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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 582**

**AGRICULTURE**

**The Environmental Impact Assessment  
(Agriculture) (Scotland) Regulations 2006**

*Made* - - - - 29th November 2006  
*Laid before the Scottish  
Parliament* - - - - 30th November 2006  
*Coming into force* - - 1st January 2007

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 and shall come into force on 1st January 2007.

(2) Subject to paragraph (3) below, these Regulations extend to Scotland only.

(3) In relation to a transborder project, the extent of these Regulations shall be determined in accordance with the provisions of regulation 14, but where these Regulations extend beyond Scotland, they do so only as a matter of Scots Law.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“agricultural” has the same meaning as in the Agriculture (Scotland) Act 1948<sup>(2)</sup>;

“agricultural land” means agricultural land as defined in the Agriculture (Scotland) Act 1948 and includes any dwelling-house or other building occupied for the purpose of farming any land;

“additional environmental information” means any information of a type referred to in Schedule 3 (information for inclusion in an environmental statement) which is received by the

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(1) 1972 c. 68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) 1948 c. 45.

Scottish Ministers after the publication of the notice referred to in regulation 11(2)(b) (whether following a requirement made in terms of regulation 12(1) or otherwise);

“consent” means consent granted under regulation 15(1) of these Regulations;

“consultation bodies” means–

- (a) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991(3);
- (b) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995(4);
- (c) any other public authority, statutory body or organisation which, in the opinion of the Scottish Ministers, has any interest in or holds any information which might be relevant to the project; and
- (d) any other bodies designated by statutory provision as having specific environmental responsibilities;

“delegated person” means a person appointed by the Scottish Ministers under regulation 17(10) to conduct and determine an appeal under regulations 17, 18 and 19 on their behalf;

“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 at Brussels on 17th March 1993;

“the EIA Directive” means Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment(5) as amended by Council Directive [97/11/EC](#)(6) and Council Directive [2003/35/EC](#)(7);

“environmental statement” means a statement–

- (a) that includes such of the information referred to in Part I of Schedule 3 as is reasonably required to assess the environmental effects of the project and which the applicant for consent 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 that Schedule;

“European site” means those sites described in regulation 10(1)(a), (b), (d) and (e) of the Habitats Regulations;

“the Habitats Directive” means Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora(8);

“the Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994(9);

“interested person” means a person who notifies the Scottish Ministers in accordance with regulation 17(6) of the wish to make representations in respect of an appeal;

“project” means–

- (a) the execution of construction works or other installations or schemes; or

(3) [1991 c. 28.](#)

(4) [1995 c. 25.](#)

(5) O.J. No. L 175, 5.7.85, p.40.

(6) O.J. No. L 73, 14.3.97, p5.

(7) O.J. No. L 156, 25.6.03, p.17.

(8) O.J. No. L 206, 22.7.92, p.7, as last amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded; O.J. No. L 236, 23.9.2003, p.667-70. See Annex II: List referred to in Article 20 of the Act of Accession, 16 Environment, C. Nature protection.

(9) [S.I.1994/2716](#), as amended.

(b) other interventions in the natural surroundings and landscape, involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes or restructuring of rural land holdings on agricultural land;

“relevant land” means the land upon which the project is to be carried out or, in relation to a project which has already been carried out, has been carried out;

“relevant project” means a project which the Scottish Ministers have decided is likely to have a significant effect on the environment in accordance with regulation 7(4) (or is deemed to have so decided in accordance with regulation 7(8));

“reporter” means a person appointed by the Scottish Ministers under regulation 17(11) to conduct a hearing or enquiry on their behalf;

“scoping opinion” means an opinion given by the Scottish Ministers in accordance with regulation 9;

“screening decision” means a decision taken by the Scottish Ministers under regulation 7(4) or which is deemed to have been taken by them under regulation 7(8); and

“transborder project” means a project where the relevant land is situated partly in Scotland and partly in England.

(2) Unless otherwise provided, expressions used both in these Regulations and in the EIA Directive or in the Habitats Directive shall have the same meaning in these Regulations as they have in the Directive in which that expression appears.

(3) Unless the context otherwise requires, a 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.

(4) All applications, notices, notifications, representations, requests, approvals and agreements to which these Regulations apply shall be made in writing.

(5) Except in relation to notices under regulations 25 or 27, the reference in paragraph (4) above to things done in writing includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(10), which has been recorded and is consequently capable of being reproduced.

(6) For the purposes of appeals to the sheriff in accordance with these Regulations in relation to land situated outwith Scotland as part of a transborder project (“non-Scottish land”)–

(a) the sheriff entitled to hear an appeal in relation to land situated within Scotland as part of the same project; and

(b) in the case of a stop notice or reinstatement notice served in relation exclusively to non-Scottish land, the sheriff who would be entitled to hear an appeal in relation to such a notice served in the case of land within Scotland as part of the same project,

shall have jurisdiction to hear the appeal as if the non-Scottish land were situated within the sheriffdom of that sheriff.

(7) In relation to the definition of “consultation bodies” in paragraph (1) above, nothing in these Regulations which permits the Scottish Ministers to consult such consultation bodies as they think fit shall be construed as permitting them, where they do so, not to consult Scottish Natural Heritage and the Scottish Environment Protection Agency.

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(10) 2000 c. 7.

**Application**

3.—(1) These Regulations apply to any project in Scotland (or, in relation to a transborder project, a project as determined in accordance with regulation 14) which is not exempt under paragraphs (2) or (3) below.

(2) A project is exempt under this paragraph if it—

- (a) constitutes development to which the Environmental Impact Assessment (Scotland) Regulations 1999(11) apply; or
- (b) is a project described in regulation 3(2) of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999(12).

(3) A project is exempt under this paragraph to the extent that the Scottish Ministers, in accordance with Article 2(3) of the EIA Directive, direct that it shall be exempt from these Regulations.

(4) In the case of a project which the Scottish Ministers decide is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt from these Regulations under paragraph (3) shall be exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.

(5) Where the Scottish Ministers propose to give a direction under paragraph (3), they shall—

- (a) consider whether any other form of assessment of the project would be appropriate; and
- (b) take such steps as they consider appropriate to bring to the attention of the public—
  - (i) the information considered in making the direction and the reasons for doing so; and
  - (ii) the information obtained from any assessment of the project under sub-paragraph (a).

