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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 115**

**The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017**

**PART 1**

**INTRODUCTORY**

**Citation, commencement, application and extent**

1.—(1) These Regulations may be cited as the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and come into force on 16th May 2017.

(2) Subject to Part 12, these Regulations apply in the case of an application for a regulatory approval made to the Scottish Ministers.

(3) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the 2010 Act” means the Marine (Scotland) Act 2010 <sup>M1</sup>;

[<sup>F1</sup>“the 2007 Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007;]

“additional information” means—

- (a) supplementary information required in accordance with regulation 21(2); 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 6(2);

“applicant”—

- (a) means in relation to an application for a regulatory approval, the applicant; and
- (b) for the purposes of regulations 10, 11, 14 and 15, includes a person who is minded to make an application for a regulatory approval;

“application for multi-stage regulatory approval” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the works permitted by the regulatory approval may be begun;

“application website” means a website maintained by the applicant for the purpose of making publicly available information relating to applications to which these Regulations apply;

[<sup>F2</sup>“the CCS Directive” means [Directive 2009/31/EC](#) of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council [Directive 85/337/](#)

EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006;]

“consenting authority” means, in relation to a project, any authority whose consent to any activity to be undertaken in the course of the project is required under any enactment;

“the consultation bodies” means—

- (a) any relevant local planning authority;
- (b) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991 <sup>M2</sup>;
- (c) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995 <sup>M3</sup>;
- (d) Historic Environment Scotland, established by section 1 of the Historic Environment (Scotland) Act 2014 <sup>M4</sup>; and
- (e) any relevant authority;

“decision notice” has the meaning given in regulation 23;

“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 <sup>M5</sup>;

“EIA application” means an application for a regulatory approval for an EIA project;

“EIA project” means works which are either—

- (a) schedule 1 works; or
- (b) schedule 2 works likely to have significant effects on the environment by virtue of factors such as their nature, size or location;

“EIA report” has the meaning given in regulation 6;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 <sup>M6</sup>;

“environmental impact assessment” has the meaning given in regulation 5;

“environmental information” means—

- (a) the EIA report submitted in respect of the proposed works;
- (b) any additional information submitted in respect of the works;
- (c) any representations made by any consultation body, or other public body, consulted in respect of the works in accordance with these Regulations; and
- (d) any representations duly made by any other person about the environmental effects of the works;

“environmental statement” has the meaning given in [<sup>F3</sup>the 2007 Regulations] as those Regulations had effect immediately prior to the date on which these Regulations came into force;

“exempt works” means works in respect of which either—

- (a) the Scottish Ministers have made a direction under regulation 8; or
- (b) the Scottish Ministers have, under regulation 9, determined that an environmental impact assessment is not required;

“marine licence” means a marine licence granted under Part 4 of the 2010 Act;

“marine protected area” means an area designated as—

- (a) a nature conservation marine protected area;

(b) a demonstration and research marine protected area; or

(c) a historic marine protected area,

by a designation order made by the Scottish Ministers under section 67 of the 2010 Act;

“multi-stage regulatory approval” means an approval, consent or agreement given pursuant to an application for multi-stage regulatory approval;

[<sup>F4</sup>“public” means one or more natural or legal persons and, in accordance with the law of any part of the United Kingdom or practice, their associations, organisations or groups;]

[<sup>F4</sup>“public concerned” means the public affected or likely to be affected by, or having an interest in, environmental decision making procedures (for the purposes of this definition non-governmental organisations promoting environmental protection and meeting any requirements under the law of any part of the United Kingdom are deemed to have an interest);]

“regulated activity” means an activity for which a regulatory approval is required;

“regulatory approval” means—

(a) a marine licence granted under Part 4 of the 2010 Act; or

(b) a variation under said Part 4 of such a marine licence;

“relevant assessment” means, in relation to proposed works, 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 proposed works;

“relevant authority” means—

(a) where a regulated activity is likely to have a significant effect on the environment of Northern Ireland, or the Northern Ireland inshore region (within the meaning of section 322 of the Marine and Coastal Access Act 2009 <sup>M7</sup>), the Department of Agriculture, Environment and Rural Affairs in Northern Ireland; or

(b) where a regulated activity is likely to have a significant effect on the environment of England or the English offshore region (within the meaning of section 322 of the Marine and Coastal Access Act 2009), the Marine Management Organisation or, as the case may be, the Secretary of State;

“relevant local planning authority” means—

(a) any authority that is a planning authority for the purposes of the Town and Country Planning (Scotland) Act 1997 <sup>M8</sup> in or adjacent to whose area the regulated activity is prepared to be carried out; and

(b) where the regulated activity is carried out in or adjacent to a National Park <sup>M9</sup>, the National Park authority for the National Park;

[<sup>F5</sup>“relevant period” means the period beginning on 21 May 2020 and ending on the date on which Part 1 of the Coronavirus (Scotland) Act 2020 expires in accordance with section 12 of that Act;]

“Scottish marine protection area” has the meaning given in section 65 of the 2010 Act;

“schedule 1 works” means works, other than exempt works, of a description set out in schedule 1;

“schedule 2 works” means works, other than exempt works, of a description set out in column 1 of schedule 2 where—

(a) any part of the works is to be carried out in a sensitive area; or

(b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to the works;

“scoping opinion” means an opinion adopted by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“screening opinion” means an opinion adopted by the Scottish Ministers as to whether works are, or are not, an EIA project;

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 of the Nature Conservation (Scotland) Act 2004 <sup>M10</sup>;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994 <sup>M11</sup>;
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage <sup>M12</sup>;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 <sup>M13</sup>;
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A <sup>M14</sup> of the Town and Country Planning (Scotland) Act 1997;
- (g) an area designated as a National Park; and
- (h) a marine protected area;

“site of special scientific interest” has the meaning given in section 58(1) of the Nature Conservation (Scotland) Act 2004 <sup>M15</sup>;

<sup>F6</sup> ...

“works” means the carrying out of activities for which a regulatory approval is required, unless the context otherwise requires;

[<sup>F7</sup>(2) Unless the context otherwise requires, expressions not defined in paragraph (1) which are used in these Regulations and also in the Directive (whether or not also used in the 2010 Act) have the same meaning as in the Directive.]

(3) In these Regulations, unless the context otherwise requires, references to a relevant local planning authority in relation to works in, on, over or under sea, are references to such planning authority or planning authorities as the Scottish Ministers consider appropriate in respect of the proposed works.

(4) In these Regulations, where an applicant submits a revised or a supplementary EIA report (or a report which that person refers to as such) any reference to an EIA report is to be treated as including a reference to that revised or supplementary EIA report.

#### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) (S.S.I. 2017/168), [regs. 1, 6\(2\)\(a\)](#)
- F2** Words in [reg. 2\(1\)](#) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) (S.S.I. 2017/168), [regs. 1, 6\(2\)\(b\)](#)
- F3** Words in [reg. 2\(1\)](#) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017](#) (S.S.I. 2017/168), [regs. 1, 6\(2\)\(c\)](#)
- F4** Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#) (S.S.I. 2019/55), [regs. 1, 5\(2\)\(a\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)

- F5** Words in reg. 2(1) inserted (20.5.2020 at 1.45 p.m.) by The Marine Works and Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (S.S.I. 2020/157), regs. 1, **3(2)**
- F6** Words in reg. 2(1) omitted (31.12.2020) by virtue of The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(2)(a)(ii)**; 2020 c. 1, Sch. 5 para. 1(1)
- F7** Reg. 2(2) substituted (31.12.2020) by The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### Marginal Citations

- M1** 2010 asp 5.
- M2** 1991 c.28.
- M3** 1995 c.25.
- M4** 2014 asp 19.
- M5** OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.
- M6** 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), **schedule 17**, paragraph 158.
- M7** 2009 c.23.
- M8** 1997 c.8.
- M9** National Parks are designated by designation orders made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000 (asp 5).
- M10** 2004 asp 6.
- M11** S.I. 1994/2716. Regulation 10 is amended by S.S.I. 2004/474 and S.S.I. 2007/80.
- M12** See Command Paper 9424.
- M13** 1979 c.46.
- M14** Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).
- M15** Section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

#### Fees

**3.—(1)** The Scottish Ministers may require an applicant to pay them reasonable fees in respect of relevant expenses.

(2) In paragraph (1) “relevant expenses” means administrative and other expenses which the Scottish Ministers reasonably incur under these Regulations in their capacity as a consenting authority (including any expenses in respect of any examination or test carried out in that capacity), but does not include any expenses in respect of which a fee may be charged under any other provision of these Regulations.

(3) The determination of the amount of a reasonable fee incurred in the performance of a function under—

- (a) regulation 9, 10 or 11;
- (b) regulation 14; or
- (c) regulation 24,

must be made by the Scottish Ministers.

(4) Before determining the amount of a fee under paragraph (3), the Scottish Ministers must consult such organisations as appear to them to represent persons who are likely to apply for a marine licence.

### **Prohibition on granting a regulatory approval without an environmental impact assessment**

4. Subject to regulation 8, the Scottish Ministers must not grant a regulatory approval for an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

### **Environmental impact assessment**

5.—(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 Parts 5, 6, 7 and, where relevant, Part 9;
- (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 works 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 the Scottish Ministers' reasoned conclusion into the decision notice in accordance with regulation 23.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed works, the direct and indirect significant effects of the proposed works 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 Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora <sup>M16</sup> and Directive [2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds <sup>M17</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 works to risks, so far as relevant to the works, of major accidents and disasters.

(5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to the determination of an application for a regulatory approval for an EIA project must identify the likely significant effects of the proposed works on the environment before a decision to grant a regulatory approval for those works is made.

(6) This paragraph applies where the Scottish Ministers—

- (a) are minded to grant a regulatory approval for an EIA project, subject to a condition that all or part of the proposed works must not commence before certain matters in implementation of that authorisation have been approved by the Scottish Ministers; and
- (b) consider that the likely significant effects of the works on the environment are not fully identifiable at the time of their determination of the application for a regulatory approval.

(7) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

#### **Marginal Citations**

**M16** OJ L 206, 22.7.1992, p.7.

**M17** OJ L 20, 26.1.2010, p.7.

### **Environmental impact assessment report**

6.—(1) An application for a regulatory approval for an EIA project must be accompanied by an environmental impact assessment report (referred to in these Regulations as an “EIA report”).

(2) An EIA report is a report prepared in accordance with this regulation by the applicant which includes (at least)—

- (a) a description of the works comprising information on the site, design, size and other relevant features of the works;
- (b) a description of the likely significant effects of the works on the environment;
- (c) a description of the features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the works and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 4 relevant to the specific characteristics of the works or of the types of works in question and to the environmental features likely to be affected.

(3) Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of those experts.

## **PART 2**

### **DETERMINING WHETHER ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED**

#### **EIA projects**

7.—(1) Subject to regulation 8, the occurrence of an event mentioned in paragraph (2) will determine for the purpose of these Regulations whether proposed works would be an EIA project.

(2) The events referred to in paragraph (1) are—

- (a) the adoption of a screening opinion by the Scottish Ministers to the effect that the proposed works are an EIA project; or
- (b) if no screening opinion has been adopted by the Scottish Ministers, the submission by the applicant in relation to those works of a report referred to by the applicant as an EIA report.

(3) A screening opinion by the Scottish Ministers determines for the purpose of these Regulations whether the proposed works are an EIA project (whether or not the applicant has submitted an EIA report) and a later screening opinion supersedes the terms of an earlier screening opinion.

### Exemptions

8.—(1) The Scottish Ministers may, in accordance with Article 2(4) of the Directive <sup>F8</sup>..., direct that these Regulations do not apply in exceptional cases in relation to particular proposed works specified in the direction where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on the purpose of the proposed works.

(2) Where a direction is given under paragraph (1) the Scottish Ministers must—

- (a) send a copy of any such direction to—
  - (i) the applicant; and
  - (ii) any relevant local planning authority;
- (b) make available to the public concerned the information considered in making the direction and the reasons for making the direction;
- (c) consider whether another form of assessment would be appropriate; and
- (d) if in the opinion of the Scottish Ministers another form of assessment would be appropriate, 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.

(3) The Scottish Ministers may direct that these Regulations do not apply in relation to particular proposed works specified in the direction if the works comprise a project having the response to civil emergencies 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.

(4) The Scottish Ministers may direct that these Regulations do not apply if they are satisfied that—

- (a) assessment of any effects on the environment of the works has already been, is being or is to be carried out by the Scottish Ministers or by another consenting authority; and
- (b) such assessment is, or will be, sufficient to meet the requirements of [<sup>F9</sup>any law of any part of the United Kingdom that implemented] the Directive in relation to the works.

(5) The Scottish Ministers may, in accordance with Article 2(5) of the Directive <sup>F10</sup>..., direct that the provisions of these Regulations relating to public consultation do not apply in cases where a project is adopted pursuant to an enactment (including an Act of the Scottish Parliament or any instrument made under such an Act), provided that the objectives of the Directive are met.

