
STATUTORY INSTRUMENTS

1999 No. 3445

**The Harbour Works (Environmental
Impact Assessment) Regulations 1999**

PART II

—APPLICATIONS RELATING TO HARBOUR WORKS

Interpretation

2.—(1) In this Part, unless the context otherwise requires—

“the appropriate Authority” means—

- (a) as regards harbour works relating to fishery harbours in England, the Minister of Agriculture, Fisheries and Food;
- (b) as regards harbour works relating to fishery harbours in Wales, the National Assembly for Wales;
- (c) as regards any other harbour works in England or Wales, the Secretary of State for the Environment, Transport and the Regions;
- (d) as regards harbour works in Scotland, the Scottish Ministers;

“developer” means any person who proposes to carry out or who carries out harbour works;

“the Directive” means Council Directive [85/337/EEC](#) on the assessment of the effect of certain public and private projects on the environment, as amended by Council Directive [97/11/EC](#);

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(1);

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“environmental statement” means a statement that includes such information of the descriptions referred to in Schedule 1 as is considered, in accordance with these Regulations, to be relevant to the proposed harbour works, but which includes at least the essential environmental information;

“essential environmental information” means—

- (a) a description of the proposed harbour works comprising information on its site, design and size;
- (b) a description of the measures which the applicant proposes to take in order to prevent, reduce or remedy significant adverse effects;
- (c) data required to identify and assess the main effects which the proposed harbour works are likely to have on the environment;
- (d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; and

- (e) a non-technical summary of the information mentioned in sub-paragraphs (a) to (d);
“fishery harbour” has the meaning assigned to it in section 21 of the Sea Fish Industry Act 1951(2);
“harbour” has the meaning assigned to it in section 57 of the Harbours Act 1964(3);
“harbour authority” means the harbour authority as defined in section 57 of the Harbours Act 1964 in relation to the harbour where the harbour works are proposed to be carried out;
“harbour works” means works involved in the construction of a harbour or in the making of modifications to an existing harbour;
“provisional order” has the meaning assigned to it in section 57 of the Harbours Act 1964;
“relevant project” means a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location;
“selection criteria” means the criteria set out in Schedule 2;
“sensitive area” means any of the following—
- (a) land notified under section 28(1) of the Wildlife and Countryside Act 1981(4) (areas of special scientific interest);
 - (b) land to which section 29(3) of that Act (nature conservation orders) applies;
 - (c) land declared to be a national nature reserve under section 35 of that Act;
 - (d) an area to which paragraph (u)(ii) in the table in article 10 of the Town and Country Planning (General Development Procedure) Order 1995(5) applies;
 - (e) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(6);
 - (f) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988(7);
 - (g) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(8);
 - (h) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(9);
 - (i) an area of outstanding natural beauty designated by order under section 87 of the National Parks and Access to the Countryside Act 1949 (designation of areas of outstanding natural beauty);
 - (j) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994(10);

(2) 1951 c. 30.

(3) 1964 c. 40; the definition of “harbour” has been amended by the Local Government (Scotland) Act 1973 (c. 65), Schedule 29, and by the Merchant Shipping Act 1995 (c. 21), Schedule 13, paragraph 33. The definition of “marine work” in section 57 of the Harbours Act 1964 has been amended by the Local Government (Scotland) Act 1973, Schedule 19, paragraph 16, and by the Companies Act 1989 (c. 40), Schedule 18, paragraph 5.

(4) 1981 c. 69; section 28 has been amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Services of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act 1988 (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).

(5) S.I. 1995/419, to which there are amendments not relevant to these Regulations.

(6) 1949 c. 97. See the definition of “National Park” in section 5(3); section 5 has been amended by the Environment Act 1995 (c. 25), section 61(1) and the Environment Protection Act 1990 (c. 43), Schedule 8, paragraph 1(1) and (5). Section 87 has been amended by the Environmental Protection Act 1990, Schedule 8, paragraph 1(12).

