives details of the place and times at which the public may inspect a statement of—
 - (i) the content of the Commissioners' decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based; and
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

Appeals against decisions of the Commissioners

17.—(1) An applicant for consent may appeal to the Scottish Ministers where the Commissioners—

- (a) have refused the application;
- (b) have granted consent subject to conditions in addition to those required by regulation 18; or
- (c) have granted consent subject only to the conditions required by regulation 18 but have specified a period for the purposes of one or both of those conditions less than the maximum period permitted by that regulation.

(2) An appeal under this regulation shall be made within 28 days, or such longer period as the Scottish Ministers may, within that period of 28 days, allow, beginning with the date on which the applicant receives notification of the Commissioners' decision under regulation 16.

(3) An appeal shall be made by notice in writing to the Scottish Ministers accompanied by, or by copies of—

- (a) the application to which it relates, and any documents provided by the applicant to the Commissioners in relation to it;
- (b) the decision of the Commissioners; and
- (c) any other information or representations which the appellant wishes to provide or make.

(4) On receipt of a notice of appeal duly made, the Scottish Ministers shall send a copy of it to the Commissioners who shall, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the Scottish Ministers copies of any representation or information provided to them in relation to the application.

(5) On an appeal under this regulation, the Scottish Ministers may allow or dismiss the appeal or vary any part of the Commissioners' decision; and, where its decision is that consent should be granted, may accordingly grant consent either subject only to the conditions required by regulation 18 or also subject to such further conditions as it may determine.

(6) The Scottish Ministers shall determine an appeal within 28 days (or such longer period as it reasonably may require) beginning with the date of receipt of the representations or information supplied in accordance with paragraph (4) above.

(7) In determining an appeal, the Scottish Ministers shall take into consideration the environmental information, any representations in relation to the appeal and any other material consideration, including in particular its assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

(8) Where an appeal has been determined, the Scottish Ministers shall—

- (a) give notice of the decision stating that this takes into consideration the environmental information relating to the application and giving the reasons and considerations on which the decision was based to—
 - (i) the appellant;
 - (ii) the Commissioners; and

- (iii) any person from whom the Commissioners received representations in relation to the application to which the appeal relates; and
- (b) publish a notice of the decision in the newspapers in which the decision of the Commissioners to which the appeal relates was published in accordance with regulation 16(b) giving details of the place and times at which the public may inspect a statement of—
 - (i) the content of the Scottish Ministers' decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based; and
 - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

Conditions to be included in every consent

- 18.** Every consent shall include conditions to the effect that—
- (a) work in relation to the relevant project shall be commenced within such period (not being more than 5 years beginning with the date consent is granted) as is specified in the consent; and
 - (b) no work shall be carried out in relation to the relevant project after the expiration of such period (not being more than 10 years beginning with the date consent is granted) as is specified in the consent.

Application to the court by person aggrieved

19.—(1) On the application of any person aggrieved by the grant of consent, the court may make an order reducing the consent where it is satisfied that the consent was given contrary to whichever of regulation 15(3) or 17(7) applies in the case or that the interests of the applicant have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(2) An application to the court under this regulation shall be made within 6 weeks from the date of publication of the decision in accordance with regulation 16(b) or 17(8)(b).

(3) The court may by interim order, pending the determination of an application under this regulation, suspend the operation of the consent on such terms as it may think fit.

(4) In this regulation “the court” means the Court of Session.

Enforcement notices

20.—(1) Where it appears to the Commissioners that a person is carrying out or has carried out work in relation to a relevant project—

- (a) without consent, where consent is required by regulation 4, or
 - (b) in breach of a condition subject to which consent has been granted under these Regulations,
- the Commissioners may serve an enforcement notice on that person.