**Screening decision – uncultivated land project and semi-natural areas**

4. No person shall 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 decision.

**Screening decision – restructuring project**

5.—(1) Where paragraph (2) applies no person shall begin or carry out a project involving restructuring of rural land holdings on agricultural land (in this regulation referred to as “the project”) without first obtaining a screening decision.

(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 6.

(3) In this regulation “sensitive area” means—

- (a) land notified under sections 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004(13);
- (b) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004;
- (c) a 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);

(11) S.S.I. 1999/1.

(12) S.S.I. 1999/43.

(13) asp 6.

(14) See Command Paper 9424.

- (d) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979<sup>(15)</sup>;
- (e) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994;
- (f) an area designated as a National Scenic Area by a direction made by the Secretary of State under section 262C of the Town and Country Planning (Scotland) Act 1972<sup>(16)</sup>; and
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000<sup>(17)</sup>.

### **Thresholds**

**6.—**(1) The method for determining whether the extent of a project 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 Schedule 1, the threshold applicable to it is that specified for that type of project in column 2 of 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 decision**

**7.—**(1) An application for a screening decision shall be accompanied by—

- (a) a plan sufficient to identify the relevant land;
- (b) a brief description of the nature, extent and purpose of the project and of its possible effects on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(2) The Scottish Ministers shall notify the applicant of the date the application was received by them.

(3) If the Scottish Ministers consider that they do not have sufficient information to make the screening decision, they may request that the applicant supply any additional information they require.

(4) The Scottish Ministers shall decide in accordance with the selection criteria set out in Schedule 2 and paragraph (5) whether a project is likely to have a significant effect on the environment.

(5) A project which the Scottish Ministers decide is likely to have a significant effect on a European site (either alone or in combination with other projects) and which is not directly connected with, or necessary to, the management of the site, shall be treated as likely to have a significant effect on the environment.

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<sup>(15)</sup> 1979 c. 46.

<sup>(16)</sup> The Town and Country Planning (Scotland) Act 1972 (c. 52) (“the 1972 Act”) was repealed by the Planning (Consequential Provisions) (Scotland) Act 1997 (c. ) (“the 1997 Act”) subject to a saving in respect of any area which on 1st April 1992 was designated as a National Scenic Area under section 262C of the 1972 Act; section 5 of and paragraph 11 of Schedule 3 to the 1997 Act.

<sup>(17)</sup> asp 10.

(6) The Scottish Ministers shall decide whether a project is a relevant project in accordance with the selection criteria set out in Schedule 2 within 35 days of the notified date and before reaching a screening decision, may consult with such of the consultation bodies as they think fit.

(7) The Scottish Ministers shall—

- (a) notify the screening decision together with a statement giving the full reasons for the decision to the applicant;
- (b) enter the screening decision in a public register which shall be publicly available for inspection at all reasonable times and may be made available in electronic form; and
- (c) notify the screening decision to such of the consultation bodies as would, in their opinion, wish to be informed of it.

(8) If an applicant who has not been notified of a screening decision within the period specified in paragraph (6) notifies the Scottish Ministers of the intention of that person to treat such failure to notify that applicant as a decision that the project is a relevant project, the Scottish Ministers shall be deemed to have decided that the project is a relevant project on the date the applicant so notifies them.

(9) If at any time after the Scottish Ministers have decided that a project is a relevant project under this regulation, they receive further information or representations which cause them to decide that the project is not a relevant project, they shall notify that decision and a statement giving the full reasons for the decision to the applicant and to the consultation bodies notified (in accordance with paragraph (7)(c)) and shall enter the decision in the register referred to at paragraph (7)(b).

(10) If a project to which a screening decision relates has not been commenced (by the carrying out of a material act) before the expiry of three years from the notified date or the date it was deemed to have been decided in accordance with paragraph (8), that screening decision shall cease to have effect.

(11) In paragraphs (6) and (10), “the notified date” means—

- (a) the date notified to the applicant in accordance with paragraph (2) above;
- (b) the date on which additional information is requested in accordance with paragraph (3); or
- (c) such date as may be agreed with the applicant,

as the case may be.

### **Requirement for consent**

**8.** No person shall begin or carry out a relevant project without first obtaining consent from the Scottish Ministers.

### **Scoping opinion**

**9.—(1)** After obtaining a screening decision that a project is a relevant project and before applying for consent, the applicant may request the Scottish Ministers to give their opinion as to the information to be provided in the environmental statement.

(2) If a scoping opinion is requested, the Scottish Ministers shall notify the applicant of the date the request was received by them and shall consult the applicant and the consultation bodies as they think fit before they give their opinion.

(3) Except in relation to Scottish National Heritage and the Scottish Environment Protection Agency, if the Scottish Ministers consider that any consultation bodies have an interest for the purposes of the scoping opinion, they shall notify the applicant of the identity of those bodies.

(4) If the Scottish Ministers consider that they have not been supplied with sufficient information to give a scoping opinion, they shall notify the applicant of the matters upon which they require

additional information within 28 days of the date of receipt by them of the request for the opinion and shall notify the applicant of the date that additional information was received by them.

(5) The Scottish Ministers shall provide the applicant with a scoping opinion within 35 days of the date of receipt by them of the request for the opinion or from the date of receipt by them of any additional information requested in accordance with paragraph (4).

### **Provision of information**

**10.**—(1) Any consultation body which is consulted by the Scottish Ministers in accordance with regulation 9(2) or which receives a request for information from a person who is intending to apply for consent shall determine whether they have in their possession any information which they consider relevant to the preparation of the environmental statement and, if they have, they shall, subject to paragraphs (2) to (5), make that information available to the applicant within 28 days from the date of the request under paragraph (5) or receipt of the request under this paragraph, as the case may be.

(2) A reasonable charge may be made by any body providing information under paragraph (1) which reflects the cost of making the relevant information available.

(3) In relation to a body to which the Environmental Information (Scotland) Regulations 2004<sup>(18)</sup> apply, paragraph (1) shall not require disclosure of information which the body—

- (a) may refuse to disclose under regulation 10(1) of those Regulations; or
- (b) is prevented from disclosing by regulation 11(1) of those Regulations.

