

2017 No. 114

AGRICULTURE

LAND DRAINAGE

WATER

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

<i>Made</i> - - - -	<i>11th April 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>13th April 2017</i>
<i>Coming into force</i> - -	<i>16th May 2017</i>

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

They have taken into account the selection criteria in Annex III to Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(b).

PART 1

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 and come into force on 16th May 2017.

Interpretation

2.—(1) In these Regulations—

“agricultural” has the same meaning as in the Agriculture (Scotland) Act 1948(c);

“agricultural land” means agricultural land as defined in the Agriculture (Scotland) Act 1948 and includes any dwelling-house or other building occupied for the purpose of farming any land;

“additional information” means—

- (a) supplementary information required in accordance with regulation 18(1); or
- (b) any other information provided by the applicant which, in the opinion of the Scottish Ministers, is substantive information about a matter to be included in the EIA report in accordance with regulation 16(2);

“application for multi-stage consent” means an application for approval, consent or agreement required by a condition included in a consent for an EIA project or an improvement order authorising an EIA project, as the case may be, where (in terms of the condition) that approval, consent or agreement must be obtained before all or part of the project permitted by

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51), (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) OJ L 26, 28.1.2012, p.1, as amended by Directive 2014/52/EU (OJ L 124, 25.4.2014, p.1).

(c) 1948 c.45. “Agricultural” and “agricultural land” are defined in section 86.

the consent for an EIA project or an improvement order authorising an EIA project, as the case may be, may be begun;

“the application website” means a website maintained by the Scottish Ministers for the purpose of making publicly available information relating to applications to which these Regulations apply;

“consultation bodies” means—

- (a) Historic Environment Scotland;
- (b) Scottish Natural Heritage;
- (c) the Scottish Environment Protection Agency;
- (d) any other public body which the Scottish Ministers consider is likely to have an interest in the project by reason of that body’s specific environmental responsibilities or local or regional competencies;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment;

“EIA project” means a project which the Scottish Ministers have decided is likely to have a significant effect on the environment by virtue of factors such as its nature, size or location;

“EIA report” has the meaning given in regulation 16;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(a);

“environmental impact assessment” has the meaning given in regulation 4;

“environmental information” means—

- (a) the EIA report submitted in respect of the project;
- (b) any additional information submitted in respect of the project;
- (c) any representations made by any consultation body, or other public body, consulted in respect of the project in accordance with these Regulations; and
- (d) any representations duly made by any other person about the environmental effects of the project;

“European site” means a site within the meaning of regulation 10 of the Habitats Regulations;

“the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(b);

“the Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994(c);

“improvement order” means an order made by the Scottish Ministers in accordance with the first schedule of the Land Drainage (Scotland) Act 1958(d);

“interested person” means a person who notifies the Scottish Ministers in accordance with regulation 30(6) (appeals to the Scottish Ministers) of that person’s wish to make representations in respect of an appeal;

“multi-stage consent” means an approval, consent or agreement given pursuant to an application for multi-stage consent;

“project” means—

- (a) the execution of construction works or other installations or schemes; or
- (b) other interventions in the natural surroundings and landscape involving—
 - (i) the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

(a) 2000 c.7, amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

(b) OJ L 206, 22.07.92, p.7.

(c) S.I. 1994/2716, to which there are amendments not relevant to these Regulations.

(d) 1958 c.24.

- (ii) restructuring of rural land holdings on agricultural land;
- (iii) irrigation; or
- (iv) drainage;

“relevant assessment” means, in relation to a project, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the project;

“relevant land” means the land upon which the project is to be carried out or, in relation to a project which has already been carried out, has been carried out;

“scoping opinion” means [why not written statement] the opinion of the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“screening opinion” means a written statement of the opinion of the Scottish Ministers as to whether a project is, or is not, an EIA project;

“sensitive area” means any of the following:—

- (a) land notified under section 3(1) or 5(1) of the Nature Conservation (Scotland) Act 2004(a);
- (b) land in respect of which an order has been made under section 23 of the Nature Conservation (Scotland) Act 2004;
- (c) a European site;
- (d) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997(b); and

“Union legislation” means any enactment in national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties.

(2) Unless otherwise provided, expressions used both in these Regulations and in the Directive or in the Habitats Directive shall have the same meaning in these Regulations as they have for the purposes of the Directive in which that expression appears.

(3) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation or schedule shall be construed as a reference to the regulation or schedule bearing that number in these Regulations.

(4) All applications, notices, notifications, representations, requests, approvals and agreements to which these Regulations apply must be made in writing.

Application

3.—(1) These Regulations apply to any project in Scotland which is not exempt by virtue of paragraphs (2) to (4).

(2) A project is exempt under this paragraph if it—

- (a) constitutes development to which the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017(c) apply; or
- (b) is a forestry project as defined in regulation 2(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017(d).

(3) The Scottish Ministers may direct that these Regulations do not apply in relation to a particular project specified in the direction if the project has the response to a civil emergency as its sole purpose and where, in the opinion of the Scottish Ministers, compliance with these Regulations would have an adverse effect on that purpose.

(a) 2004 asp 6.

(b) 1997 c.8. Section 263A was inserted by the Planning etc. (Scotland) Act 2006 asp 17, section 50.

(c) S.S.I. 2017/102.

(d) S.S.I. 2017/113.

(4) The Scottish Ministers may, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive), direct that these Regulations do not apply in relation to a particular project specified in the direction where in the opinion of the Scottish Ministers compliance with these Regulations would result in adversely affecting the purpose of the project.

(5) Before making a direction under paragraph (4) the Scottish Ministers must consider whether another form of assessment would be appropriate and where a direction is given the Scottish Ministers must—

- (a) make available to the public concerned the information considered in making the direction and the reasons for making the direction; and
- (b) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.

Environmental impact assessment

4.—(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an EIA report by the applicant;
- (b) the carrying out of consultation, publication and notification as required by regulations 17 and 18 and, where relevant, regulations 19 and 20;
- (c) the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the Scottish Ministers on the significant effects of the project on the environment, taking into account the results of the examination referred to in subparagraph (c) and, where appropriate, their own supplementary examination; and
- (e) the integration of that reasoned conclusion into the decision notice in accordance with regulation 22.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the project, the direct and indirect significant effects of the project (including, where the project will have operational effects, those operational effects) on the factors specified in paragraph (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under the Habitats Directive and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds^(a);
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape.