(2) An enforcement notice may require the person on whom it is served to take such one or more of the following measures as appear to the Commissioners to be suitable in the circumstances, namely—

- (a) apply to the Commissioners for consent;
- (b) discontinue work in relation to the relevant project;
- (c) restore the land to its condition before any work in relation to the relevant project was carried out;

- (d) carry out on the land any works or operations, specified in the enforcement notice, which in the opinion of the Commissioners are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project.
- (3) An enforcement notice shall specify the period during which any of the measures mentioned in paragraph (2)(a), (c) or (d) is to be taken and may specify different periods for different measures.
- (4) Either—
 - (a) an enforcement notice served by virtue of paragraph (1)(a) above shall include or be accompanied by a written statement of the Commissioners' reasons for being of the opinion that the project is a relevant project; or
 - (b) the Commissioners shall serve such a written statement on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.
- (5) Either—
 - (a) an enforcement notice shall include or be accompanied by a notice explaining how, to whom and within what period an appeal may be brought and whether the requirements of the enforcement notice will be stayed while an appeal is pending; or
 - (b) the Commissioners shall serve such a notice on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.
- (6) The Commissioners may, at any time—
 - (a) by a further notice served on the person on whom the enforcement notice was served, vary an enforcement notice; and
 - (b) withdraw an enforcement notice.
- (7) An enforcement notice may be served on any person—
 - (a) by delivering it to him personally;
 - (b) by leaving it for him at his last known place of abode or business; or
 - (c) by sending it through the post addressed to him at his last known place of abode or business.
- (8) An enforcement notice may—
 - (a) in the case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body;
 - (b) in the case of a partnership, be served on a partner or person having the control or management of the partnership business.

Appeals against enforcement notices

21.—(1) Any person on whom an enforcement notice has been served in accordance with regulation 20 may appeal to the Scottish Ministers.

(2) An appeal under this regulation shall be made within 28 days, or such longer period as the Scottish Ministers may, within that period of 28 days, allow, beginning with the date on which the appellant receives the enforcement notice.

(3) An appeal shall be made by notice in writing to the Scottish Ministers accompanied by, or by copies of—

- (a) the enforcement notice;
- (b) any relevant consent; and
- (c) any other information or representations which the appellant wishes to provide or make.

(4) On receipt of a notice of appeal duly made, the Scottish Ministers shall send a copy of it to the Commissioners who shall, within 28 days beginning with the date of receipt by them of the notice of appeal, supply to the Scottish Ministers copies of any representation or information provided to them in relation to any relevant consent or application for consent.

(5) On an appeal under this regulation, the Scottish Ministers may, subject to paragraph (9) below, allow or dismiss the appeal or vary any part of the enforcement notice.

(6) The Scottish Ministers shall determine an appeal within 28 days (or such longer period as it reasonably may require) beginning with—

- (a) the date of receipt of the representations or information supplied in accordance with paragraph (4) above; or
- (b) where there is no consent or application for consent relevant to the enforcement notice, the date of receipt by the Scottish Ministers of the notice of appeal.

(7) In determining an appeal, the Scottish Ministers shall take into consideration any environmental information, any representations received by them in relation to the appeal and any other material consideration, including in particular its assessment of the direct and indirect effects of the relevant project on the environmental factors specified in Schedule 4.

(8) Where an appeal has been determined, the Scottish Ministers shall give notice of the decision, giving the reasons and considerations on which the decision was based, to the appellant and the Commissioners.

(9) The Scottish Ministers shall not allow an appeal against an enforcement notice served by virtue of regulation 20(1)(a) where it appears to them that consent is required by regulation 4.

(10) The making of an appeal under this regulation shall have the effect of suspending the operation of any requirement in the enforcement notice to which it relates to take measures described in paragraphs (a), (c) or (d) of regulation 20(2) until the appeal is determined by the Scottish Ministers or, where the appeal is withdrawn, until withdrawal of the appeal.

Penalties for non-compliance with enforcement notices

22.—(1) Any person who carries out work in relation to a relevant project in contravention of a requirement to discontinue that work in an enforcement notice served on him in accordance with regulation 20 shall be guilty of an offence and liable—

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

(2) Any person on whom an enforcement notice has been served in accordance with regulation 20 who fails, within the period specified in the enforcement notice, to carry out any measure, other than discontinuance of the relevant project, required by the enforcement notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where an offence under paragraph (1) or (2) above which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under paragraphs (1) or (2) above has been committed by a Scottish partnership and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Power of entry and default powers

23.—(1) Subject to paragraph (2) below, any person duly authorised in writing by the Commissioners may at any reasonable time enter any land on which he or the Commissioners reasonably suspects or suspect that work in relation to a relevant project is being or has been carried out—

- (a) without consent, where such consent is required under regulation 4; or
- (b) in breach of a condition subject to which consent has been granted.