[<sup>F11</sup>(6) For the purpose of paragraph (1), Article 2(4) of the Directive is to be read as if—

- (a) in the first sub-paragraph—
  - (i) “Without prejudice to Article 7,” were omitted;
  - (ii) for “Member States” there were substituted “the Scottish Ministers”;
- (b) in the second sub-paragraph—
  - (i) for “Member States”, there were substituted “Scottish Ministers”;
  - (ii) point (c) were omitted;



- (c) the third and fourth sub-paragraphs (each beginning “The Commission”) were omitted.
- (7) For the purpose of paragraph (5), Article 2(5) of the Directive is to be read as if—
- (a) in the first sub-paragraph—
    - (i) “Without prejudice to Article 7,” were omitted;
    - (ii) for “Member States” there were substituted “The Scottish Ministers”;
  - (b) the second sub-paragraph were omitted.]

#### Textual Amendments

- F8** Words in reg. 8(1) omitted (31.12.2020) by virtue of The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 8(4)(b) inserted (31.12.2020) by The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 8(5) omitted (31.12.2020) by virtue of The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F11** Reg. 8(6)(7) inserted (31.12.2020) by The Marine Environment (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/55), regs. 1, **5(3)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

#### General provisions relating to screening

- 9.—(1)** When making a determination as to whether schedule 2 works are an EIA project the Scottish Ministers must—
- (a) in all cases take into account—
    - (i) such of the selection criteria set out in schedule 3 as are relevant to the works; and
    - (ii) the available results of any relevant assessment; and
  - (b) where that determination is made following a request for a screening opinion under regulation 10(1), base their determination on the information provided in accordance with regulation 10(2).
- (2) Where the Scottish Ministers adopt a screening opinion—
- (a) that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 3 which are relevant to the works, the main reasons for their conclusions as to whether the works are, or are not, an EIA project; and
  - (b) where the screening opinion is to the effect that the works are not an EIA project, the statement referred to in sub-paragraph (a) must state any features of the proposed works or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.
- (3) The Scottish Ministers may adopt a screening opinion at their own volition.
- (4) As soon as possible after adopting a screening opinion, the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to—
- (a) the applicant; and
  - (b) any relevant local planning authority.

#### Requests for a screening opinion

- 10.—(1)** An applicant may request the Scottish Ministers to adopt a screening opinion.
- (2) A request for a screening opinion under paragraph (1) must include—

- (a) a description of the location of the proposed works, including a plan sufficient to identify the area in which the works are proposed to be sited;
  - (b) a description of the proposed works, including in particular—
    - (i) a list of all of the regulated activities which are proposed;
    - (ii) a description of the physical characteristics of the proposed works and, where relevant, works to be decommissioned; and
    - (iii) a description of the location of the proposed works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
  - (c) a description of the aspects of the environment likely to be significantly affected by the proposed works; and
  - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed works on the environment resulting from either, or both, of the following:—
    - (i) the expected residues and emissions and the production of waste, where relevant;
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the proposed works or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.
- (4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant—
- (a) the selection criteria set out in schedule 3; and
  - (b) the available results of any relevant assessment.
- (5) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1), may consult such of the consultation bodies as the Scottish Ministers consider appropriate, as to the views of the consultation body or bodies on whether the proposed works are an EIA project unless the applicant has already conveyed the views of the body or bodies to the Scottish Ministers.
- (6) Where a consultation body is consulted by the Scottish Ministers under paragraph (5) it must give its views to the Scottish Ministers within—
- (a) a period of 3 weeks beginning on the date on which it was so consulted; or
  - (b) such longer period as the Scottish Ministers may determine.
- (7) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1), must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify the applicant, in writing, of the points on which they require further information.

### **Screening opinions – time period for decision**

**11.—**(1) Following a request for a screening opinion under regulation 10(1), the Scottish Ministers must adopt a screening opinion—

- (a) within 3 weeks of the latest of—
  - (i) the date of receipt of the request by the Scottish Ministers;
  - (ii) where the Scottish Ministers have consulted a consultation body or bodies by virtue of regulation 10(5), the date by which the consultation body or bodies must give views under regulation 10(6), (or, if earlier, the date by which the Scottish Ministers have received the views of each body which was consulted); or

- (iii) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the Scottish Ministers and the applicant; or
- (b) where notice is given under paragraph (2), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.
- (2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed works it is not practicable for them to adopt a screening opinion within the period of 90 days beginning with the date of [F12 receipt of] the request, they may extend that period by notice, in writing, given to the applicant.
- (3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to adopt a screening opinion pursuant to the request.
- (4) The date on which a request for a screening opinion under regulation 10(1) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening opinion in accordance with regulation 10(2) and, as the case may be, regulation 10(3) is received by the Scottish Ministers.

#### **Textual Amendments**

- F12** Words in [reg. 11\(2\)](#) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(3)**

## **PART 3**

### **PROCEDURES CONCERNING APPLICATIONS FOR REGULATORY APPROVALS**

#### **Application without prior screening**

- 12.**—(1) This regulation applies where it appears to the Scottish Ministers that—
- (a) an application for a regulatory approval which is before them for determination is an application to carry out schedule 1 works or an application to carry out schedule 2 works;
- (b) the works in question have not been the subject of a screening opinion; and
- (c) the application is not accompanied by a report referred to by the applicant as an EIA report.
- (2) Where this regulation applies the Scottish Ministers must adopt a screening opinion in respect of the proposed works to which the application for a regulatory approval relates.
- (3) If it appears to the Scottish Ministers that the application for a regulatory approval is an application to carry out schedule 2 works but the Scottish Ministers do not consider that the information submitted by the applicant in connection with the application includes all the information referred to in regulation 10(2), the Scottish Ministers must seek from the applicant such information as they consider remains to be provided by giving notice to the applicant describing that information.

#### **EIA application made without an EIA report**

- 13.**—(1) This regulation applies where an EIA application which is before the Scottish Ministers for determination is not accompanied by a report referred to by the applicant as an EIA report.

(2) Where this regulation applies the Scottish Ministers must notify the applicant, in writing, that the submission of an EIA report is required.

(3) Notice under paragraph (2) must be given—

- (a) within 3 weeks beginning with the date on which the application is made; or
- (b) where the Scottish Ministers adopt a screening opinion after the date on which the application is made under regulation 12(2), within 7 days beginning with the date of making of that screening opinion.