(4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the project to risks, so far as relevant to the project, of major accidents and disasters.

(5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to an application for consent for an EIA project, or an improvement order authorising an EIA project, as the case may be, must identify the likely significant effects of the project on the environment before a decision to grant consent for that project is made.

(6) This paragraph applies where the Scottish Ministers—

- (a) consider that the likely significant effects of the project on the environment are not fully identifiable at the time of their determination of the application for consent under these Regulations, or for an improvement order authorising an EIA project, as the case may be; and

(a) OJ L 20, 26.1.2010, p.7.

- (b) are minded to grant the consent, or make the improvement order, as the case may be, subject to a condition that all or part of the project must not commence before certain matters in implementation of that consent or improvement order, have been approved.

(7) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

PART 2

AGRICULTURE AND IRRIGATION PROJECTS

Prohibition on granting consent without an environmental impact assessment

5. The Scottish Ministers must not grant consent for an EIA project under these Regulations unless an environmental impact assessment has been carried out in respect of that project, and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

Screening opinion for agriculture – uncultivated land and semi-natural areas

6. No person may begin or carry out a project involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes without first obtaining a screening opinion in accordance with regulations 10 to 12.

Screening opinion for irrigation project

7. No person may begin or carry out a project involving irrigation without first obtaining a screening opinion in accordance with regulations 10 to 12.

Screening opinion for agriculture – restructuring project

8.—(1) Where paragraph (2) applies, no person may begin or carry out a project involving restructuring of rural land holdings on agricultural land without first obtaining a screening opinion in accordance with regulations 10 to 12.

(2) This paragraph applies where—

- (a) the project, or any part of it, is to be carried out in a sensitive area; or
- (b) the project is to be carried out wholly outside a sensitive area and the extent of the project is equal to or exceeds the threshold applicable to it calculated in accordance with regulation 9.

Thresholds for agriculture – restructuring projects

9.—(1) The method for determining whether the extent of a project for the restructuring of rural land holdings is equal to or exceeds the threshold applicable to it shall be determined in accordance with this regulation.

(2) Where a project consists of only one of the types of project specified in column 1 of the table in schedule 1, the threshold applicable to it is that specified for that type of project in column 2 of the table in that schedule.

(3) Where a project is made up of more than one of the types of project specified in column 1—

- (a) each relevant part of the project must be assessed so as to determine the threshold applicable to that part; and
- (b) if any relevant part of the project equals or exceeds the threshold applicable to that part, then the entire project is to be treated as having an extent equal to or exceeding the threshold applicable to it.

Application for screening opinion

- 10.**—(1) An application for a screening opinion must be accompanied by—
- (a) a plan sufficient to identify the land;
 - (b) a description of the project, including in particular—
 - (i) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (ii) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
 - (c) a description of the aspects of the environment likely to be significantly affected by the project; and
 - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (2) An application for a screening opinion may, in addition to the information required in accordance with paragraph (1), also be accompanied by a description of any features of the project, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.
- (3) The information referred to in paragraph (1) is to be compiled taking into account, where relevant—
- (a) the selection criteria set out in schedule 2; and
 - (b) the available results of any relevant assessment.

Screening opinions – time period for decision

- 11.**—(1) Following an application for a screening opinion under regulation 10, the Scottish Ministers must adopt a screening opinion—
- (a) as soon as possible, and in any event within a period of time not exceeding 90 days beginning with the date of receipt of the application; or
 - (b) where notice is given under paragraph (2), by the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.
- (2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the project it is not practicable to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the application, the Scottish Ministers may extend that period by notice in writing given to the person who made the application.
- (3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which they are to adopt a screening opinion pursuant to the application.
- (4) The Scottish Ministers must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify in writing the person who made the application of the points on which they require further information.
- (5) For the purposes of paragraph (1), the date on which an application for a screening opinion is taken to have been received is the date on which the last of the items or information required to be contained in or accompany an application for a screening opinion is received by the Scottish Ministers.

Screening opinions – determination

12.—(1) When making a determination as to whether a project is an EIA project, the Scottish Ministers must—

- (a) in all cases take into account—
 - (i) the information provided by the applicant;
 - (ii) such of the selection criteria set out in schedule 2 as are relevant to the project;
 - (iii) the available results of any relevant assessment; and
- (b) where information is provided to them by virtue of regulation 10(1) and (2) or 11(4), base their determination on that information.

(2) Where the Scottish Ministers adopt a screening opinion—

- (a) that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 2 as are relevant to the project, the main reasons for their conclusion; and
- (b) where the screening opinion is to the effect that the project is not an EIA project, the statement referred to in paragraph (a) must state any features of the project or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

(3) As soon as possible after adopting a screening opinion the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2) to the applicant.

Requirement for consent

13. No person may begin or carry out an EIA project without first obtaining consent from the Scottish Ministers.

Scoping opinion

14.—(1) After obtaining a screening opinion that a project is an EIA project and before applying for consent for an EIA project, the applicant may request the Scottish Ministers to adopt a scoping opinion.

(2) A request under paragraph (1) must include—

- (a) a plan sufficient to identify the land;
- (b) a brief description of the nature and purpose of the project and of its likely impact on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information to adopt a scoping opinion, they must within the period of 28 days beginning with the date of receipt of the request under paragraph (1) notify the person making the request of the points on which they require further information.

(4) The Scottish Ministers must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted the consultation bodies.

(5) Before adopting a scoping opinion, the Scottish Ministers must take into account—

- (a) the specific characteristics of the particular project, including its location and technical capacity;
- (b) the specific characteristics of the project of the type concerned; and
- (c) the environmental features likely to be affected by the project.

(6) The Scottish Ministers must within the period of 35 days beginning with the date of receipt of that request under paragraph (1), or such longer period as they reasonably require, adopt a scoping opinion and send a copy to the person who made the request.

Procedure to facilitate preparation of EIA reports

15.—(1) An applicant who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice in writing to the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the land and the nature and purpose of the project, and must indicate the main environmental consequences to which the applicant proposes to refer in the EIA report.

(3) Where the Scottish Ministers receive notice under paragraph (1) they must—

- (a) notify the consultation bodies in writing of the name and address of the applicant and of the duty imposed on those bodies by paragraph (4) to make information available to the applicant; and
- (b) inform in writing the applicant of the names and addresses of the bodies so notified.