(7) 1988 c. 4; see the definition of “the Broads” in section 2(3).

(8) Command Paper 9424.

(9) 1979 c. 46. See the definition of “scheduled monument” in section 1(11).

(10) S.I. 1994/2716.

- (k) an area designated as a natural heritage area under section 6(2) of the Natural Heritage (Scotland) Act 1991⁽¹¹⁾ or as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972⁽¹²⁾;

and subject thereto, expressions used which are also used in the Directive have the meaning which they bear in the Directive.

(2) For the purposes of this Part a person carries out harbour works if he carries out the whole or any part of such works or any operation in connection with or for the purposes of such works.

(3) Harbour works constituting a project which is of a description mentioned in Annex II to the Directive shall be treated for the purposes of this Part as not falling within that Annex unless—

- (a) the area of the harbour works exceeds 1 hectare,
- (b) any part of the harbour works is to be carried out in a sensitive area, or
- (c) the appropriate Authority determines that the harbour works constituting the project shall be treated for the purposes of this Part as falling within that Annex.

Scope

3. This Part applies to harbour works below the low water mark of medium tides, being works which are—

- (a) not subject to planning control pursuant to the Town and Country Planning Act 1990⁽¹³⁾ or the Town and Country Planning (Scotland) Act 1997⁽¹⁴⁾ or pursuant to orders made in exercise of powers conferred by the said Acts;
- (b) not specifically described in or authorised to be carried out by a harbour revision order made pursuant to section 14 of the Harbours Act 1964, a harbour empowerment order made pursuant to section 16 of the Harbours Act 1964 or by a provisional order;
- (c) not specifically described in or authorised to be carried out by any enactment conferring powers to carry out works at a harbour;
- (d) not authorised by an order under section 3 of the Transport and Works Act 1992⁽¹⁵⁾;
- (e) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988⁽¹⁶⁾; and
- (f) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999⁽¹⁷⁾.

Procedure for obtaining a prior opinion

4.—(1) A person who is minded to make an application or give a notice of a description referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) may ask the appropriate Authority to state in writing its opinion—

⁽¹¹⁾ 1991 c. 28.

⁽¹²⁾ 1972 c. 52. Section 6(9) of the Natural Heritage (Scotland) Act 1991 contains a saving provision for any area which was designated as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972 as at the date of repeal of that section by section 27 of, and Schedule 11 to, the 1991 Act.

⁽¹³⁾ 1990 c. 8.

⁽¹⁴⁾ 1997 c. 8.

⁽¹⁵⁾ 1992 c. 42.

⁽¹⁶⁾ S.I. 1988/1218.

⁽¹⁷⁾ S.I. 1999/367.

- (a) as to whether the application or notice would or would not relate in whole or in part to harbour works to which this Part applies; and
- (b) if the appropriate Authority considers it would so relate and, assuming the criteria set out in paragraph (2) were satisfied, about the information to be supplied in the environmental statement.

(2) The criteria referred to in paragraph (1)(b) are that the proposed harbour works constitute a project falling within Annex I to the Directive, or within Annex II to the Directive and (taking into account the selection criteria) the appropriate Authority determines that they would be likely to constitute a relevant project.

(3) A request under paragraph (1) shall be accompanied by—

- (a) a plan sufficient to identify the location of the proposed harbour works,
- (b) a brief description of the nature and purpose of the proposed harbour works and of their possible effects on the environment,
- (c) plans and selections showing the lines, situation and levels of the proposed harbour works, and
- (d) such other information or representations as the person making the request may wish to provide or make.

(4) The appropriate Authority receiving a request under paragraph (1) shall, if it considers that it has not been provided with sufficient information to give an opinion on the questions raised, notify the person making the request of the particular points on which it requires further information.

(5) Subject to paragraph (6), the appropriate Authority shall give the opinion requested under paragraph (1) as soon as reasonably practicable.

