

**2007 No. 485**

**ENVIRONMENTAL PROTECTION**

**The Environmental Impact Assessment and Natural Habitats  
(Extraction of Minerals by Marine Dredging) (Scotland)  
Regulations 2007**

*Made* - - - - - *30th October 2007*  
*Laid before the Scottish Parliament* *31st October 2007*  
*Coming into force* - - - *23rd November 2007*

**ARRANGEMENT OF REGULATIONS**

**PART 1  
INTRODUCTORY**

1. Citation, commencement and extent
2. Interpretation
3. Application to the Crown

**PART 2  
RESTRICTIONS ON DREDGING**

4. Restrictions on dredging
5. Partial application of the Regulations in particular cases

**PART 3  
PRELIMINARY MATTERS**

6. Preliminary determination of the Scottish Ministers
7. Opinion of the Scottish Ministers as to content of the environmental statement
8. Provision of information to facilitate preparation of an environmental statement

**PART 4  
PERMISSIONS FOR DREDGING**

9. Applications for permission
10. Further information
11. Publicity and consultation
12. Decisions on applications
13. Offences relating to applications and permissions

14. Projects likely to have significant effects on the environment in another EEA state

PART 5  
TRANSFER AND VARIATION OF PERMISSIONS

15. Transfer of permission
16. Variation of permission
17. Variation of permission on application: preliminary determinations, fees etc.
18. Variation of permission on application - relevant projects and habitats projects
19. Variation of permission on application – other cases
20. Revocation or variation of permission otherwise than on application
21. Consequences of revocation, suspension or variation
22. Offences relating to transfers and variations

PART 6  
NATURAL HABITATS

23. Protection of natural habitats
24. Amendment of regulations relating to natural habitats

PART 7  
GENERAL

25. Register
26. Penalties
27. Local inquiries
28. Electronic Communications

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SCHEDULE 1 — ENVIRONMENTAL STATEMENTS  
PART 1 — MINIMUM REQUIREMENTS  
PART 2 — ADDITIONAL REQUIREMENTS  
SCHEDULE 2 — SELECTION CRITERIA  
SCHEDULE 3 — NATURAL HABITATS

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 56 of the Finance Act 1973(b).

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

(b) 1973 c.51, to which there are amendments which are not relevant to these Regulations. The functions conferred upon the Minister of the Crown under section 56 of the Finance Act 1973, insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. The requirement to obtain Treasury consent was removed by section 55 of that Act.

# PART 1

## INTRODUCTORY

### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007, and come into force on 23rd November 2007.

(2) These Regulations extend to Scotland and the Scottish zone only.

### Interpretation

2.—(1) In these Regulations—

“the appropriate consultation bodies” means—

- (a) in relation to any dredging in Scotland which may constitute or form part of a project serving national defence purposes, the Secretary of State;
- (b) in relation to any dredging in Scotland which would be likely to have significant effects on the environment in England, or which is likely to have a significant effect on a European site in England, the Secretary of State;
- (c) in relation to any dredging in Scotland or the Scottish zone which would be likely to have significant effects on the environment in Northern Ireland, or which is likely to have a significant effect on a European site in Northern Ireland, the Department of the Environment;
- (d) in relation to any dredging in Scotland or the Scottish zone, Scottish Natural Heritage;
- (e) in relation to any dredging in the Scottish zone and outwith Scotland, the Secretary of State and the Joint Nature Conservation Committee;
- (f) such other bodies as the Scottish Ministers consider, by reason of their specific environmental responsibilities, to have an interest in a relevant project;

“by public advertisement”, in relation to a notice means—

- (a) by publication of the notice in such national publication and in such local newspaper as the Scottish Ministers consider appropriate; and
- (b) where the Scottish Ministers maintain a website for the purposes of advertising of applications, by publication of the notice on the website;

“commencement” means the date on which these Regulations come into force;

“dredging” means the extraction of minerals by dredging in marine waters, but does not include—

- (a) such extraction where specifically authorised to be carried out by any enactment (including any enactment contained in a local Act or subordinate legislation);
- (b) dredging in any waters within the jurisdiction of a harbour authority, as defined by section 57 of the Harbours Act 1964(a);
- (c) extraction to which any of the following Regulations apply—
  - (i) the (Environmental Impact Assessment) (Scotland) Regulations 1999(b);
  - (ii) the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999(c);
  - (iii) the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Impacts) Regulations 1999(d);

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(a) 1964 c.40.

(b) S.S.I. 1999/1 as amended by S.S.I. 2003/331 and 341 and S.S.I. 2007/176 and 268.

(c) S.I. 1999/1672 as amended by S.S.I. 1999/1 and S.I. 2007/1996.

(d) S.I. 1999/360, amended by S.I. 2007/933.

(iv) the Pipe-line Works (Environmental Impact Assessment) Regulations 2000(a); and where the context so requires, includes proposed dredging.

“the EIA Directive” means Directive 85/337/EEC(b) on the assessment of the effects on certain public and private projects on the environment;

“environmental statement” has the meaning given by regulation 7(1);

“European site” means any of the following–

- (a) a special area of conservation;
- (b) a site of Community importance which has been placed on the list referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive;
- (c) an area classified as a special protection area under Article 4(1) or (2) of the Wild Birds Directive;
- (d) a site which has been proposed by the Scottish Ministers, the Secretary of State or the Department of the Environment as a site eligible for designation as a special area of conservation for the purposes of meeting the United Kingdom’s obligations under Article 4(1) of the Habitats Directive, until such time as–
  - (i) it is included in the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
  - (ii) agreement is reached under Article 4(2) of that Directive not to include the site in that list;
- (e) a site included in the list of sites which has been proposed by the Secretary of State and transmitted to the European Commission under regulation 7 (list of sites eligible for identification as of Community importance) of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(c) until such time as–
  - (i) it is included in the list of sites of Community importance referred to in the third sub-paragraph of Article 4(2) of the Habitats Directive; or
  - (ii) agreement is reached under Article 4(2) of that Directive not to include the site in that list;

“habitats project” means any project for carrying out dredging in marine waters which is not directly connected with, or necessary to, the management of a European site and which is likely to have a significant effect (either alone or in combination with other plans or projects) on a European site;

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

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

“the holder” in respect of a permission granted under these Regulations, means for so long as the permission is vested in that person, any person to whom the permission has been transferred;

“marine waters” means tidal waters and parts of the sea from the mean high watermark of ordinary spring tides up to the seaward limits of Scotland and the Scottish zone, to the extent to which they are within a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964(f) (designation of areas of continental shelf);

“notice” means notice in writing, and “notify” and cognate expressions shall be construed accordingly;

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(a) S.I. 2000/1928 as amended by S.I. 2007/1992.

(b) O.J. No. L 175, 05.07.85, p.40, amended by Directive 97/11/EC, (O.J. No. L 73, 14.03.97, p.5) and Directive 2003/35/EC(O.J. No. L 156, 25.06.03, p.17).

(c) S.I. 2007/1842.

(d) O.J. No. L 206, 22.07.92, p.7, to which there are amendments not relevant to these Regulations.

(e) 1994/2716 as amended by S.S.I. 2004/475 and S.S.I. 2007/80.

(f) 1964 c.29.

“owner”–

- (a) in relation to minerals in which there is a Crown interest, means–
  - (i) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
  - (ii) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
  - (iii) in the case of land belonging to Her Majesty in right of Her private estates, a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers; and
  - (iv) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;
- (b) in relation to minerals in which there is no Crown interest means a person who has right to the minerals;

“prospective applicant” means a person who intends to make an application under regulation 9 or 17;

“relevant project” means any project for carrying out dredging in marine waters which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“Scotland” and the “Scottish Zone” have the meaning assigned to them by section 126(1) (interpretation) of the Scotland Act 1998(a) as read with the Scottish Adjacent Water Boundaries Order 1999(b);

“the selection criteria” means the criteria set out in Schedule 2 to these Regulations;

“the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds(c).

(2) Expressions used in these Regulations and in the EIA Directive or in the Habitats Directive have the same meaning for the purposes of these Regulations as in those Directives.