(4) In relation to a body to which the Environmental Information Regulations 2004<sup>(19)</sup> apply, paragraph (1) shall not require disclosure of information which the body—

- (a) may refuse to disclose under regulation 12(1) of those Regulations; or
- (b) is prevented from disclosing by regulation 13(1) of those Regulations.

(5) In the case of information held by a consultation body which is consulted by the Scottish Ministers in accordance with regulation 9(2), that body shall advise the applicant that it holds relevant information and the cost of making it available and shall only make it available if so requested by the applicant thereafter.

### **Application for consent**

**11.**—(1) An application for consent (which shall include the environmental statement) shall be made to the Scottish Ministers and shall be accompanied by such number of copies of the application as they may reasonably require.

(2) After the Scottish Ministers have received an application for consent in accordance with paragraph (1), they shall—

- (a) send a copy of the application to the consultation bodies as they think fit and inform them that they may make representations within 42 days from the date the application was received by them; and
- (b) for the purpose of ensuring that members of the public concerned are given an opportunity to make representations before the application is determined, publish in a newspaper circulating in the locality of the relevant land a notice—
  - (i) announcing that the application has been made and indicating the nature of the possible decisions to be made in relation to that application;

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<sup>(18)</sup> S.S.I. 2004/520.

<sup>(19)</sup> S.I. 2004/3391.

- (ii) specifying the address at which copies of the application may be inspected free of charge and where (or from where) any one who wishes to obtain copies of the application may do so (or arrange to do so) within 42 days beginning with the publication of the notice (for which copies a reasonable charge may be made) at all reasonable hours; and
- (iii) stating that any person wishing to make any representations in relation to the likely environmental effects of the project for which consent is sought shall make them in writing to the Scottish Ministers at the address specified under sub-paragraph (ii), or at an e-mail address nominated by them, within 42 days from the publication of the notice; and
- (iv) stating, if relevant, which of the other EEA States, the authorities referred to in Article 6(1) of the EIA Directive, and the public concerned in such EEA States will be consulted on the application.

### **Additional Information**

**12.**—(1) If, after having complied with regulation 11(2), the Scottish Ministers reach the opinion that they require additional environmental information in order to decide whether to grant, or refuse to grant, consent for a relevant project, they shall notify the applicant of the information (and the number of copies) required and the applicant shall provide the Scottish Ministers with the additional environmental information required.

(2) The Scottish Ministers shall send a copy of any additional environmental information to the consultation bodies to whom a copy of the application was sent under regulation 11(2)(a) and such other consultation bodies as they think fit and shall make arrangements for the sending of a copy of that information to another EEA State which has indicated that it wishes to make representations in accordance with regulation 13(1) and shall make arrangements for them to be informed that they may make representations within 28 days.

(3) Where additional environmental information is received the Scottish Ministers shall publish in a newspaper circulating in the locality of the relevant land a notice—

- (a) referring to the application to which the additional environmental information relates and the date on which that application was made;
- (b) stating that the additional environmental information has been provided;
- (c) specifying the address at which copies of the additional environmental information may be inspected free of charge and where (or from where) anyone who wishes to obtain copies of the additional environmental information may do so (or arrange to do so) within 28 days beginning with the publication of the notice (for which copies a reasonable charge may be made) at all reasonable hours; and
- (d) stating that any person wishing to make any representations in relation to the additional environmental information shall make them in writing to the Scottish Ministers at the address specified under paragraph (c), or to an e-mail address nominated by them, within 28 days from the publication of the notice.

### **Other EEA States**

**13.**—(1) As soon as possible following receipt of the application for consent, the Scottish Ministers shall consider whether the relevant project is also likely to have significant effects on the environment of another EEA State and, if they are of the opinion that such effects are likely, or where an EEA State likely to be significantly affected so requests, the Scottish Ministers shall make arrangements for there to be sent to that EEA State—



- (a) details of the nature and location of the relevant project and any information they have on the impact it is likely to have on that EEA State; and
- (b) an indication as to whether they believe consent will be given and the nature of any such consent,

and shall make arrangements to ensure that the EEA State may indicate within a reasonable time whether it wishes to participate in the procedure set out in these Regulations.

(2) If the EEA State indicates that it does wish to participate in the procedure set out in these Regulations, the Scottish Ministers shall make arrangements to ensure that it is sent a copy of the application for consent (including the environmental statement) together with any additional environmental information and any documents issued in accordance with article 6(3)(a) and (b) of the EIA Directive and shall make arrangements to ensure that it is provided with relevant information regarding the said procedure.

(3) The Scottish Ministers shall also make arrangements—

- (a) for the particulars and information referred to in paragraphs (1) and (2) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the EIA Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) to ensure that those authorities and the public concerned are given an opportunity, before consent for the project is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.

(4) In accordance with Article 7(4) of the EIA Directive, the Scottish Ministers shall—

- (a) ensure that consultations are entered into with the EEA State concerned regarding, amongst other things, the potential significant effects of the project on the environment of that State and the measures envisaged to reduce or eliminate such effects; and
- (b) make arrangements with a view to seeking to agree with the other EEA State a reasonable period of time for the duration of the consultation period (to include consideration of any opinions received pursuant to paragraph (3)(b)).

(5) Where the Scottish Ministers receive from another EEA State information which has been made available in accordance with Article 7(1) and (2) of the EIA Directive (which relates to projects in one EEA State which are likely to have significant effects on the environment of another EEA State), in relation to a relevant project in that EEA State, they shall—

- (a) arrange for that information to be made available, within a reasonable time, to such of the consultation bodies and such members of the public as, in their opinion, would be likely to be concerned by the project; and
- (b) ensure that the consultation bodies and members of the public provided with information in accordance with sub-paragraph (a) are given an opportunity during the period agreed in accordance with paragraph (6)(b), to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information provided.

(6) In accordance with Article 7(4) of the EIA Directive, the Scottish Ministers shall—

- (a) ensure that consultations are entered into with an EEA State from which information has been received as mentioned in paragraph (5) 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; and
- (b) make arrangements with a view to seeking to agree with that EEA State a reasonable period, before consent for the project is granted, during which the consultation bodies and members of the public referred to in paragraph (5)(b) may forward their opinion to the competent authority in that EEA State in accordance with that paragraph.