(6) The appropriate Authority shall not give an opinion in response to a request under paragraph (1) until it has consulted the person who made the request and such bodies as appear to it to be likely to have an interest in the project by reason of their environmental responsibilities.

(7) In so far as the request relates to paragraph (1)(b), the appropriate Authority shall indicate the extent of the information set out in Schedule 1 which the person who requested the opinion would be required under regulation 5 to supply; in so doing the appropriate Authority shall take into account the extent to which it considers—

- (a) information to be relevant to its decision under regulation 10 and to the specific characteristics of the particular proposed harbour works and of the environmental features likely to be affected by the works, and
- (b) that (having regard inter alia to current knowledge and methods of assessment) the person who requested the opinion may reasonably be required to compile the information.

Applications or notices relating to harbour works where a prior opinion has been given

5.—(1) This regulation shall apply where an application or notice of one of the following descriptions is made or given in relation to harbour works to which this Part applies—

- (a) an application for consent to the carrying out of operations pursuant to section 34 of the Coast Protection Act 1949⁽¹⁸⁾;
- (b) notice from a harbour authority pursuant to regulations made under section 37 of the Merchant Shipping Act 1988⁽¹⁹⁾ that application has been made for a licence to carry out operations;

⁽¹⁸⁾ 1949 c. 74; section 34 has been amended by the Merchant Shipping Act 1988 (c. 12), section 36(1)–(4), and the Statute Law Revision Act 1953 (c. 5).

⁽¹⁹⁾ 1988 c. 12.

- (c) an application for the approval of any such work as is referred to in section 35(1)(g) of the Coast Protection Act 1949; or
 - (d) an application for approval required to be obtained in relation to any work (other than work specifically described or authorised as mentioned in regulation 3(b) or (c)) under any provision of—
 - (i) a local Act;
 - (ii) a harbour revision order made pursuant to section 14 of the Harbours Act 1964; or
 - (iii) a harbour empowerment order made pursuant to section 16 of that Act, not requiring consent under section 34 of the Coast Protection Act 1949;and an opinion has been given to the developer under regulation 4(1) that the appropriate Authority would consider that such an application or notice relating to the same, or substantially the same proposed works, would relate in whole or in part to harbour works to which this Part applies.
- (a) (2) (a) Where an application of a description referred to in paragraph (1)(d)(i) is made and the approval required to be obtained is not the approval of the appropriate Authority—
 - (i) the developer shall notify the appropriate Authority of the application, and
 - (ii) the approval shall not be granted and the developer shall not commence the proposed harbour works, unless paragraph (3) or (7) applies or the appropriate Authority consents to the carrying out of the proposed harbour works under regulation 10(2).
 - (b) In any other case to which this regulation applies, the developer shall not commence the proposed harbour works unless paragraph (3) or (7) applies or the appropriate Authority consents thereto under regulation 10(2).
- (3) Where it appears to the appropriate Authority that the proposed harbour works do not constitute a project falling within Annex I or II to the Directive, it shall in writing notify its decision to the developer and, in a case where a notice referred to in paragraph (1)(b) has been given, to the harbour authority, and subject to paragraph (6) it shall take no further action on the application or notice pursuant to this Part.
- (4) Where it appears to the appropriate Authority that the proposed harbour works constitute a project falling within Annex I to the Directive—
- (a) it shall in writing notify its decision and the reasons for its decision to the developer and, in a case where a notice has been given under paragraph (1)(b), the harbour authority, and
 - (b) paragraphs (9) and (10) shall apply.
- (5) Where it appears to the appropriate Authority that the proposed harbour works constitute a project falling within Annex II to the Directive—
- (a) it shall determine whether, taking into account the selection criteria, the works constitute a relevant project,
 - (b) it shall in writing notify its decision to the developer and, in a case where a notice referred to in paragraph (1)(b) has been given, to the harbour authority, and
 - (c) where it determines that, taking into account the selection criteria, the works constitute a relevant project, it shall in writing notify the reasons for its decision, to—
 - (i) the developer, and
 - (ii) in a case where a notice referred to in paragraph (1)(b) has been given, the harbour authority.
- (6) The appropriate Authority shall make available for public inspection at all reasonable hours at a place within the locality of the harbour where the harbour works are proposed to be carried out, a copy of—

- (a) its decision under paragraph (3), (4) or (5)(a), and
- (b) any accompanying statement of reasons under paragraph (4) or (5)(c).