(4) An applicant who receives notice under paragraph (2) may, within the period of 3 weeks beginning with the date of the notice, write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 14 ask the Scottish Ministers to adopt a scoping opinion.

(5) If the applicant does not write by virtue of paragraph (4), the Scottish Ministers are under no duty to deal with the application and, within the period of 3 weeks beginning with the date of the notice under paragraph (2), the Scottish Ministers must inform the applicant, in writing, that no further action is being taken on the application.

(6) If the applicant writes in accordance with paragraph (4), but does not provide an EIA report to the Scottish Ministers, then the Scottish Ministers are to determine the application only by refusing regulatory approval.

## **PART 4**

### **PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS**

#### **Request for scoping opinions**

**14.**—(1) An applicant may request the Scottish Ministers to adopt a scoping opinion.

(2) A request under paragraph (1) must include—

- (a) a description of the location of the works, including a plan sufficient to identify the area in which the works are proposed to be sited;
- (b) a brief description of the nature and purpose of the works and their likely impact on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information to adopt a scoping provision they must, within the period of 3 weeks beginning with the date of the request under paragraph (1), notify the applicant of the points on which they require further information.

(4) The Scottish Ministers must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the consultation bodies; and
- (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies.

(5) The consultation period under paragraph (4) is either—

- (a) 30 days beginning with the date on which the Scottish Ministers contact the bodies referred to in paragraph (4) by virtue of that paragraph; or
- (b) where the Scottish Ministers and any such body have agreed a longer period, such longer period.

- (6) The Scottish Ministers, when adopting a scoping opinion, must take into account—
- (a) the information provided by the applicant, in particular information in respect of the specific characteristics of the works, including their location and technical capacity, and their likely impact on the environment; and
  - (b) any representations made to them in response to consultation undertaken in accordance with paragraph (4).

(7) The Scottish Ministers must, within the period of 5 weeks beginning with the date by which any body consulted under paragraph (4) is required to make representations, or within such longer period as the Scottish Ministers require, adopt a scoping opinion and send a copy to the applicant.

(8) The adoption of a scoping opinion by the Scottish Ministers does not preclude the Scottish Ministers from requiring of the applicant information in connection with any report that may be submitted by that person as an EIA report in connection with an application for a regulatory approval for the same works as referred to in the scoping opinion.

(9) Where the applicant has, at the same time as making a request for a screening opinion under regulation 10(1), made a request under paragraph (1), and the Scottish Ministers have adopted a screening opinion to the effect that the works are an EIA project, the Scottish Ministers must begin the procedures relating to scoping on the date on which they give the screening opinion.

(10) The Scottish Ministers may at their own volition adopt a scoping opinion and paragraphs (4), (5), (6), (7) and (8) apply in relation to the adoption of such a scoping opinion as they apply where a request is made under paragraph (1).

### **Procedure to facilitate preparation of EIA reports**

**15.—**(1) An applicant who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice of that intention, in writing, to the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the location, nature and purpose of the works, and must indicate the main environmental consequences to which the applicant proposes to refer in the EIA report.

(3) Where the Scottish Ministers receive notice under paragraph (1), or a written statement made by virtue of regulation 13(4), they must—

- (a) notify the consultation bodies and any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies, in writing, of—
  - (i) the name and address of the applicant; and
  - (ii) the duty imposed on those bodies by paragraph (4) to make information available to that person; and
- (b) inform the applicant, in writing, of the names and addresses of the bodies so notified.

(4) Subject to paragraphs (5) and (6), any body notified in accordance with paragraph (3) must, if requested by the applicant—

- (a) enter into consultation with the applicant to determine whether the body has in its possession any information which that body or the applicant considers to be relevant to the preparation of the EIA report; and
- (b) if the body has any such information, the body must make that information available to the applicant.

(5) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 10(1) of the Environmental Information (Scotland) Regulations 2004 <sup>M18</sup>; or
  - (b) are prevented from disclosing by regulation 11(2) of those Regulations.
- (6) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—
- (a) may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004 <sup>M19</sup>; or
  - (b) are prevented from disclosing by regulation 13(1) of those Regulations.
- (7) A reasonable charge reflecting the cost of making the relevant information available may be made by the Scottish Ministers or any body notified in accordance with paragraph (3) when making information available in accordance with paragraph (4).

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**Marginal Citations**

**M18** S.S.I. 2004/520, as amended by S.S.I. 2013/127.

**M19** S.I. 2004/3391, as relevantly amended by S.I. 2015/1897.

## PART 5

### PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

#### Publication of EIA report

**16.**—(1) Where, in relation to an EIA application, the applicant submits to the Scottish Ministers a report which the applicant refers to as an EIA report, the Scottish Ministers must, as soon as possible after the submission of that report, either—

- (a) publicise the EIA report; or
- (b) direct the applicant to publicise the EIA report,

by notice, in accordance with this regulation <sup>F13</sup>....

(2) [<sup>F14</sup>Subject to regulation 16A, a notice] referred to in paragraph (1) must—

- (a) describe the application and the proposed works to which the EIA report relates;
- (b) state that the proposed works are subject to environmental impact assessment and, where relevant, state that they are likely to have significant effects on the environment in [<sup>F15</sup>an] EEA State;
- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
- (d) state how copies of the EIA report may be obtained;
- (e) state the cost of a copy of the EIA report;
- (f) state how, and by what date, representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
- (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice will be given of the subsequent submission by the applicant of any additional information and how representations in relation to that additional information may be made;

- (h) state the nature of possible decisions to be taken in relation to the application and provide details of the consenting authority by whom such decisions are to be taken; and
  - (i) state an address for the consenting authority.
- (3) Notice under paragraph (1) must be published—
- (a) on a website;
  - (b) in The Edinburgh Gazette; and
  - (c) in a newspaper circulating in the locality in which the works to which the EIA report relates are situated (or, in relation to proposed works in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed works).
- (4) A notice under paragraph (1) may be combined with any other notice which the applicant may be required to publish in respect of the application.
- (5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an EIA report to any person except that the copies sent pursuant to regulation 18 are to be supplied free of charge.

#### Textual Amendments

- F13** Words in [reg. 16\(1\)](#) omitted (30.6.2017) by virtue of [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(4)**
- F14** Words in [reg. 16\(2\)](#) substituted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(3)**
- F15** Word in [reg. 16\(2\)\(b\)](#) substituted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, **5(4)**; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F16</sup>Temporary relaxation of requirement for publication of EIA report

**16A.** Regulation 16(2)(c) applies during the relevant period as if “and the times and places at which, and the means by which the EIA report is available for inspection” were substituted with “on the application website”.]

