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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 114**

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

**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<sup>(1)</sup>;

“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 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;

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(1) 1948 c.45. “Agricultural” and “agricultural land” are defined in section 86.

- (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<sup>(2)</sup>;

“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<sup>(3)</sup>;

“the Habitats Regulations” means the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(4)</sup>;

“improvement order” means an order made by the Scottish Ministers in accordance with the first schedule of the Land Drainage (Scotland) Act 1958<sup>(5)</sup>;

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

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<sup>(2)</sup> 2000 c.7, amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

<sup>(3)</sup> OJ L 206, 22.07.92, p.7.

<sup>(4)</sup> S.I. 1994/2716, to which there are amendments not relevant to these Regulations.

<sup>(5)</sup> 1958 c.24.

“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<sup>(6)</sup>;
- (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<sup>(7)</sup>; 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<sup>(8)</sup> apply; or
- (b) is a forestry project as defined in regulation 2(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>(9)</sup>.

(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.

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<sup>(6)</sup> 2004 asp 6.

<sup>(7)</sup> 1997 c.8. Section 263A was inserted by the Planning etc. (Scotland) Act 2006 asp 17, section 50.

<sup>(8)</sup> S.S.I. 2017/102.

<sup>(9)</sup> 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<sup>(10)</sup>;
- (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—

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<sup>(10)</sup> OJ L 20, 26.1.2010, p.7.

- (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
  - (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.