(3) Where these Regulations refer to–

- (a) an application or request which may be made by any person; or
- (b) an approval, decision, determination or opinion to be issued by the Scottish Ministers,

any such application or request shall be made and any such approval, decision, determination or opinion shall be issued in writing.

### **Application to the Crown**

3.—(1) Subject to paragraph (2), these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations constituting a criminal offence may make the Crown criminally liable, but the Court of Session may, on the application of any person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), these Regulations apply to persons in the public service of the Crown as they apply to any other person.

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(a) 1998 c.46.

(b) S.S.I. 1999/1126.

(c) O.J. No. L 103, 25.04.79 p.1, to which there are amendments not relevant to these Regulations.

## PART 2

### RESTRICTIONS ON DREDGING

#### **Restrictions on dredging**

4. It shall be an offence for any person to carry out dredging except where the dredging—
- (a) falls within one of the cases described in regulation 5 (when these Regulations shall apply in relation to the dredging only to the extent specified in that regulation in relation to the particular case); or
  - (b) is carried out in accordance with a permission granted under Part 4 of these Regulations.

#### **Partial application of the Regulations in particular cases**

5.—(1) The cases mentioned in regulation 4(a) are those described in paragraphs (2), (6) and (7) of this regulation.

(2) The first case is where the Scottish Ministers receive from the Secretary of State a determination in writing—

- (a) that the dredging constitutes or forms part of a project serving national defence purposes; and
- (b) that in the opinion of the Secretary of State the application of these Regulations, except to the extent specified in paragraph (4), (5), (6) or (7) of this regulation, as the case may be, would have an adverse effect on those purposes.

(3) Where paragraph (2) applies, the Scottish Ministers shall determine whether the dredging would constitute a habitats project.

(4) Where paragraph (2) applies and the Scottish Ministers determine under paragraph (3) that the project would constitute a habitats project, then only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;
- (b) regulation 9;
- (c) regulations 12 and 13;
- (d) regulations 15 to 23 and Schedule 3; and
- (e) regulations 25 to 28.

(5) Where paragraph (2) applies and the Scottish Ministers determine under paragraph (3) that the project would not constitute a habitats project, only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;
- (b) regulation 25; and
- (c) regulation 28.

(6) The second case is where the Scottish Ministers have determined under regulation 6—

- (a) that the dredging does not constitute a relevant project; and
- (b) that the dredging does not constitute a habitats project;

and in such a case only the following provisions of these Regulations shall apply—

- (i) Parts 1 and 2;
- (ii) regulation 25; and
- (iii) regulation 28.

(7) Subject to paragraph (8), the third case is where the dredging continues to be carried out in accordance with a written agreement entered into by the owner before commencement, and in such a case only the following provisions of these Regulations shall apply—

- (a) Parts 1 and 2;
- (b) regulation 23 and Schedule 3;
- (c) regulation 25;
- (d) regulation 27; and
- (e) regulation 28.

(8) Where a written agreement entered into by the owner before commencement is varied on or after commencement, the dredging shall fall within the third case only where the Scottish Ministers have determined, having regard to such of the selection criteria as are relevant, that dredging under the agreement as so varied does not constitute a relevant project (and Schedule 2 shall have effect to specify the selection criteria for the purposes of these Regulations).

## PART 3

### PRELIMINARY MATTERS

#### **Preliminary determination of the Scottish Ministers**

6.—(1) Any person who proposes to carry out dredging may request the Scottish Ministers to make a preliminary determination as to—

- (a) whether or not the dredging would constitute a relevant project; and
- (b) whether or not the dredging would comprise or form part of a habitats project.

(2) Before making a preliminary determination in response to a request under paragraph (1), the Scottish Ministers shall consult—

- (a) the owner, (if the owner is not the person requesting the determination); and
- (b) the appropriate consultation bodies.

(3) The Scottish Ministers may ask the person making the request under paragraph (1) to supply such further information within such specified period and in such form as may reasonably be required.

(4) If the person making the request under paragraph (1) fails to supply the information requested within the specified period, or such further period as the Scottish Ministers may allow, the request shall be treated as withdrawn.

(5) In making a preliminary determination in response to an application under paragraph (1)(a) the Scottish Ministers shall take into account such of the selection criteria as are relevant in the particular case.

(6) As soon as is reasonably practicable after making a preliminary determination, the Scottish Ministers shall—

- (a) send a copy of it to the person making the request under paragraph (1) and to any persons consulted under paragraph (2); and
- (b) take such steps as the Scottish Ministers consider appropriate to ensure that it is made available to the public concerned.

#### **Opinion of the Scottish Ministers as to content of the environmental statement**

7.—(1) In these Regulations, “environmental statement” means a statement that includes—

- (a) the information set out in Part 1 of Schedule 1 to these Regulations; and

- (b) such of the information set out in Part 2 of that Schedule as is reasonably required to assess the environmental effects of the relevant project and which, having regard in particular to current knowledge and methods of assessment, the applicant can reasonably be required to compile;

and Schedule 1 shall have effect for these purposes.

(2) At the request of a prospective applicant, the Scottish Ministers shall give an opinion as to the information to be provided by an environmental statement.

(3) Before giving their opinion, the Scottish Ministers shall consult—

- (a) the prospective applicant;
- (b) the owner (if the owner is not the person requesting the opinion); and
- (c) the appropriate consultation bodies,

as to the information to be provided by the environmental statement.

(4) The Scottish Ministers shall send a copy of their opinion given under this regulation to any person who has been consulted under paragraph (3).

### **Provision of information to facilitate preparation of an environmental statement**

**8.**—(1) A prospective applicant may, where the proposed application requires an environmental statement, give notice of an intention to submit an application to the Scottish Ministers.

(2) A notice under paragraph (1) shall include the information necessary to identify the location and nature of the dredging, and shall indicate the main environmental consequences of the dredging which will be referred to in the prospective applicant's environmental statement.

(3) On receipt of a notice under paragraph (1), the Scottish Ministers shall—

- (a) notify the appropriate consultation bodies of the name and address of the prospective applicant and of the duty imposed on the consultation bodies by paragraph (4) to make information available to that person; and
- (b) notify the prospective applicant of the names and addresses of the bodies notified under sub-paragraph (a).

(4) Subject to paragraph (5), any body notified in accordance with paragraph (3)(a), or the Scottish Ministers, shall, if requested to do so by the prospective applicant, determine whether or not it has in its possession any information relevant to the preparation of the environmental statement and, if it has, the body or the Scottish Ministers shall make that information available to the prospective applicant.

(5) Paragraph (4) shall not require the disclosure of any information—

- (a) to which the Environmental Information Regulations (Scotland) 2004<sup>(a)</sup> apply, where the person holding it would be entitled to withhold it in response to a request made in accordance with those Regulations; or
- (b) which in any other case would be exempt information if request for disclosure were made in accordance with the Freedom of Information (Scotland) Act 2002<sup>(b)</sup>.

(6) A reasonable charge reflecting the cost of making the relevant information available may be made by a body (other than the Scottish Ministers who are responsible for deciding the application) when they make information available in accordance with paragraph (4).

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

(b) 2002 asp 13.

## PART 4

### PERMISSIONS FOR DREDGING

#### **Applications for permission**

- 9.—(1) An application for permission to carry out dredging shall—
- (a) be made to the Scottish Ministers;
  - (b) contain such information as the Scottish Ministers may reasonably require;
  - (c) unless paragraph (2) applies to the dredging, include an environmental statement;
  - (d) where paragraph (2) applies, and the Secretary of State’s determination relates to part only of the dredging, include an environmental statement in respect of any part of the dredging to which the determination does not apply; and
  - (e) be accompanied by a fee of £29,500.

(2) This paragraph applies where the Scottish Ministers have received a determination from the Secretary of State under regulation 5(2) that the dredging constitutes or forms part of a project serving national defence purposes, and that in the opinion of the Secretary of State the application of these Regulations would have an adverse effect on those purposes.

(3) The Scottish Ministers may require the applicant to supply such number of copies of the application as may reasonably be required, within such period as may reasonably be specified.