#### Textual Amendments

- F16** [Reg. 16A](#) inserted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(4)**

#### Publicity of determinations and provision of information

**17.—(1)** The Scottish Ministers must take steps to secure that the following documents are made available for public inspection at all reasonable hours at the address notified under regulation 16(2):

- (a) any screening opinion;
- (b) any scoping opinion;
- (c) a copy of the EIA report;
- (d) additional information; and

- (e) in accordance with national legislation, the main reports or advice issued to the Scottish Ministers at the time when the documents specified in sub-paragraphs (a), (b), (c) and (d) are first made available to the public.

(2) The Scottish Ministers must ensure that the documents listed in paragraph (1) are electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

### **Consultation**

**18.**—(1) The Scottish Ministers must, as soon as reasonably possible, either—

- (a) supply the consultation bodies, and any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies, with the following material:—
  - (i) a copy of the EIA application;
  - (ii) a copy of the EIA report;
  - (iii) a copy of any additional information supplied by the applicant to the Scottish Ministers; and
  - (iv) a letter stating that any representations in response to consultation regarding the application must be made, in writing, to the Scottish Ministers, at an address specified by the Scottish Ministers, within the period of 30 days beginning with the date of the letter (or such longer period as may be agreed between any consultation body or other public body which was consulted, and the Scottish Ministers in accordance with paragraph (2)); or

- (b) direct the applicant to do so.

(2) The Scottish Ministers may agree a longer consultation period with a consultation body, or such other public body consulted under paragraph (1), where, in the opinion of the Scottish Ministers, it is reasonable to do so.

### **Copies of EIA report for the Scottish Ministers**

**19.**—(1) [<sup>F17</sup>Subject to regulation 19A, where] an EIA report is submitted in relation to an EIA application by means of electronic communication, the applicant must also send two hard copies of the EIA report to the Scottish Ministers.

(2) Where an EIA report is submitted in relation to an EIA application by hard copy, the applicant must also—

- (a) send an additional hard copy of the EIA report to the Scottish Ministers; and
- (b) send a copy of the EIA report to the Scottish Ministers by means of electronic communication.

(3) If requested to do so by the Scottish Ministers, the applicant must send to the Scottish Ministers such further hard copies of the EIA report as the Scottish Ministers request.

(4) In this regulation references to “hard copy” or “hard copies” are references to copies of an EIA report sent other than by means of electronic communication.



#### Textual Amendments

- F17** Words in [reg. 19\(1\)](#) substituted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(5)**

#### [<sup>F18</sup>T] **Temporary relaxation of requirement for hard copies of EIA report for the Scottish Ministers**

- 19A.** Regulation 19 applies during the relevant period as if—
- (a) paragraph (1) required an EIA report in relation to an application for a marine licence to be submitted by means of electronic communication and for the applicant to send two hard copies of the EIA report to the Scottish Ministers but only to send such hard copies if requested to do so by them, and
  - (b) paragraph (2) were omitted.]

#### Textual Amendments

- F18** [Reg. 19A](#) inserted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(6)**

#### **Copies of EIA report for the public**

**20.—(1)** [<sup>F19</sup>Subject to regulation 20A, where] an EIA report is submitted in relation to an EIA application, the applicant must ensure that a reasonable number of copies of the EIA report are available for inspection at any place named in the notice published under regulation 16(1) as a place at which copies of the EIA report may be inspected.

(2) The applicant must provide copies of the EIA report in accordance with the terms of the notice published under regulation 16(1).

(3) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a report provided in accordance with paragraph (2).

#### Textual Amendments

- F19** Words in [reg. 20\(1\)](#) substituted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(7)**

#### [<sup>F20</sup>T] **Temporary relaxation of requirement for hard copies of EIA report for the public**

**20A.** There is no requirement to make hard copies of an EIA report available for public inspection during the relevant period.]

### Textual Amendments

- F20** Reg. 20A inserted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(8)**

## PART 6

### ADDITIONAL INFORMATION

#### Additional information and evidence relating to EIA reports

**21.**—(1) This regulation applies where the Scottish Ministers are considering an EIA application (including an application for multi-stage regulatory approval).

(2) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the applicant supplementary information about any matter mentioned in schedule 4 which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the works on the environment.

(3) The applicant must provide that supplementary information.

(4) The Scottish Ministers may, in writing, require to be produced to them such evidence, in respect of any EIA report or additional information as they may reasonably call for to verify any information contained in the EIA report or such additional information, as the case may be.

#### Publication of additional information

**22.**—(1) [<sup>F21</sup>Subject to regulation 22A, where] additional information is provided to the Scottish Ministers, the applicant must publish a notice in accordance with paragraph (2) containing the information required by paragraph (3).

(2) A notice under paragraph (1) must be published—

- (a) in The Edinburgh Gazette;
- (b) in one or more newspapers circulating in the locality in which the works are situated (or, in relation to proposed works in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed works); and
- (c) on the application website.

(3) A notice under paragraph (1) must—

- (a) describe the EIA application and the proposed works;
- (b) state that the proposed works are subject to environmental impact assessment and, where relevant, state that they are likely to have significant effects on the environment in [<sup>F22</sup>an] EEA State;
- (c) state that the additional information is available for inspection [<sup>F23</sup>free of charge] and the times and places at which, and the means by which, the additional information is available for inspection;
- (d) state how copies of the additional information may be obtained;
- (e) state the cost of a copy of the additional information;

- (f) state how and by what date representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
  - (g) provide details of the arrangements for public participation in the decision making procedure, including a description of how notice is to be given of any subsequent submission by the applicant of additional information and how representations in relation to that additional information may be made; and
  - (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by which such decisions are to be taken.
- (4) The applicant must serve a copy of the additional information on any person to whom a copy of the EIA report was supplied under regulation 18(1) together with a copy of the notice published under paragraph (1).
- (5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the additional information to any person but the copies served under paragraph (4) are to be supplied free of charge.
- (6) Paragraph (1) does not apply in relation to additional information to the extent that—
- (a) the information is provided for the purposes of an inquiry held under the 2010 Act;
  - (b) the written requirement for the information states that it is to be provided for such purposes; and
  - (c) the information must be published as part of that inquiry.
- [<sup>F24</sup>(7) Where additional information is provided to the Scottish Ministers the applicant must ensure that a reasonable number of copies of the additional information are available for inspection at any place named in the notice under paragraph (1) as a place at which copies of the additional information may be inspected.
- (8) The applicant must provide copies of the additional information in accordance with the terms of the notice under paragraph (1) and where that notice includes an address at which copies of the additional information may be obtained the applicant must ensure that a reasonable number of copies of the additional information are available at that address.]

