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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 349**

**The Conservation (Natural Habitats, &c.)  
Amendment (No. 2) (Scotland) Regulations 2007**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

**Amendment of the Conservation (Natural Habitats, &c.) Regulations 1994**

2.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994<sup>(1)</sup> are amended in accordance with paragraphs (2) to (6).

(2) In regulation 47(1) (application of provisions of this Part)<sup>(2)</sup>—

- (a) omit “-(a)” where it currently appears;
- (b) after “48” insert “, 48A”;
- (c) omit “(b)” where it currently appears;
- (d) for “&c.), apply,” substitute “&c.) apply—”;
- (e) immediately before “subject” insert “(a)”; and
- (f) at the end insert—
  - “; and
  - (b) in relation to all other plans and projects”.

(3) After regulation 48 insert—

**“Directions as regards plans and projects**

**48A.**—(1) The Scottish Ministers may at any time direct a competent authority (other than the Scottish Ministers or the Secretary of State) to send to them a copy of a plan or project—

- (a) which is being prepared by the competent authority, or which is to be or has been undertaken by the competent authority; or
- (b) which is to be or has been consented to, permitted or otherwise authorised by the competent authority,

and which in the opinion of the Scottish Ministers may have a significant effect on a European site in Great Britain.

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(1) S.I.1994/2716; relevant amendments are made by S.I. 2004/475 and 2007/80. The 1994 Regulations make provision for the purpose of implementing, for Great Britain, Council Directive 92/43/EEC.

(2) Regulation 47(1) was amended by S.I. 2004/475.

(2) The Scottish Ministers shall consider any plan or project in respect of which they have issued a direction under paragraph (1), together with such information in relation to it as they may reasonably require the competent authority to provide.

(3) Where the Scottish Ministers are satisfied that—

- (a) the plan or project falls within regulation 48(1) and no appropriate assessment has been carried out; or
- (b) an appropriate assessment has been carried out which does not comply with the Habitats Directive and these Regulations,

they may direct the competent authority to carry out an appropriate assessment in accordance with the Habitats Directive and these Regulations.

(4) A direction under paragraph (3) shall be issued as soon as reasonably practicable, and may, in particular, specify—

- (a) the manner in which an appropriate assessment must be carried out; and
- (b) the matters to be covered by the appropriate assessment.

(5) Where a direction is issued under paragraph (3), the plan or project and any operation or activity carried out under it is suspended until such time as the Scottish Ministers direct that they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(6) The Scottish Ministers shall issue a direction under paragraph (5) as soon as reasonably practicable after they are satisfied that an appropriate assessment has been carried out in accordance with the Habitats Directive and these Regulations.

(7) The Scottish Ministers shall consult with the appropriate nature conservation body as to the exercise of the Scottish Ministers' functions under paragraphs (1) to (6) of this regulation.

(8) Where a direction is issued under paragraph (3), the Scottish Ministers shall send to the competent authority a summary in writing of their reasons.

(9) A competent authority shall comply with any direction given to it under paragraph (1) or (3).”.

(4) In regulation 49 (considerations of overriding public interest)(3)—

- (a) in paragraph (1) after “agree” insert “, subject to paragraph (1A),”;
- (b) immediately after paragraph (1) insert—

“(1A) A competent authority other than the Scottish Ministers or the Secretary of State shall consult the Scottish Ministers for the purpose of satisfying itself under paragraph (1), and shall have regard to the opinion of the Scottish Ministers.”; and

(c) after paragraph (6) insert—

“(7) A competent authority shall comply with any direction given to it under paragraph (6).”.

(5) In regulation 50(2) (review of existing decisions and consents, etc.) after “(4)” insert “and regulation 48A”.

(6) At the beginning of regulation 52(2) (co-ordination where more than one competent authority involved) insert “Subject to regulation 48A,”.

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