(7) Where the appropriate Authority determines pursuant to paragraph (5)(a) that the works do not constitute a relevant project, then subject to the provisions of paragraphs (5) and (6) it shall take no further action on the application or notice pursuant to this Part.

(8) Where the appropriate Authority determines pursuant to paragraph (5)(a) that the works constitute a relevant project, paragraphs (9) to (11) shall apply.

(9) Where this paragraph applies, the appropriate Authority shall direct the developer to supply it with an environmental statement in such form as it may specify.

(10) Subject to paragraph (11), the appropriate Authority may require the developer to supply it with specified information in addition to the information specified in the opinion given to the developer pursuant to regulation 4(1)(b) in relation to the same, or substantially the same, proposed harbour works as are referred to in the application or notice.

(11) The appropriate Authority may specify information under paragraph (10) only if it is information of a type set out in Schedule 1 and the appropriate Authority considers that—

- (a) it is relevant to its decision under regulation 10 and to the specific characteristics of the proposed harbour works to which the application or notice relates and to the environmental features likely to be affected; and
- (b) (having regard inter alia to current knowledge and methods of assessment) the developer may reasonably be required to compile the information.

Applications or notices relating to harbour works where a prior opinion has not been given

6.—(1) This regulation shall apply where an application or notice of a description referred to in sub-paragraph (a), (b), (c) or (d) of regulation 5(1) is made or given and an opinion has not been given to the developer under regulation 4(1) in relation to the application or notice.

(2) Where an application of a description referred to in sub-paragraph (d)(i) of regulation 5(1) is made and the approval required to be obtained is not the approval of the appropriate Authority—

- (a) the developer shall notify the appropriate Authority of the application,
- (b) the appropriate Authority shall consider whether the application relates in whole or in part to harbour works to which this Part applies and shall reach a decision thereon as soon as reasonably practicable, and
- (c) if the appropriate Authority determines that the application relates in whole or in part to harbour works to which this Part applies—
 - (i) the approval shall not be granted, and
 - (ii) the developer shall not commence the proposed harbour works, unless paragraph (5) or (9) applies or the appropriate Authority consents to the carrying out of the proposed harbour works under regulation 10(2).

(3) In any other case to which this regulation applies—

- (a) the appropriate Authority shall consider whether the application or notice relates in whole or in part to harbour works to which this Part applies and shall reach a decision thereon as soon as reasonably practicable, and
- (b) if the appropriate Authority determines that the application or notice relates in whole or in part to harbour works to which this Part applies, the developer shall not commence the proposed works unless paragraph (5) or (9) applies or the appropriate Authority consents thereto under regulation 10(2).

(4) The appropriate Authority may require the developer to provide it with such of the following information as it deems necessary to enable it to consider whether the proposed harbour works constitute a project falling within Annex I or II to the Directive, and if within Annex II, to determine whether (after taking into account the selection criteria) they constitute a relevant project—

- (a) a plan sufficient to identify the location of the proposed harbour works;
- (b) a brief description of the nature and purpose of the proposed harbour works and of their possible effects on the environment;
- (c) plans and sections showing the lines, situation and levels of the proposed harbour works; and
- (d) such further information as it may specify in a particular case.

(5) Where it appears to the appropriate Authority that the proposed harbour works do not constitute a project falling within Annex I or II to the Directive, it shall in writing notify its decision to the developer and, in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority, and subject to paragraph (8) it shall take no further action on the application or notice pursuant to this Part.