(2) Where any measures required by an enforcement notice by virtue of regulation 20(2) (other than discontinuance of the relevant project) have not been taken within the period specified in the enforcement notice—

- (a) any person duly authorised by the Commissioners may at any reasonable time enter the land to which the enforcement notice relates and take those measures; and
- (b) the Commissioners may recover from the person on whom the enforcement notice was served any expenses reasonably incurred by them in doing so.

(3) A person authorised under paragraphs (1) or (2) above to enter any land shall, if so requested, produce evidence of his authority before so entering.

Registers of opinions, directions, determinations etc. for public inspection

24.—(1) At each of their Conservancy offices in Scotland, the Commissioners shall keep a register of the following, so far as relating to the area of that Conservancy—

- (a) each direction received under regulation 4(2);
- (b) each opinion under regulation 6(1) or (5);
- (c) each direction received under regulation 7(7);
- (d) each opinion under regulation 9(1);
- (e) each direction received under regulation 9(7);
- (f) each determination under regulation 15(1);
- (g) each determination received under regulation 17(8);
- (h) statements of reasons accompanying any of the above;
- (i) each environmental statement received, including any further information.

(2) Each register kept under this regulation shall be available for inspection by the public at all reasonable hours.

Revocation and transitional provisions

25.—(1) Subject to the following provisions of this regulation, the Environmental Assessment (Forestry) Regulations 1998⁽¹²⁾ (in this regulation called “the 1998 Regulations”) are hereby revoked with respect to Scotland.

(2) Paragraph (1) of this regulation shall not affect the continued application of the 1998 Regulations in Scotland in respect of any matter relating to—

- (a) a breach of regulation 3 of those Regulations which occurred before the date of coming into force of these Regulations; or
- (b) an enforcement notice issued under regulation 16 of those Regulations; and these Regulations shall not apply to such a matter.

⁽¹²⁾ [S.I.1998/1731](#); the “Minister” is defined in regulation 2(1) as meaning, in relation to Scotland, the Secretary of State; the Secretary of State’s functions were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(3) Where, before the date of coming into force of these Regulations, an application under regulation 4(1) of the 1998 Regulations has been received by the Commissioners in relation to land in Scotland but the Commissioners have not given their opinion in relation to that application—

- (a) the application shall be treated as an application under regulation 5(1) of these Regulations; and
- (b) any notification of the Commissioners under regulation 4(3) of the 1998 Regulations shall be treated as a notification under regulation 5(3) of these Regulations (but without prejudice to their power to make a further notification under the latter regulation).

(4) Where, before the date of coming into force of these Regulations, an application under regulation 6(1) of the 1998 Regulations has been received by the Scottish Ministers in relation to land in Scotland but a direction has not been given in relation to that application—

- (a) the application shall be treated as an application under regulation 7(1) of these Regulations; and
- (b) any notification by the Scottish Ministers under regulation 6(3) of the 1998 Regulations shall be treated as a notification under regulation 7(3) of these Regulations (but without prejudice to the power to make a further notification under the latter regulation).

(5) Where, before the date of coming into force of these Regulations, an application under regulation 7 of the 1998 Regulations has been received by the Commissioners in relation to land in Scotland but the Commissioners have not determined that application—

- (a) the application shall be treated as an application under regulation 10 of these Regulations;
- (b) any notification by the Commissioners under regulation 8 of the 1998 Regulations shall be treated as a notification under regulation 11 of these Regulations (but without prejudice to their power to make a further notification under the latter regulation).

(6) Where, before the date of coming into force of these Regulations, an appeal under regulation 13 of the 1998 Regulations has been received by the Scottish Ministers but that appeal has not been determined, the appeal shall be treated as an appeal under regulation 17 of these Regulations.