(7) If another EEA State has taken a decision to grant or refuse consent and has informed the Scottish Ministers of that decision in accordance with Article 9(2) of the EIA Directive, the Scottish Ministers must take such steps as they consider appropriate to bring to the attention of the public any information received from that EEA State in relation to that decision.

### **Transborder projects**

**14.**—(1) In the case of a transborder project where the greater part of the relevant land is situated in Scotland, the Scottish Ministers shall consult the appropriate consultation bodies before making a screening decision under regulation 7(4), giving a scoping opinion under regulation 9(5) or granting or refusing consent under regulation 15.

(2) Subject to paragraph (4), in the case of a transborder project where the greater part of the relevant land is situated in England, that project shall be only subject to regulation by the England Regulations.

(3) If so requested by a consultation body and if the other consultation bodies agree, the Scottish Ministers may, in relation to a transborder project where the greater part of the relevant land is situated in Scotland, request the Secretary of State that only the England Regulations will apply to it.

(4) A transborder project to which paragraph (2) above applies shall, notwithstanding that paragraph, be subject to these Regulations—

- (a) where the Scottish Ministers request that it should be only subject to these Regulations; and
- (b) if the Secretary of State, following consultation with the appropriate consultation bodies, agrees.

(5) In this regulation—

“appropriate consultation bodies” has the same meaning as consultation bodies in the England Regulations;

“the England Regulations” means the Environmental Impact Assessment (Agriculture) (England) Regulations 2006<sup>(20)</sup>; and

“the greater part of the relevant land is situated in Scotland” includes land of which the area is situated equally within each of Scotland and England.

### **The consent decision**

**15.**—(1) The Scottish Ministers shall consider, in light of the environmental statement, any additional environmental information and any representations received in accordance with regulation 11(2), regulation 12(2) or (3) and in respect of projects to which regulation 13 applies, in light of the consultations with the relevant EEA State, any opinions received pursuant to paragraph (3)(b) of that regulation whether or not to grant consent for the project.

(2) The Scottish Ministers shall not reach their decision under paragraph (1) until the latest of—

- (a) the expiry of the period specified in the notice published under regulation 11(2)(b);
- (b) the expiry of 28 days after the later of the date on which any additional environmental information was sent to the consultation bodies in accordance with regulation 12(2) and the date that notice of it was published in accordance with regulation 12(3); and
- (c) the expiry of the period agreed pursuant to regulation 13(4)(b).

(3) The Scottish Ministers shall not grant consent for a project which would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations (which shall not include anything for which a licence has been granted under regulation 44 of those Regulations).

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(20) S.I. 2006/2362.

(4) Paragraphs (5) to (9) shall apply to a decision by the Scottish Ministers whether or not to grant consent for a 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 “the European site project”).

(5) Subject to paragraphs (7) and (8), the Scottish Ministers shall 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.

(6) The consideration of implications to be undertaken under paragraph (5) shall 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.

(7) 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 (8), 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.

(8) Where a European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (7) 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.

(9) Where in accordance with paragraph (7), consent is granted for a European site project notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers shall 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.

(10) Any consent granted in accordance with paragraph (1) shall be subject to the conditions required by paragraph (11) and to such additional conditions as the Scottish Ministers may think fit.

(11) Every consent shall be granted subject to conditions to the effect that—

- (a) the consent shall lapse if the 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 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 3 years of 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 sub-paragraph (d);
- (c) the consent authorises the project only as described in the consent application, 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 sub-paragraph (d);
- (d) applications for further consent under conditions in sub-paragraphs (b) or (c) shall be subject to such of the requirements of these Regulations as the Scottish Ministers think fit.

(12) When the Scottish Ministers have decided whether to grant or not to grant consent they shall—

- (a) notify the applicant, those consultation bodies to whom copies of the consent application were sent in accordance with regulation 11(2)(a), any EEA State consulted pursuant to regulation 13(4) and any other authority or person who forwarded their opinion pursuant to regulation 13(3)(b) of their decision and any conditions attached thereto, together with the full reasons and considerations on which the decision is based, including, if relevant, information about the participation of the public;

- (b) inform the public of the decision by publishing a notice in a newspaper circulating in the locality of the relevant land or by such other means as they consider reasonable in the circumstances; and
  - (c) make available for public inspection a statement containing—
    - (i) the content of the decision;
    - (ii) the full reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
    - (iii) a description, where relevant, of the principal measures required to be taken to avoid, reduce or offset the major adverse environmental effects of the project; and
    - (iv) information regarding the right to challenge the decision and the procedures for doing so.
- (13) Where the Scottish Ministers have decided to grant consent for a project—
- (a) which consists of the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest;
  - (b) which Scottish Natural Heritage have advised against permitting or have advised should be permitted only subject to certain conditions; and
  - (c) in respect of which the decision of the Scottish Ministers does not follow the advice referred to in sub-paragraph (b),

they shall give notice of their decision to Scottish Natural Heritage, including a statement of how (if at all) they have taken account of the advice of Scottish Natural Heritage, and shall impose a condition on the consent to prevent the project from being commenced before the end of the period of 21 days beginning with the date of giving that notice.

### **Review of decisions and consents**

**16.** Schedule 4 shall apply to—

- (a) any decision that a project is not a relevant project made in accordance with regulation 7(6); and
- (b) any consent granted in accordance with regulation 15(1),

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 15(11)(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 (general provisions)**

**17.—(1)** The following persons:—

- (a) a person who has applied for a screening decision in respect of a project which the Scottish Ministers have decided is a relevant project, or are deemed to have so decided under regulation 7(8);
- (b) a person who has applied for consent for a relevant project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 15(11) and (13));
- (c) a person upon whom a notice of a decision (being a revocation of a decision made under regulation 7(6) or the revocation or modification of a consent granted under regulation 15(1)) has been served in accordance with paragraph 3 of Schedule 4; and

(d) a person upon whom a notice requiring reinstatement works has been served 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 and in regulation 20 referred to as “the relevant decision”) in accordance with this regulation and, except in the case of a deemed decision, when making the relevant decision the Scottish Ministers shall advise all persons with a right of appeal under this paragraph of that right.

