SCOTTISH STATUTORY INSTRUMENTS

2002 No. 6

AGRICULTURE

The Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002

Made - - - -	*14th January 2002*
Laid before the Scottish Parliament - - - -	*14th January 2002*
Coming into force - -	*4th February 2002*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Scotland) Regulations 2002 and shall come into force on 4th February 2002.

(2) Subject to paragraph (3) below, these Regulations extend to Scotland only.

(3) In relation to a transborder project, the extent of these Regulations shall be determined in accordance with the provisions of regulation 12, but where these Regulations extend beyond Scotland, they do so only as a matter of Scots Law.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires–

"agricultural" has the same meaning as in the Agriculture (Scotland) Act 1948(**2**);

"additional environmental information" means additional information required as part of the environmental statement in accordance with regulation 10(1);

"consent" means consent granted under regulation 13(1) of these Regulations;

"consultation bodies" means–

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1948 c. 45.

(a) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991(**3**);

(b) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995(**4**); and

(c) any other public authority, statutory body or organisation which, in the opinion of the Scottish Ministers, has any interest in or holds any information which might be relevant to the project;

"delegated person" means a person appointed by the Scottish Ministers under regulation 15(10) to conduct and determine an appeal under regulations 15, 16 and 17 on their behalf;

"EEA State" means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

"the EIA Directive" means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment(**5**);

"environmental statement" means a statement–

(a) that includes such of the information referred to in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the project and which the applicant for consent can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but

(b) that includes at least the information referred to in Part II of that Schedule;

"European site" means those sites described in regulation 10(1)(a), (b), (d) and (e) 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(**6**);

"the Habitats Regulations" means the Conservation (Natural Habitats, &c.) Regulations 1994(**7**);

"interested person" means a person who notifies the Scottish Ministers in accordance with regulation 15(6) of the wish to make representations in respect of an appeal;

"project" means–

(a) the execution of construction works or other installations or schemes; or

(b) other interventions in the natural surroundings and landscape,

involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

"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;

"relevant project" means a project which the Scottish Ministers have decided is likely to have a significant effect on the environment in accordance with regulation 5(4) (or is deemed to have so decided in accordance with regulation 5(8));

"reporter" means a person appointed by the Scottish Ministers under regulation 15(11) to conduct an appeal under regulations 15, 16 and 17 on their behalf;

"scoping opinion" means an opinion given by the Scottish Ministers in accordance with regulation 7;

(**3**) 1991 c. 28.
(**4**) 1995 c. 25.
(**5**) O.J. No. L 175, 5.7.85, p.40, as amended by Council Directive 97/11/EC, O.J. No. L 73, 14.3.97, p.5.
(**6**) O.J. No. L 206, 22.7.92, p.7, as last amended by Council Directive 97/62/EC, O.J. No. L 305, 8.11.97, p.42.
(**7**) S.I.1994/2716, as amended by S.I. 1996/525 and 973, 1997/3055 and 1999/1820.

"screening decision" means a decision taken by the Scottish Ministers under regulation 5(4) or which is deemed to have been taken by them under regulation 5(8);

"transborder project" means a project where the relevant land is situated partly in Scotland and partly in England.

(2) Unless otherwise provided, expressions used both in these Regulations and in the EIA Directive on the assessment of the effects of certain public and private projects on the environment or in the Habitats Directive on the conservation of natural habitats and of wild fauna and flora shall have the same meaning in these Regulations as they have in 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 shall be made in writing.

(5) Except in relation to notices under regulations 22 or 24, the reference in paragraph (4) above to things done in writing includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**8**), which has been recorded and is consequently capable of being reproduced.

(6) For the purposes of appeals to the sheriff in accordance with these Regulations in relation to land situated outwith Scotland as part of a transborder project ("non-Scottish land")–

(a) the sheriff entitled to hear an appeal in relation to land situated within Scotland as part of the same project; and

(b) in the case of a stop notice or reinstatement notice served in relation exclusively to non-Scottish land, the sheriff who would be entitled to hear an appeal in relation to such a notice served in the case of land within Scotland as part of the same project,

shall have jurisdiction to hear the appeal as if the non-Scottish land were situated within the sheriffdom of that sheriff.

(7) In relation to the definition of "consultation bodies" in paragraph (1) above, nothing in these Regulations which permits the Scottish Ministers to consult such consultation bodies as they think fit shall be construed as permitting them, where they do so, not to consult with Scottish Natural Heritage and the Scottish Environment Protection Agency.

Application

3.—(1) These Regulations apply to any project in Scotland (or, in relation to a transborder project, a project as determined in accordance with regulation 12) which is not exempt under paragraphs (2) or (3) below.

(2) A project is exempt under this paragraph if it–

(a) constitutes development to which the Environmental Impact Assessment (Scotland) Regulations 1999(**9**) apply; or

(b) is a project described in regulation 3(2) of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999(**10**).