(7) Where—

- (a) a case falls to be treated under these Regulations by virtue of paragraph (3), (4) or (6) above, and
- (b) part or all of a period of time specified in regulation 6(1), 7(4) or (as appropriate) 17(4) or (6) of these Regulations (“the relevant provision”) expired before the date of the coming into force of these Regulations,

the whole of the specified period shall be taken into account for the purposes of these Regulations in the same way as if the relevant provision had been in force on the date specified in the relevant provision as the date on which the period began to run.

(8) A direction of the Scottish Ministers under regulation 6 of the 1998 Regulations that a particular project was not a relevant project for the purpose of those Regulations, or in the absence of such a direction an opinion of the Commissioners under regulation 5 of those Regulations to that effect—

- (a) shall be treated, after the coming into force of these Regulations, as determining that the project specified in the direction or opinion (but only that project) is not a relevant project for the purposes of these Regulations; but
- (b) shall cease to have the effect stated in sub-paragraph (a) (without prejudice to the availability of a further direction or opinion under these Regulations) on the expiry of the period of five years beginning with the date of coming into force of these Regulations if the work relating to the project has not been completed within that period.

(9) Regulations 4 and 20 to 23 of these Regulations apply in relation to any consent given under the 1998 Regulations (including any conditions to which that consent is subject) as they apply to a consent (including such conditions) given under these Regulations.

St Andrew's House,
Edinburgh
3rd September 1999

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE 1

Regulation 2(1)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENTS

PART 1

1. Description of the project, including in particular—
 - (a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including in particular, population, fauna, flora, soil, water, air, climatic factors, material assets including the architectural and archaeological heritage, landscape and inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed projects on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project, resulting from—
 - (a) the existence of the project;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances, and the elimination of waste, and the description by the applicant of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5 above.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

PART II

1. A description of the project comprising information on the site, design and size of the project.
2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
3. The data required to identify and assess the main effects which the project is likely to have on the environment.
4. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 above.

SCHEDULE 2

Regulation 3(3)

THRESHOLDS FOR IDENTIFICATION OF PROJECTS LIKELY
TO HAVE SIGNIFICANT EFFECTS ON THE ENVIRONMENT**Interpretation****1.** For the purposes of this Schedule—

“sensitive area” means—

- (a) land notified under subsection (1) of section 28 (areas of special scientific interest) of the Wildlife and Countryside Act 1981⁽¹³⁾;
- (b) land to which subsection (3) of section 29 (nature conservancy 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⁽¹⁴⁾;
- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁵⁾;
- (e) 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⁽¹⁶⁾ 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⁽¹⁷⁾;
- (f) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc.) Regulations 1994⁽¹⁸⁾;

“specified threshold” means any threshold specified in hectares in Column 2 or 3 of the Table in paragraph 2 below.

Thresholds

2.—(1) For the purposes of regulation 3(3), the threshold for any project of a type specified in an entry in column 1 in the Table below is the area (if any) specified in the corresponding entry in Column 2 or 3 of the Table, whichever is appropriate to the land covered, or proposed to be covered, by that project.

(2) This paragraph applies subject to paragraph 3 of this Schedule.

TABLE

<i>Column 1</i> <i>Type of Project</i>	<i>Column 2</i> <i>Threshold where any part of the land is in a sensitive area</i>	<i>Column 3</i> <i>Threshold where no part of the land is in a sensitive area</i>
Afforestation	2 hectares, where the sensitive area is one referred to in paragraph 1(e) above.	5 hectares.

⁽¹³⁾ 1981 c. 69, amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31) and the Wildlife and Countryside (Service of Notices) Act 1985 (c. 59).

⁽¹⁴⁾ See Command Paper 9424.

⁽¹⁵⁾ 1979 c. 46. See the definition in section 1(11).

⁽¹⁶⁾ 1991 c. 28.

⁽¹⁷⁾ 1972 c. 52; section 6(9) of the Natural Heritage (Scotland) Act 1991 contained a saving provision for any areas which were designated as National Scenic Areas under section 262C as at the date of repeal of that section by section 27 of, and Schedule 11 to, the 1991 Act.

⁽¹⁸⁾ S.I.1994/2716.