(6) Where it appears to the appropriate Authority that the proposed harbour works constitute a project falling within Annex I to the Directive—

- (a) it shall in writing notify its decision and the reasons for its decision to the developer and, in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority, and
- (b) paragraph (11) shall apply.

(7) Where it appears to the appropriate Authority that the proposed harbour works constitute a project falling within Annex II to the Directive—

- (a) it shall determine whether, taking into account the selection criteria, the works constitute a relevant project,
- (b) shall in writing notify its decision to the developer and, in a case where a notice referred to in regulation 5(1)(b) has been given, to the harbour authority, and
- (c) where it determines that, taking into account the selection criteria, the works constitute a relevant project, it shall in writing notify the reasons for its decision, to—
 - (i) the developer, and
 - (ii) in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority.

(8) The appropriate Authority shall make available for public inspection at all reasonable hours at a place within the locality of the harbour where the harbour works are proposed to be carried out, a copy of—

- (a) its decision under paragraph (5), (6) or (7)(a), and
- (b) any accompanying statement of reasons under paragraph (6) or (7)(c).

(9) Where the appropriate Authority decides pursuant to paragraph (7)(a) that the works do not constitute a relevant project, then subject to the provisions of paragraphs (7) and (8) it shall take no further action on the application or notice pursuant to this Part.

(10) Where the appropriate Authority decides pursuant to paragraph (7)(a) that the works constitute a relevant project, paragraph (11) shall apply.

(11) Where this paragraph applies, the appropriate Authority shall direct the developer to supply it, in such form as it may specify, with an environmental statement which includes so much of the information referred to in Schedule 1 as the appropriate Authority considers—

- (a) is relevant to its decision under regulation 10 and to the specific characteristics of the proposed harbour works to which the application or notice relates and to the environmental features likely to be affected; and
- (b) (having regard inter alia to current knowledge and methods of assessment) the developer may reasonably be required to compile.

Publication of notice by developer

7.—(1) Not less than 14 days before the developer provides the information to be supplied under regulation 5(9) or 6(11) to the appropriate Authority, he shall publish a notice in a local newspaper circulating in the locality of the harbour where the harbour works are proposed to be carried out, stating—

- (a) his name and the location and nature of the proposed harbour works;
- (b) that he has applied for consent or approval to the carrying out of the proposed works and specifying the relevant provision pursuant to which consent or approval was applied for;
- (c) that he has been directed to supply an environmental statement which includes the information referred to in regulation 5(9) or 6(11);
- (d) that a copy of any information supplied under regulation 4(3) or 6(4) together with the environmental statement to be supplied under regulation 5(9) or 6(11) may be inspected by members of the public at all reasonable hours;
- (e) an address within the locality of the harbour where the harbour works are proposed to be carried out at which the documents open to inspection may be inspected, and the latest date on which they will be available (being a date not less than 42 days later than the date on which the notice is published);
- (f) an address within the locality of the harbour where the harbour works are proposed to be carried out (whether or not the same as that named under sub-paragraph (e)) at which copies of the environmental statement to be supplied under regulation 5(9) or 6(11) may be obtained, for so long as stocks last, and, if a charge is to be made for a copy, the amount of the charge; and
- (g) that any person who wishes to make representations concerning the proposed harbour works should do so in writing, within a period of 7 days beginning with the day after the date specified in accordance with sub-paragraph (e), to the appropriate Authority.

(2) On the date of publication of the notice under paragraph (1) the developer shall also post at a place to which members of the public have access at the offices of the harbour authority for the harbour where the harbour works are proposed to be carried out or if there is no such place, shall post outside the offices of the said harbour authority, a notice containing the information specified in paragraph (1).

