

SCHEDULE 5

Regulation 25

Consultation by the planning authority

Subject to regulation 25, the planning authority must before determining an application for planning permission for development consult a person, authority or body mentioned in a paragraph below in the circumstances specified in that paragraph.

1. SEPA—

(1) where the development is likely to result in a material increase in the number of buildings at risk of being damaged by flooding; or

(2) where the development consists of or includes—

- (a) fish farming;
- (b) mining operations;
- (c) the carrying out of building or other operations or use of land for the purposes of providing or storing mineral oils and their derivatives;
- (d) the carrying out of building or other operations (other than the laying of sewers, the construction of pump-houses in a line of sewers, the construction of septic tanks and cesspools serving single dwellinghouses, single caravans or single buildings in which not more than 10 people will normally reside, work or congregate, and works ancillary thereto) or use of land for the retention, treatment or disposal of sewage, trade-waste, or effluent;
- (e) the carrying out of works or operations in the bed or on the banks of a river or stream;
- (f) the use of land as a cemetery; or
- (g) the use of land for the deposit of any kind of refuse or waste, including slurry or sludge.

2. Scottish Natural Heritage where—

- (a) the development may affect a site of special scientific interest; or
- (b) the development consists of or includes the winning and working of peat other than for the domestic requirements of the applicant.

3. The Health and Safety Executive where the development is within an area which has been notified to the planning authority by the Health and Safety Executive for the purpose of this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances [^{F1}(otherwise than on a relevant nuclear site)] and which involves the provision of—

- (a) residential accommodation;
- (b) more than 250 square metres of retail floor space;
- (c) more than 500 square metres of office floor space; or
- (d) more than 750 square metres of floor space to be used for an industrial process,

or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area.

F1 Words in sch. 5 para. 3 inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), [Sch. 3 para. 209\(2\)](#) (with Sch. 4)

[^{F2}3A. The Office for Nuclear Regulation where the development is within an area which has been notified to the planning authority by the Office for Nuclear Regulation for the purpose of

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this provision because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances on a relevant nuclear site and which involves the provision of—

- (a) residential accommodation;
- (b) more than 250 square metres of retail floor space;
- (c) more than 500 square metres of office floor space; or
- (d) more than 750 square metres of floor space to be used for an industrial process,

or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area.]

F2 Sch. 5 para. 3A inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), [Sch. 3 para. 209\(3\)](#) (with Sch. 4)

[^{F3}4. Scottish Natural Heritage, the Health and Safety Executive and SEPA where the development—

- (a) involves the siting of new establishments;
- (b) ^{F4}consists of modifications to establishments covered by Article 11 of Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive [96/82/EC](#) (OJ L 197, 24.7.2012, p.1) [^{F5}, as Directive 2012/18/EU had effect immediately before IP completion day]; or
- (c) includes transport routes, locations of public use and residential areas in the vicinity of an establishment, where the siting or development may be the source of or increase the risk or consequences of a major accident, and, in relation to development falling within paragraph (c), any person who is, according to the register held by the planning authority under regulation 41 of the *Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015*, the person who is in control of the land on which the establishment is located.]

F3 Sch. 5 para. 4 substituted (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), reg. 1, [sch. 8 para. 3\(4\)](#)

F4 Words in [sch. 5 para. 4\(b\)](#) inserted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), regs. 1, [3\(3\)\(a\)](#) (as amended by [S.S.I. 2019/274](#), regs. 1, [2\(2\)](#) and [S.S.I. 2020/310](#), regs. 1, [2\(2\)\(4\)](#), [4\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

F5 Words in [sch. 5 para. 4\(b\)](#) inserted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), regs. 1, [3\(3\)\(a\)](#) (as amended by [S.S.I. 2019/274](#), regs. 1, [2\(2\)](#) and [S.S.I. 2020/310](#), regs. 1, [2\(2\)\(4\)](#), [4\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

5. The Scottish Ministers, in the case of—

(1) development of land within 67 metres of the middle of, or development comprising the formation, laying out or alteration of any means of access to—