<i>Column 1</i> <i>Type of Project</i>	<i>Column 2</i> <i>Threshold where any part of the land is in a sensitive area</i>	<i>Column 3</i> <i>Threshold where no part of the land is in a sensitive area</i>
	No threshold in the case of other sensitive areas.	
Deforestation	0.5 hectare, where the sensitive area is one referred to in paragraph 1(e) above	1 hectare.
	No threshold in the case of other sensitive areas.	
Forest road works	No threshold.	1 hectare.
Forest quarry works	No threshold.	1 hectare.

Thresholds for extending projects

- 3.—(1) Where the project under consideration is an extending project—
- (a) the thresholds specified in the Table in paragraph 2 above shall not apply; and
 - (b) the threshold applicable for that project for the purposes of regulation 3(3) shall be instead such balance (if any), in hectares, of the area specified in Column 2 or, as the case may be, Column 3 in that Table opposite the entry in Column 1 for that type of project as remains after deduction of the accumulated material past project area).
- (2) For the purposes of sub-paragraph (1)(b) above, it is immaterial whether any part of the accumulated material past project area is, or is not, in a sensitive area (or any kind of sensitive area).
- (3) In this paragraph—
- “extending project” means any project covering, or proposed to cover, land adjoining the area of one or more material past projects;
- “material past project”, in relation to a particular extending project, means a project which—
- (a) is of the same type (as specified in regulation 3(2)) as that extending project; and
 - (b) was completed after the coming into force of these Regulations; and
 - (c) was completed not more than five years before the proposed date for starting the work relating to that extending project;
- “Accumulated material past project area”, in relation to a particular extending project, means the total area covered by—
- (a) the material past project or, if more than one, all of them; and
 - (b) every other project—
 - (i) whose area adjoins the material past project, or one of them; and
 - (ii) which satisfies conditions (a) to (c) in the definition of “material past project”.

Consideration of thresholds in other cases where project adjoins or is near another project

- 4.—(1) The facts—
- (a) that a project is or would be adjoining or, in the opinion of the Commissioners or (as the case may be) the Scottish Ministers, near another project of any type specified in regulation 3(2), and
 - (b) that, for any reason, the case in question does not fall within paragraph 3 above,

may be regarded by the Commissioners or the Scottish Ministers as rendering the circumstances of that project exceptional for the purposes of regulation 6(3) or (as the case may be) 7(6).

(2) This paragraph—

- (a) shall not affect the application of those regulations in a case which does fall within paragraph 3; and
- (b) shall not be interpreted as limiting the generality of the references in those regulations to circumstances which are, in the opinion of the Commissioners or (as the case may be) the Scottish Ministers, exceptional.

SCHEDULE 3

Regulations 6(2) and 7(5)

PROJECTS HAVING SIGNIFICANT EFFECTS ON THE ENVIRONMENT: SELECTION CRITERIA

Characteristics of projects

1. The characteristics of projects must be considered having regard, in particular, to:
 - the size of the project;
 - the cumulation with other projects;
 - the use of natural resources;
 - the production of waste;
 - pollution and nuisances;
 - the risk of accidents, having regard in particular to substances or technologies used.

Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:
 - the existing land use;
 - the relative abundance, quality and regenerative capacity of natural resources in the area;
 - the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (a) wetlands;
 - (b) coastal zones;
 - (c) mountain and forest areas;
 - (d) nature reserves and parks;
 - (e) areas classified or protected in the United Kingdom or under the law of other member states; special protection areas designated pursuant to Directive [79/409/EEC](#) on the conservation of wild birds⁽¹⁹⁾ and [92/43/EEC](#) on the conservation of natural habitats and wild fauna⁽²⁰⁾;
 - (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;

⁽¹⁹⁾ OJ No.L103, 25.4.1979, p.1.

⁽²⁰⁾ OJ No.L206, 22.7.1992, p.7.

- (g) densely populated areas;
- (h) landscapes of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The potential significant effects of projects must be considered in relation to criteria set out under headings 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population);
- the transfrontier nature of the impact;
- the magnitude and complexity of the impact;
- the probability of the impact;
- the duration, frequency and reversibility of the impact.