#### Textual Amendments

- F21** Words in [reg. 22\(1\)](#) substituted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(9)**
- F22** Word in [reg. 22\(3\)\(b\)](#) substituted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, **5(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in [reg. 22\(3\)\(c\)](#) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(5)(a)**
- F24** [Reg. 22\(7\)\(8\)](#) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(5)(b)**

#### [<sup>F25</sup>Temporary relaxation of requirement for publication of additional information

**22A.** Regulation 22(3)(c) applies during the relevant period as if “and the times and places at which, and the means by which, the additional information is available for inspection” were substituted with “on the application website”.]

### Textual Amendments

- F25** Reg. 22A inserted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(10)**

## PART 7

### NOTIFICATION OF DECISIONS

#### Decision notice

**23.**—(1) Where an EIA application is determined by the Scottish Ministers, the notification of the decision to be given to the applicant (referred to in these Regulations as “the decision notice”) must include the information specified in paragraph (2).

(2) The information is—

- (a) a description of the works;
- (b) the terms of the decision;
- (c) the main reasons and considerations on which the decision is based;
- (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
- (e) a summary of—
  - (i) the environmental information; and
  - (ii) the results of the consultations and information gathered pursuant to Parts 5 and 6 and, where relevant, Part 9 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 30, have been incorporated or otherwise addressed;
- (f) if the decision is to grant a regulatory approval—
  - (i) any conditions to which the decision is subject;
  - (ii) the reasoned conclusion referred to in regulation 5(1)(d);
  - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date;
  - (iv) a description of any features of any mitigation measures; and
  - (v) a description of any monitoring measures required under regulation 24; and
- (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(3) Where regulation 5(6) applies, the decision notice must describe the matters in respect of which the Scottish Ministers consider that the effects of the works are not fully identifiable at the time of their determination of the EIA application.

(4) For the purposes of paragraph (2)(f)(iii), the reasoned conclusion referred to in regulation 5(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the works on the environment.

(5) In this regulation and in regulation 24—

“mitigation measures” means any features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment including any such features or measures required by virtue of a condition imposed on the grant of regulatory approval; and

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed works including any such measures required by virtue of a condition imposed on the grant of regulatory approval.

### Monitoring measures

24.—(1) Where an EIA application is determined by the Scottish Ministers and the decision is to grant a regulatory approval, the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works and the significance of their effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under [<sup>F26</sup>assimilated] law (within the meaning of schedule 1 of the Interpretation Act 1978) (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and
- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

(3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.

(4) Where mitigation measures or monitoring measures are required by a condition imposed on the grant of a regulatory approval the Scottish Ministers must take steps to ensure that those measures are implemented.

#### Textual Amendments

**F26** Word in [reg. 24\(2\)\(b\)](#) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), [reg. 1\(1\)](#), [sch. 2 para. 34\(2\)](#)

### Notification of decision

25.—(1) Where an EIA application is determined by the Scottish Ministers they must—

- (a) send the decision notice to the applicant;
- (b) notify the consultation bodies, and such other bodies consulted under regulation 18(1), of their decision by sending a copy of the decision notice to such bodies; and
- (c) publish a notice containing the information specified in paragraph (3)(a) to (c) on a website.

(2) The applicant must, as soon as reasonably practicable after receiving the decision notice under paragraph (1)(a), notify the public of the decision, and of where a copy of decision notice may be inspected, by publishing a notice in accordance with paragraph (3)(d).

(3) [<sup>F27</sup>Subject to regulation 25A, a notice] under paragraphs (1) and (2) must—

- (a) describe the works;
- (b) state the terms of the decision;
- (c) state the times and places at which, and the means by which, a copy of the decision notice is available for inspection; and
- (d) be published—
  - (i) in The Edinburgh Gazette;
  - (ii) in one or more newspapers circulating in the locality in which the proposed works are situated (or in relation to the proposed works situated in, on, over or under the sea, such newspapers as are likely to come to the attention of those likely to be affected by the proposed works); and
  - (iii) on the application website.

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**Textual Amendments**

**F27** Words in [reg. 25\(3\)](#) substituted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(11)**

**[<sup>F28</sup>Temporary relaxation of requirement to make decision notice available for inspection**

**25A.** Regulation 25 applies during the relevant period as if paragraph (3)(c) were substituted with—

“(c) state the details of the website where a copy of the decision notice is available for inspection;”.]

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**Textual Amendments**

**F28** [Reg. 25A](#) inserted (20.5.2020 at 1.45 p.m.) by [The Marine Works and Marine Licensing \(Miscellaneous Temporary Modifications\) \(Coronavirus\) \(Scotland\) Regulations 2020 \(S.S.I. 2020/157\)](#), regs. 1, **3(12)**

## PART 8

### MULTI-STAGE REGULATORY APPROVALS

**Prohibition on granting a multi-stage regulatory approval without an environmental impact assessment**

**26.** The Scottish Ministers must not grant an application for multi-stage regulatory approval in respect of an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers have taken the environmental information into account.

**Application for a multi-stage regulatory approval where EIA report previously provided**

**27.** Where—

- (a) an application for a multi-stage regulatory approval which is before the Scottish Ministers for determination relates to regulatory approval for an EIA project;

- (b) an EIA report has previously been submitted by the applicant in relation to the works;
- (c) it appears to the Scottish Ministers that the works, or the part of the works to which the application for multi-stage regulatory approval relates, as the case may be, may have significant effects on the environment that have not previously been identified; and
- (d) the applicant has not submitted additional information in respect of those effects together with the application for multi-stage regulatory approval,

the Scottish Ministers must seek supplementary information from the applicant in accordance with regulation 21(2) in respect of such effects.

### **Application for a multi-stage regulatory approval without EIA report**

**28.**—(1) Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage regulatory approval which is before them for determination relates to schedule 1 works;
- (b) the works in question have not been the subject of a screening opinion; and
- (c) an EIA report has not been submitted by the applicant in relation to the works,

the Scottish Ministers must adopt a screening opinion in respect of the works.

(2) Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage regulatory approval which is before them for determination relates to schedule 2 works;
- (b) it appears to them that the works in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or because the works have not been the subject of a screening opinion); and
- (c) an EIA report has not been submitted by the applicant in relation to the works,

the Scottish Ministers must adopt a screening opinion in respect of the works.