(3) The developer shall ensure that the notice referred to in paragraph (2) is—

- (a) left in position for a period of 42 days beginning with the date of posting;
- (b) posted by affixing it firmly to some object on the premises and is sited and displayed in such a way as to be easily visible to and legible by members of the public; and
- (c) replaced if it is at any time removed, damaged or defaced.

(4) The environmental statement supplied to the appropriate Authority under regulation 5(9) or 6(11) shall be accompanied by—

- (a) a copy of the notice referred to in paragraph (1) certified by or on behalf of the developer as having been published in a named newspaper on a date specified in the certificate; and
- (b) a certificate by or on behalf of the developer which states—

- (i) that he has posted a notice at or outside the offices of the harbour authority for the harbour where the harbour works are proposed to be carried out in accordance with paragraph (2), and when he did so; and
- (ii) that he has complied with the requirements of paragraph (3)(b) and will comply with the requirements of paragraph (3)(c) should this be necessary.

Transboundary cases and involvement of other EEA States

- 8.—(1) This regulation applies where—
- (a) harbour works are proposed to be carried out in Great Britain,
 - (b) it appears to the appropriate Authority that the harbour works constitute a project falling within Annex I or II to the Directive, and in the case of a project falling within Annex II it determines that (taking into account the selection criteria) they would constitute a relevant project, and
 - (c)
 - (i) it comes to the attention of the appropriate Authority that the project is likely to have significant effects on the environment in another EEA State; or
 - (ii) another EEA State so requests.
- (2) The appropriate Authority shall—
- (a) publish in the Gazette the particulars mentioned in paragraph (3) in a notice with an indication of where further information is available;
 - (b) send to the other EEA State as soon as possible, and no later than the date of publication of that notice, the particulars mentioned in paragraph (3) and, if it thinks fit, the information mentioned in paragraph (4); and
 - (c) give the other EEA State a reasonable time in which to indicate whether it wishes to be consulted in accordance with paragraph (6).
- (3) The particulars referred to in paragraph (2)(a) and (b) are—
- (a) a description of the project, together with any available information on its possible significant effect on the environment in another EEA State; and
 - (b) information about the nature of the decision which may be taken under this Part.
- (4) The information to be sent to an EEA State which indicates, in accordance with paragraph (2)(c), that it wishes to be consulted in accordance with paragraph (6) is—
- (a) a copy of the application or notice referred to in regulation 5(1) which has been made or given respectively;
 - (b) a copy of the environmental statement in respect of the works to which that application or notice relates; and
 - (c) information regarding the procedure under this Part;
- but only to the extent that such information has not already been provided to the EEA State in accordance with paragraph (2)(a).
- (5) The appropriate Authority shall also—
- (a) arrange for the information referred to in paragraphs (3) and (4) to be made available, within a reasonable time, to the authorities likely to have an interest in the project by reason of their environmental responsibilities, and the public concerned, in the territory of the EEA State concerned; and
 - (b) ensure that those authorities and the public concerned are given a reasonable opportunity, before consent for the works is granted, to forward to the appropriate Authority, their opinion on the information supplied.

(6) The appropriate Authority shall—

- (a) consult the EEA State concerned about the project generally and, in particular, about the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) endeavour to agree with 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 application concerned the appropriate Authority shall inform the EEA State of the decision and shall forward to it a statement giving—

- (a) the content of the decision whether or not to grant consent and any conditions attached to the decision;
- (b) the main reasons and consideration on which the decision is based;
- (c) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects; and
- (d) confirmation that any information, representations, opinions, consultations and report of an inquiry have been taken into consideration in accordance with regulation 10(3) in reaching the decision.

Consultation on and holding of inquiry into proposed harbour works

9.—(1) The appropriate Authority shall direct the developer to supply such bodies as it may specify, being bodies appearing to it to be likely to have an interest in the project by reason of their environmental responsibilities, with copies of the environmental statement supplied to it under regulation 5(9) or 6(11).