(4) Subject to paragraphs (5) and (6), the Scottish Ministers and any body notified in accordance with paragraph (3) must, if requested by the applicant, enter into consultation with the applicant to determine whether the Scottish Ministers or the body have in their possession any information which the applicant or they consider relevant to the preparation of the EIA report, and the Scottish Ministers or body must make any such information available to the applicant.

(5) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 10(1) of the Environmental Information (Scotland) Regulations 2004(a); or
- (b) are prevented from disclosing by regulation 11(2) of those Regulations.

(6) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(b); or
- (b) are prevented from disclosing by regulation 13(1) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by the Scottish Ministers or any body notified in accordance with paragraph (3) when making information available in accordance with paragraph (4).

Application and EIA report

16.—(1) An application for consent for an EIA project must be accompanied by—

- (a) an environmental impact assessment report (referred to in these Regulations as an “EIA report”); and
- (b) such number of copies of the application as the Scottish Ministers may reasonably require.

(2) An EIA report is a report prepared in accordance with this regulation by the applicant which includes (at least)—

- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the project on the environment;

(a) S.S.I. 2004/520, as amended by S.S.I. 2013/127.

(b) S.I. 2004/3391, as relevantly amended by S.I. 2015/1897.

- (c) a description of the features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 3 relevant to the specific characteristics of the project or of the type of project in question and to the environmental features likely to be affected.

(3) Where a scoping opinion is issued, the EIA report must be based on that scoping opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of such experts.

Consultation and publication

17.—(1) Where the Scottish Ministers have received an application for consent for an EIA project they must—

- (a) send a copy of the application, including the EIA Report, to the consultation bodies and consult them about the EIA report and inform them how and by what date they may make representations (being a date within the period of 30 days beginning with the date on which the application was sent); and
- (b) in order to ensure the effective participation of the public concerned in the decision-making process, publish as soon as possible a notice in accordance with paragraphs (2) to (4).

(2) Notice under paragraph (1)(b) must—

- (a) describe the application and the project to which the EIA report relates;
- (b) state that the project is subject to environmental impact assessment and, where relevant, state that it is likely to have significant effects on the environment in another EEA State;
- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
- (d) state how copies of the EIA report may be obtained;
- (e) state the cost of a copy of the EIA report;
- (f) state how and by what date representations may be made (being a date within the period of 30 days beginning with the last date on which the notice is published);
- (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice is to be given of any subsequent submission by the applicant of additional information and how representations in relation to that additional information may be made; and
- (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by whom such decisions are to be taken.

(3) Notice under paragraph (1) must be published—

- (a) on the application website;

- (b) in The Edinburgh Gazette; and
- (c) in a newspaper circulating in the locality in which the project is situated.

(4) The applicant must, at the time of submitting the report, pay the cost to be incurred by the Scottish Ministers in arranging publication of the notice in accordance with paragraph (3)(b) and (c).

(5) The Scottish Ministers must make copies of the report and other documents submitted with the application available for inspection on the application website.

Additional information

18.—(1) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the applicant supplementary information about a matter to be included in the EIA report in accordance with regulation 4(2) which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the project on the environment.

(2) The applicant must provide the information, and such information provided is referred to in these Regulations as “supplementary information”.

(3) Where additional information is provided, regulation 17 applies to the provision of such information as it applies to the submission of an EIA report as if references to the report were references to the additional information.

Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom

19.—(1) This regulation applies where—

- (a) it comes to the attention of the Scottish Ministers that a project proposed to be carried out in Scotland is an EIA project and is likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
- (b) an EEA State other than the United Kingdom likely to be significantly affected by such a project so requests.

(2) The Scottish Ministers must—

- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (b) below, the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);
- (b) publish the information in sub-paragraph (a) above in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
- (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars referred to in paragraph (2)(a) are—

- (a) a description of the project, together with any available information on its possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must as soon as possible send to that EEA State the following information:—

- (a) a copy of the application concerned (which includes the EIA report); and
- (b) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

- (5) The Scottish Ministers, insofar as they are concerned, must also—
- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the applicant to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before consent is granted, to forward to the Scottish Ministers, within a reasonable time, their opinion on the information supplied.
- (6) The Scottish Ministers must in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.
- (7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned the Scottish Ministers must inform the EEA State of the decision and forward to it a copy of the decision notice.

Projects in another EEA State likely to have significant transboundary effects

20.—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the developer of a project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
 - (b) determine in agreement with that EEA State a reasonable period, before consent for the project is granted, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and
 - (c) so far as they have received such information, notify the consultation bodies and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
 - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.
- (2) The Scottish Ministers must also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
 - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

Availability of opinions etc. for inspection

21.—(1) Where any document mentioned in paragraph (2) is received, issued or adopted by the Scottish Ministers, the Scottish Ministers must make copies of that document available for inspection—

- (a) on the application website; and
- (b) at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.

(2) The documents are any—

- (a) request under regulation 14(1);
- (b) direction given under regulation 3(3) or (4);
- (c) screening opinion;
- (d) scoping opinion;
- (e) EIA report and any additional information; and
- (f) statement of reasons accompanying any of the above.

(3) Documents made available under paragraph (1) must remain so available for a period of 2 years.

Decision notice

22.—(1) The Scottish Ministers must determine an application for consent for an EIA project as soon as reasonably practicable but in any event within the period of 6 months beginning with the date on which it receives the application; but may determine it within such other time period as may be agreed with the applicant.

(2) Where an application for consent for an EIA project is determined by the Scottish Ministers the notification of the decision to be given to the applicant (referred to in these Regulations as “the decision notice”) must include the information specified in paragraph (3).

(3) The information is—

- (a) a description of the project;
- (b) the terms of the decision;
- (c) the main reasons and considerations on which the decision is based;
- (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures; and
- (e) a summary of—
 - (i) the environmental information; and
 - (ii) the results of the consultations and information gathered pursuant to regulations 17, 18, and where relevant, regulations 19 and 20 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 20, have been incorporated or otherwise addressed;
- (f) if the decision is to grant consent—
 - (i) any conditions to which the decision is subject;
 - (ii) the reasoned conclusion referred to in regulation 4(1)(d);
 - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date;
 - (iv) a description of any mitigation measures; and
 - (v) a description of any monitoring measures required under regulation 24; and
- (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(4) Where regulation 4(6) applies, the decision notice must describe the matters in respect of which the Scottish Ministers consider that the effects of the project are not identifiable at the time of their determination of the EIA application.