(4) Where the applicant fails, within such period as the Scottish Ministers have specified, or such further period as the Scottish Ministers may allow, to comply with any requirement of this regulation, the application shall be deemed to be withdrawn at the end of such period, and the fee shall be refunded if the Scottish Ministers have not yet published a notice under regulation 11(1).

(5) An application under this regulation may be withdrawn at any time by notice to the Scottish Ministers, and the fee shall be refunded if, at the time when the Scottish Ministers receive the notice of withdrawal, the Scottish Ministers have not yet published a notice under regulation 11(1).

(6) Where the Scottish Ministers receive an application under this regulation in respect of dredging which may constitute or form part of a project serving national defence purposes, the Scottish Ministers shall provide a copy of that application to the Secretary of State.

#### **Further information**

- 10.—(1) Paragraph (2) applies where the Scottish Ministers consider—
- (a) that the environmental statement fails to contain sufficient information of a description specified in any of the paragraphs of Part 2 of Schedule 1 to enable the environmental effects of the proposed dredging to be fully considered; and
  - (b) having regard in particular to current knowledge and methods of assessment, that the applicant can reasonably be required to supply further information of such description.

(2) Where this paragraph applies, the Scottish Ministers shall request the applicant to supply such further information as they consider necessary and shall notify the applicant of—

- (a) the number of copies of the further information that the applicant is required to supply; and
- (b) the period within which such further information shall be supplied.

(3) Where the applicant fails, within such period as the Scottish Ministers have specified, or such further period as the Scottish Ministers may allow, to comply with any request of the Scottish Ministers under this regulation, the application shall be deemed to be withdrawn at the end of such period and the fee shall be refunded if the Scottish Ministers have not yet published a notice under regulation 11(1).

## Publicity and consultation

11.—(1) Where the Scottish Ministers receive—

- (a) an application made under regulation 9 which includes an environmental statement; or
- (b) further information supplied under regulation 10 or any other information provided by the applicant,

the Scottish Ministers shall publish by public advertisement, as soon as reasonably practicable, a notice complying with the requirements of paragraph (2).

(2) The notice shall contain the following information—

- (a) the applicant's name;
- (b) a statement that the applicant has made an application or, as the case may be, supplied further or any other information, to the Scottish Ministers under these Regulations;
- (c) a statement that the application is subject to an assessment of its effects on the environment pursuant to these Regulations;
- (d) that the Scottish Ministers will take a decision on the application under these Regulations and a statement that the application may either be granted, whether or not subject to conditions, or refused;
- (e) the address of the place in Scotland at which copies of the application and any further or other information, and any reports or advice which have been issued to the Scottish Ministers at that time, as the case may be, may be inspected;
- (f) a statement that inspection of the application, any further or other information, and any reports or advice which have been issued to the Scottish Ministers may be undertaken at that place, without charge, and at any reasonable time during a period which shall not be less than eight weeks beginning with the date on which the notice is published;
- (g) the address in Scotland from which copies of the application and any further or other information and any reports or advice which have been issued to the Scottish Ministers, may be obtained and, if a charge is made under paragraph (3) for the supply of copies, of the amount of the charge;
- (h) a statement that any person who wishes to make representations to the Scottish Ministers regarding the application or regarding any further or other information or any reports or advice which have been issued to the Scottish Ministers, may do so in writing within the period specified under in sub-paragraph (f); and
- (i) the address in Scotland to which representations may be sent.

(3) A reasonable charge may be made for the provision of copies of the application or any further or other information or any reports or advice which have been issued to the Scottish Ministers, to any person who requests them.

(4) The Scottish Ministers shall send to such of the appropriate consultation bodies as they consider necessary and the owner (if the owner is not the applicant)—

- (a) a copy of the application and, as soon as reasonably practicable, of any further or other information and of any reports or advice that have been issued to the Scottish Ministers; and
- (b) a statement—
  - (i) that representations may be made to the Scottish Ministers regarding the application;
  - (ii) of the address in Scotland to which representations may be sent; and
  - (iii) of the period, being not less than eight weeks beginning with the date on which notice of the application is first published under paragraph (1), within which representations may be made.

(5) Where the Scottish Ministers are aware of any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application, but is unlikely to become aware of it by means of the

public advertisement, the Scottish Ministers shall send a notice to such person containing the details set out in paragraph (2).

### **Decisions on applications**

12.—(1) Before deciding whether to grant or refuse permission on an application under regulation 9, the Scottish Ministers shall determine whether or not the application relates to a project which constitutes a habitats project.

(2) The applicant shall provide such information as the Scottish Ministers may reasonably require to enable the Scottish Ministers to make the determination under paragraph (1).

(3) Before deciding whether to grant or refuse permission for a project which the Scottish Ministers have determined would constitute a habitats project (whether under this regulation or under regulation 6(1)(b)) the Scottish Ministers shall make an appropriate assessment of the implications for the European site affected, in view of its conservation objectives and paragraph 2 of Schedule 3 shall apply for that purpose.

(4) Before deciding whether to grant or to refuse permission, the Scottish Ministers may give the opportunity of making representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose, to the applicant, the owner (if the owner is not the applicant) and any other person whom the Scottish Ministers consider should be given such an opportunity.

(5) In deciding whether to grant or refuse permission the Scottish Ministers shall take into consideration—

- (a) the information provided in the application;
- (b) the environmental statement, where one has been provided;
- (c) any further information supplied under regulation 10 and any other information submitted by the applicant;
- (d) any relevant representations made in response to the notice published under regulation 11(1) or by anyone to whom a copy of the application has been sent under regulation 11(4) or to whom a notice has been sent under regulation 11(5);
- (e) any opinion forwarded to the Scottish Ministers pursuant to regulation 14(4);
- (f) any reports and advice that have been issued to the Scottish Ministers;
- (g) the report of any person appointed under paragraph (4);
- (h) any published policy of the Scottish Ministers in relation to the extraction of minerals by marine dredging; and
- (i) the results of any assessment carried out under paragraph (3).

(6) A grant of permission—

- (a) may be subject to such conditions as the Scottish Ministers consider appropriate; including conditions intended to implement any policy taken into account under paragraph 5(h); and
- (b) shall be made to, and subject to any transfer under regulation 15, shall enure for the benefit of, the owner.

(7) The Scottish Ministers shall send notice of the decision to—

- (a) the applicant;
- (b) the owner (if the owner is not the applicant);
- (c) any person who has made representations in respect of the application; and
- (d) the appropriate consultation bodies who were consulted under regulation 11(4);

and the notice shall state—

- (i) the main reasons for the decision;

- (ii) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (iii) where permission is granted, any conditions imposed under paragraph 6(a), and, where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (iv) that the decision may be challenged and the procedures for doing so.

(8) Within the period of 28 days beginning with the date of the decision, the Scottish Ministers shall publish, in the same or similar manner in which notice relevant to the application was published under regulation 11, a notice containing—

- (a) a statement that the Scottish Ministers have granted, or as the case may be, refused permission;
- (b) a description of the dredging for which permission has been granted or, as the case may be, refused; and
- (c) the address in Scotland at which any person may inspect a copy of the notice issued under paragraph (7).

### **Offences relating to applications and permissions**

**13.—**(1) It shall be an offence for a person who, for the purposes of obtaining (whether for that person or another) the grant of a permission under regulation 12—

- (a) makes a statement or representation, or furnishes a document or information, which that person knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) It shall be an offence for a person to fail to comply with a condition to which a permission is subject.

### **Projects likely to have significant effects on the environment in another EEA state**

**14.—**(1) Where—

- (a) the Scottish Ministers are aware that a relevant project is likely to have significant effects on the environment in another EEA state; or
- (b) a request is made by another EEA state, whose territory is likely to be significantly affected by such a relevant project;

the Scottish Ministers shall, as soon as possible and not later than the date of publication of the notice referred to in regulation 11(1), carry out the actions specified in paragraph (2).

