
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 113

The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017

PART 10

MISCELLANEOUS

Electronic communications – general

32.—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, reports, statements, notices, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement, notice or other document to any other person (“the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of 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.

(4) The cases are—

- (a) any requirement under regulation 27, including submitting information to an EEA State; and
- (b) any requirement under regulation 28, including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other 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) Where the electronic communication is received by the recipient—

- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
- (b) at any time during a day which is not working day, it is deemed to have been received on the next working day,

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and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971 ^{M1}, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement or document, any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

Marginal Citations

M1 1971 c.80. Paragraph 2 of schedule 1 was amended by section 1 of the [St Andrew's Day Bank Holiday \(Scotland\) Act 2007 \(asp 2\)](#).

Electronic communications – deemed agreement

33.—(1) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communication for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communication is the address incorporated into, or otherwise logically associated with, that communication.

(2) Deemed agreement under paragraph (1) subsists until that person gives notice under regulation 34 to revoke the agreement.

Withdrawal of consent to use of electronic communications

34. Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Commissioners or, as the case may be, to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Commissioners or, as the case may be, with the Scottish Ministers for that purpose,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of 7 days, beginning with the date on which the notice is given.

Service of notices etc.

35.—(1) Any notice required to be given to any person by the Commissioners or, as the case may be, by the Scottish Ministers, by virtue of these Regulations may be given by—

- (a) delivering it to that person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or fax to that person's proper address; or

- (d) sending it by email to that person's last known email address.
- (2) For the purposes of paragraph (1)(a), a notice is delivered to—
 - (a) a body corporate where it is given to a relevant individual within that body;
 - (b) a partnership where it is given to a partner or a person having control or management of the partnership; and
 - (c) an unincorporated association where it is given to an officer or a member of the governing body of the association or any other person having management responsibilities in respect of the association.
- (3) For the purposes of paragraph (1)(b) and (c) and section 7 of the Interpretation Act 1978 ^{M2} (service of documents by post) in its application to this regulation, “proper address” means—
 - (a) in the case of a body corporate, the registered office (if it is in the United Kingdom) or the principal office of the body in the United Kingdom;
 - (b) in the case of a partnership, the principal office of the partnership;
 - (c) in the case of an unincorporated association, the principal office of the association; or
 - (d) in any other case, a person's last known address.
- (4) For the purposes of paragraph (1)(d), a notice is sent to an email address of—
 - (a) a body corporate, where it is sent to an email address of—
 - (i) the body corporate; or
 - (ii) a relevant individual within that body,where that address is supplied by that body for the conduct of the affairs of that body;
 - (b) a partnership, where it is sent to an email address of—
 - (i) the partnership; or
 - (ii) a partner or person having control or management of that partnership,where that address is supplied by that partnership for the conduct of the affairs of the partnership;
 - (c) an unincorporated association, where it is sent to an email address of—
 - (i) an officer or member of the governing body of the association; or
 - (ii) any other person having management responsibilities in respect of the association,where that address is supplied by that association for the conduct of the affairs of that association; and
 - (d) a person other than a person mentioned in sub-paragraph (a), (b) or (c), where it is sent to an email address supplied by that person for the conduct of the affairs of that person.
- (5) In this regulation—
 - (a) “partnership” includes a Scottish partnership; and
 - (b) “relevant individual” means—
 - (i) a director, manager, secretary or other similar officer of the body corporate; or
 - (ii) where the affairs of the body corporate are managed by its members, a member.

Marginal Citations

M2 1978 c.30.

Competent authority – avoidance of conflict of interest

36.—(1) The Commissioners or, as the case may be, the Scottish Ministers are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Commissioners are to consider an application for EIA consent made by the Commissioners they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

(3) Where the Scottish Ministers are to consider an appeal against a refusal of EIA consent following an EIA application made by the Scottish Ministers, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

Co-ordination of assessments

37.—(1) Where in relation to an EIA forestry project there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a habitats regulation assessment, the Commissioners (or the Scottish Ministers, as the case may be) must, where appropriate, ensure that the habitats regulation assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “habitats regulation assessment” means an assessment under regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994 ^{M3}.

Marginal Citations

M3 [S.I. 1994/2716](#) as relevantly amended by [S.S.I. 2007/80](#) and [S.I. 2007/1843](#).

Offence - false or misleading statements

38.—(1) A person commits an offence if that person, for the purpose of procuring a particular decision on an EIA application to which these Regulations apply—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information.

(2) A person who commits an offence under paragraph (1) is liable—

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

(3) No act or omission of the Crown constitutes an offence under this regulation.

(4) The Court of Session may, on the application of the Commissioners, the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing these Regulations, declare unlawful any act or omission of the Crown which would, but for paragraph (3) be an offence under this regulation.

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

Offences - non-compliance with enforcement notices

39.—(1) A person commits an offence if that person carries out work in relation to an EIA forestry project in contravention of a requirement to discontinue that work in an enforcement notice served upon that person pursuant to paragraph 3(2)(b) of schedule 4.

(2) A person who commits an offence under paragraph (1) is liable—

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

(3) A person commits an offence if that person fails to carry out any measure required by an enforcement notice, pursuant to paragraph 3(2)(a), (c) or (d) of schedule 4, within the time period which is specified in that notice, pursuant to paragraph 3(3) of that schedule.

(4) A person who commits an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) No act or omission of the Crown constitutes an offence under this regulation.

(6) The Court of Session may, on the application of the Commissioners, the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing these Regulations, declare unlawful any act or omission of the Crown which would, but for paragraph (5) be an offence under this regulation.

(7) Despite paragraph (5), this regulation applies to a person in the public service of the Crown as it applies to other persons.

Offences by bodies corporate etc.

40.—(1) Paragraph (2) applies where—

(a) an offence under regulation 38 or 39 has been committed by—

- (i) a body corporate;
- (ii) a Scottish partnership; or
- (iii) an unincorporated association other than a Scottish partnership; and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

- (i) a relevant individual; or
- (ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In paragraph (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

- (i) a director, manager, secretary or similar officer of the body;
- (ii) where the affairs of the body are managed by its members, a member;

(b) in relation to a limited liability partnership, a member;

(c) in relation to a Scottish partnership, a partner; or

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

Revocation and savings

41.—(1) The 1999 Regulations are revoked.

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(2) The 1999 Regulations continue to have effect as they did immediately before 16th May 2017 in relation to any relevant project in connection with which the Commissioners have before 16th May 2017—

(a) granted consent under regulation 15 of the 1999 Regulations; or

(b) received—

(i) an application for an opinion under regulation 5(1) of the 1999 Regulations;

(ii) a request for an opinion under regulation 9(1) of the 1999 Regulations; or

(iii) an application for consent under regulation 10 of the 1999 Regulations.

(3) In this regulation, “relevant project” and “consent” have the meanings given to them in regulation 2 of the 1999 Regulations.

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Changes and effects yet to be applied to :

- Regulations power to amend or revoke conferred by [2023 c. 55 s. 164\(3\)Sch. 14 Pt. 2](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 31(4A) inserted by [S.S.I. 2020/466 reg. 9\(4\)](#)
- reg. 41(4)(5) inserted by [S.S.I. 2021/44 reg. 10\(34\)](#)