(2) A person to whom paragraph (1) applies must serve notice of an appeal on the Scottish Ministers within 3 months from the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal shall 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 (whether pursuant to this regulation or regulation 20) or until the withdrawal of the appeal.

(5) As soon as reasonably practicable after receipt of notice of an appeal, the Scottish Ministers shall 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 13(4);
- (d) any authority or person who forwarded their opinion to them pursuant to regulation 13(3) (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) above may not make representations in respect of the appeal to the Scottish Ministers unless the Scottish Ministers are notified by that person of their wish to do so within 21 days of the date on which a copy of the notice was served upon that person.

(7) Before determining an appeal, the Scottish Ministers or the delegated person shall decide, if the appellant has indicated a wish to be heard, whether the matter shall be disposed of by a hearing or an inquiry and, if the appellant has not indicated a wish to be heard, whether the appeal shall be determined by written representations, by a hearing or by an inquiry and in either case shall notify the appellant and any interested persons of their decision.

(8) Before deciding under paragraph (7) whether the appeal (if not to be decided by written representations) shall be determined by a hearing or by an inquiry, the Scottish Ministers or the delegated person shall give the appellant and any interested person an opportunity to make representations in relation to that decision.

(9) On determining the appeal, the Scottish Ministers or the delegated person may allow or dismiss the appeal, or reverse any part of the decision which is the subject of the appeal, and may deal with the appeal in the same way as if it were a decision at first instance.

(10) The Scottish Ministers may appoint any person to exercise on their behalf, with or without payment, their function of conducting and determining the appeal or any matter involved in the appeal.

(11) If the Scottish Ministers decide to hold a hearing or inquiry under paragraph (7), they may appoint any person to conduct the inquiry or hearing on their behalf, with or without payment.

(12) Where an appointment is made under paragraph (10) or (11), Schedule 5 shall have effect for the purposes of such appointment.

(13) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(21)</sup> (power to direct inquiries) shall apply in relation to inquiries or hearings determined in accordance with these Regulations as they apply to local inquiries under that section, but as if the references there to the Minister were references to the Scottish Ministers or the delegated person.

(14) Where the Scottish Ministers or the delegated person decide that the appeal should be determined by way of a hearing rather than an inquiry, the Scottish Ministers, the delegated person or the reporter shall determine the procedure to apply to the hearing (which may include provision for site visits) and regulation 19(7) and (9) to (12) shall, with such modifications as are necessary, apply to that hearing.

(15) Paragraph (14) is without prejudice to the right of the Scottish Ministers, the delegated person or the reporter having decided thereunder to proceed by hearing, to later decide to apply the procedures under these Regulations in relation to an inquiry (or any part of them), if doing so is considered appropriate.

(16) The Scottish Ministers, the delegated person or the reporter shall except as otherwise provided by this regulation or by regulation 18 or 19 determine the procedure (which may include provision for site visits) in relation to the conduct of the appeal and may vary or waive any of the time limits set out in regulation 19 in any particular case.

(17) Any representations, statements or other documents to be submitted to the Scottish Ministers, the delegated person or the reporter in accordance with regulation 18 or 19 shall be accompanied by such number of copies as they may specify.

### **Determination of appeals by written representations**

**18.—**(1) This regulation shall apply to an appeal which is to be determined by written representations.

(2) Within 42 days of receiving notice that the appeal is to be determined by written representations, the appellant shall either serve on the Scottish Ministers any further representations that the appellant wishes to be considered by the Scottish Ministers or shall notify the Scottish Ministers that the appellant wishes to rely on the information already supplied by that appellant, and the Scottish Ministers shall either send to the interested persons copies of any further representations made by the appellant or shall 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 shall, within 28 days 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 shall send copies of the representations served upon them to the appellant and to the other interested persons.

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

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

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(21) 1973 c. 65. Section 210 was amended by the Housing and Planning Act 1986 (c. 63), Schedule 11, Part II, paragraph 39.

(6) When the decision under paragraph (5) is notified, the Scottish Ministers shall indicate to all persons notified thereunder, the existence of the appeal provisions at regulation 17.

(7) In this regulation, references to the Scottish Ministers shall, where the context so requires, include references to the delegated person.

### **Determination of appeals by an inquiry**

**19.**—(1) This regulation shall apply to an appeal which is to be determined by an inquiry.

(2) Within 42 days of receiving notice that the appeal is to be determined by an inquiry, the appellant shall serve on the Scottish Ministers a statement which contains full particulars of the case of the appellant and copies of any documents to which the appellant wishes to refer at the inquiry and the Scottish Ministers shall send copies of the statement and documents to the interested persons.

(3) Any of the interested persons who wish to be heard at the inquiry shall, within 28 days of receipt of the appellant's statement pursuant to paragraph (2), notify the Scottish Ministers of the wish to appear and the Scottish Ministers may require any person who has so notified them to serve a statement containing the particulars of the case of that person together with copies of any documents to which reference is intended to be made at the inquiry (other than those to which the appellant has expressed a wish to refer) within 28 days of being so required and the Scottish Ministers shall send copies of such statements to the appellant and to the other interested persons.

(4) The Scottish Ministers may by notice require the appellant or any other person who has provided a statement in accordance with paragraph (3) to provide them with such further information about the matters contained in the statement as they may specify and they shall send a copy of such information to the appellant or to the other interested persons as the case may be.

(5) The Scottish Ministers shall give the appellant and the interested persons notice of at least 42 days of the date, time and place fixed for the inquiry and, where relevant, of the name of the reporter appointed to conduct the inquiry or the delegated person appointed to determine the appeal and shall give, not less than 21 days before the date fixed for the inquiry, such notice to the public as they may think fit.

(6) The Scottish Ministers may vary the time or place for the holding of the inquiry and shall give such notice of any such variation as they may think fit and before an inquiry takes place the Scottish Ministers shall make all of the documents submitted by the appellant and the interested persons in respect of the inquiry available for inspection by any person who so requests.

(7) The persons entitled to appear at an inquiry are—

- (a) the appellant;
- (b) any consultation body with an interest in the subject matter of the inquiry;
- (c) the interested persons; and
- (d) any other person whom the Scottish Ministers shall permit to appear.

