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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 485**

The Environmental Impact Assessment and  
Natural Habitats (Extraction of Minerals by  
Marine Dredging) (Scotland) Regulations 2007

PART 5

TRANSFER AND VARIATION OF PERMISSIONS

**Transfer of permission**

**15.**—(1) A permission granted under these Regulations shall not be transferred either in whole or in part to another person without the prior approval of the Scottish Ministers and, where any transfer is purported to be made without such consent, the transfer shall be void.

(2) The Scottish Ministers may, upon application from the owner or the holder, approve the transfer either unconditionally or subject to such conditions of transfer as the Scottish Ministers consider appropriate.

(3) Where a permission is transferred, the owner shall—

- (a) remain liable for any breach of any condition to which the permission is subject, whenever the breach may arise; and
- (b) shall continue to have such rights and obligations in relation to the permission as these Regulations provide.

(4) Any holder of a permission shall only be liable for breaches of any conditions, including any conditions of transfer, to which the permission is subject which arise whilst the holder is the holder of the permission.

(5) Where a permission has been transferred with the Scottish Ministers' approval under paragraph (2), the transfer shall cease to have effect at the end of the period of 40 days beginning with the date of the transfer, or such further period as may be agreed by the Scottish Ministers, unless the transferee notifies the Scottish Ministers in writing within that period—

- (a) that the whole or, as the case may be, part of the permission has been transferred to the transferee;
- (b) where the transfer is of part only, of the extent of the part transferred; and
- (c) of the date of the transfer.

**Variation of permission**

**16.**—(1) The Scottish Ministers may vary a permission granted under these Regulations, in whole or in part.

(2) The Scottish Ministers may do so either—

- (a) on the application of a person mentioned in regulation 17(1); or

(b) of their own motion, in the circumstances provided for in regulation 20(1).

(3) Any variation may be made not only to the permission itself but also to any condition to which the permission was subject prior to the variation.

**Variation of permission on application: preliminary determinations, fees etc.**

17.—(1) An application for variation may be made to the Scottish Ministers—

- (a) where there has been a transfer of the whole of the permission under regulation 15, by the holder;
- (b) where there has been a transfer of part of the permission under regulation 15, and where the proposed variation is in respect of that part, by the holder;
- (c) where—
  - (i) a person (“a prospective transferee”) is considering entering into an agreement with the owner or holder for a transfer of the permission under regulation 15, either in whole or in part; and
  - (ii) the proposed variation relates to a part or the whole of the permission which is intended to be transferred,
 by the prospective transferee; and
- (d) in any other case, by the owner.

(2) An application under paragraph (1) (“a variation application”) shall, where the applicant is the holder or a prospective transferee (whether of the whole or part of the permission), be accompanied by a document signifying the owner’s consent in writing to the making of the application.

(3) Before deciding whether or not to grant a variation application, the Scottish Ministers shall—

- (a) unless the dredging was determined to be a national defence project when permission was given for the dredging, determine, having regard to such of the selection criteria as are relevant to the proposed variation, whether or not the variation would constitute a relevant project; and
- (b) determine whether or not the variation would constitute a habitats project.

(4) Where, in order to make a determination under paragraph (3), the Scottish Ministers consider it necessary, they may ask the person making the variation application to supply such further information within such specified period and in such form as may reasonably be required.

(5) If the applicant fails to supply the information requested under paragraph (4) within the specified period or such further period as the Scottish Ministers may allow, the application shall be deemed to be withdrawn.

(6) Before making a determination under paragraph (3), the Scottish Ministers shall consult—

- (a) the owner (if the owner is not the applicant);
- (b) the applicant; and
- (c) such of the appropriate consultation bodies as they may consider necessary.

(7) As soon as is reasonably practicable after making a determination under paragraph (3), the Scottish Ministers shall—

- (a) send a copy of it to the applicant, together with information about how the decision may be challenged;
- (b) send a copy of it to any persons consulted under paragraph (6); and
- (c) take such steps as the Scottish Ministers consider appropriate to ensure that it is made available to the public concerned.