(2) The actions mentioned in paragraph (1) are that the Scottish Ministers shall—

- (a) send to the affected state—
  - (i) details of the location and nature of the dredging;
  - (ii) any available information on its potential effect on the environment in the affected state; and
  - (iii) a description of the nature of the decision which may be made under these Regulations;
- (b) give the affected state a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide; and
- (c) publish in the Edinburgh Gazette a notice containing the particulars in sub-paragraph (a) and indicating the address in Scotland from which additional information may be obtained.

(3) Where an affected state indicates a desire to participate in the procedure for which these Regulations provide, the Scottish Ministers shall, as soon as possible, send to that affected state

such of the following information as has not already been provided to it in accordance with paragraph (2)–

- (a) a copy of any application under regulation 9;
- (b) a copy of any further information supplied under regulation 10, or other information provided by the applicant;
- (c) a copy of any notice published under regulation 11(1);
- (d) copies of any reports and advice issued to the Scottish Ministers; and
- (e) relevant information regarding the procedure under these Regulations.

(4) The Scottish Ministers shall ensure that any bodies with specific environmental responsibilities who have been consulted by the affected state and the public concerned are given an opportunity, before any application is decided, to forward to the Scottish Ministers, within a reasonable time, their opinion on the particulars and information supplied.

(5) The Scottish Ministers shall–

- (a) enter into consultations with the affected state regarding, amongst other matters, the potential effects of the dredging on the environment of that affected state and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the affected state, a reasonable period of time for the duration of the consultation period.

(6) Where the Scottish Ministers have consulted an affected state in accordance with paragraph (5) on the decision to be made on any application concerned, the Scottish Ministers shall inform that affected state of the decision and shall send to it a notice of the decision, and the notice shall state–

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process;
- (c) where permission is granted–
  - (i) the conditions imposed under regulation 12(6)(a); and
  - (ii) where applicable, a description of the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects.

## PART 5

### TRANSFER AND VARIATION OF PERMISSIONS

#### **Transfer of permission**

**15.**—(1) A permission granted under these Regulations shall not be transferred either in whole or in part to another person without the prior approval of the Scottish Ministers and, where any transfer is purported to be made without such consent, the transfer shall be void.

(2) The Scottish Ministers may, upon application from the owner or the holder, approve the transfer either unconditionally or subject to such conditions of transfer as the Scottish Ministers consider appropriate.

(3) Where a permission is transferred, the owner shall–

- (a) remain liable for any breach of any condition to which the permission is subject, whenever the breach may arise; and
- (b) shall continue to have such rights and obligations in relation to the permission as these Regulations provide.

(4) Any holder of a permission shall only be liable for breaches of any conditions, including any conditions of transfer, to which the permission is subject which arise whilst the holder is the holder of the permission.

(5) Where a permission has been transferred with the Scottish Ministers' approval under paragraph (2), the transfer shall cease to have effect at the end of the period of 40 days beginning with the date of the transfer, or such further period as may be agreed by the Scottish Ministers, unless the transferee notifies the Scottish Ministers in writing within that period—

- (a) that the whole or, as the case may be, part of the permission has been transferred to the transferee;
- (b) where the transfer is of part only, of the extent of the part transferred; and
- (c) of the date of the transfer.

### **Variation of permission**

**16.**—(1) The Scottish Ministers may vary a permission granted under these Regulations, in whole or in part.

(2) The Scottish Ministers may do so either—

- (a) on the application of a person mentioned in regulation 17(1); or
- (b) of their own motion, in the circumstances provided for in regulation 20(1).

(3) Any variation may be made not only to the permission itself but also to any condition to which the permission was subject prior to the variation.

### **Variation of permission on application: preliminary determinations, fees etc.**

**17.**—(1) An application for variation may be made to the Scottish Ministers—

- (a) where there has been a transfer of the whole of the permission under regulation 15, by the holder;
- (b) where there has been a transfer of part of the permission under regulation 15, and where the proposed variation is in respect of that part, by the holder;
- (c) where—
  - (i) a person (“a prospective transferee”) is considering entering into an agreement with the owner or holder for a transfer of the permission under regulation 15, either in whole or in part; and
  - (ii) the proposed variation relates to a part or the whole of the permission which is intended to be transferred, by the prospective transferee; and
- (d) in any other case, by the owner.

(2) An application under paragraph (1) (“a variation application”) shall, where the applicant is the holder or a prospective transferee (whether of the whole or part of the permission), be accompanied by a document signifying the owner's consent in writing to the making of the application.

(3) Before deciding whether or not to grant a variation application, the Scottish Ministers shall—

- (a) unless the dredging was determined to be a national defence project when permission was given for the dredging, determine, having regard to such of the selection criteria as are relevant to the proposed variation, whether or not the variation would constitute a relevant project; and
- (b) determine whether or not the variation would constitute a habitats project.

(4) Where, in order to make a determination under paragraph (3), the Scottish Ministers consider it necessary, they may ask the person making the variation application to supply such further information within such specified period and in such form as may reasonably be required.

(5) If the applicant fails to supply the information requested under paragraph (4) within the specified period or such further period as the Scottish Ministers may allow, the application shall be deemed to be withdrawn.

(6) Before making a determination under paragraph (3), the Scottish Ministers shall consult–

- (a) the owner (if the owner is not the applicant);
- (b) the applicant; and
- (c) such of the appropriate consultation bodies as they may consider necessary.

(7) As soon as is reasonably practicable after making a determination under paragraph (3), the Scottish Ministers shall–

- (a) send a copy of it to the applicant, together with information about how the decision may be challenged;
- (b) send a copy of it to any persons consulted under paragraph (6); and
- (c) take such steps as the Scottish Ministers consider appropriate to ensure that it is made available to the public concerned.

(8) At the same time as sending to the applicant the copy of the determination under paragraph (7) the Scottish Ministers shall request payment of the appropriate fee under paragraph (10).

(9) If the fee is not paid within such period as the Scottish Ministers shall specify, or such further period as the Scottish Ministers may allow, the variation application shall be deemed to be withdrawn.

(10) The appropriate fee is–

- (a) in a case where the Scottish Ministers determine under paragraph (3) that a proposed variation would constitute either a relevant project or a habitats project or both, £15,000; and
- (b) in any other case, £4,000.

#### **Variation of permission on application - relevant projects and habitats projects**

**18.**—(1) Where the Scottish Ministers determine under regulation 17(3)(a) that a variation would constitute a relevant project–

- (a) the Scottish Ministers shall request the applicant to supply an environmental statement within a specified period and shall not decide the variation application until the applicant has supplied one; and
- (b) the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application under regulation 9, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 17–
  - (i) regulations 7 and 8;
  - (ii) paragraphs (4), (5) and (6) of regulation 9;
  - (iii) regulations 10 and 11;
  - (iv) with the exception of paragraph (6)(b), regulation 12;
  - (v) regulations 13 and 14;
  - (vi) regulation 22; and
  - (vii) regulations 25 to 28.

(2) Where an environmental statement has been requested under paragraph (1)(a) and has not been supplied within the specified period, or such further period as the Scottish Ministers may allow, the application shall be deemed to be withdrawn at the end of such period and the fee shall be refunded, provided that no advertisement under regulation 11(1), as applied by paragraph (1)(b), has been published at the date of withdrawal.

(3) Where the Scottish Ministers determine under regulation 17(3)(b) that a variation would constitute a habitats project, the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application made under regulation 9, as

if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 17–

- (a) regulations 12 and 13; and
- (b) regulations 22, 23, 25, 26, 27 and 28.

#### **Variation of permission on application – other cases**

**19.**—(1) Where the Scottish Ministers determine under regulation 17(3) that a variation would not constitute a relevant project or a habitats project, this regulation applies–

- (a) to the application in respect of that variation; and
- (b) to any subsequent application in respect of the same variation which is submitted to the Scottish Ministers within 12 months of the date of the determination.

(2) Where reasonably necessary, the Scottish Ministers may request the applicant to supply further information within such period and in such form as may reasonably be specified.

(3) Where the applicant fails, within such period as the Scottish Ministers have specified, or such further period as the Scottish Ministers may allow, to comply with any request of the Scottish Ministers under paragraph (2), the variation application shall be deemed to be withdrawn and the fee shall be refunded, provided that, at the date of withdrawal, the Scottish Ministers have not complied with the requirements of paragraph (4).