(8) A person entitled to appear at an inquiry who proposes to give, or call another person to give, evidence at it by reading a precognition shall send a copy of the precognition to the Scottish Ministers together with a written summary not less than 21 days before the date fixed for the inquiry and the Scottish Ministers shall send copies of the precognition and summary to the appellant or to the other interested persons as the case may be.

(9) If a reporter has been appointed to conduct the inquiry, after the conclusion of the inquiry, the reporter shall make a report to the Scottish Ministers which shall include the conclusions and recommendations of the reporter or the reporter's reasons for not making any recommendations.

(10) If the Scottish Ministers differ from the report of the reporter made in accordance with paragraph (9) on any matter of fact mentioned in, or appearing to them to be material to, a conclusion reached by the reporter, or if the Scottish Ministers are minded to take into consideration any new

evidence or new matter of fact and are for that reason disposed to disagree with a recommendation made by the reporter, they shall not come to a decision without first affording to any persons who appeared at the inquiry the opportunity of making representations to them within such reasonable time as they shall specify.

(11) The Scottish Ministers or the delegated person, as the case may be, shall notify the decision and the reasons for it, and shall send a copy of any report made in accordance with paragraph (9) to the appellant, to the interested persons and to any other persons who appeared at the inquiry and who asked to be notified of the decision.

(12) When the decision under paragraph (11) is notified, the Scottish Ministers shall indicate to all persons notified thereunder, the existence of the appeal provisions at regulation 20.

(13) In this regulation, references to the Scottish Ministers shall, where the context so requires, include references to the delegated person or the reporter.

### **Application to the court by person aggrieved**

**20.**—(1) Any—

- (a) person who may appeal in relation to the relevant decision;
- (b) consultation body with an interest in relation to the relevant decision; and
- (c) person who otherwise is an interested person in relation to the relevant decision,

and who is aggrieved by the decision of the Scottish Ministers (or the delegated person) pursuant to regulations 17, 18 and 19—

- (i) that a project is or is not a relevant project;
- (ii) to refuse to grant consent for a relevant project;
- (iii) to grant consent for a relevant project;
- (iv) as to the conditions to be imposed in such a grant,

may appeal to the sheriff.

(2) Any person who is entitled to be informed of a decision on appeal made pursuant to paragraphs 3 or 5 of Schedule 4 and who is aggrieved by the decision made thereunder, may appeal to the sheriff.

(3) An appeal to the sheriff under this regulation shall be made by summary application within 21 days from the date of notification of the decision in accordance with regulation 18(5) or 19(11) or regulation 19(11) as applied by regulation 17(14), as the case may be, but in the case of an appeal as to conditions to be imposed, the making of the appeal shall not have the effect of suspending the operation of the conditions.

(4) The sheriff may set aside the decision concerned and where the sheriff does so, the matter shall be referred back to the Scottish Ministers to re-determine the matter, subject to paragraph (7), in accordance with these Regulations and the sheriff may, subject to these Regulations, make such interim or other order as may be thought fit.

(5) Paragraphs (1) and (2) apply to decisions of the Scottish Ministers following re-determination following appeal as they do to decisions on initial determination.

(6) In the event of an appeal from the decision of the sheriff or any further appeal, paragraph (4) shall apply and the references therein to the sheriff shall be taken as referring to the person determining that appeal.

(7) Where a matter is referred back by the sheriff under this regulation, the Scottish Ministers shall, in re-determining that matter apply so much of the procedures set out in these Regulations as appear to them to be necessary and appropriate to carry out that re-determination and shall advise the appellant and all interested persons of the procedures to be applied for that purpose.



### **Access to review procedures before a court**

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

### **Offences**

**22.** Any person who begins or carries out a project without first obtaining either a decision that the project is not a relevant project or a decision granting consent for the project in accordance with these Regulations shall be guilty of an offence under this regulation and liable on summary conviction to a fine not exceeding level 5 on the standard scale, unless the project is an exempt project under regulation 3.

**23.** Any person who carries out work in contravention of any condition of a consent granted in accordance with these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**24.—(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,

shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to a fine.

### **Stop notices**

**25.—(1)** Where it appears to the Scottish Ministers that an offence has been committed under regulations 22, 23 or 24 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 (a “stop notice”) prohibiting all or any part of such 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 (or a delegated person) grant consent for the prohibited work;
- (c) if the Scottish Ministers (or a delegated person) decide that the prohibited work is not a relevant 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 by summary application within 21 days 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.

### **Penalties for contravention of a stop notice**

**26.**—(1) Any person who contravenes a stop notice that has been served on that person shall be guilty of 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 shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; 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**

**27.**—(1) Where it appears to the Scottish Ministers that an offence has been committed under regulations 22, 23 or 24, they may serve a notice (“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 21 days from the date on which the notice is served, appeal to the sheriff by way of summary application on any of the following grounds:—

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

(4) Where an appeal by summary application is made in accordance with this regulation, the reinstatement notice shall be of no effect until the date of determination or abandonment of the summary application or any appeal therefrom by the applicant or the appellants, 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 shall be guilty of an offence and liable on summary conviction—

(a) to a fine not exceeding level 5 on the standard scale; 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**

**28.—**(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 regulations 22, 23, 24, 26, or 27 has been committed on or in connection with that land;

(b) serving a reinstatement notice under regulation 27 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 24, 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 shall, 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) shall 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) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Offences by bodies corporate**

**29.**—(1) Where an offence under these Regulations committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity (or in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (1) shall apply in relation to the acts and defaults of a member in connection with the members' functions of management as if the member were a director of the body corporate.

### **Revocation**

**30.** The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002(22) are revoked.

### **Transitional provisions**

**31.**—(1) This regulation provides for the treatment of certain notices served under the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (“the 2002 Regulations”).

(2) Any stop notice served under regulation 22 of the 2002 Regulations is to be treated as though it was served under regulation 25 of these Regulations, and regulations 26 and 28 of these Regulations apply to any enforcement action taken in respect of a breach of the notice.

(3) Subject to paragraph (4), any reinstatement notice served under regulation 24 of the 2002 Regulations is to be treated as though it was served as a reinstatement notice under regulation 27 of these Regulations, and regulations 27 and 28 apply to any enforcement action taken in respect of a breach of the notice.