(8) At the same time as sending to the applicant the copy of the determination under paragraph (7) the Scottish Ministers shall request payment of the appropriate fee under paragraph (10).

(9) If the fee is not paid within such period as the Scottish Ministers shall specify, or such further period as the Scottish Ministers may allow, the variation application shall be deemed to be withdrawn.

(10) The appropriate fee is–

- (a) in a case where the Scottish Ministers determine under paragraph (3) that a proposed variation would constitute either a relevant project or a habitats project or both, £15,000; and
- (b) in any other case, £4,000.

### **Variation of permission on application – relevant projects and habitats projects**

**18.**—(1) Where the Scottish Ministers determine under regulation 17(3)(a) that a variation would constitute a relevant project–

- (a) the Scottish Ministers shall request the applicant to supply an environmental statement within a specified period and shall not decide the variation application until the applicant has supplied one; and
- (b) the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application under regulation 9, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 17–
  - (i) regulations 7 and 8;
  - (ii) paragraphs (4), (5) and (6) of regulation 9;
  - (iii) regulations 10 and 11;
  - (iv) with the exception of paragraph (6)(b), regulation 12;
  - (v) regulations 13 and 14;
  - (vi) regulation 22; and
  - (vii) regulations 25 to 28.

(2) Where an environmental statement has been requested under paragraph (1)(a) and has not been supplied within the specified period, or such further period as the Scottish Ministers may allow, the application shall be deemed to be withdrawn at the end of such period and the fee shall be refunded, provided that no advertisement under regulation 11(1), as applied by paragraph (1)(b), has been published at the date of withdrawal.

(3) Where the Scottish Ministers determine under regulation 17(3)(b) that a variation would constitute a habitats project, the following provisions of these Regulations shall apply in relation to the variation application as they apply in relation to an application made under regulation 9, as if references to deciding an application under paragraph (1) of that regulation and cognate expressions were references to deciding an application under regulation 17–

- (a) regulations 12 and 13; and
- (b) regulations 22, 23, 25, 26, 27 and 28.

### **Variation of permission on application – other cases**

**19.**—(1) Where the Scottish Ministers determine under regulation 17(3) that a variation would not constitute a relevant project or a habitats project, this regulation applies–

- (a) to the application in respect of that variation; and

(b) to any subsequent application in respect of the same variation which is submitted to the Scottish Ministers within 12 months of the date of the determination.

(2) Where reasonably necessary, the Scottish Ministers may request the applicant to supply further information within such period and in such form as may reasonably be specified.

(3) Where the applicant fails, within such period as the Scottish Ministers have specified, or such further period as the Scottish Ministers may allow, to comply with any request of the Scottish Ministers under paragraph (2), the variation application shall be deemed to be withdrawn and the fee shall be refunded, provided that, at the date of withdrawal, the Scottish Ministers have not complied with the requirements of paragraph (4).

(4) The Scottish Ministers shall send—

- (a) a copy of the variation application and of any further information provided under paragraph (2); and
- (b) a statement that representations may be made to the Scottish Ministers regarding the application, and of the address in Scotland to which representations may be sent and of the period within which representations may be made, which shall not be less than 8 weeks beginning with the date on which the statement is sent,

to the persons referred to in paragraph (5).

(5) The persons mentioned in paragraph (4) are—

- (a) the appropriate consultation bodies;
- (b) the owner (if the owner is not the applicant); and
- (c) any other person (including any non governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or who the Scottish Ministers consider is likely to be affected by the application.

(6) Before deciding whether to grant or refuse a variation application to which this regulation applies, the Scottish Ministers may give the opportunity of making representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose, to the applicant, the owner (if the owner is not the applicant) and any other person whom the Scottish Ministers consider should be given such an opportunity.