(4) The Scottish Ministers shall send–

- (a) a copy of the variation application and of any further information provided under paragraph (2); and
- (b) a statement that representations may be made to the Scottish Ministers regarding the application, and of the address in Scotland to which representations may be sent and of the period within which representations may be made, which shall not be less than 8 weeks beginning with the date on which the statement is sent,

to the persons referred to in paragraph (5).

(5) The persons mentioned in paragraph (4) are–

- (a) the appropriate consultation bodies;
- (b) the owner (if the owner is not the applicant); and
- (c) any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or who the Scottish Ministers consider is likely to be affected by the application.

(6) Before deciding whether to grant or refuse a variation application to which this regulation applies, the Scottish Ministers may give the opportunity of making representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose, to the applicant, the owner (if the owner is not the applicant) and any other person whom the Scottish Ministers consider should be given such an opportunity.

(7) In deciding whether to grant or refuse a variation application to which this regulation applies, the Scottish Ministers shall take into consideration–

- (a) the information provided in the variation application;
- (b) any further information supplied under paragraph (2) and any other information submitted by the applicant;
- (c) any relevant representations made in response to the copies of the application supplied under paragraph (4);
- (d) the report of any person appointed under paragraph (6); and
- (e) any published policy of the Scottish Ministers in relation to the extraction of minerals by marine dredging.

(8) The Scottish Ministers may decide the variation application by either granting or refusing permission for the variation.

(9) A grant of permission for the variation may be subject to such conditions as the Scottish Ministers consider appropriate including conditions intended to implement any policy taken into account under paragraph (7)(e).

(10) The Scottish Ministers shall send notice of the decision under paragraph (8) to the persons referred to in paragraph (5), and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (c) where permission is granted—
  - (i) any conditions imposed under paragraph (9); and
  - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (d) that the decision may be challenged and the procedures for doing so.

### **Revocation or variation of permission otherwise than on application**

**20.**—(1) This regulation applies where—

- (a) a significant breach has occurred of any condition attached to the permission or to a transfer of the permission; or
- (b) in any other case the Scottish Ministers consider it appropriate to exercise the powers conferred by this regulation, in order to protect the environment from significant adverse effects caused by the dredging authorised by the permission.

(2) Where this regulation applies, the Scottish Ministers may—

- (a) revoke the permission; or
- (b) vary it in whole or in part permanently.

(3) Before revoking or permanently varying a permission under paragraph (2)—

- (a) the Scottish Ministers shall serve notice of the proposed revocation or variation—
  - (i) on the persons listed in paragraph (4); and
  - (ii) in accordance with the requirements specified in paragraph (5); and
- (b) the Scottish Ministers may request the owner or the holder of the permission, or of the part of the permission affected, as the case may be, to provide by a specified date, such additional information as may be required, in order that the Scottish Ministers may establish the extent to which the proposed revocation or variation is likely to be effective to protect the environment from any significant adverse effects which would otherwise be caused by the dredging authorised by the permission (“the additional information”).

(4) The persons mentioned in paragraph (3)(a)(i) are—

- (a) the owner and any holder of the permission or the part affected, as the case may be;
- (b) the appropriate consultation bodies; and
- (c) any other person (including any non-governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or whom the Scottish Ministers consider is likely to be affected by the revocation, suspension, under paragraph (7) or (8), or variation.

(5) The requirements mentioned in paragraph (3)(a)(ii) are—

- (a) to inform the recipients of the date when the proposed revocation or variation is intended to take effect under regulation 21; and
- (b) to specify a period, being not less than 28 days from the date of the notice (“the specified period”), within which the representations may be made about the proposed revocation or variation.

(6) The Scottish Ministers shall publish a copy of the notice served under paragraph (3)(a), where applicable and paragraph (7) by public advertisement.

(7) Where the Scottish Ministers consider that it is necessary for the dredging to cease or the permission to be temporarily varied as soon as possible, they may suspend or temporarily vary the permissions, as the case may be, by inclusion in the notice served as required by paragraph (3) of a statement which—

- (a) states that the permission is suspended or, as the case may be, temporarily varied and the nature of the variations which are temporarily made to the permission;
- (b) informs the recipients that the suspension or temporary variation shall take effect (for the time being and pending the Scottish Ministers decision under paragraph (11)) from the date on which the notice is served; and
- (c) specifies a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made to the Scottish Ministers about the suspension or temporary variation.

(8) Where the Scottish Ministers request additional information under paragraph (3)(b), but the additional information is not provided by the date specified or within such further period as the Scottish Ministers may allow, and the permission has not been suspended under paragraph (7), the permission shall be suspended.

(9) Where a permission has been suspended under paragraph (8)—

- (a) if the additional information is provided to the Scottish Ministers’ satisfaction within six months of the suspension, the suspension shall cease;
- (b) if the additional information is not so provided, the permission may be revoked by the Scottish Ministers and the Scottish Ministers shall send notice of the revocation to the persons listed in paragraph (4).

(10) If within the specified period, a person on whom notice has been served under paragraph (3)(a), or a person who has made representations in response to the advertisement published under paragraph (6), so requests, the Scottish Ministers may give—

- (a) to that person; and
- (b) to any other person on whom notice was served under paragraph (3)(a), or who has made representations in response to the advertisement published under paragraph (6),

an opportunity to make representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose.

(11) The Scottish Ministers shall decide whether to revoke the permission or vary it permanently, having regard, in particular, to—

- (a) any representations made in response to a notice served under paragraph (3)(a) or an advertisement published under paragraph (6); and
- (b) if applicable, the report of any person appointed under paragraph (10).

(12) The Scottish Ministers shall serve notice of the decision under paragraph (11) on any person on whom the notice was served under paragraph (3)(a) and on any person who made representations in response to the advertisement published under paragraph (6), and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process; and
- (c) that the decision may be challenged and the procedures for doing so.

### **Consequences of revocation, suspension or variation**

**21.—(1)** A revocation or variation under regulation 20(2) shall take effect, subject to paragraph (2), on the date on which the notice is served under regulation 20(12).

(2) Where more than one notice is served under regulation 20(12) in respect of the same revocation or variation and those notices are served on different days, the revocation or variation shall take effect on the date on which the last of them is served.

(3) Where a permission has been suspended, or a variation has taken effect temporarily under regulation 20(7), but the Scottish Ministers final decision under regulation 20(11) is not to revoke the permission or not to vary it permanently, the permission shall again have effect, or have effect on the terms effective prior to the temporary variation, as the case may be, from the date of the notice served under regulation 20(12).

(4) In relation to a permission which has been suspended under regulation 20(7) or (8), which continues in effect under regulation 20(9)(a) or which the Scottish Ministers have decided under regulation 20(11) not to revoke—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended, shall be treated as extended by a period equal to that during which the permission was suspended; and
- (b) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, that specified date shall be postponed by a period equal to that during which the permission was suspended.

(5) In relation to a permission which was varied temporarily under regulation 20(8), which the Scottish Ministers have decided under regulation 20(11) not to vary permanently—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under paragraph (3) shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (b) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(6) The revocation or variation of a permission under regulation 20(2), the suspension of a permission under regulation 20(7) or (8), or the temporary variation of a permission under regulation 20(7), shall not affect anything done under the permission before the date on which the permission was revoked, varied, suspended or temporarily varied, as the case may be.

#### **Offences relating to transfers and variations**

**22.—**(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) a transfer of a permission under regulation 15 or a variation of a permission under regulation 16, or in response to a request under regulation 20(3)(b)—

- (a) makes a statement or representation, or furnishes a document or information, which the person knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) It shall be an offence for a person to fail to comply with any condition of transfer.

(3) While a permission is suspended under regulation 20(7) or (8), any continued or further dredging under the permission shall be an offence.

## PART 6

### NATURAL HABITATS

#### **Protection of natural habitats**

23. Schedule 3 to these Regulations has effect in relation to dredging in marine waters in Scotland and the Scottish zone.