(4) Nothing in paragraph (3) affects any appeal under regulation 24(3) of the 2002 Regulations brought before the coming into force of these Regulations.

St Andrew's House,  
Edinburgh  
29th November 2006

*ROSS FINNIE*  
A member of the Scottish Executive

SCHEDULE 1

Regulation 6

Thresholds for a project involving restructuring of rural land holdings on agricultural land wholly outwith a sensitive area

<i>Column 1</i>	<i>Column 2</i>
Restructuring project involving the addition or removal of any field boundary	6 km subject to a maximum removal of 0.5km of hedge or dry-stane dyke and maximum addition of 1 km of vehicle track
Restructuring project which involves an area of land	200 hectares
Restructuring project involving the addition, removal or redistribution of a volume of earth or other material in relation to land	5,000 cubic metres

SCHEDULE 2

Regulation 7(4)

SELECTION CRITERIA FOR A SCREENING DECISION

**1. Characteristics of projects**

The characteristics of projects, having regard in particular to—

- (a) the size of the project;
- (b) the cumulation with other projects;
- (c) the use of natural resources;
- (d) the production of waste;
- (e) pollution and nuisances; and
- (f) the risk of accidents, having regard in particular to substances or technologies used.

**2. Location of project**

The environmental sensitivity of geographical areas likely to be affected by projects, having regard in particular to—

- (a) the existing land use;
- (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:—
  - (i) wetlands;
  - (ii) coastal zones;
  - (iii) mountain and forest areas;
  - (iv) nature reserves and parks;
  - (v) areas classified or protected under legislation (including European sites);
  - (vi) areas in which environmental quality standards laid down in Community legislation have already been exceeded;

- (vii) densely populated areas; and
- (viii) landscapes of historical, cultural or archaeological significance.

**3. The potential impact**

The potential significant effects of projects, in relation to criteria set out under paragraphs 1 and 2 above, having regard in particular to—

- (a) the extent of the impact (geographical area and size of the affected population);
- (b) the impact on other member States;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 3

Regulation 2(1)

INFORMATION FOR INCLUSION IN AN ENVIRONMENTAL STATEMENT

**PART I**

**1. A 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, or other implementation, and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, nature and quantity and the materials used; and
- (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 for consent and an indication of the main reasons for the preferred 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 the inter-relationship between the above factors.**

**4. A description of the likely significant effects of the project 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; and
- (c) the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the applicant for consent 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 of this Part.**

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant for consent 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 for consent and an indication of the main reasons for the preferred choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

## SCHEDULE 4

Regulation 16

### REVIEW OF DECISIONS AND CONSENTS

1. The Scottish Ministers shall as soon as reasonably practicable make an appropriate assessment of the implications for the European site of the project permitted by the decision or consent in view of conservation objectives of the site for the purpose of determining whether the project will adversely affect the integrity of the site.
2. For the purposes of that assessment, the Scottish Ministers—
  - (a) may require any person interested in the relevant land to supply them with such information as they may reasonably think necessary;
  - (b) shall consult Scottish Natural Heritage and have regard to any representations made by them within such reasonable time as they may specify; and
  - (c) may, if they consider it appropriate, consult members of the public.
3. Unless, following that assessment, the Scottish Ministers are satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site and that regulation 15(7) does not apply, they shall, in the case of a decision, revoke that decision and, in the case of a consent, either revoke that consent or make such modifications to the consent as appear to them to be necessary to ensure that the project will not adversely affect the integrity of the European site and they shall notify that decision to all persons who appear to them to have an interest in the relevant land.
4. Subject to paragraph 5, a revocation or modification of a decision or a consent in pursuance of which works have been commenced or completed shall not affect so much of those works as have already been carried out.
5. If, where a project which is subject to a decision made under paragraph 3 has commenced, it appears to the Scottish Ministers to be necessary to safeguard the integrity of the European site, they may by notice require the person responsible for carrying out such works or any person interested in the relevant land to carry out such works of reinstatement as may be reasonable in the circumstances and any person who carries out works in compliance with such a requirement shall be entitled, on making a claim in accordance with paragraph 6, to recover from the Scottish Ministers compensation in respect of any expenses reasonably incurred by such claimant in that behalf.

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

6. If, following a decision under paragraph 3, a person has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, that person shall be entitled to be paid compensation on submitting a claim in accordance with paragraph 8.

7. A claim for compensation payable under paragraph 5 or 6 shall be submitted to the Scottish Ministers within 42 days of notification of the decision in respect of which compensation is payable and shall be accompanied by such evidence as the Scottish Ministers may reasonably require.

8. Any dispute as to the amount of compensation payable under paragraphs 5 or 6 may be referred to the Lands Tribunal for Scotland within 5 years of the date of notification of the decision in respect of which compensation is payable.

9. Nothing in this regulation shall affect anything done in pursuance of a decision or consent before the date on which the site became a European site.

## SCHEDULE 5

Regulation 17(12)

### DELEGATION OF APPELLATE FUNCTIONS

1. In this Schedule “appointed person” means a person appointed under paragraphs (10) or (11) of regulation 17 and “appointment” means an appointment under that regulation.

2. An appointment must be in writing and—

- (a) may relate to any particular appeal or matter specified in the appointment or to appeals or matters of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment;
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the Scottish Ministers in respect of any appeal or matter which has not been determined by the appointed person before that time; and
- (d) shall confirm whether the appointed person is a reporter or a delegated person.

3.—(1) The provisions of this paragraph shall apply to an appeal which falls to be determined by a delegated person.

(2) Where a delegated person holds an inquiry, an assessor may be appointed by the Scottish Ministers to sit with the appointed person at the inquiry and advise on any matters arising, notwithstanding that the delegated person is to determine the appeal or matter.

(3) Subject to regulation 17(13), the expenses of an inquiry held by a delegated person under these Regulations shall be met by the Scottish Ministers.

4.—(1) Where under paragraph 2(c) the appointment of the appointed person is revoked in respect of any appeal or matter, the Scottish Ministers shall, unless they propose to determine the appeal or matter themselves, appoint another person under regulation 17(10) to determine the appeal or matter instead.

