

SCHEDULE 3

Regulations 12(3) and 23

NATURAL HABITATS

Definitions

1.—(1) In this schedule, “Natura 2000” means the European network of special areas of conservation, and special protection areas designated under the Wild Birds Directive, provided for by Article 3(1) of the Habitats Directive.

Provision for the protection of European sites: new dredging projects

2.—(1) This paragraph applies in relation to every project in respect of which the Scottish Ministers have determined under regulation 6, 12(1) or 17(3) that it would be a habitats project.

(2) A person applying under regulation 9 or 17 shall provide such information as the Scottish Ministers may reasonably require for the purposes of the assessment under regulation 12(3) or that regulation as applied by regulation 18(3).

(3) For the purposes of the assessment, the Scottish Ministers shall take appropriate scientific advice.

(4) Where the Scottish Ministers consider it appropriate to do so, they must take the opinion of the public and if they do so they must take such steps for that purpose as they consider appropriate for the purposes of the assessment.

(5) In the light of the conclusion of the assessment, and subject to sub paragraphs (7) and (8) below, the Scottish Ministers shall grant permission for the project only after having ascertained that it will not, either alone or in combination with other plans or projects, adversely affect the integrity of the European site.

(6) In considering whether a project will adversely affect the integrity of the site, the Scottish Ministers shall have regard to—

- (a) the manner in which it is proposed to be carried out; and
- (b) any conditions or restrictions subject to which they propose that the permission should be granted.

(7) Where the Scottish Ministers consider that any adverse effects of the project on the integrity of a European site would be avoided if the permission were subject to conditions, permission shall only be granted subject to those conditions.

(8) If the Scottish Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub paragraph (9), may be of a social or economic nature), they may grant permission for the project notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub paragraph (8) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other imperative reasons of overriding public interest provided the Scottish Ministers have had due regard to the opinion of the European Commission in concluding that there are such reasons.

Provision for the protection of European sites: review of existing permissions

3.—(1) Where—

Status: This is the original version (as it was originally made).

(a) before the date on which a site becomes a European site, the Scottish Ministers have granted permission under these Regulations for a project which the Scottish Ministers consider would have constituted a habitats project, had the European site been designated at the date when the application for the permission was determined; and

(b) none of the circumstances mentioned in sub paragraph (2) apply,

the Scottish Ministers shall, as soon as reasonably practicable after the date on which the site becomes a European site, review the permission.

(2) The circumstances referred to in sub paragraph (1)(b) are—

- (a) the dredging to which the permission relates has been completed before the site became a European site;
- (b) the permission was granted subject to a condition as to the period within which the dredging to which it relates was to be begun and that period has expired without the dredging having been begun, and the permission is no longer capable of implementation without being varied by the Scottish Ministers; and
- (c) the permission was granted for a limited period and that period has expired.

(3) The Scottish Ministers shall, for the purpose of reviewing the permission, make an appropriate assessment of the implications of the dredging for the site in view of its conservation objectives; and the provisions of sub paragraphs (3), (4), (5) and (6) of paragraph 2 shall apply, with appropriate modifications, in relation to such a review.

(4) Where a permission is reviewed under this regulation, the Scottish Ministers may request the owner or the holder of the permission, as the case may be, to provide, within a specified period, any additional information which the Scottish Ministers require in order to carry out the review and if that information is not provided within the period specified, or such further period as the Scottish Ministers may allow, the Scottish Ministers may revoke the permission without completing the review.

(5) Having reviewed a permission under this paragraph, the Scottish Ministers shall—

- (a) affirm or vary it in accordance with sub paragraph (6), (7) or (8); or
- (b) in any other case revoke it.

(6) The permission may be affirmed if the Scottish Ministers are satisfied that the project will not adversely affect the integrity of the European site.

(7) The permission may be varied if the Scottish Ministers are satisfied that any adverse effects on the integrity of the European site of the carrying out or, as the case may be, the continuation of the project, would be avoided by a variation of the permission.

(8) Subject to sub paragraph (10), if the Scottish Ministers are satisfied that, there being no alternative solutions, the project must be carried out for imperative reasons of overriding public interest (which, subject to sub paragraph (9), may be of a social or economic nature), the permission may be affirmed, notwithstanding a negative assessment of the implications for the site.

(9) Where the site concerned hosts a priority natural habitat type or a priority species, the reasons referred to in sub paragraph (8) must be either—

- (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- (b) other imperative reasons which in the opinion of the Scottish Ministers, following consultation with the European Commission are imperative reasons of overriding public interest.

(10) The Scottish Ministers shall not affirm a permission under sub paragraph (8) in any case where sub paragraph (6) or (7) applies.