- (a) a trunk road;
- (b) a proposed trunk road or a proposed special road, being a road the route of which is shown as such in the development plan, or in respect of which the Scottish Ministers have given notice in writing to the planning authority of their proposal, together with the maps or plans sufficient to identify the proposed route of the road;

- (c) any road which is comprised in the route of a special road to be provided by the Scottish Ministers in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984 relating to special roads, and which has not for the time being been transferred to them; or
 - (d) any road which has been or is to be provided by the Scottish Ministers in pursuance of an Order under the provisions of that Act relating to trunk roads and special roads and has not for the time being been transferred to any roads authority;
- (2) development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a trunk road;
- ^{F6}(3)
- ^{F7}(4)
- ^{F8}(5)
- (6) development which consists of or includes the winning and working of peat other than for the domestic requirements of the applicant; or
- (7) marine fish farm development.

F6	Sch. 5 para. 5(3) omitted (1.10.2015) by virtue of The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 (S.S.I. 2015/237) , regs. 1(1), 5(3)(a)
F7	Sch. 5 para. 5(4) omitted (1.10.2015) by virtue of The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 (S.S.I. 2015/237) , regs. 1(1), 5(3)(a)
F8	Sch. 5 para. 5(5) omitted (1.10.2015) by virtue of The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015 (S.S.I. 2015/237) , regs. 1(1), 5(3)(a)

6. The community council, if any, within whose area the development is to take place where—
- (a) the community council, within 7 days (excluding Saturday and Sunday, December 25th and 26th and January 1st and 2nd) of the date on which the planning authority sent to that community council in accordance with regulation 23(1) the list which includes information about the application for such development, informs the planning authority that it wishes to be consulted; or
 - (b) the development is likely to affect the amenity in the area of the community council.
7. The Coal Authority where the development consists of—
- (a) the erection of a building, other than an alteration, extension or re-erection of an existing building or the erection of a building of a temporary character; or
 - (b) the provision of a pipeline,
- in an area of coal working or former or proposed coal working notified by the Coal Authority to the planning authority.
8. Any adjoining planning authority, where the development is likely to affect land in the district of that authority.
9. Network Rail Infrastructure Limited or any other railway undertakers likely to be affected where—
- (a) some part of the development is to be situated within 10 metres of a railway line forming part of the national railway network; or
 - (b) the development is likely to result in a material increase in the volume or a material change in the character of traffic using a level crossing over a railway.
10. The roads authority concerned, where the development involves—

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- (a) the formation, laying out or alteration of any means of access to, or is likely to create or attract traffic which will result in a material increase in the volume of traffic entering or leaving, a road (other than a trunk road) for which the planning authority are not also the roads authority; or
- (b) the formation, laying out or alteration of any means of access to land affording access to a toll road.

11. The Theatres Trust where the development involves any land on which there is a theatre as defined in the Theatres Trust Act 1976 ^{M1}.

Marginal Citations

M1 1976 c.27.

12. Scottish Water where the development is likely to require a material addition to or a material change in the services provided by that authority.

13. A district salmon fishery board where the development consists of fish farming.

14. The Scottish Ministers and the Secretary of State where marine fish farm development may affect a site designated as a controlled site under section 1 of the Protection of Military Remains Act 1986 ^{M2}.

Marginal Citations

M2 1986 c.35.

15. The Crofting Commission where the development may have an adverse effect on the continued use of land for crofting.

16. sportscotland where the development is likely to—

- (a) result in the loss of an outdoor sports facility;
- (b) prejudice the use of an existing outdoor sports facility for that purpose; or
- (c) prevent the use of land, which was last used as an outdoor sports facility, from being used again for that purpose.