#### **Amendment of regulations relating to natural habitats**

24.—(1) In the Habitats Regulations regulation 47 (application of provisions of Part IV) after paragraph (3)(b)–

“(3A) This Part does not apply to any plan or project to which the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 apply.”.

(2) The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007(a) are amended as follows–

- (a) in regulation 25 (protection of European offshore marine sites and European sites)–
  - (i) at the end of paragraph (6)(c) delete “or”;
  - (ii) after paragraph (6)(d) insert–
    - “; or
  - (e) any project to which paragraph 2 of Schedule 3 to the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 applies”;
- (b) in regulation 27 (review of existing decisions and consents)–
  - (i) at the end of paragraph (6)(d) delete “or”; and
  - (ii) after paragraph 6(e) insert–
    - “;
  - (f) requires a review of any project or agreement that falls to be similarly reviewed under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007”

## PART 7

### GENERAL

#### **Register**

25.—(1) The Scottish Ministers shall keep a register containing the information specified in paragraph (2).

- (2) The register shall contain a copy, either in photographic or electronic form or both, of–
- (a) each determination received from the Secretary of State under regulation 5(2);
  - (b) each determination made by the Scottish Ministers under regulation 5(3);
  - (c) each request for a preliminary determination under regulation 6(1);
  - (d) each preliminary determination made by the Scottish Ministers in response to a request under regulation 6(1);
  - (e) each opinion given by the Scottish Ministers under regulation 7(2);

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(a) S.I. 2007/1842.

- (f) each application for permission to carry out dredging made to the Scottish Ministers under regulation 9(1), including any environmental statement, and any accompanying plans and drawings;
- (g) any further information supplied in response to a request under regulation 10(2), or any other information supplied by the applicant;
- (h) each notice published under regulation 11(1);
- (i) any reports and advice which are issued to the Scottish Ministers in relation to any application under these Regulations;
- (j) each determination made by the Scottish Ministers under regulation 12(1);
- (k) any information supplied by an applicant under regulation 12(2);
- (l) each decision of the Scottish Ministers in relation to an application under regulation 12(6), including a copy of the report of any person appointed under regulation 12(4) in respect of the application, details of any conditions subject to which permission was granted and the date of the decision;
- (m) each approval of a transfer given under regulation 15(2), including a copy of any conditions subject to which the approval was given;
- (n) each application for a variation of a permission made under regulation 17(1);
- (o) any information provided by the applicant, or decision, determination or opinion of the Scottish Ministers in relation to an application to vary a permission to carry out dredging, under any regulation which is applied to an application under regulation 17(1) by regulation 18(1)(b) or (3);
- (p) each determination made by the Scottish Ministers under regulation 17(3);
- (q) any information provided by an applicant for a variation under regulation 19(2);
- (r) each decision made by the Scottish Ministers under regulation 19(8) in relation to a proposed variation, including a copy of the report of any person appointed under regulation 19(6) in respect of the application, details of any conditions subject to which the variation was granted and the date of the decision;
- (s) each notice served by the Scottish Ministers under regulation 20(3)(a);
- (t) any information provided by the owner or holder of a permission in response to a request under regulation 20(3)(b);
- (u) the report of any person appointed under regulation 20(10);
- (v) each decision made by the Scottish Ministers under regulation 20(11);
- (w) each notice served by the Scottish Ministers under regulation 20(12);
- (x) the order of any court in any legal proceedings in respect of an offence under these Regulations;
- (y) any information supplied by an applicant under paragraph 2(2) of Schedule 3;
- (z) any information provided by the owner or holder of a permission under paragraph 3(4) of Schedule 3;
  - (aa) each decision made by the Scottish Ministers to affirm, revoke or vary a permission under paragraph 3(5) of Schedule 3;
  - (bb) each notice served by the Scottish Ministers under paragraph 4(1) of Schedule 3;
  - (cc) each notice served by the Scottish Ministers under paragraph 5(1) or (5) of Schedule 3;
  - (dd) each decision made by the Scottish Ministers in respect of a review under paragraph 5(4) of Schedule 3, including a copy of the report of any person appointed under paragraph 5(3) of that Schedule in respect of the review, and the date of the decision;
  - (ee) any statement of reasons accompanying any of the above;

- (ff) any monitoring scheme, report or other information submitted to the Scottish Ministers under a condition to which permission to carry out dredging, or consent to a transfer of a permission under regulation 15, was made subject;
- (gg) any representation made or information provided to the Scottish Ministers by any person or body, and in particular an EEA state, the Secretary of State and the Department of Environment in connection with any function performed or to be performed by the Scottish Ministers under these Regulations; and
- (hh) the order of any court in any legal proceedings in which the validity of any approval, decision, determination, opinion or other action of the Scottish Ministers under these Regulations was questioned.

(3) The register shall include an index.

(4) The register shall be available for inspection by the public at all reasonable hours, by prior appointment.

(5) Where the register is kept using electronic storage, the Scottish Ministers may also make the register available for inspection by the public on a website maintained by the Scottish Ministers for that purpose.

(6) On request by any member of the public and on payment of a reasonable fee, the Scottish Ministers shall provide a copy of any document entered on the register.

(7) Except where paragraph (8) applies, an entry in the register shall be made within 28 days of—

- (a) the receipt by the Scottish Ministers of any application, representation, information, scheme, report or order;
- (b) the giving or making of the relevant approval, decision, determination or opinion, or the issuing of the relevant notice.

(8) Where the Scottish Ministers are of the view that making an entry in the register in accordance with paragraph (7) may prejudice the fairness or speed of the process of the giving or making of any approval, decision, determination or opinion under these Regulations, the entry shall be made as soon as practicable after the approval, decision, determination or opinion has been made or given.

## **Penalties**

**26.**—(1) A person who commits an offence under these Regulations shall be liable—

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

(2) Where an offence under these Regulations 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, neglect on the part of an officer, that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) In this regulation, “officer”, in relation to a body corporate means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or a person purporting to act in that capacity.

(4) For the purposes of paragraph (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Proceedings for an offence alleged to have been committed under these Regulations by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(6) Where an offence under these Regulations is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a partner, the partner as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(7) Proceedings for an offence under these Regulations may be taken, and the offence may for all incidental purposes be treated as having been committed in relation to dredging in marine waters in Scotland and the Scottish zone, in any place in Scotland.

(8) Proceedings for a declaration under regulation 3(2) may be taken, and the contravention which is complained of may for all incidental purposes be treated as having been committed, in any part of Scotland.

### **Local inquiries**

**27.**—(1) The Scottish Ministers may cause a local inquiry to be held for the purposes of the exercise of any of their functions under these Regulations.

(2) In relation to a local inquiry held under these Regulations in respect of dredging in Scotland and the Scottish zone, the provisions of section 210(2) to (8) of the Local Government (Scotland) Act 1973(a) shall apply in relation to any inquiry held under these Regulations as they apply in relation to an inquiry mentioned in subsection (1) of that section.

### **Electronic communications**

**28.**—(1) A requirement in these Regulations that any application, approval, decision, determination, notice, opinion, or request should be in writing is fulfilled where the recipient consents to receive it electronically and the document meets the criteria in paragraph (4), and “written” is to be construed accordingly.

(2) Where an application is made to the Scottish Ministers for any approval, decision, determination or opinion, under these Regulations using electronic communications, the person making the application shall be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application; and
- (c) that the deemed agreement under this paragraph shall subsist until that person gives notice to revoke the agreement.

(3) Where a person is no longer willing to accept the use of electronic communications in relation to any application under these Regulations, that person shall give notice to the Scottish Ministers and such revocation shall be final and shall take effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(4) The criteria referred to in paragraph (1) are that the document transmitted by the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Nothing in this regulation shall prevent the Scottish Ministers from requiring an applicant for permission under regulation 9 or the applicant in relation to any application under regulation 6(1), 7(2), 15(2) or 17(1) or the owner or holder of a permission in the case of a proposed revocation or variation under regulation 20, to provide such number of printed copies of any document as the Scottish Ministers shall reasonably require, notwithstanding that the document has already been transmitted to the Scottish Ministers electronically.

