
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 582

**The Environmental Impact Assessment
(Agriculture) (Scotland) Regulations 2006**

The consent decision

15.—(1) The Scottish Ministers shall consider, in light of the environmental statement, any additional environmental information and any representations received in accordance with regulation 11(2), regulation 12(2) or (3) and in respect of projects to which regulation 13 applies, in light of the consultations with the relevant EEA State, any opinions received pursuant to paragraph (3)(b) of that regulation whether or not to grant consent for the project.

(2) The Scottish Ministers shall not reach their decision under paragraph (1) until the latest of—

- (a) the expiry of the period specified in the notice published under regulation 11(2)(b);
- (b) the expiry of 28 days after the later of the date on which any additional environmental information was sent to the consultation bodies in accordance with regulation 12(2) and the date that notice of it was published in accordance with regulation 12(3); and
- (c) the expiry of the period agreed pursuant to regulation 13(4)(b).

(3) The Scottish Ministers shall not grant consent for a project which would involve doing anything which would be unlawful under regulations 39, 41 or 43 of the Habitats Regulations (which shall not include anything for which a licence has been granted under regulation 44 of those Regulations).

(4) Paragraphs (5) to (9) shall apply to a decision by the Scottish Ministers whether or not to grant consent for a 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 “the European site project”).

(5) Subject to paragraphs (7) and (8), the Scottish Ministers shall 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.

(6) The consideration of implications to be undertaken under paragraph (5) shall 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.

(7) 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 (8), 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.

(8) Where a European site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in paragraph (7) 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.

(9) Where in accordance with paragraph (7), consent is granted for a European site project notwithstanding a negative assessment of the implications for a European site, the Scottish Ministers

shall 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.

(10) Any consent granted in accordance with paragraph (1) shall be subject to the conditions required by paragraph (11) and to such additional conditions as the Scottish Ministers may think fit.

(11) Every consent shall be granted subject to conditions to the effect that—

- (a) the consent shall lapse if the 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 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 3 years of 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 sub-paragraph (d);
- (c) the consent authorises the project only as described in the consent application, 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 sub-paragraph (d);
- (d) applications for further consent under conditions in sub-paragraphs (b) or (c) shall be subject to such of the requirements of these Regulations as the Scottish Ministers think fit.

(12) When the Scottish Ministers have decided whether to grant or not to grant consent they shall—

- (a) notify the applicant, those consultation bodies to whom copies of the consent application were sent in accordance with regulation 11(2)(a), any EEA State consulted pursuant to regulation 13(4) and any other authority or person who forwarded their opinion pursuant to regulation 13(3)(b) of their decision and any conditions attached thereto, together with the full reasons and considerations on which the decision is based, including, if relevant, information about the participation of the public;
- (b) inform the public of the decision by publishing a notice in a newspaper circulating in the locality of the relevant land or by such other means as they consider reasonable in the circumstances; and
- (c) make available for public inspection a statement containing—
 - (i) the content of the decision;
 - (ii) the full reasons and considerations on which the decision is based including, if relevant, information about the participation of the public;
 - (iii) a description, where relevant, of the principal measures required to be taken to avoid, reduce or offset the major adverse environmental effects of the project; and
 - (iv) information regarding the right to challenge the decision and the procedures for doing so.

(13) Where the Scottish Ministers have decided to grant consent for a project—

- (a) which consists of the carrying out of operations likely to damage any of the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest;
- (b) which Scottish Natural Heritage have advised against permitting or have advised should be permitted only subject to certain conditions; and
- (c) in respect of which the decision of the Scottish Ministers does not follow the advice referred to in sub-paragraph (b),

they shall give notice of their decision to Scottish Natural Heritage, including a statement of how (if at all) they have taken account of the advice of Scottish Natural Heritage, and shall impose a condition on the consent to prevent the project from being commenced before the end of the period of 21 days beginning with the date of giving that notice.