
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 114

**The Agriculture, Land Drainage and
Irrigation Projects (Environmental Impact
Assessment) (Scotland) Regulations 2017**

PART 2

AGRICULTURE AND IRRIGATION PROJECTS

Conditions and restrictions on the granting of consent

23.—(1) The Scottish Ministers must not grant consent for an EIA project which would involve doing anything which would be unlawful under regulation 39, 41 or 43 of the Habitats Regulations (which does not include anything for which a licence has been granted under regulation 44 of those Regulations).

(2) Paragraphs (3) to (7) apply to a decision by the Scottish Ministers whether or not to grant consent for an EIA project which is likely to have a significant effect upon a European site (either alone or in combination with other projects) (referred to in those paragraphs as “a European site project”).

(3) Subject to paragraphs (5) and (6), the Scottish Ministers may grant consent for the European site project only if they have considered its implications for the European site and are satisfied that the European site project will not adversely affect the integrity of that site.

(4) The consideration of implications to be undertaken under paragraph (3) must involve an appropriate assessment of the implications of the European site project for the European site in view of the conservation objectives of the site.

(5) If the Scottish Ministers are satisfied that, there being no alternative solutions, the European site project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (6), may be of a social or economic nature), they may grant consent for the European site project, notwithstanding a negative assessment of the implications for a European site.

(6) Where a European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (5) must be either—

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

(7) Where in accordance with paragraph (5), consent is granted for a European site project notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 (as defined in the Habitats Regulations) is protected.

(8) Any consent for an EIA project granted must be subject to the conditions required by paragraph (9) and to such additional conditions as the Scottish Ministers may think fit.

- (9) Every consent for an EIA project must be granted subject to conditions to the effect that—
- (a) the consent shall lapse if the EIA project has not commenced (by the carrying out of a material act) within 1 year of the date on which it was granted;
 - (b) if the EIA project has not been completed (which, for these purposes, shall mean that works permitted by the consent have been carried out and completed and all changes in the use or level of use of the relevant land permitted by the consent have been implemented) within the period of 3 years beginning with the date on which the consent was granted, the consent shall expire and the Scottish Ministers may require operations or uses implemented pursuant to the consent to cease until they have granted further consent in accordance with subparagraph (d);
 - (c) the consent authorises the EIA project only as described in the application for consent for an EIA project, subject to any amendments approved by the Scottish Ministers, and any material change in the operations or uses so authorised shall require further consent in accordance with subparagraph (d);
 - (d) applications for further consent under conditions in sub-paragraph (b) or (c) must be subject to such of the requirements of these Regulations as the Scottish Ministers think fit.