SCHEDULE 4

Regulations 15(3), 17(7) and 21(7)

ENVIRONMENTAL FACTORS

- (a) Human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between the factors mentioned in paragraphs (a) to (c) above.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environmental Assessment (Forestry) Regulations 1998, ([S.I.1998/1731](#)) (“the 1998 Regulations”) provided for the implementation in relation to forestry projects in Great Britain of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private and public projects on the environment. The present Regulations implement, for Scotland, changes made to that Directive made by Council Directive [97/11/EC](#). They also implement the extension of both Directives to the Contracting Parties of the European Economic Area (EEA) under Article 74 and Annex XX paragraph I.1 of the Agreement on the European Economic Area, as given effect by Decision No.20/1999 of the EEA Joint Committee adopted on 26th February 1999 (not yet published).

These Regulations restate the provisions in the 1998 Regulations with revisions and amendments, and the 1998 Regulations are therefore revoked with respect to Scotland.

Regulation 2 defines terms used in the Regulations. As in the 1998 Regulations, there is a prohibition on carrying out any work or operations in relation to a project which is a “relevant project” (as defined) unless consent has been obtained from the Forestry Commissioners or, on appeal, the Scottish Ministers. A further new provision gives the Forestry Commissioners power, in accordance

Status: This is the original version (as it was originally made).

with Directive [85/337/EEC](#), as amended, to exempt particular projects from the application of the Regulations (regulation 4).

“Relevant project” is defined in regulation 3 as one of four types of project relating to forestry which does not constitute development regulated by the legislation on town and country planning but which is likely to have substantial effects on the environment. In a new provision, a project which covers an area falling below certain thresholds specified in Schedule 2 to the Regulations is to be treated as not likely to have substantial effects on the environment. However, the Commissioners or the Scottish Ministers have power to treat such a project as a relevant project requiring consent where, in their opinion, exceptional circumstances make it likely that the project will have substantial effects on the environment.

A person who proposes to carry out a project may apply to the Commissioners for an opinion as to whether the project is a relevant project. If dissatisfied with that opinion, or if no opinion is given, he may apply to the Scottish Ministers for a direction on the issue. In determining that issue account must be taken of the environmental criteria set out in Schedule 3. A new provision enables the Commissioners or the Scottish Ministers to issue an opinion or direction without receiving an application. An opinion or direction that the project is not a relevant project will lapse if the project is not completed within five years (regulations 5 to 8).

The proposer of a project may also seek an opinion from the Commissioners as to the information that should be included in the environmental statement attached to an application for consent (see below), and if they fail to give an opinion may seek a direction from the Scottish Ministers (regulation 9).

Applications to the Commissioners for consent for a relevant project must be accompanied by an environmental statement which must contain the information required by Schedule 1 to the Regulations. The Commissioners may request further information and other bodies holding relevant information are required to make it available. There are requirements to publish the application and any further information and to invite representations. Where it appears that the project may be likely to have significant effects on the environment in another State of the European Economic Area, provision is made for the authorities of that State to be consulted before a decision is made. In making their decision, the Commissioners are required to have regard to the environmental statement and the direct and indirect effects on environmental factors specified in Schedule 4. Their decision must be notified in writing (regulations 10 to 16).

Where consent is refused the person proposing the project may appeal to the Scottish Ministers (regulation 17). There is a requirement that any consent granted by the Commissioners or the Scottish Ministers be subject to specified conditions (regulation 18). Where consent is granted an aggrieved person has a right of complaint to the Court of Session if they believe that the grant of consent was contrary to the Regulations (regulation 19).

The Commissioners are given powers to serve enforcement notices where relevant projects are carried out without consent or in breach of conditions. The person served with such a notice may appeal to the Scottish Ministers. Penalties are specified for breach of an enforcement notice. A power of entry and certain default powers are conferred on officers authorised by the Commissioners (regulations 20 to 23).

At each of their Conservancy offices in Scotland, the Forestry Commissioners are required to keep a register of opinions, directions and determinations for public inspection (regulation 24).

Transitional provisions apply, including treatment of a number of ongoing applications, appeals etc. under the 1998 Regulations as if they had been made under these Regulations (regulation 25).

A Regulatory Impact Appraisal has been prepared in relation to these Regulations. It has been placed in the Scottish Parliament information centre and copies may be obtained from Country Services Division, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT (Telephone: 0131 314 6324).