(5) For the purposes of paragraph (3)(f)(iii) the reasoned conclusion referred to in regulation 4(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the project on the environment.

(6) In this regulation and in regulation 24—

“mitigation measures” means any features of the project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment including any such features or measures required by virtue of a condition imposed on the grant of consent; and

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the project including any such measures required by virtue of a condition imposed on the grant of consent for an EIA project.

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.

Monitoring measures

24.—(1) Where an application for consent for an EIA project is determined by the Scottish Ministers and the decision is to grant consent, 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 project and the significance of its effects 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 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 do so.

(4) Where mitigation measures or monitoring measures are required, the Scottish Ministers must take steps to ensure that those measures are implemented.

Notification of decision

25. Where an application for consent for an EIA project is determined by the Scottish Ministers, they must—

- (a) inform the public and consultation authorities of the decision, and of where a copy of decision notice may be inspected, by publishing a notice in a newspaper circulating in the locality in which the land is situated, or by such other means as are reasonable in the circumstances; and
- (b) make a copy of the decision notice available for public inspection—
 - (i) on the application website; and
 - (ii) at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.

Prohibition on granting an application for multi-stage consent without an environmental impact assessment

26. The Scottish Ministers must not grant an application for multi-stage consent in respect of an EIA project unless an environmental impact assessment has been carried out in respect of that

project and in carrying out such an assessment the Scottish Ministers must take the environmental information into account.

Application for multi-stage consent where EIA report previously provided

27.—(1) This regulation applies in relation to the consideration by the Scottish Ministers of an application for multi-stage consent where a report referred to by the applicant as an EIA report has previously been submitted by the applicant in relation to the project.

(2) Where this regulation applies—

- (a) if it appears to the Scottish Ministers that the project, or the part of the project to which the application for multi-stage consent relates, as the case may be, may have significant effects on the environment that have not previously been identified and assessed; and
- (b) the applicant has not submitted additional information in respect of those effects together with the application for multi-stage consent,

the Scottish Ministers must seek supplementary information from the applicant in accordance with regulation 18 in respect of such effects.

Modification of regulations relating to application for multi-stage consent

28.—(1) These Regulations apply to an application for multi-stage consent as if—

- (a) references to an application for consent for an EIA project were references to an application for multi-stage consent; and
- (b) in regulation 19(5)(b) the reference to “consent” were a reference to “multi-stage consent”.

(2) Regulation 22(3)(d), (e) and (g) applies in respect of the notification of a decision on an application for multi-stage consent only where additional information has been provided by the applicant in connection with that application.

Review of decisions and consents

29. Schedule 4 applies to—

- (a) any decision that a project is not an EIA project; and
- (b) any consent for an EIA project,

where, after the date of the decision or grant of consent, a site becomes a European site and in the opinion of the Scottish Ministers the carrying out or completion (having the same meaning as in regulation 23(9)(b)) of the project would be likely to have a significant effect on that site and would not be directly connected with or necessary for the management of the site.

Appeals to the Scottish Ministers

30.—(1) The following persons:—

- (a) a person who has applied for a screening opinion in respect of a project which the Scottish Ministers have decided is an EIA project;
- (b) a person who has applied for consent for an EIA project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 23(9));
- (c) a person upon whom a notice of a decision (being a revocation of a decision that a project is not an EIA project) or the revocation or modification of a consent for an EIA project has been notified in accordance with paragraph 3 of schedule 4; and
- (d) a person upon whom a notice requiring reinstatement works has been notified in accordance with paragraph 5 of schedule 4,

may by notice appeal to the Scottish Ministers against the consent or decision as the case may be (in this regulation referred to as “the relevant decision”) in accordance with this regulation and when making the relevant decision the Scottish Ministers must advise all persons with a right of appeal under this paragraph of that right.

(2) A person to whom paragraph (1) applies (in this regulation referred to as “the appellant”) must serve notice of an appeal on the Scottish Ministers within the period of 3 months beginning with the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal must include—

- (a) a description of the relevant decision;
- (b) a statement of the grounds of appeal; and
- (c) a statement indicating whether the appellant wishes the appeal to be disposed of on the basis of written representations or to be in the form of a hearing or an inquiry.

(4) Where a notice of an appeal is served in relation to a decision referred to in paragraph (1)(c) or (d), the revocation or modification concerned shall not take effect or the reinstatement works shall not require to commence (as the case may be) until the expiry of the period of appeal following final determination or until the withdrawal of the appeal.

(5) As soon as reasonably practicable after receipt of notice of an appeal, the Scottish Ministers must serve copies of the notice (or arrange for copies to be served) on—

- (a) such of the consultation bodies as they think fit;
- (b) any person who made representations in respect of the relevant decision;
- (c) any EEA State consulted pursuant to regulation 19(6);
- (d) any authority or person who forwarded their opinion to the Scottish Ministers pursuant to regulation 19(5)(b); and
- (e) any other person who appears to them to have a particular interest in the subject matter of the appeal.

(6) A person upon whom a copy of a notice of an appeal has been served in accordance with paragraph (5) may not make representations in respect of the appeal to the Scottish Ministers unless the Scottish Ministers are notified by that person of that person’s wish to do so within the period of 21 days beginning with the date on which a copy of the notice was served upon that person.

Hearing procedure

31.—(1) Before determining an appeal made under regulation 30(1), the Scottish Ministers may afford the appellant and any interested party an opportunity of appearing before and being heard by a person appointed by them (in this regulation referred to as “the appointed person”) and they must do so in any case where a request is made by the appellant to be so heard.

(2) If the Scottish Ministers cause a hearing to be held, they—

- (a) must give the appellant and any interested person at least 42 days written notice (or such shorter period of notice as they may agree with the appellant and the interested parties) of the date, time and place fixed for the holding of the hearing; and
- (b) may require a site visit.

(3) The Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice—
 - (i) on the application website;
 - (ii) in The Edinburgh Gazette; and
 - (iii) in a newspaper circulating in the locality in which the project is situated; and
- (b) serve a copy of that notice on every interested person.

(4) The Scottish Ministers may vary the date fixed for the holding of any hearing and paragraphs (2) and (3) apply to the variation of a date as they applied to the date originally fixed.

(5) The Scottish Ministers may also vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to them to be reasonable.

(6) The persons entitled to be heard at any hearing are the appellant and any interested person.

