
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 582

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

Appeals (general provisions)

17.—(1) The following persons:—

- (a) a person who has applied for a screening decision in respect of a project which the Scottish Ministers have decided is a relevant project, or are deemed to have so decided under regulation 7(8);
- (b) a person who has applied for consent for a relevant project in respect of which consent has been refused or has been granted subject to conditions (other than those specified in regulation 15(11) and (13));
- (c) a person upon whom a notice of a decision (being a revocation of a decision made under regulation 7(6) or the revocation or modification of a consent granted under regulation 15(1)) has been served in accordance with paragraph 3 of Schedule 4; and
- (d) a person upon whom a notice requiring reinstatement works has been served 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 and in regulation 20 referred to as “the relevant decision”) in accordance with this regulation and, except in the case of a deemed decision, when making the relevant decision the Scottish Ministers shall advise all persons with a right of appeal under this paragraph of that right.

(2) A person to whom paragraph (1) applies must serve notice of an appeal on the Scottish Ministers within 3 months from the date upon which that person was notified of the relevant decision.

(3) Notice of an appeal shall 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 (whether pursuant to this regulation or regulation 20) or until the withdrawal of the appeal.

(5) As soon as reasonably practicable after receipt of notice of an appeal, the Scottish Ministers shall 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 13(4);
- (d) any authority or person who forwarded their opinion to them pursuant to regulation 13(3) (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) above may not make representations in respect of the appeal to the Scottish Ministers unless the Scottish Ministers are notified by that person of their wish to do so within 21 days of the date on which a copy of the notice was served upon that person.
- (7) Before determining an appeal, the Scottish Ministers or the delegated person shall decide, if the appellant has indicated a wish to be heard, whether the matter shall be disposed of by a hearing or an inquiry and, if the appellant has not indicated a wish to be heard, whether the appeal shall be determined by written representations, by a hearing or by an inquiry and in either case shall notify the appellant and any interested persons of their decision.
- (8) Before deciding under paragraph (7) whether the appeal (if not to be decided by written representations) shall be determined by a hearing or by an inquiry, the Scottish Ministers or the delegated person shall give the appellant and any interested person an opportunity to make representations in relation to that decision.
- (9) On determining the appeal, the Scottish Ministers or the delegated person may allow or dismiss the appeal, or reverse any part of the decision which is the subject of the appeal, and may deal with the appeal in the same way as if it were a decision at first instance.
- (10) The Scottish Ministers may appoint any person to exercise on their behalf, with or without payment, their function of conducting and determining the appeal or any matter involved in the appeal.
- (11) If the Scottish Ministers decide to hold a hearing or inquiry under paragraph (7), they may appoint any person to conduct the inquiry or hearing on their behalf, with or without payment.
- (12) Where an appointment is made under paragraph (10) or (11), Schedule 5 shall have effect for the purposes of such appointment.
- (13) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽¹⁾ (power to direct inquiries) shall apply in relation to inquiries or hearings determined in accordance with these Regulations as they apply to local inquiries under that section, but as if the references there to the Minister were references to the Scottish Ministers or the delegated person.
- (14) Where the Scottish Ministers or the delegated person decide that the appeal should be determined by way of a hearing rather than an inquiry, the Scottish Ministers, the delegated person or the reporter shall determine the procedure to apply to the hearing (which may include provision for site visits) and regulation 19(7) and (9) to (12) shall, with such modifications as are necessary, apply to that hearing.
- (15) Paragraph (14) is without prejudice to the right of the Scottish Ministers, the delegated person or the reporter having decided thereunder to proceed by hearing, to later decide to apply the procedures under these Regulations in relation to an inquiry (or any part of them), if doing so is considered appropriate.
- (16) The Scottish Ministers, the delegated person or the reporter shall except as otherwise provided by this regulation or by regulation 18 or 19 determine the procedure (which may include provision for site visits) in relation to the conduct of the appeal and may vary or waive any of the time limits set out in regulation 19 in any particular case.
- (17) Any representations, statements or other documents to be submitted to the Scottish Ministers, the delegated person or the reporter in accordance with regulation 18 or 19 shall be accompanied by such number of copies as they may specify.

(1) 1973 c. 65. Section 210 was amended by the Housing and Planning Act 1986 (c. 63), Schedule 11, Part II, paragraph 39.