(7) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this

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(a) 1973 c.65.

purpose “working day” means a day which is not a Saturday, Sunday, a Bank Holiday in Scotland, or any other day which is a local or public holiday in an area in which the electronic communication is received.

(8) In this regulation—

- (a) the expression “address” includes any number or address used for the purpose of such communications or storage; and
- (b) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000<sup>(a)</sup>.

*STEWART STEVENSON*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
30th October 2007

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(a) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

## SCHEDULE 1

Regulation 2, 7(1), 9(1), 10(1)  
and 18(1)

### ENVIRONMENTAL STATEMENTS

#### PART 1

##### MINIMUM REQUIREMENTS

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 this choice, taking into account the environmental effects.
5. A non-technical summary of the information provided under paragraphs 1 to 4 of this Part.

#### PART 2

##### ADDITIONAL REQUIREMENTS

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 this 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 proposed 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 a 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 of this Part.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information.

**SELECTION CRITERIA****Characteristics of projects**

1. The characteristics of projects must be considered 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.

**Location of projects**

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to—
  - (a) the existing land use;
  - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
  - (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 an EEA state's legislation; special protection areas designated by Member States pursuant to the Wild Birds Directive or the Habitats Directive;
    - (vi) areas in which the 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.

**Characteristics of the potential impact**

3. The potential significant effects of projects must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to—
  - (a) the extent of the impact (geographical area and size of the affected population);
  - (b) the transfrontier nature of the impact;
  - (c) the magnitude and complexity of the impact;
  - (d) the probability of the impact;
  - (e) the duration, frequency and reversibility of the impact.

## NATURAL HABITATS

**Definitions**

1.—(1) In this schedule, “Natura 2000” means the European network of special areas of conservation, and special protection areas designated under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive.

**Provision for the protection of European sites: new dredging projects**

2.—(1) This paragraph applies in relation to every project in respect of which the Scottish Ministers have determined under regulation 6, 12(1) or 17(3) that it would be a habitats project.

(2) A person applying under regulation 9 or 17 shall provide such information as the Scottish Ministers may reasonably require for the purposes of the assessment under regulation 12(3) or that regulation as applied by regulation 18(3).

(3) For the purposes of the assessment, the Scottish Ministers shall take appropriate scientific advice.

(4) Where the Scottish Ministers consider it appropriate to do so, they must take the opinion of the public and if they do so they must take such steps for that purpose as they consider appropriate for the purposes of the assessment.

(5) In the light of the conclusion of the assessment, and subject to sub-paragraphs (7) and (8) below, the Scottish Ministers shall grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects, adversely affect the integrity of the European site.

(6) In considering whether a project will adversely affect the integrity of the site, the Scottish Ministers shall have regard to—

- (a) the manner in which it is proposed to be carried out; and
- (b) any conditions or restrictions subject to which they propose that the permission should be granted.

(7) Where the Scottish Ministers consider that any adverse effects of the project on the integrity of a European site would be avoided if the permission were subject to conditions, permission shall only be granted subject to those conditions.

(8) If the Scottish Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub-paragraph (9), may be of a social or economic nature), they may grant permission for the project notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other imperative reasons of overriding public interest provided the Scottish Ministers have had due regard to the opinion of the European Commission in concluding that there are such reasons.

**Provision for the protection of European sites: review of existing permissions**

3.—(1) Where—

- (a) before the date on which a site becomes a European site, the Scottish Ministers have granted permission under these Regulations for a project which the Scottish Ministers consider would have constituted a habitats project, had the European site been designated at the date when the application for the permission was determined; and
- (b) none of the circumstances mentioned in sub-paragraph (2) apply,

the Scottish Ministers shall, as soon as reasonably practicable after the date on which the site becomes a European site, review the permission.

(2) The circumstances referred to in sub-paragraph (1)(b) are–

- (a) the dredging to which the permission relates has been completed before the site became a European site;
- (b) the permission was granted subject to a condition as to the period within which the dredging to which it relates was to be begun and that period has expired without the dredging having been begun, and the permission is no longer capable of implementation without being varied by the Scottish Ministers; and
- (c) the permission was granted for a limited period and that period has expired.

(3) The Scottish Ministers shall, for the purpose of reviewing the permission, make an appropriate assessment of the implications of the dredging for the site in view of its conservation objectives; and the provisions of sub-paragraphs (3), (4), (5) and (6) of paragraph 2 shall apply, with appropriate modifications, in relation to such a review.

(4) Where a permission is reviewed under this regulation, the Scottish Ministers may request the owner or the holder of the permission, as the case may be, to provide, within a specified period, any additional information which the Scottish Ministers require in order to carry out the review and if that information is not provided within the period specified, or such further period as the Scottish Ministers may allow, the Scottish Ministers may revoke the permission without completing the review.

(5) Having reviewed a permission under this paragraph, the Scottish Ministers shall–

- (a) affirm or vary it in accordance with sub-paragraph (6), (7) or (8); or
- (b) in any other case revoke it.

(6) The permission may be affirmed if the Scottish Ministers are satisfied that the project will not adversely affect the integrity of the European site.

(7) The permission may be varied if the Scottish Ministers are satisfied that any adverse effects on the integrity of the European site of the carrying out or, as the case may be, the continuation of the project, would be avoided by a variation of the permission.

(8) Subject to sub-paragraph (10), if the Scottish Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub-paragraph (9), may be of a social or economic nature), the permission may be affirmed, notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub-paragraph (8) must be either–

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

(10) The Scottish Ministers shall not affirm a permission under sub-paragraph (8) in any case where sub-paragraph (6) or (7) applies.

(11) Nothing in this paragraph shall affect anything done under the permission before the date on which the site became a European site.

### **Provision for the protection of European sites: review of existing agreements**

4.—(1) As soon as reasonably practicable after the coming into force of these Regulations, the Scottish Ministers shall serve on the parties to each agreement to which sub-paragraph (2) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(2) This sub-paragraph applies to any written agreement—

- (a) entered into by an owner before the coming into force of these Regulations; and
- (b) which the Scottish Ministers consider relates to dredging which constitutes a habitats project.

(3) As soon as reasonably practicable after a site becomes a European site, the Scottish Ministers shall serve on the parties to each agreement to which sub-paragraph (4) applies, a notice specifying a date for the purposes of sub-paragraph (5).

(4) This sub-paragraph applies to any agreement—

- (a) entered into by an owner before the coming into force of these Regulations; and
- (b) which the Scottish Ministers consider relates to dredging which constitutes a habitats project as a result of the designation of the European site.

(5) On and after the date specified in a notice under sub-paragraph (1) or sub-paragraph (3), the agreement shall have effect for all purposes as a permission granted as a result of an application under regulation 9 and which it is the Scottish Ministers duty to review under paragraph 3.

### **Procedure on review**

5.—(1) Where, on a review under paragraph 3 or 4, the Scottish Ministers decide to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the Scottish Ministers shall serve notice on—

- (a) the owner;
- (b) any holder of the permission, or the part affected, as the case may be; and
- (c) any other person who, in the Scottish Ministers' opinion, will be affected by the revocation or variation,

informing them of their decision and specifying a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made to them.

(2) The Scottish Ministers shall also serve notice on any person or body from which scientific advice was obtained, informing them of their decision and inviting their representations within the specified period.

(3) If, within the specified period, a person on whom notice has been served under sub-paragraph (1) so requires, the Scottish Ministers shall, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person; and
- (b) to any other person or body on whom notice was served under that sub-paragraph or sub-paragraph (2),

an opportunity to make representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose.

(4) The Scottish Ministers shall decide, having regard, in particular, to—

- (a) any representations made in response to a notice served under sub-paragraph (1) or (2); and
- (b) if applicable, the report of any person appointed pursuant to sub-paragraph (3),

whether to proceed with the revocation or variation of the permission.

(5) The Scottish Ministers shall serve on any person on whom notice was served under sub-paragraph (1) or (2) notice of their decision under sub-paragraph (4) stating—

- (a) the main reasons for the decision; and

- (b) the main considerations on which the decision is based; and
- (c) that the decision may be challenged and the procedures for doing so.