(7) Nothing in paragraph (6) prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(8) After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must include the conclusions and recommendations of that person or the reasons for not making any recommendation.

Determination of appeals by written representations

32.—(1) This regulation applies to an appeal made under regulation 30(1) which is to be determined by written representations.

(2) Within a period of 42 days beginning with the date of receipt of notice that the appeal is to be determined by written representations, the appellant must either serve on the Scottish Ministers any further representations that the appellant wishes to be considered by the Scottish Ministers or must notify the Scottish Ministers that the appellant wishes to rely on the information already supplied by that appellant, and the Scottish Ministers must either send to the interested persons copies of any further representations made by the appellant or must notify them that the appellant does not intend to make further representations as the case may be.

(3) Any of the interested persons who wish to make representations in respect of the appeal must, within a period of 28 days beginning with the date of receipt of further representations made by the appellant or of notification that the appellant does not wish to make further representations, as the case may be, serve such representations on the Scottish Ministers, who must send copies of the representations served upon them to the appellant and to the other interested persons.

(4) The Scottish Ministers must allow the appellant and the other interested persons a period of not less than 14 days beginning with the date of receipt of representations made in accordance with paragraph (3), in which to respond to those representations.

(5) No earlier than the expiry of the period specified in paragraph (4), the Scottish Ministers must determine the appeal and must notify the decision and the reasons for it to the appellant and to the interested persons.

Determination and publication of appeal

33.—(1) On determining an appeal made under regulation 30(1), the Scottish Ministers may quash or confirm the relevant decision, and if they affirm it they may do so in its original form or with such modifications as they think fit.

(2) The Scottish Ministers must give notice to the appellant and any interested person of their determination of the appeal and their reasons for that determination, and must provide the appellant and any interested person with a copy of any report made under regulation 31(8).

(3) The Scottish Ministers must make copies of—

- (a) the decision and the reasons for the decision; and
- (b) the report made under regulation 31(8),

available for inspection on the application website and at all reasonable hours at an office of the Scottish Ministers where the documents may be inspected.

Access to review procedures before a court

34. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of

the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive.

Competent authority – avoidance of conflict of interest

35.—(1) The Scottish Ministers must 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 Scottish Ministers are to consider an application for consent for an EIA project made by 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

36.—(1) Where in relation to an EIA 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 Regulations Assessment, the Scottish Ministers must where appropriate ensure that the Habitats Regulations Assessment and the environmental impact assessment are co-ordinated.

(2) In this regulation, “Habitats Regulations Assessment” means an assessment under regulation 48 of the Habitats Regulations.

Offences

37. Any person who begins or carries out a project without first obtaining either a decision that the project is not an EIA project or a decision granting consent for an EIA project in accordance with these Regulations commits an offence under this regulation and is liable—

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

unless the project is an exempt project under regulation 3.

38. Any person who carries out work in contravention of any condition of a consent for an EIA project granted in accordance with these Regulations commits an offence and is liable—

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

39.—(1) Any person who, for the purpose of procuring a particular decision on an application made under these Regulations—

- (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 paragraph (1) above is liable—

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

Application to Crown

40.—(1) No act or omission of the Crown constitutes an offence under these Regulations.

(2) 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 paragraph (1) have constituted an offence under this regulation.

(3) Despite paragraph (1), this regulation applies to a person in the public service of the Crown as it applies to other persons.

Stop notices

41.—(1) Where it appears to the Scottish Ministers that an offence has been committed under regulation 37, 38 or 39 and they consider that the potential harm to the environment of work to which the offence relates is such that the work should cease with immediate effect, they may serve a notice (in these Regulations referred to as a “stop notice”) prohibiting all or any part of such work (the “prohibited work”).

(2) The Scottish Ministers may serve a stop notice on any person who appears to them to have an interest in the relevant land or to be engaged in any activity prohibited by the notice.

(3) The Scottish Ministers may at any time withdraw a stop notice (without prejudice to their power to serve another) by serving notice to that effect on those persons served with the stop notice.

(4) A stop notice shall take effect no earlier than the time and date specified in the notice which, except in an emergency, shall not be less than 24 hours after it has been served.

(5) A stop notice shall cease to have effect—

- (a) if a notice of withdrawal is served in accordance with paragraph (3);
- (b) if the Scottish Ministers grant consent for the prohibited work;
- (c) if the Scottish Ministers decide that the prohibited work is not an EIA project; or
- (d) in accordance with an order of the sheriff in relation to an appeal under paragraph (6).

(6) A person on whom a stop notice is served may appeal to the sheriff in relation to that notice within a period of 21 days beginning with the date of service of the notice.

(7) The making of an appeal under paragraph (6) shall not have the effect of suspending the effect of the stop notice.

(8) On determination of the appeal, the sheriff may by order quash or affirm the stop notice and, if affirming it, may do so either in its original form or with such modifications as may in the circumstances be thought fit.

Offences – contravention of a stop notice

42.—(1) Any person who contravenes a stop notice that has been served on that person commits an offence.

(2) An offence under this regulation may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under this regulation by reference to any period of time following the preceding conviction for such an offence.

(3) References in this regulation to contravening a stop notice shall mean causing or permitting its contravention.

(4) A person guilty of an offence under this regulation is liable—

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

(5) In proceedings for an offence under this regulation it shall be a defence for the accused to prove that—

- (a) the stop notice was not served on the accused; and
- (b) the accused did not know, and could not reasonably have been expected to know, of its existence.

Reinstatement

43.—(1) Where it appears to the Scottish Ministers that an offence has been committed under regulation 37, 38 or 39, they may serve a notice (in these Regulations referred to as “a reinstatement notice”) upon the person who appears to them to be responsible for committing the offence requiring that person to reinstate, to their reasonable satisfaction, the relevant land to the condition it was in before the project was commenced and specifying the period within which the reinstatement is required to be carried out.

(2) Where the condition of the relevant land before the project was commenced cannot be determined with reasonable accuracy, or where it is not possible to return the relevant land to the same condition it was in before the project commenced, the reinstatement notice shall impose such requirements for the purposes of reinstatement as shall, in the opinion of the Scottish Ministers (after consultation with such of the consultation bodies as they think fit), be reasonable in the circumstances.