(7) In deciding whether to grant or refuse a variation application to which this regulation applies, the Scottish Ministers shall take into consideration—

- (a) the information provided in the variation application;
- (b) any further information supplied under paragraph (2) and any other information submitted by the applicant;
- (c) any relevant representations made in response to the copies of the application supplied under paragraph (4);
- (d) the report of any person appointed under paragraph (6); and
- (e) any published policy of the Scottish Ministers in relation to the extraction of minerals by marine dredging.

(8) The Scottish Ministers may decide the variation application by either granting or refusing permission for the variation.

(9) A grant of permission for the variation may be subject to such conditions as the Scottish Ministers consider appropriate including conditions intended to implement any policy taken into account under paragraph (7)(e).

(10) The Scottish Ministers shall send notice of the decision under paragraph (8) to the persons referred to in paragraph (5), and the notice shall state—

- (a) the main reasons for the decision;

- (b) the main considerations on which the decision is based including, if relevant, information about the public participation process;
- (c) where permission is granted—
  - (i) any conditions imposed under paragraph (9); and
  - (ii) where applicable, the main measures to be taken to avoid, reduce and, if possible, offset any major adverse effects; and
- (d) that the decision may be challenged and the procedures for doing so.

### **Revocation or variation of permission otherwise than on application**

- 20.**—(1) This regulation applies where—
- (a) a significant breach has occurred of any condition attached to the permission or to a transfer of the permission; or
  - (b) in any other case the Scottish Ministers consider it appropriate to exercise the powers conferred by this regulation, in order to protect the environment from significant adverse effects caused by the dredging authorised by the permission.
- (2) Where this regulation applies, the Scottish Ministers may—
- (a) revoke the permission; or
  - (b) vary it in whole or in part permanently.
- (3) Before revoking or permanently varying a permission under paragraph (2)—
- (a) the Scottish Ministers shall serve notice of the proposed revocation or variation—
    - (i) on the persons listed in paragraph (4); and
    - (ii) in accordance with the requirements specified in paragraph (5); and
  - (b) the Scottish Ministers may request the owner or the holder of the permission, or of the part of the permission affected, as the case may be, to provide by a specified date, such additional information as may be required, in order that the Scottish Ministers may establish the extent to which the proposed revocation or variation is likely to be effective to protect the environment from any significant adverse effects which would otherwise be caused by the dredging authorised by the permission (“the additional information”).
- (4) The persons mentioned in paragraph (3)(a)(i) are—
- (a) the owner and any holder of the permission or the part affected, as the case may be;
  - (b) the appropriate consultation bodies; and
  - (c) any other person (including any non governmental organisation promoting environmental protection in marine waters) who is likely to have an interest in the application or whom the Scottish Ministers consider is likely to be affected by the revocation, suspension, under paragraph (7) or (8), or variation.
- (5) The requirements mentioned in paragraph (3)(a)(ii) are—
- (a) to inform the recipients of the date when the proposed revocation or variation is intended to take effect under regulation 21; and
  - (b) to specify a period, being not less than 28 days from the date of the notice (“the specified period”), within which the representations may be made about the proposed revocation or variation.
- (6) The Scottish Ministers shall publish a copy of the notice served under paragraph (3)(a), where applicable and paragraph (7) by public advertisement.

(7) Where the Scottish Ministers consider that it is necessary for the dredging to cease or the permission to be temporarily varied as soon as possible, they may suspend or temporarily vary the permissions, as the case may be, by inclusion in the notice served as required by paragraph (3) of a statement which—

- (a) states that the permission is suspended or, as the case may be, temporarily varied and the nature of the variations which are temporarily made to the permission;
- (b) informs the recipients that the suspension or temporary variation shall take effect (for the time being and pending the Scottish Ministers decision under paragraph (11)) from the date on which the notice is served; and
- (c) specifies a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made to the Scottish Ministers about the suspension or temporary variation.

(8) Where the Scottish Ministers request additional information under paragraph (3)(b), but the additional information is not provided by the date specified or within such further period as the Scottish Ministers may allow, and the permission has not been suspended under paragraph (7), the permission shall be suspended.

