

**The Scottish
Government's
implementation of the
Agriculture, Land
Drainage and
Irrigation Projects
(Environmental
Impact Assessment)
(Scotland)
Regulations 2017**

Case reference IESS.23.022

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1. Executive summary

1.1 [Directive 2011/92/EU](#) of the European Parliament (as amended by [Directive 2014/52/EU](#)) requires an assessment of the likely significant effects of certain projects on the environment before a development consent can be granted. The aim of the directives is to provide high levels of environmental protection, and to help integrate environmental considerations into the preparation of projects to reduce their impact on the environment.

1.2 In Scotland, these directives are implemented in part through [The Agriculture, Land Drainage and Irrigation Projects \(Environmental Impact Assessment\) \(Scotland\) Regulations 2017](#) (the 2017 Regulations). Implementation of the 2017 Regulations is undertaken on behalf of Scottish Ministers by the [Scottish Government's Rural Payments and Inspections Division](#) ('RPID').

1.3 Environmental Standards Scotland (ESS) received a representation raising concerns that there had been a failure to correctly apply the 2017 Regulations, which had led in some cases to permanent, irreparable damage to valuable character landscapes, habitats, soils and historic features.

1.4 On reviewing the evidence, ESS determined that the central concern raised within the representation was well made and invited RPID to take improvement measures.

1.5 RPID accepted that the implementation and application of the 2017 Regulations had been inadequate and agreed to take action to remedy this. For the reasons set out in this report, ESS considers that the measures taken by RPID are reasonable. ESS accordingly considers that informal resolution has been achieved.

2. Background

2.1 Environmental Impact Assessments (EIAs) are used to assess any likely significant environmental effects arising from a proposed development. EIAs help the public and relevant authorities understand the possible environmental effects, and the scope for their reduction, before decisions are made. They also provide transparency and increase opportunities for the public to participate in the planning process.

2.2 There are a number of [EIA regimes in Scotland](#), covering areas such as town and country planning, forestry and agriculture.

2.3 In respect of agriculture, the 2017 Regulations implement EU Directive 2011/92/EU and Directive 2014/52/EU. The directives require an assessment of the likely significant effects of certain projects on the environment before a development consent can be granted.

2.4 The 2017 Regulations apply to any 'project' in Scotland. A project is defined in the 2017 Regulations as:

- the execution of construction works or other installations or schemes
or
- other interventions in the natural surroundings and landscape involving:
 - the use of uncultivated land or semi-natural areas for intensive agricultural purposes
 - restructuring of rural land holdings on agricultural land
 - irrigation
 - drainage

2.5 The 2017 Regulations set out the requirements which applicants and decision makers must follow in respect of the making and handling of applications for development. For example, depending on the circumstances, landowners must apply to Scottish Ministers for screening decisions and/or consents for an activity including irrigation, drainage and restructuring. The 2017 Regulations also set out the powers available to the competent authorities, such as monitoring, powers of entry to premises and the serving of stop notices for unauthorised developments.

3. The representation

3.1 On 28 May 2023, ESS received a representation concerning the way in which the 2017 Regulations were being implemented. The representation suggested that there was a lack of understanding on the part of landowners and officials in respect of the workings of the 2017 Regulations and that officials were not sufficiently proactive in exercising their duties. The representation also asserted that there appeared to be confusion surrounding which public body was responsible for

implementing the 2017 Regulations and that insufficient sanctions have been applied where breaches of the 2017 Regulations had been found.

3.2 The outcome sought in the representation was for ESS to undertake an investigation into the screening and consenting decisions made by RPID under the 2017 Regulations.

3.3 ESS considered this case to be within its remit, due to the following factors:

- the representation related to a public authority – RPID
- the representation related to environmental law – the 2017 Regulations
- RPID’s decision-making and assessment processes, as described in the representation, may have constituted a failure to comply with environmental law, or a failure to implement environmental law effectively
- while the representation related specifically to a number of individual regulatory decisions (which ESS cannot overturn), ESS considered that broader, systemic concerns were raised over RPID’s performance in connection with the 2017 Regulations

4. Informal resolution process

4.1 On 5 July 2023, ESS approached RPID to discuss the concerns raised within the representation. RPID explained that it had already been made aware of environmental damage having been caused by ongoing unauthorised activity in some areas. RPID also explained that its officials had made several visits to these areas to offer advice on the requirements of the 2017 Regulations, and to undertake enforcement action to prevent further damage. RPID confirmed that it had not received screening or consent applications for these projects and openly accepted that its oversight of the 2017 Regulations had not been proactive.