(3) Where the Scottish Ministers adopt a screening opinion under paragraph (1) or (2) to the effect that the works to which the application for multi-stage regulatory approval relates are an EIA project, the Scottish Ministers must notify the applicant, in writing, that the submission of an EIA report is required.

(4) The Scottish Ministers must notify the applicant in accordance with paragraph (3) within the period of 3 weeks beginning with the date of the screening opinion.

(5) An applicant who receives a notification under paragraph (3) may, within the period of 3 weeks beginning with the date of the notification, write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 14 request the Scottish Ministers to adopt a scoping opinion.

(6) If the applicant does not write in accordance with paragraph (5), the Scottish Ministers are under no duty to deal with the application and, at the end of the 3 week period, the Scottish Ministers must inform the applicant, in writing, that no further action is being taken on the application.

(7) If the applicant writes by virtue of paragraph (5), but does not provide an EIA report to the Scottish Ministers, then the Scottish Ministers are to determine the application only by refusing regulatory approval.

### **Modification of Regulations relating to an application for multi-stage regulatory approval**

**29.**—(1) These Regulations apply to an application for multi-stage regulatory approval as if—

- (a) references to an application for regulatory approval were references to an application for multi-stage regulatory approval;

- (b) references to an EIA application were references to an application for multi-stage regulatory approval for an EIA project; and
- (c) in regulation 30(5)(b) the reference to “regulatory approval” were a reference to “multi-stage regulatory approval”.

(2) Regulations 23(2)(d), (e) and (g) and 25(1)(b) and (2) apply in respect of the notification of a decision on an application for multi-stage regulatory approval only where an EIA report or additional information has been first submitted or provided by the applicant to the Scottish Ministers in connection with that application.

## PART 9

### PROJECTS WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

#### **Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom**

30.—(1) This regulation applies where—

- (a) it comes to the attention of the Scottish Ministers that works proposed to be carried out in Scotland are the subject of an EIA application and are likely to have significant effects on the environment in an EEA State <sup>F29</sup>...; or
- (b) an EEA State <sup>F30</sup>... likely to be significantly affected by such works makes a request to the Scottish Ministers <sup>F31</sup>....

(2) Where this regulation applies, the Scottish Ministers must—

- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (b), the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);
- (b) publish the information referred to in sub-paragraph (a) in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
- (c) give the EEA State a reasonable period of time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars referred to in paragraph (2)(a) are—

- (a) a description of the works, together with any available information on their possible significant effect on the environment in [<sup>F32</sup>the] EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must, as soon as possible, send to that EEA State the following information:—

- (a) a copy of the EIA application concerned;
- (b) a copy of the EIA report in respect of the works to which that application relates; and
- (c) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

(5) The Scottish Ministers, insofar as they are concerned, must also—

- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the applicant to be made available, within a reasonable



- period of time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before a regulatory approval is given for the works, to forward to the Scottish Ministers, within a reasonable period of time, their opinion on the information supplied.
- (6) The Scottish Ministers <sup>F33</sup> ... must—
- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the works on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with [<sup>F34</sup>that EEA State] a reasonable period of time for the duration of the consultation period.
- (7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the EIA application concerned, the Scottish Ministers must inform the EEA State of the decision and forward to it a statement of—
- (a) the content of the decision and any conditions attached to it;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the works.

#### Textual Amendments

- F29** Words in [reg. 30\(1\)\(a\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in [reg. 30\(1\)\(b\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(b\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F31** Words in [reg. 30\(1\)\(b\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(b\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Word in [reg. 30\(3\)\(a\)](#) substituted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F33** Words in [reg. 30\(6\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(d\)\(i\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in [reg. 30\(6\)](#) substituted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(6\)\(d\)\(ii\)](#); 2020 c. 1, Sch. 5 para. 1(1)

#### Projects in another EEA State likely to have significant transboundary effects

**31.**—(1) Where the Scottish Ministers receive from an EEA State <sup>F35</sup> ... information which that EEA State has gathered from the applicant of a proposed project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must <sup>F36</sup> ...—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;

- (b) determine in agreement with that EEA State a reasonable period, before a regulatory approval is given for the project, during which members of the public in Scotland may submit to the competent authority in that EEA State representations<sup>F37</sup>...; and
  - (c) so far as they have received such information, notify the consultation bodies and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
    - (i) any conditions attached to it;
    - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
    - (iii) a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects that have been identified.
- (2) The Scottish Ministers must also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable period of time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
  - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before a regulatory approval for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

#### Textual Amendments

- F35** Words in [reg. 31\(1\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(7\)\(a\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in [reg. 31\(1\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(7\)\(b\)](#); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in [reg. 31\(1\)](#) omitted (31.12.2020) by virtue of [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, [5\(7\)\(c\)](#); 2020 c. 1, Sch. 5 para. 1(1)

## PART 10

### OFFENCES

#### Provision of false etc. information

**32.**—(1) A person commits an offence if that person, for the purpose of procuring a particular decision on an application to which these Regulations apply—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
  - (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
  - (c) with intent to deceive, withholds any material information.
- (2) A person who commits an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on conviction on indictment, to a fine.

(3) No act or omission of the Crown constitutes an offence under this regulation.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing this regulation, declare unlawful any act or omission of the Crown which would but for paragraph (3) be an offence under this regulation.

(5) Despite paragraph (3), this regulation applies to a person in the public service of the Crown as it applies to other persons.

### **Offences by bodies corporate etc.**

**33.**—(1) Paragraph (2) applies where—

(a) an offence under regulation 32(1) has been committed by—

(i) a body corporate;

(ii) a Scottish partnership; or

(iii) an unincorporated association other than a Scottish partnership; and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—

(i) a relevant individual; or

(ii) an individual purporting to act in the capacity of a relevant individual.

(2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) In paragraph (1), “relevant individual” means—

(a) in relation to a body corporate (other than a limited liability partnership)—

(i) a director, manager, secretary or similar officer of the body;

(ii) where the affairs of the body are managed by its members, a member;

(b) in relation to a limited liability partnership, a member;

(c) in relation to a Scottish partnership, a partner; or

(d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

## **PART 11**

### **MISCELLANEOUS**

#### **Electronic communications – general**

**34.**—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

(a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and

(b) references to applications, reports, statements, notices, opinions, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement, notice or other document to any other person (referred to in these Regulations as “the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) the requirement under regulation 19(1), (2)(a) or (3) to provide copies of a report;
- (b) any requirement under regulation [F38]30], including submitting information to an EEA State; and
- (c) any requirement under regulation [F39]31], including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Where the electronic communication is received by the recipient—

- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
- (b) at any time during a day which is not a working day, it is deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971 <sup>M20</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations (other than under regulation 19(1), (2)(a) or (3), 30 or 31) to give or send any report, statement or document, any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

#### Textual Amendments

- F38** Word in reg. 34(4)(b) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(6)(a)**
- F39** Word in reg. 34(4)(c) substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(6)(b)**

#### Marginal Citations

- M20** 1971 c.80.