(9) Where a permission has been suspended under paragraph (8)—

- (a) if the additional information is provided to the Scottish Ministers' satisfaction within six months of the suspension, the suspension shall cease;
- (b) if the additional information is not so provided, the permission may be revoked by the Scottish Ministers and the Scottish Ministers shall send notice of the revocation to the persons listed in paragraph (4).

(10) If within the specified period, a person on whom notice has been served under paragraph (3) (a), or a person who has made representations in response to the advertisement published under paragraph (6), so requests, the Scottish Ministers may give—

- (a) to that person; and
- (b) to any other person on whom notice was served under paragraph (3)(a), or who has made representations in response to the advertisement published under paragraph (6),

an opportunity to make representations (whether in person or in writing) to a person appointed by the Scottish Ministers for that purpose.

(11) The Scottish Ministers shall decide whether to revoke the permission or vary it permanently, having regard, in particular, to—

- (a) any representations made in response to a notice served under paragraph (3)(a) or an advertisement published under paragraph (6); and
- (b) if applicable, the report of any person appointed under paragraph (10).

(12) The Scottish Ministers shall serve notice of the decision under paragraph (11) on any person on whom the notice was served under paragraph (3)(a) and on any person who made representations in response to the advertisement published under paragraph (6), and the notice shall state—

- (a) the main reasons for the decision;
- (b) the main considerations on which the decision is based, including, if relevant, information about the public participation process; and
- (c) that the decision may be challenged and the procedures for doing so.

### **Consequences of revocation, suspension or variation**

**21.—(1)** A revocation or variation under regulation 20(2) shall take effect, subject to paragraph (2), on the date on which the notice is served under regulation 20(12).

(2) Where more than one notice is served under regulation 20(12) in respect of the same revocation or variation and those notices are served on different days, the revocation or variation shall take effect on the date on which the last of them is served.

(3) Where a permission has been suspended, or a variation has taken effect temporarily under regulation 20(7), but the Scottish Ministers final decision under regulation 20(11) is not to revoke the permission or not to vary it permanently, the permission shall again have effect, or have effect on the terms effective prior to the temporary variation, as the case may be, from the date of the notice served under regulation 20(12).

(4) In relation to a permission which has been suspended under regulation 20(7) or (8), which continues in effect under regulation 20(9)(a) or which the Scottish Ministers have decided under regulation 20(11) not to revoke—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended, shall be treated as extended by a period equal to that during which the permission was suspended; and
- (b) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, that specified date shall be postponed by a period equal to that during which the permission was suspended.

(5) In relation to a permission which was varied temporarily under regulation 20(8), which the Scottish Ministers have decided under regulation 20(11) not to vary permanently—

- (a) any period specified in the permission for the taking of any action, which expires after the date on which the permission was varied temporarily under paragraph (3) shall, if the action relates to matters which are affected by the temporary variation, be treated as extended by a period equal to that during which the permission had effect as varied; and
- (b) where a permission requires any action to be taken by a specified date which falls after the date on which the permission was varied temporarily, the specified date shall, if the action relates to matters which are affected by the temporary variation, be postponed by a period equal to that during which the permission had effect as varied.

(6) The revocation or variation of a permission under regulation 20(2), the suspension of a permission under regulation 20(7) or (8), or the temporary variation of a permission under regulation 20(7), shall not affect anything done under the permission before the date on which the permission was revoked, varied, suspended or temporarily varied, as the case may be.

### **Offences relating to transfers and variations**

**22.**—(1) A person commits an offence who, for the purposes of obtaining (whether for that person or another) a transfer of a permission under regulation 15 or a variation of a permission under regulation 16, or in response to a request under regulation 20(3)(b)—

- (a) makes a statement or representation, or furnishes a document or information, which the person knows to be false in a material particular; or
- (b) recklessly makes a statement or representation, or furnishes a document or information, which is false in a material particular.

(2) It shall be an offence for a person to fail to comply with any condition of transfer.

(3) While a permission is suspended under regulation 20(7) or (8), any continued or further dredging under the permission shall be an offence.