### **Effect of the Scottish Ministers' decision on review**

6.—(1) Where the Scottish Ministers have decided, under paragraph 5(1), to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the permission shall be suspended or the variation shall take effect temporarily, as the case may be, subject to sub-paragraph (2), on the date on which notice is served under paragraph 5(1).

(2) Where more than one notice is served under paragraph 5(1) in respect of the same revocation or variation, and those notices are served on different days, the suspension or temporary variation shall take effect on the date on which the last of them is served.

(3) Where the Scottish Ministers decide not to proceed with the revocation or variation of the permission under paragraph 5(4), it shall again have effect, or have effect on the terms on which that permission was effective prior to the temporary variation, as the case may be, from the date of the Scottish Ministers decision not so to proceed.

(4) In relation to a permission to which sub-paragraph (3) applies—

(a) where the Scottish Ministers have decided not to revoke the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended under sub-paragraph (1) or sub-paragraph (2), shall be treated as extended by a period equal to that during which the permission was suspended; and
- (ii) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, the specified date shall be postponed by a period equal to that during which the permission was suspended;

(b) where the Scottish Ministers have decided not to vary the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under sub-paragraph (1) or (2), shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (ii) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(5) A revocation or variation under paragraph 5(1), or the suspension or temporary variation of a permission under sub-paragraph (1), shall not affect anything done under the permission before the date determined in accordance with that sub-paragraph or, as the case may be, sub-paragraph (2).

### **Compensatory measures**

7. Where—

- (a) a project is granted permission, notwithstanding a negative assessment of the implications for a European site; or
- (b) a permission is affirmed on review, notwithstanding such an assessment,

the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected and shall ensure that the European Commission is informed of the compensatory measures taken.

## EXPLANATORY NOTE

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

These Regulations implement, in waters in Scotland and the Scottish zone referred to in the Regulations as “marine waters”:

Council Directive 85/337/EEC (O.J. No. L 175, 05.07.85, p.40) on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 97/11/EC, O.J. No. L 73, 14.03.97, p.5 and by Directive 2003/35/EC, O.J. No. L 156, 25.06.03, p.17) (“Directive 85/337”); and

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (O.J. No. L 206, 22.07.92, p.7) (“Directive 92/43”) to which there are amendments not relevant to these Regulations,

in so far as they relate to the extraction of minerals by marine dredging.

Subject to exceptions for dredging for national defence purposes and for dredging which is carried out under certain agreements in existence prior to the Regulations coming into force, the Directives are implemented by ensuring that permission is required for marine dredging projects which engage either directive (regulation 5) and that any dredging carried out without permission where it is needed is an offence (regulation 4). Applications for dredging permission must be made to the Scottish Ministers (regulation 9).

Directive 85/337 is implemented by requiring that an environmental statement is provided in relation to an application which relates to a relevant project, i.e. the extraction of minerals by dredging in marine waters which is likely to have significant effects on the environment (regulation 9). That statement must be taken into account in deciding the application (regulation 12). Directive 92/43 is implemented by requiring that an appropriate assessment is carried out of the effects of such dredging, where it is likely, either alone or in combination with other plans or projects, to have a significant effect on a European site (regulation 12(3) and Schedule 3). Such dredging is referred to in the Regulations as a “habitats project”. European sites are sites in the United Kingdom designated under Directive 92/43, and sites designated as special protection areas under Council Directive 79/409/EEC on the conservation of wild birds (O.J. No. L 103, 25.01.79, p.1) which are treated by Directive 92/43 as having been designated under that directive for these purposes. For the purposes of the Regulations sites which have been proposed by the Scottish Ministers, the Secretary of State or Department for the Environment for designation are also included. Where permission is required under regulation 5, it is an offence for persons other than the Crown to extract minerals by dredging in marine waters unless the dredging is carried out in accordance with a permission which has been granted under these Regulations (regulation 4).

The Regulations make provision for certain actions which may be undertaken before any application for permission is made. Regulation 6 enables any person who proposes to carry out dredging to request the Scottish Ministers to determine whether that dredging would constitute a relevant project, and to determine whether it would constitute a habitats project. Regulation 7 enables a person who intends to make an application for permission which requires an environmental statement to request the Scottish Ministers to give an opinion as to the information to be provided in that environmental statement. Regulation 8 requires appropriate consultation bodies, as defined in the Regulations, government departments and the Scottish Ministers to identify and provide information to assist in the preparation of an environmental statement and enables them to charge for it.

Regulation 9 requires that any application for permission include an environmental statement (unless the dredging constitutes or forms part of a project serving national defence purposes and would have an advance effect on those purposes). Any application for permission must be accompanied by a fee of £29,500. Regulation 10 allows the Scottish Ministers to require the

applicant to provide further information, if the Scottish Ministers consider the original environmental statement contains insufficient information to enable the environmental effects of the proposed dredging to be fully considered. Under regulation 11 applications must be subject to publicity and consultation. Regulation 12 sets out the considerations, (including the environmental statement and any assessment of the effect on a European site) and procedure which apply to deciding applications. Before deciding an application for permission to carry out dredging, the Scottish Ministers may give certain parties an opportunity of making representations in person or in writing to a person appointed by the Scottish Ministers. Regulation 13 creates offences where false information is provided in relation to obtaining a permission.

Under regulation 14 provision is made for consultation with any other EEA state where dredging is likely to have significant effects on the environment in that EEA state.

Provision is made under the Regulations for the transfer (regulation 15) and the variation on application (regulations 16 to 19) of a permission. A permission may also be revoked or varied otherwise than on an application, or suspended (regulations 20 and 21), where necessary in order to protect the environment. Regulation 22 provides for offences related to the transfer or variation of a permission.

Regulation 24 amends regulation 47 of the Conservation (Natural Habitats & c.) Regulations 1994. It also amends regulation 25 and 27 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007.

Regulation 25 requires the Scottish Ministers to keep a public register of applications for permission, related approvals, decisions, determinations, and opinions and information provided by applicants under the Regulations.

Regulation 26 provides for the penalties which apply to offences under the Regulations. Regulation 27 allows the Scottish Ministers to hold an inquiry before exercising certain functions under the Regulations. Regulation 28 makes provision for the use of electronic communications in complying with the procedures established by the Regulations.

Schedule 1 sets out requirements for what must be included in an environmental statement.

Schedule 2 sets out the criteria which are relevant when the Scottish Ministers determine whether a dredging project is a relevant project.

Schedule 3 imposes requirements which are similar to those in regulations 48 to 53 (general provisions for the protection of European sites) of the Conservation (Natural Habitats, &c.) Regulations 1994. Paragraphs 2 to 4 of Schedule 3 deal with the protection of European sites in three different circumstances–

- (a) paragraph 2 deals with the process for carrying out an appropriate assessment of the effect of new dredging projects on existing European sites and specifies that permission may only be granted on the terms set out in sub-paragraphs (5) to (9);
- (b) paragraph 3 provides for a review of the effect of permissions on sites which become European sites after those permissions are granted; and
- (c) paragraph 4 provides for a review of the effect on European sites of dredging agreements which were entered into before the commencement of these Regulations.

For the purposes of paragraphs 3 and 4 of Schedule 3, the definition of European site is extended to include sites in the United Kingdom upon which the European Commission is consulting the United Kingdom as to whether they should be designated.

Where a review of a permission or an agreement is carried out, the Scottish Ministers must affirm, vary or revoke the permission. The procedure to be followed where the Scottish Ministers revoke or vary a permission is set out in paragraph 5, and the effect of the Scottish Ministers' decision whether to proceed with a revocation or variation is set out in paragraph 6.

Where permission is granted or affirmed despite the negative implications for a European site, compensatory measures must be taken to ensure the overall coherence of the European network of such sites.

A regulatory impact assessment has been prepared in relation to these Regulations and can be obtained from the Scottish Government Planning Directorate, Area 2-H, Victoria Quay, Edinburgh, EH6 6QQ.

Transposition notes are available from the same place.



**2007 No. 485**

**ENVIRONMENTAL PROTECTION**

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