(2) Where the developer is not the harbour authority, the appropriate Authority shall direct the developer to supply the harbour authority with copies of the information supplied to it under regulation 5(9) or 6(11).

(3) Where it has given a direction under paragraph (1) or (2) the appropriate Authority shall consult the bodies specified under paragraph (1), or the harbour authority as the case may be, before reaching a decision on the merits of the proposed harbour works.

(4) The appropriate Authority may if it thinks fit cause an inquiry to be held by a person appointed by it into a proposal to carry out harbour works and it shall afford to the developer, to any persons who have made representations to it, and to the bodies specified in any direction under paragraph (1) and to the harbour authority mentioned in any direction given under paragraph (2), the opportunity to appear before the person appointed by it for the purpose.

(5) Subsections (2) to (5) of section 250 of the Local Government Act 1972⁽²⁰⁾ or subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽²¹⁾ (which relate to the giving of evidence at, and defraying the cost of, local inquiries) shall apply to an inquiry held under paragraph (4) as they apply in relation to a local inquiry under subsection (1) of that section; but, in its application by virtue of this sub-paragraph, subsection (4) of section 250 of the Local Government Act 1972 shall have effect with the omission of the words “and any amount” onwards.

Decisions on applications

10.—(1) Where the appropriate Authority is satisfied that the developer has complied with its direction under regulation 5(9) or 6(11), with regulation 7 and with any direction under

⁽²⁰⁾ 1972 c. 70.

⁽²¹⁾ 1973 c. 65; section 210(5) was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289(F) and 289(G) (as inserted by the Criminal Justice Act 1982 (c. 48), section 54).

regulation 9(1) or (2), and it has received the report of any inquiry held under regulation 9(4), it shall reach a decision on the proposed harbour works, in accordance with paragraphs (2) and (3).

(2) Subject to paragraph (3), the appropriate Authority shall—

- (a) consent to the carrying out of the proposed harbour works either unconditionally or subject to such conditions as it sees fit; or
- (b) refuse such consent.

(3) The appropriate Authority shall not consent to the carrying out of the proposed harbour works unless it has taken into consideration the information supplied to it under regulation 5(9) or 6(11), any representations received pursuant to regulation 7(1) or (2), any opinion received pursuant to regulation 8(5), any consultations under regulation 8(6) or 9(3), and the report of any inquiry held under regulation 9(4); and it shall state in its decision that it has done so.

(4) The appropriate Authority shall—

- (a) notify its decision and the reasons and considerations upon which it was based to the developer;
- (b) inform the public of the decision, by publishing a notice in a local newspaper circulating in the locality of the harbour where the harbour works are proposed to be carried out, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at all reasonable hours at a place near the location of the proposed works, the following information—
 - (i) the content of its decision whether or not to grant consent and any conditions attached to the decision;
 - (ii) the main reasons and considerations on which the decision is based;
 - (iii) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects; and
 - (iv) where it consents to the carrying out of the proposed works, confirmation that any information, representations, opinions, consultations, or report of an inquiry referred to in paragraph (3) have been taken into consideration in reaching the decision.

(5) Any condition subject to which the appropriate Authority has consented to harbour works—

- (a) shall (subject to sub-paragraph (c)) either remain in force for a specified period or remain in force without limit of time;
- (b) shall (in addition to binding the developer to whom the consent is given) bind, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of the harbour works which have been carried out;
- (c) may, if the appropriate Authority thinks fit, be revoked by it.

(6) A consent under paragraph (2) may be granted so as to continue in force, unless renewed, only if the harbour works for which the consent is granted are begun or completed within such period as may be specified in the consent, and any renewal of a consent may be limited in the same way.