### Electronic communications – deemed agreement

**35.—(1)** Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
  - (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.
- (2) Deemed agreement under paragraph (1) subsists until that person gives notice under regulation 36 to revoke the agreement.

#### **Withdrawal of consent to use of electronic communications**

**36.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of 7 days, beginning with the date on which the notice is given.

#### **Access to review procedure before a court**

**37.**—<sup>[F40]</sup>(1) Any non governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive.

<sup>[F41]</sup>(2) For the purpose of paragraph (1), Article 11(1) of the Directive is to be read as if the reference to—

- (a) “Member States” were a reference to “The Scottish Ministers”,
- (b) “a Member State” were a reference to “Scotland”.]

#### **Textual Amendments**

**F40** Reg. 37 renumbered as reg. 37(1) (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, **5(8)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

**F41** Reg. 37(2) inserted (31.12.2020) by [The Marine Environment \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/55\)](#), regs. 1, **5(8)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

#### **Co-ordination of assessments**

**38.**—(1) Where, in relation to an EIA project there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a habitats regulation appraisal, the Scottish Ministers must, where appropriate, ensure that the habitats regulation appraisal and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “habitats regulation appraisal” means an assessment under one, or more, of the following regulations—

- (a) regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994;

- (b) [<sup>F42</sup>regulation 28 of the Conservation of Offshore Marine Habitats and Species Regulations 2017];
- (c) regulation 61 of the Conservation of Habitats and Species Regulations 2010 <sup>M21</sup>.

#### Textual Amendments

**F42** Words in reg. 38(2) substituted (30.11.2017) by [The Conservation of Offshore Marine Habitats and Species Regulations 2017 \(S.I. 2017/1013\)](#), reg. 1, **Sch. 4 para. 21(2)** (with regs. 3, 4(2))

#### Marginal Citations

**M21** [S.I. 2010/490](#), **regulation 61** is amended by [S.I. 2012/1927](#).

### Competent authority – avoidance of conflict of interest

**39.**—(1) The Scottish Ministers are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are to consider an application for an EIA project they have made, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

## PART 12

### TRANSITIONAL PROVISIONS AND REVOCATIONS

#### Transitional provisions – general

**40.**—(1) These Regulations, other than regulations 5(4), 6(4) and (5)(b), 8(3), 24 and 38, apply with the modifications specified in paragraph (2) in respect of an application for regulatory approval where the applicant has before 16th May 2017—

- (a) submitted an environmental statement in connection with the application; or
  - (b) made a request for a scoping opinion under regulation 13(1) of the 2007 Regulations in respect of the works to which the application relates.
- (2) These Regulations apply in accordance with paragraph (1) as if—
- (a) references to an EIA report included references to an environmental statement;
  - (b) for the factors specified in regulation 5(3)(a) to (d) there were substituted—
    - “(a) human beings, fauna and flora;
    - (b) soil, water, air, climate and the landscape; and
    - (c) material assets and cultural heritage;”;
  - (c) for regulation 6(2) there were substituted—
    - “(2) An EIA report is a report prepared in accordance with this regulation by the applicant which includes (at least) the information specified in schedule 3 of the 2007 Regulations.”; and
  - (d) the reference in regulation 21(2) to matters mentioned in schedule 4 of these Regulations were a reference to the matters mentioned in schedule 3 of the 2007 Regulations.

[<sup>F43</sup>(2A) Paragraphs (1) to (3) of regulation 22 (publication of additional information) do not apply to additional information falling within paragraph (b) of the definition of “additional information” in

regulation 2(1) which is received by the Scottish Ministers in relation to an application for regulatory approval before 16th May 2017 where before that date notice has been given under regulation 16(1) of the 2007 Regulations publicising that information in relation to that application.]

(3) Where—

(a) a request for a scoping opinion under regulation 13(1) of the 2007 Regulations is made before 16th May 2017; and

(b) the Scottish Ministers have not adopted the scoping opinion before that date,

that request is to be treated as having been made under regulation 14(1) but when adopting the scoping opinion the Scottish Ministers are to assess the scope and level of detail of information to be contained in the EIA report by reference only to the scope and level of detail of information which immediately before 16th May 2017 had to be included in an environmental statement in accordance with regulation 12(2) and schedule 3 of the 2007 Regulations.

(4) References in this regulation and in regulation 41 to provisions of the 2007 Regulations are references to such provisions as they had effect immediately before 16th May 2017.

#### Textual Amendments

**F43** Reg. 40(2A) inserted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(7)**

#### Transitional provisions – requests for screening opinions

**41.** These Regulations, other than regulations 9(1)(b) and 10(2) to (4), apply in respect of a request for a screening opinion made under regulation 11(1) of the 2007 Regulations before 16th May 2017 as they apply to a request for a screening opinion [<sup>F44</sup>made under regulation 10(1)] of these Regulations on or after that date as if—

(a) the reference in regulation 11(4) to items or information required to be contained in or accompany a request in accordance with regulation 10(2) of these Regulations were a reference to items or information required to accompany a request for a screening opinion in accordance with sub-paragraphs (a) and (b) of paragraph 1 of schedule 2 of the 2007 Regulations; and

(b) the reference in regulation 9(1)(a)(i) and (2)(a) to the criteria set out in schedule 3 of these Regulations were a reference to the criteria set out in schedule 1 of the 2007 Regulations.

#### Textual Amendments

**F44** Words in reg. 41 substituted (30.6.2017) by [The Environmental Impact Assessment \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/168\)](#), regs. 1, **6(8)**

#### Revocations

**42.** The following instruments are revoked:—

(a) the 2007 Regulations;

(b) the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011<sup>M22</sup>; and

(c) the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2015<sup>M23</sup>.

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**Changes to legislation:** There are currently no known outstanding effects for the The Marine Works  
(Environmental Impact Assessment) (Scotland) Regulations 2017. (See end of Document for details)

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**Marginal Citations**

**M22** S.I. 2011/735.

**M23** S.I. 2015/446.

St Andrew's House,  
Edinburgh

*R CUNNINGHAM*  
A member of the Scottish Government



**Changes to legislation:**

There are currently no known outstanding effects for the The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.