4.2 At the time of ESS’ initial contact, RPID had already made plans to update its website, issue a communication to all farmers in the area concerned and produce an article for the farming press. These actions were designed to improve communication links with landowners about the 2017 Regulations.

4.3 Having considered the information available, on 31 August 2023 ESS wrote to RPID inviting it to resolve matters informally. ESS set out the following areas of concern in how the 2017 Regulations were being implemented:

- a lack of good quality guidance available for farmers and landowners
- a lack of good quality guidance for RPID staff and whether staff had sufficient expertise in identifying sensitive habitats, because there appeared to be a lack of definition of key terms such as ‘semi-natural land’; ‘uncultivated land’ and ‘intensive farming’, which are all used in the 2017 Regulations and are, in ESS’ view, critical in making consent or screening decisions
- a lack of publicly available information regarding applications made to RPID and the screening decisions or consents provided by RPID under the 2017 Regulations
- a lack of process or policy within RPID to support implementation of the 2017 Regulations, leading to an overall absence of oversight, particularly with regard to enforcement
- inadequate communication with the farming and landowning community regarding their responsibilities under the 2017 Regulations

4.4 RPID subsequently accepted ESS’ invitation and agreed to produce an implementation plan to address the areas of concerns identified. On 11 October 2023, RPID forwarded a six-point implementation plan to ESS, grouping certain areas of improvement together.

4.5 In respect of the concerns raised over policy and guidance, RPID explained that it would introduce new guidance for staff which would contain flowcharts and processes that will provide a baseline for ongoing implementation. RPID confirmed that this guidance would be circulated to staff at the end of March 2024, but that a period of monitoring would apply before finalisation by the end of May 2024. RPID also explained that regular internal reporting would be introduced to assess consistency and accuracy of approach. ESS will continue to monitor implementation of this agreed action.

4.6 RPID also confirmed that it would develop guidance for farmers which it would publish in a bespoke section on EIA regulations on its Rural Payments and Services website. RPID explained that this would be a significant piece of work, during which they would have to liaise with other public bodies and seek legal advice. [This guidance was published on RPID’s website](#) on 22 March 2024.

4.7 In terms of expertise, RPID provided examples of the range of experience available among its staff. It explained that, where staff were unsure or required

specialist input, the new guidance will signpost them to relevant agencies. For example, NatureScot, the Scottish Environment Protection Agency or Historic Environment Scotland.

4.8 In respect of the concerns raised over communication with the farming community, RPID explained that it would issue direct communications to farmers in specific areas setting out the requirements of the 2017 regulations and would also pursue communications nationally by issuing a bespoke communication on its Rural Payments & Services website. These communications were completed in December 2023 and 22 March 2024 respectively.

4.9 In respect of transparency, RPID explained that it had already started producing a register which would include previous and future cases. RPID confirmed that the register would be made available on its Rural Payments & Services website. [This information was published](#) on 22 March 2024.

4.10 ESS agreed with the content of the implementation plan, and therefore considered that informal resolution had been achieved.

5. Conclusion

5.1 Scotland's landscapes, habitats and archaeological heritage are intrinsically valuable, and overlap with the farmed environment. Landowners have a role in the stewardship of Scotland's natural heritage and it is important that this intersection is carefully managed.

5.2 The 2017 Regulations exist to ensure that developments which could impact these features are properly considered and managed. Without proactive oversight and governance, fragile and unique environmental characteristics can be permanently erased.

5.3 RPID accepted at an early stage that it had to improve upon the way it was implementing its duties under the 2017 Regulations and agreed a plan with ESS to take the actions required to remedy this.

5.4 Following the actions taken by RPID, ESS considers that informal resolution has been achieved in that:

- communication with the farming community will be improved

- relevant parties will have the clarity they need to carry out their roles and responsibilities effectively
- increased monitoring and assessment of performance will take place
- transparency of the application and consenting process will be introduced

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