(2) Where such a new appointment is made, the consideration of the appeal or matter, or any inquiry in connection with it, shall be begun afresh.

(3) Nothing in sub-paragraph (2) shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.



5.—(1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the Scottish Ministers.

(2) Sub-paragraph (1) shall not apply—

- (a) for the purposes of so much of any contract made between the Scottish Ministers and the appointed person as relates to the exercise of the function; or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

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## EXPLANATORY NOTE

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

These Regulations implement, in relation to projects on uncultivated land and semi-natural areas and projects restructuring rural land holdings in Scotland, Council Directive [85/337/EEC](#) (as amended by Council Directives [97/11/EC](#) and [2003/35/EC](#)) on the assessment of the effects of certain public and private projects on the environment and Council Directive [92/43/EEC](#) (as last amended by the Act concerning conditions of accession of the Czech Republic and other states and the adjustments to the Treaties on which the European Union is founded) on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”) insofar as it applies to such projects.

The definition of “project” identifies those activities which are subject to the requirements of the Regulations. Regulation 4 prevents any projects involving the use of uncultivated land or semi natural areas for intensive agricultural purposes from being undertaken unless a screening decision is first obtained. Regulation 5 prevents any projects involving the restructuring of rural land holdings on agricultural land which are either to be carried out in a sensitive area or exceed the threshold applicable to the project calculated in accordance with regulation 6 from being undertaken unless a screening decision is first obtained. Regulation 5 defines “sensitive area” for this purpose.

The screening decision determines whether the project is one which is likely to have a significant effect on the environment. This will include a project likely to have a significant effect on a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) (“the Habitats Regulations”). A project which has been so determined is defined as a “relevant project” in the Regulations. The screening decision must be reached in accordance principally with the selection criteria set out in Schedule 1 to these Regulations. The procedural requirements in respect of screening decisions are set out in regulation 7.

Regulation 8 prohibits a relevant project from being carried out without consent first having been obtained from the Scottish Ministers.

Regulation 9 entitles the prospective applicant for consent to obtain an opinion from the Scottish Ministers as to the information which will be required as part of the environmental statement to accompany the application for consent.

Regulation 10 requires the environmental bodies consulted to provide any relevant information in their possession to the applicant for consent.

Regulations 11 and 12 contain the procedural requirements for the application for consent. The application is required to include the environmental statement which is defined as a statement which includes the information in Part II of Schedule 3 to the Regulations and such of the information in

Part I of Schedule 3 as is reasonably required to assess the environmental effects of the project and which the applicant can, having regard to current knowledge and methods of assessment, reasonably be required to compile. Regulation 12 requires additional environmental information received to be sent to consultation bodies, any other EEA State which is participating in the consultation process and to be publicised.

Regulation 13 contains provisions for notifying other States which are parties to the Agreement on the European Economic Area of projects likely to have environmental effects on those States.

Regulation 14 specifies how decisions under the Regulations are to be made in respect of projects located partly in Scotland and partly in England.

Regulation 15 prescribes how the Scottish Ministers shall decide whether to grant consent for a project. It requires them to take into account all of the information and representations provided in accordance with the Regulations.

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

Regulation 15(11) specifies mandatory conditions to which the consents are required to be subject to ensure that consents are implemented and that further consent is required for works which are materially different from those permitted.

Regulation 15(12) contains procedural requirements to be complied with in granting or refusing consent and regulation 13(13) makes provision for a case where the Scottish Ministers intend to grant consent for any project which consists of an operation likely to damage a site of special scientific interest against the advice of Scottish Natural Heritage.

Regulation 16 and Schedule 4 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

An applicant for a screening decision or for consent for a relevant project (or a person interested in a project subject to a revocation or modification under the review provisions contained in Schedule 4) may appeal against an adverse decision to the Scottish Ministers. An appellant is entitled to be heard by a person appointed by the Scottish Ministers by way of a hearing or an inquiry. The general appeal provisions are contained in regulation 17 and the procedures for determination by written representations and by inquiry are contained in regulations 18 and 19 respectively.

Persons aggrieved by decisions under regulations 17, 18 or 19 may appeal to the sheriff by way of summary application (regulation 20).

Regulation 21 gives non-governmental organisations title and interest to access to judicial review procedure in the Scottish courts in relation to any alleged breaches of Council Directive 85/337. This is required in terms of Article 10a of the Directive as inserted by article 3 of Directive 2003/35.

Persons who carry on projects without first obtaining either a negative screening decision or consent for the project, or who act in breach of conditions imposed on a consent, commit an offence under the Regulations. It is also an offence under the Regulations to make false or misleading statements in order to obtain a particular decision (regulations 22 to 24).

If the Scottish Ministers wish to ensure that unauthorised works are stopped with immediate effect, they can, under regulation 25, serve a stop notice on the person carrying out the works or on any person with an interest in the land upon which the works are taking place. An appeal against a stop notice lies to the sheriff. Non-compliance with the stop notice is an offence (regulation 26).

Regulation 27 contains a power for the Scottish Ministers to serve a notice requiring a person they believe to be responsible for committing an offence in connection with works, to reinstate the land to its former condition. An appeal against a reinstatement notice lies to the sheriff. Failure to comply with the requirements of a reinstatement notice is an offence.

Regulation 28 contains powers of entry in connection with carrying out the functions of the Scottish Ministers under the Regulations and includes the power to inspect and take copies of records. Powers are also provided to enter land for the purpose of carrying out works of reinstatement following non-compliance with a reinstatement notice.

Regulation 29 makes provision in relation to offences committed by bodies corporate.

The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 (“the 2002 Regulations”) which implemented Directives [85/337/EEC](#) and [92/43/EEC](#) before these Directives were amended in relation to projects on uncultivated land and semi natural areas are revoked (regulation 30).

Regulation 31 contains transitional provisions in relation to stop notices and reinstatement notices served under the 2002 Regulations.

A Regulatory Impact Assessment in relation to these Regulations has been prepared and placed in the Scottish Parliament Information Centre. Copies of it can be obtained from the Scottish Executive Environment and Rural Affairs Department, Pentland House, 47 Robb’s Loan, Edinburgh, EH14 1TY.