(3) A person served with a notice under paragraph (1) may, within the period of 21 days beginning with the date on which the notice is served, appeal to the sheriff on any of the following grounds:—

- (a) the notice or any requirement in the notice is not within the power conferred by this regulation;
- (b) there has been some material informality, defect or error in, or in connection with, the notice; or
- (c) any of the requirements of the notice are unreasonable.

(4) Where an appeal is made in accordance with this regulation, the reinstatement notice shall be of no effect until the date of determination or abandonment of the appeal or any appeal therefrom by the applicant or the appellant, as the case may be.

(5) For the purposes of paragraph (4), the “date of determination” means—

- (a) in the case of an appeal from the sheriff or where there is a further right of appeal in relation to that determination, the date of expiry of the period within which an appeal may be taken; or
- (b) in the case where there is no such right of appeal, the date of final determination.

(6) If any person, without reasonable excuse, fails to comply with any requirement of a reinstatement notice served under paragraph (1), that person commits an offence and is liable on summary conviction—

- (a) to a fine not exceeding the statutory maximum; and
- (b) if the failure is continued after conviction, to a further fine not exceeding one twentieth of the sum equivalent to level 5 on the standard scale for every day on which the failure is so continued.

Powers of entry and default powers

44.—(1) Any person duly authorised in writing by the Scottish Ministers may, at a reasonable time, enter and inspect any land for the purpose of—

- (a) ascertaining whether an offence under regulation 37, 38, 39, 42 or 43 has been committed on or in connection with that land;
- (b) serving a reinstatement notice under regulation 43 in respect of that land; or
- (c) exercising any functions under schedule 4, if there are reasonable grounds for entering for the purpose in question.

(2) Any person duly authorised in writing by the Scottish Ministers who has reasonable grounds for suspecting that a person has committed an offence under regulation 39, may enter any premises, other than premises used only as a dwelling, which are, or which such person has reasonable cause to believe to be, occupied by, or in the possession of, the person believed to be

responsible for committing the offence, and may inspect and take copies of any records which that authorised person has reasonable cause to believe are relevant to the suspected offence.

(3) If any measures required by a reinstatement notice or by notice served in accordance with paragraph 5 of schedule 4 have not been taken within the period specified in the notice—

- (a) any person duly authorised in writing by the Scottish Ministers may, at a reasonable time, enter the land to which the notice relates; and
- (b) may recover from the person in default as a debt the expenses reasonably incurred in doing so.

(4) A person authorised under paragraph (1), (2) or (3) to enter any land or premises must, if so requested, produce evidence of the authority of that person before so entering.

(5) A person authorised under paragraph (1), (2) or (3) to enter any land or premises may be accompanied by such other person as is considered necessary.

(6) Any person in occupation or possession of land or premises entered by a person authorised under paragraph (1), (2) or (3) must give to that person such assistance as the authorised person may reasonably request so as to enable the exercise of any power conferred upon such authorised person by this regulation.

(7) A person who intentionally obstructs or impedes any person acting in the exercise of the powers conferred by this regulation, or who fails without reasonable excuse to comply with a request made under paragraph (6) commits an offence and is liable on summary conviction to a fine not exceeding the statutory maximum.

Offences by bodies corporate

45.—(1) Subsection (2) applies where—

- (a) an offence under these Regulations 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, Scottish partnership or unincorporated association commits an 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—
 - (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 Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

PART 3

LAND DRAINAGE

Prohibition on making improvement order without an environmental impact assessment

46. The Scottish Ministers must not make an improvement order authorising an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such an assessment they must take the environmental information into account.

Screening opinion for land drainage

47.—(1) Where paragraph (2) applies, an owner of agricultural land who, in relation to a project, proposes to apply for an improvement order must, before submitting that application, apply to the Scottish Ministers for a screening opinion.

(2) This paragraph applies where—

- (a) the project, or any part of it, is to be carried out in a sensitive area; or
- (b) the project is to be carried out wholly outside a sensitive area and the extent of the project exceeds 1 hectare.

(3) Where an application for a screening opinion is made under this regulation, regulations 10 to 12 apply.

Application of Part 2 to land drainage

48. Where the applicant referred to in regulation 47 has obtained a screening opinion to the effect that the works to be authorised by the improvement order constitute an EIA Project—

- (a) regulations 14 to 21 and regulation 22(2) to (6) apply to that applicant as if references to “consent for an EIA project” were to be read as references to “an improvement order authorising an EIA project”;
- (b) regulations 24 to 28 apply to that applicant as if references to “consent for an EIA project” were to be read as references to “an improvement order authorising an EIA project”;
- (c) regulations 34, 35, 36, 39, and 45 apply; and
- (d) regulations 5 to 9, 13, 22(1), 29 to 33, 37 to 38 and 41 to 44 do not apply.

PART 4

MISCELLANEOUS

Revocation, saving and transitional provision

49.—(1) Subject to paragraphs (2) and (3), the 2006 Regulations are revoked.

(2) The 2006 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of an application for consent made under regulation 11 of the 2006 Regulations where the applicant has before that date—

- (a) submitted an environmental statement in connection with that application; or
- (b) requested the Scottish Ministers under regulation 9 of the 2006 Regulations to adopt a scoping opinion in respect of the project to which the application relates.

(3) The 2006 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of an application for a screening decision under regulation 7 of the 2006 Regulations made to the Scottish Ministers before that date.

- (4) These Regulations (other than this regulation) do not apply in respect of—
- (a) an application for consent to which the 2006 Regulations continue to have effect by virtue of paragraph (2); or
 - (b) an application for a screening decision to which the 2006 Regulations continue to have effect by virtue of paragraph (3).

(5) References in any enactment to an environmental statement prepared, or having effect as if prepared, in accordance with the 2006 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.

(6) In this regulation—

“the 2006 Regulations” means the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006(a); and

“environmental statement” has the same meaning as in the 2006 Regulations.

50.—(1) Subject to paragraph (2), Part IV (drainage works) of the 1999 Regulations is revoked.

(2) Part IV of the 1999 Regulations continues to have effect as it did immediately before 16th May 2017 in respect of an application for an improvement order where the applicant has before that date—

- (a) submitted an environmental statement in connection with that application; or
- (b) requested the Scottish Ministers under regulation 56 of the 1999 Regulations to provide an opinion on the information to be supplied.

(3) These Regulations (other than this regulation) do not apply in respect of an application for consent for an improvement order to which Part IV of the 1999 Regulations continue to have effect by virtue of paragraph (2).