(3) A project is exempt under this paragraph to the extent that the Scottish Ministers, in accordance with Article 2(3) of the EIA Directive, direct that it shall be exempt from these Regulations.

(**8**) 2000 c. 7.
(**9**) S.S.I. 1999/1.
(**10**) S.S.I. 1999/43.

(4) In the case of a project which the Scottish Ministers decide is likely to have a significant effect on a European site (either alone or in combination with other projects), the power to direct that the project is exempt from these Regulations under paragraph (3) above shall be exercisable only to the extent that compliance with the Habitats Directive is secured in relation to the project.

Screening decision

4. No person shall begin or carry out a project without first obtaining a screening decision.

5.—(1) An application for a screening decision shall be accompanied by–

(a) a plan sufficient to identify the relevant land;

(b) a brief description of the nature, extent and purpose of the project and of its possible effects on the environment; and

(c) such other information or representations as the applicant may wish to provide or make.

(2) The Scottish Ministers shall notify the applicant of the date the application was received by them.

(3) If the Scottish Ministers consider that they do not have sufficient information to make the screening decision, they may request that the applicant supply any additional information they require.

(4) The Scottish Ministers shall decide in accordance with the selection criteria set out in Schedule 1 and paragraph (5) below whether a project is likely to have a significant effect on the environment.

(5) A project which the Scottish Ministers decide is likely to have a significant effect on a European site (either alone or in combination with other projects) and which is not directly connected with, or necessary to, the management of the site, shall be treated as likely to have a significant effect on the environment.

(6) The Scottish Ministers shall decide whether a project is a relevant project in accordance with the selection criteria set out in Schedule 1 within 35 days of the notified date and before reaching a screening decision, may consult with such of the consultation bodies as they think fit.

(7) The Scottish Ministers shall–

(a) notify the screening decision together with a statement giving the full reasons for the decision to the applicant;

(b) enter the screening decision in a public register which shall be publicly available for inspection at all reasonable times and may be made available in electronic form; and

(c) notify the screening decision to such of the consultation bodies as would, in their opinion, wish to be informed of it.

(8) If an applicant who has not been notified of a screening decision within the period specified in paragraph (6) above notifies the Scottish Ministers of the intention of that person to treat such failure to notify that applicant as a decision that the project is a relevant project, the Scottish Ministers shall be deemed to have decided that the project is a relevant project on the date the applicant so notifies them.

(9) If at any time after the Scottish Ministers have decided that a project is a relevant project under this regulation, they receive further information or representations which cause them to decide that the project is not a relevant project, they shall notify that decision and a statement giving the full reasons for the decision to the applicant and to the consultation bodies notified (in accordance with paragraph (7)(c) above) and shall enter the decision in the register referred to at paragraph (7)(b) above.

(10) If a project to which a screening decision relates has not been commenced (by the carrying out of a material act) before the expiry of three years from the notified date or the date it was deemed to have been decided in accordance with paragraph (8) above, that screening decision shall cease to have effect.

(11) In paragraphs (6) and (10) above, "the notified date" means–

(a) the date notified to the applicant in accordance with paragraph (2) above;

(b) the date on which additional information is requested in accordance with paragraph (3) above; or

(c) such date as may be agreed with the applicant,

as the case may be.

Requirement for consent

6. No person shall begin or carry out a relevant project without first obtaining consent from the Scottish Ministers.

Scoping opinion

7.—(1) After obtaining a screening decision and before applying for consent, the applicant may request the Scottish Ministers to give their opinion as to the information to be provided in the environmental statement.

(2) If a scoping opinion is requested, the Scottish Ministers shall notify the applicant of the date the request was received by them and shall consult the applicant and the consultation bodies as they think fit before they give their opinion.

(3) Except in relation to Scottish National Heritage and the Scottish Environment Protection Agency, if the Scottish Ministers consider that any consultation bodies have an interest for the purposes of the scoping decision, they shall notify the applicant of the identity of the those bodies.

(4) If the Scottish Ministers consider that they have not been supplied with sufficient information to give a scoping opinion, they shall notify the applicant of the matters upon which they require additional information within 28 days of the date of receipt by them of the request for the opinion and shall notify the applicant of the date that additional information was received by them.

(5) The Scottish Ministers shall provide the applicant with a scoping opinion within 35 days of the date of receipt by them of the request for the opinion or from the date of receipt by them of any additional information requested in accordance with paragraph (4) above.

Provision of information

8.—(1) Any consultation body which is consulted by the Scottish Ministers in accordance with regulation 7(2) or which receives a request for information from a person who is intending to apply for consent shall determine whether they have in their possession any information which they consider relevant to the preparation of the environmental statement and, if they have, they shall, subject to paragraphs (2) to (4) below, make that information available to the applicant within 28 days from the date of the request under paragraph (4) below or receipt of the request under this paragraph, as the case may be.

(2) A reasonable charge may be made by any body providing information under paragraph (1) above which reflects the cost of making the relevant information available.