
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 138

**The Transport and Works (Scotland) Act 2007
(Environmental Impact Assessment) Regulations 2017**

Insertion of sections 20A to 20C

6. After section 20 insert—

“20A. Monitoring measures

(1) Where a determination is made by the Scottish Ministers under section 11 and that determination relates to an application or proposal of the type referred to in section 11(1), if section 12(4) and (7) apply to that determination the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works which are the subject of the determination and the significance of the effects of those works on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring,
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the relevant directive) or other legislation applicable in Scotland are more appropriate, and
- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

(3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must include the terms of those measures in any order made under section 1 that follows on from any determination referred to in subsection (1).

(4) Where mitigation measures or monitoring measures are required as part of an order made under section 1 the Scottish Ministers must take steps to ensure that those measures are implemented.

(5) In subsection (2)—

- (a) “Union legislation” means any enactment in the domestic legislation of Scotland giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU treaties, and
- (b) the reference to the relevant directive is to the directive specified in section 12(9).

(6) In this section and in section 12(4)(c)(v) “monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed works that are the subject of an order under section 1.

20B. Offences

(1) Any person who, for the purpose of procuring a particular decision in relation to the making or otherwise of an order under section 1 to which section 11(8) applies—

- (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,

commits an offence.

(2) A person who commits an offence under subsection (1) shall be 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 section.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing the provision, declare unlawful any act or omission of the Crown which would but for subsection (3) have constituted an offence under this section.

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

20C. Offences by bodies corporate etc.

(1) Subsection (2) applies where—

- (a) an offence under section 20B 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 subsection (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,
- (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.”.