(4) References in any enactment to an environmental statement prepared, or having effect as if prepared, in accordance with the 1999 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.

(5) In this regulation—

“the 1999 Regulations” means the Environmental Impact Assessment (Scotland) Regulations 1999(b); and

“environmental statement” has the same meaning as in the 1999 Regulations.

51.—(1) Subject to paragraph (2)—

- (a) the definition of “the EIA Directive” in regulation 2 (interpretation); and
- (b) regulation 11(2)(f) (form and content of applications for authorisation),

of the 2011 Regulations are revoked.

(2) The provisions of the 2011 Regulations listed in paragraph (1) continue to have effect as they did immediately before 16th May 2017 in respect of an application for authorisation under regulation 11(1) of the 2011 Regulations where the applicant has before that date—

- (a) submitted the environmental information required under regulation 11(2) of the 2011 Regulations in connection with that application; or
- (b) requested the Scottish Environment Protection Agency under regulation 11(4) of the 2011 Regulations to provide a scoping opinion in respect of the activities to which the application relates.

(a) S.S.I. 2006/582, amended by S.S.I. 2006/614, S.S.I. 2008/202, S.S.I. 2010/460, S.I. 2011/1043 and S.S.I. 2013/177.

(b) S.S.I. 1999/1, amended by S.S.I. 2002/324, S.S.I. 2004/332, S.S.I. 2006/614, S.S.I. 2007/176, S.S.I. 2007/484, S.S.I. 2007/268, S.S.I. 2008/202, S.S.I. 2009/221, S.S.I. 2009/343, S.S.I. 2010/460, S.S.I. 2011/139, S.I. 2011/1043, S.S.I. 2013/177 and S.S.I. 2015/237.

(3) These Regulations (other than this regulation) do not apply in respect of an application for consent for an EIA project to which the 2011 Regulations continue to have effect by virtue of paragraph (2).

(4) References in any enactment (including an Act of the Scottish Parliament or an instrument under such an Act) to the environmental information provided, or having effect as if provided, in accordance with registration 11(2) of the 2011 Regulations are treated as including a reference to an EIA report prepared in accordance with these Regulations.

(5) In this regulation “the 2011 Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011(a).

Consequential provision

52. In article 3(10)(b) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992(b), for “Part IV of the Environmental Impact Assessment (Scotland) Regulations 1999” substitute “the Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017”.

Electronic communications – general

53.—(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 (in this regulation referred to as “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 19 including sending information to an EEA State; and
- (b) any requirement under regulation 20 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,

(a) S.S.I. 2011/209 as amended by S.S.I. 2012/360, S.S.I. 2013/176, S.S.I. 2013/323 and S.S.I. 2015/211.

(b) S.I. 1992/223. Article 3(10) was amended by S.S.I. 2011/139, regulation 47(5). There are other amendments not relevant to these Regulations.

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^(a), 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.

Electronic communications – deemed agreement

54. Any person sending a document using electronic communications is deemed to have agreed—

- (a) to the use of such communications for all purposes of these Regulations relating to a request for a screening opinion, application, notice or appeal which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the request, application, notice or appeal; and
- (c) that the person’s deemed agreement under this regulation subsists until the person gives notice in accordance with regulation 55 to revoke the agreement.

Withdrawal of consent to use of electronic communications

55. 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 Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into 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.

56.—(1) Any notice required to be given to any person 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;

(a) 1971 c.80.

- (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(a) (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;
 - (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;
 - (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.

R CUNNINGHAM
A member of the Scottish Government

St Andrew’s House,
Edinburgh
11th April 2017

(a) 1978 c.30.

SCHEDULE 1

Regulation 9

THRESHOLDS FOR A PROJECT INVOLVING RESTRUCTURING
OF RURAL LAND HOLDINGS ON AGRICULTURAL LAND
WHOLLY OUTWITH A SENSITIVE AREA

TABLE

<i>Column 1</i>	<i>Column 2</i>
Restructuring project involving the addition or removal of any field boundary	6 km subject to a maximum removal of 0.5km of hedge or drystone dyke and maximum addition of 1 km of vehicle track
Restructuring project which involves an area of land	200 hectares
Restructuring project involving the addition, removal or redistribution of a volume of earth or other material in relation to land	5,000 cubic metres

SCHEDULE 2

Regulations 10(3) and 12(2)

SELECTION CRITERIA FOR SCREENING

Characteristics of projects

1. The characteristics of projects must be considered with particular regard to—
 - (a) the size and design of the whole project;
 - (b) cumulation with other existing and/or approved projects;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
 - (g) the risks to human health (for example due to water contamination or air pollution).

Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered with particular regard to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) european sites and other areas classified or protected under national legislation;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Types and characteristics of the potential impact

3. The likely significant effects of projects on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the projects on the factors specified in regulation 4(3) (environmental impact assessment), taking into account—
 - (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
 - (b) the nature of the impact;
 - (c) the transboundary nature of the impact;
 - (d) the intensity and complexity of the impact;
 - (e) the probability of the impact;

- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved projects;
- (h) the possibility of effectively reducing the impact.

INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

1. A description of the project, including in particular—
 - (a) a description of the location of the project;
 - (b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat and radiation) and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in regulation 4(3) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the project on the environment resulting from, inter alia:
 - (a) the construction and existence of the project, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
 - (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
 - (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
 - (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
 - (g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in regulation 4(3) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project including in particular those established under the Habitats Directive and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(a).

7. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as 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(b) or Council Directive 2009/71/Euratom establishing a community framework for the nuclear safety of nuclear installations(c) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

11. A reference list detailing the sources used for the descriptions and assessments included in the EIA report.

(a) OJ L 20, 26.1.2010, p.7, amended by Council Directive 2013/17/EU (OJ L 158, 10.6.2013, p.193).

(b) OJ L 197, 24.7.2012, p.1.

(c) OJ L 172, 2.7.2009, p.18, amended by Council Directive 2014/87/Euratom (OJ L 219, 25.7.2014, p.42).

REVIEW OF DECISIONS AND CONSENTS

1. The Scottish Ministers must as soon as reasonably practicable make an appropriate assessment of the implications for the European site of the project permitted by the decision or consent in view of conservation objectives of the site for the purpose of determining whether the project will adversely affect the integrity of the site.

2. For the purposes of that assessment, the Scottish Ministers—

- (a) may require any person interested in the relevant land to supply them with such information as they may reasonably think necessary;
- (b) must consult Scottish Natural Heritage and have regard to any representations made by them within such reasonable time as they may specify; and
- (c) may, if they consider it appropriate, consult members of the public.

