

SCHEDULE 4

ENFORCEMENT POWERS

Appeals against enforcement notices

4.—(1) A notified person may appeal to the Scottish Ministers.

(2) An appeal must be brought before the expiry of the period of 28 days beginning with the date on which the notified person is served with the notice, or within such longer period as the Scottish Ministers may (before the expiry of that 28 day period) allow.

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

- (a) the enforcement notice;
- (b) any relevant EIA consent; and
- (c) any other information or representations which the notified person who is appealing (for the remainder of this paragraph, “the appellant”) wishes to provide or make.

(4) Where notice of appeal is given in accordance with sub-paragraphs (1) to (3), the Scottish Ministers must send a copy of the notice of appeal to the Commissioners who must, within a period of 28 days beginning with the date of which they receive the notice of appeal, supply to the Scottish Ministers copies of any representation or information made or provided to them in relation to any relevant EIA consent or EIA application.

(5) The Scottish Ministers must determine an appeal before the expiry of the period of 28 days beginning with—

- (a) the date on which they receive the information and representations supplied to them under sub-paragraph (4);
- (b) in cases where there is no EIA consent nor any EIA application relevant to the enforcement notice, the date on which the Scottish Ministers received notice of the appeal.

(6) Subject to sub-paragraph (9), the Scottish Ministers may determine an appeal by—

- (a) affirming the enforcement notice;
- (b) quashing the enforcement notice; or
- (c) varying any part of the enforcement notice.

(7) In determining an appeal, the Scottish Ministers must take into consideration any environmental information, any representations in relation to the appeal and any other material consideration, including in particular their assessment of the direct and indirect significant effects of the EIA forestry project on the factors specified in regulation 5(3).

(8) On determination of an appeal, the Scottish Ministers must give notice of the appeal decision, including a statement of the reasons and considerations on which it is based to—

- (a) the appellant; and
- (b) the Commissioners.

(9) The Scottish Ministers may not quash an enforcement notice where—

- (a) it was served pursuant to paragraph 3(1)(a); and
- (b) it appears to the Scottish Ministers that EIA consent is required by virtue of regulation 3(1).

(10) Where an enforcement notice requires the taking of measures mentioned in paragraph 3(2) (a), (c) or (d), the giving of notice of appeal against the enforcement notice in accordance with sub-paragraphs (1) to (3) has the effect of suspending the enforcement notice insofar as it relates to any of those requirements until—

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

- (a) the appeal is determined by the Scottish Ministers; or
- (b) (if the appeal is withdrawn) the withdrawal of the appeal.

(11) The giving of a written statement of reasons under paragraph 3(5) in connection with an enforcement notice given under paragraph 3(1)(a) is not an event for the purposes of regulation 8(2) where—

- (a) an appeal is brought against the enforcement notice to which the written statement of reasons relates; and
- (b) the Scottish Ministers determine to quash the enforcement notice.