[^{F9}**17.** Historic Environment Scotland, in the case of—

- (a) development of land which is situated within 800 metres from any Royal Palace or Park, and might affect the amenities of that Palace or Park;
- (b) development which may affect—
 - (i) a World Heritage Site;
 - (ii) a historic garden or designed landscape;
 - (iii) the site of a scheduled monument or its setting; or
 - (iv) a category A listed building or its setting; or
- (c) development (other than householder development) which may affect a historic battlefield.]

F9 Sch. 5 para. 17 inserted (1.10.2015) by [The Town and Country Planning \(Historic Environment Scotland\) Amendment Regulations 2015 \(S.S.I. 2015/237\)](#), regs. 1(1), **5(3)(b)** (with reg. 5(4))

Interpretation of Schedule 5

In this Schedule—

(1) “district salmon fishery board” has the meaning assigned to it by section 40 of the Salmon Act 1986 ^{M3};

“historic battlefield” means a battlefield which is included in the inventory of battlefields compiled and maintained under section 32B of the Ancient Monuments and Archaeological Areas Act 1979 ^{M4}; and

“outdoor sports facility” means land used as—

- (a) an outdoor playing field extending to not less than 0.2ha used for any sport played on a pitch;
- (b) an outdoor athletics track;
- (c) a golf course;
- (d) an outdoor tennis court, other than those within a private dwelling, hotel or other tourist accommodation; and
- (e) an outdoor bowling green.

[^{F10}“relevant nuclear site” means a site which is—

- (a) a nuclear site (within the meaning given in section 112(1) of the Energy Act 2013);
- (b) an authorised defence site (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998);
- (c) a new nuclear build site (within the meaning given in regulation 2A of those 1998 Regulations).]

“roads authority” has the same meaning as in section 151 of the Roads (Scotland) Act 1984 ^{M5};

“SEPA” means the Scottish Environment Protection Agency established under section 20 of the Environment Act 1995 ^{M6};

“site of special scientific interest” has the same meaning as in section 58(1) of the Nature Conservation (Scotland) Act 2004 ^{M7}.

“slurry” means animal faeces and urine (whether or not water has been added);

“special road” means a road provided or to be provided in accordance with a scheme under section 7 of the Roads (Scotland) Act 1984;

“sportscotland” means the Scottish Sports Council;

“toll order” has the same meaning as in Part II of the New Roads and Street Works Act 1991 ^{M8};

“toll road” means a road which is the subject of a toll order;

“trunk road” means a road or proposed road which is a trunk road within the meaning of section 151 of the Roads (Scotland) Act 1984 that is to say, a road which is a trunk road by virtue of section 5 of that Act or of an Order or direction under that section or section 202 of the Act; and

(2) expressions which are used in paragraph 4 and in Council Directive 96/82/EC of the European Council ^{M9} on the control of major accident hazards involving dangerous substances have the same meaning in that paragraph as in that Directive [^{F11}, as it had effect immediately before IP completion day].

F10 Words in sch. 5 inserted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), [Sch. 3 para. 209\(4\)](#) (with Sch. 4)

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- F11** Words in sch. 5 inserted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), regs. 1, **3(3)(b)** (as amended by [S.S.I. 2019/274](#), regs. 1, **2(2)** and [S.S.I. 2020/310](#), regs. 1, **2(2)(4)**, 4(2)); 2020 c. 1, **Sch. 5 para. 1(1)**

Marginal Citations

- M3** 1986 c.62.
- M4** 1979 c.46. Section 32B was inserted by section 11 of the [Historic Environment \(Amendment\) \(Scotland\) Act 2011 \(asp 3\)](#).
- M5** 1984 c.54. Section 151 was relevantly amended by the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#), Schedule 13, paragraph 135(10) and [S.I. 2001/1400](#).
- M6** 1995 c.25.
- M7** 2004 (asp 6).
- M8** 1991 c.22.
- M9** O.J. No. L 10, 14.1.1997, p.13. The Directive was amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council of 29th September 2003 (O.J. No. L 284, 31.10.2003) and Directive 2003/105/EC of the European Parliament and of the Council of 16th December 2003 (O.J. No. L 345, 31.12.2003 p.97).

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