(11) Nothing in this paragraph shall affect anything done under the permission before the date on which the site became a European site.

Provision for the protection of European sites: review of existing agreements

4.—(1) As soon as reasonably practicable after the coming into force of these Regulations, the Scottish Ministers shall serve on the parties to each agreement to which sub paragraph (2) applies, a notice specifying a date for the purposes of sub paragraph (5).

(2) This sub paragraph applies to any written agreement—

- (a) entered into by an owner before the coming into force of these Regulations; and
- (b) which the Scottish Ministers consider relates to dredging which constitutes a habitats project.

(3) As soon as reasonably practicable after a site becomes a European site, the Scottish Ministers shall serve on the parties to each agreement to which sub paragraph (4) applies, a notice specifying a date for the purposes of sub paragraph (5).

(4) This sub paragraph applies to any agreement—

- (a) entered into by an owner before the coming into force of these Regulations; and
- (b) which the Scottish Ministers consider relates to dredging which constitutes a habitats project as a result of the designation of the European site.

(5) On and after the date specified in a notice under sub paragraph (1) or sub paragraph (3), the agreement shall have effect for all purposes as a permission granted as a result of an application under regulation 9 and which it is the Scottish Ministers duty to review under paragraph 3.

Procedure on review

5.—(1) Where, on a review under paragraph 3 or 4, the Scottish Ministers decide to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the Scottish Ministers shall serve notice on—

- (a) the owner;
- (b) any holder of the permission, or the part affected, as the case may be; and
- (c) any other person who, in the Scottish Ministers' opinion, will be affected by the revocation or variation,

informing them of their decision and specifying a period, being not less than 28 days from the date of the notice (“the specified period”), within which representations may be made to them.

(2) The Scottish Ministers shall also serve notice on any person or body from which scientific advice was obtained, informing them of their decision and inviting their representations within the specified period.

(3) If, within the specified period, a person on whom notice has been served under sub paragraph (1) so requires, the Scottish Ministers shall, before deciding whether to proceed with the revocation or variation, give—

- (a) to that person; and
- (b) to any other person or body on whom notice was served under that sub paragraph or sub paragraph (2),

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

(4) The Scottish Ministers shall decide, having regard, in particular, to—

- (a) any representations made in response to a notice served under sub paragraph (1) or (2); and

(b) if applicable, the report of any person appointed pursuant to sub paragraph (3), whether to proceed with the revocation or variation of the permission.

(5) The Scottish Ministers shall serve on any person on whom notice was served under sub-paragraph (1) or (2) notice of their decision under sub-paragraph (4) stating—

- (a) the main reasons for the decision; and
- (b) the main considerations on which the decision is based; and
- (c) that the decision may be challenged and the procedures for doing so.

Effect of the Scottish Ministers' decision on review

6.—(1) Where the Scottish Ministers have decided, under paragraph 5(1), to revoke or vary a permission granted, or having effect as if granted, under these Regulations, the permission shall be suspended or the variation shall take effect temporarily, as the case may be, subject to sub paragraph (2), on the date on which notice is served under paragraph 5(1).

(2) Where more than one notice is served under paragraph 5(1) in respect of the same revocation or variation, and those notices are served on different days, the suspension or temporary variation shall take effect on the date on which the last of them is served.

(3) Where the Scottish Ministers decide not to proceed with the revocation or variation of the permission under paragraph 5(4), it shall again have effect, or have effect on the terms on which that permission was effective prior to the temporary variation, as the case may be, from the date of the Scottish Ministers decision not so to proceed.

(4) In relation to a permission to which sub paragraph (3) applies—

(a) where the Scottish Ministers have decided not to revoke the permission—

- (i) any period specified in the permission for the taking of any action, which expires after the date on which the permission was suspended under sub paragraph (1) or sub paragraph (2), shall be treated as extended by a period equal to that during which the permission was suspended; and
- (ii) where a permission requires anything to be done by a specified date, which falls after the date upon which the permission was suspended, the specified date shall be postponed by a period equal to that during which the permission was suspended;

(b) where the Scottish Ministers have decided not to vary the permission—

- (i) 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 sub paragraph (1) or (2), 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
- (ii) 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.

(5) A revocation or variation under paragraph 5(1), or the suspension or temporary variation of a permission under sub paragraph (1), shall not affect anything done under the permission before the date determined in accordance with that sub paragraph or, as the case may be, sub paragraph (2).

Compensatory measures

7. Where—

- (a) a project is granted permission, notwithstanding a negative assessment of the implications for a European site; or
- (b) a permission is affirmed on review, notwithstanding such an assessment,

the Scottish Ministers shall secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected and shall ensure that the European Commission is informed of the compensatory measures taken.