3. Unless, following that assessment, the Scottish Ministers are satisfied that the project permitted by the decision or consent will not adversely affect the integrity of the European site and that regulation 23(5) does not apply, they must, in the case of a decision, revoke that decision and, in the case of a consent, either revoke that consent or make such modifications to the consent as appear to them to be necessary to ensure that the project will not adversely affect the integrity of the European site and they must notify that decision to all persons who appear to them to have an interest in the relevant land.

4. Subject to paragraph 5, a revocation or modification of a decision or a consent in pursuance of which works have been commenced or completed will not affect so much of those works as have already been carried out.

5. If, where a project which is subject to a decision made under paragraph 3 has commenced, it appears to the Scottish Ministers to be necessary to safeguard the integrity of the European site, they may by notice require the person responsible for carrying out such works or any person interested in the relevant land to carry out such works of reinstatement as may be reasonable in the circumstances and any person who carries out works in compliance with such a requirement will be entitled, on making a claim in accordance with paragraph 6, to recover from the Scottish Ministers compensation in respect of any expenses reasonably incurred by such claimant in that behalf.

6. If, following a decision under paragraph 3, a person has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification or has otherwise sustained loss or damage which is directly attributable to the revocation or modification, that person will be entitled to be paid compensation on submitting a claim in accordance with paragraph 7.

7. A claim for compensation payable under paragraph 5 or 6 must be submitted to the Scottish Ministers within 42 days of notification of the decision in respect of which compensation is payable and must be accompanied by such evidence as the Scottish Ministers may reasonably require.

8. Any dispute as to the amount of compensation payable under paragraph 5 or 6 may be referred to the Lands Tribunal for Scotland within 5 years of the date of notification of the decision in respect of which compensation is payable.

9. Nothing in this schedule affects anything done in pursuance of a decision or consent before the date on which the site became a European site.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact and update, with savings, the Environmental Impact Assessment (Agriculture) (Scotland) Regulations 2006 (“the 2006 Regulations”) and Part IV of the Environmental Impact Assessment (Scotland) Regulations 1999 (“the 1999 Regulations”).

These Regulations implement, in relation to the use of uncultivated land or semi-natural areas for intensive agricultural purposes, the restructuring of rural land holdings on agricultural land, irrigation and land drainage, Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1), as amended by Directive 2014/52/EU of the European Parliament and of the Council (OJ L 124, 25.4.2014, p.1) (“the EIA Directive”). They do so by imposing procedural requirements in relation to the consideration of applications for consent and restricting the grant of consent unless an Environmental Impact Assessment (“EIA”) has been carried out.

These Regulations revoke specific provisions of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“the 2011 Regulations”) as these Regulations will replace the 2011 Regulations for the purpose of transposing the EIA Directive in respect of irrigation projects.

Part 2 applies to agriculture and irrigation projects.

Regulation 4 sets out what the environmental assessment process comprises and regulation 16 sets out the content of an EIA report.

Regulation 5 prohibits the grant of consent for an EIA project unless an EIA has been carried out and the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. Regulation 26 makes equivalent provision in relation to the determination of an application for multi-stage consent.

Regulations 6 to 8 set out that no person may begin or carry out a project for agriculture, irrigation or restructuring without first obtaining a screening opinion (subject to thresholds in respect of restructuring projects which are set out in regulation 9).

Regulations 10 to 12 and schedule 2 set out the procedures, and information required, for screening opinions.

Regulation 13 contains a prohibition on beginning or carrying out an EIA project for agriculture or irrigation without first obtaining consent from the Scottish Ministers.

Regulation 14 enables a person to seek an opinion from the Scottish Ministers (“a scoping opinion”) on the information to be included in an EIA report. The types of information which may be required are set out in schedule 3. The Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion. Regulation 15 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the applicant.

Regulation 17 provides for consultation where an EIA report is received by Scottish Ministers and requires publication of notice of the lodging of the application and the EIA report to be given.

Regulation 18 contains procedures for the provision by the applicant of information additional to that contained in the EIA Report and provides that additional information provided by the applicant which becomes available after the initial gathering of information for an EIA report has taken place will also require to be publicised.

Regulations 19 and 20 provide for consultation between EEA States where development is likely to have significant effects on the environment in another EEA State.

Regulation 21 provides for documents to be made available to the public. Regulation 22 requires Scottish Ministers to provide information about decisions taken following consideration of environmental information in accordance with the Regulations.

Regulation 23 substantially re-enacts regulation 15 of the 2006 Regulations and provides that the Scottish Ministers must not grant consent for a project which would involve activities prohibited under those provisions of the Habitats Regulations which implement Articles 12, 13, 15 and 16 of the Habitats Directive. Neither may they grant consent for a project which would adversely affect the integrity of a European site. These provisions implement Article 6(3) of the Habitats Directive.

Regulations 27 and 28 make provision relating to applications for multi-stage consent which essentially mirror the provisions in the Regulations relating to applications for consent for an EIA project.

Regulation 29 and schedule 4 implement Article 6(2) of the Habitats Directive by ensuring that any decisions taken in accordance with the Regulations before the designation of a European site which would permit a project to be carried out which would adversely affect the integrity of the site are reviewed and revoked or modified as necessary.

Regulations 30 to 33 provide for appeals to Scottish Ministers.

Regulation 34 makes provision to extend access to justice to environmental non-governmental organisations. Regulation 35 provides for avoidance of conflicts of interest and regulation 39 makes it an offence to knowingly or recklessly to provide false or misleading information in order to procure a decision or, with intent to deceive, to use such information or to withhold information to that end. Regulation 45 provides for how this applies in the context of offences committed by bodies corporate.

Part 3 deals with land drainage. Authorisations for the execution of drainage works (“improvement orders”) are granted under the Land Drainage (Scotland) Act 1958. Regulation 47 provides that the owner of agricultural land who proposes to apply for an improvement order must (subject to the threshold provisions) apply to Scottish Ministers for a screening opinion as to whether the works are an EIA project. Regulation 46 provides that the Scottish Ministers may not grant an improvement order where the works are an EIA project unless an EIA has been carried out.

Regulation 48 applies, with modifications, those provisions of Part 2 which are to apply to drainage works projects.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government and online at www.legislation.gov.uk.

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