Harbour works carried out without a decision

11.—(1) If a developer carries out harbour works to which it appears to the appropriate Authority that this Part applies and which have not been the subject of a decision under regulation 5(3) or (7), 6(5) or (9), 10(2) or this regulation—

- (a) the appropriate Authority shall serve notice in writing on the developer requiring him:
 - (i) if appropriate, to cease carrying out the harbour works forthwith; and

- (ii) to supply the appropriate Authority with such of the information referred to in regulation 6(4) as it may specify and within such period as it may specify; and
 - (b) the provisions of regulations 6(5) to (11), 7 to 10, and 12 to 14 shall apply subject to the modifications set out in paragraph (2), whether or not an application or notice referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) is made or given.
- (2) The modifications referred to in paragraph (1)(b) are:
- (a) for “proposed harbour works”, wherever these words occur, there shall be substituted “harbour works”;
 - (b) for “are proposed to be”, wherever these words occur, there shall be substituted “have been”;
 - (c) where an application or notice referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) is not made or given, regulation 7(1)(b) and 8(4)(a) shall be omitted; and
 - (d) in regulation 6(11), after “in such form” there shall be inserted “and within such period”.
- (3) If the developer no longer owns, occupies or enjoys any use of the harbour works which have been carried out when the appropriate Authority decides to serve a notice under paragraph (1) the notice may be served on any other person who for the time being owns, occupies or enjoys any use of the harbour works, and the references to the developer in paragraphs (1), (4) and (5) shall have effect as a reference to the person on whom the notice is served.
- (4) If a developer fails to supply the appropriate Authority with such of the information referred to in regulation 6(4) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Authority shall make such investigations as it considers necessary to enable it to determine whether the harbour works constitute a project falling within Annex I or II to the Directive, and in the case of a project falling within Annex II to the Directive whether (taking into account the selection criteria) the harbour works constitute a relevant project.
- (5) Where regulation 6(11) applies as modified by paragraph (2)(d), and the developer fails to comply with the appropriate Authority’s direction, the appropriate Authority shall refuse consent in respect of the harbour works.

Variation of consent

12.—(1) Where a developer proposes to change or extend any harbour works which are the subject of a consent under regulation 10(2), or regulation 10(2) as modified by regulation 11, he may make an application to the appropriate Authority to vary that consent.

(2) The appropriate Authority shall determine whether, taking into account the selection criteria, the proposed change or extension constitutes a relevant project.

(3) Where the appropriate Authority determines that, taking into account the selection criteria, the proposed change or extension constitutes a relevant project, regulations 6(7), (8), (10), (11), 7 to 10 and 13 and 14 shall apply in relation to the application as they apply in relation to an application or notice referred to in regulation 6(1).

Enforcement

13.—(1) If a developer carries out harbour works in respect of which consent has been refused under regulation 10 or 11 or in contravention of a condition subject to which consent was granted, the appropriate Authority may serve notice in writing on the developer requiring him, within such period (not being less than 30 days) as may be specified in the notice, to remove the works and reinstate the site or to make such alterations thereto as may be so specified, or, if it appears to the appropriate Authority urgently necessary to do so, it may itself remove or alter the works and reinstate the site.

(2) If within the period specified in any notice under paragraph (1) the developer fails to comply with it, the appropriate Authority may itself remove or alter the works and reinstate the site as specified in the notice.

(3) Where the appropriate Authority removes or alters works and reinstates a site under paragraph (1) or (2), it shall be entitled to recover the expense, as certified by it, from the developer.

(4) If the developer no longer owns, occupies or enjoys any use of the harbour works when the appropriate Authority decides to serve a notice under paragraph (1), the notice may be served on any other person who for the time being owns, occupies or enjoys any use of the harbour works, and the references to the developer in paragraph (2), and in paragraph (3) in relation to any action taken by the appropriate Authority under paragraph (2), shall in that case have effect as a reference to the person on whom the notice is served.

Penalties

14.—(1) A person who issues a certificate purporting to comply with regulation 7(4) which contains a statement which he knows to be false or misleading in a material particular, or who recklessly issues a certificate purporting to comply with regulation 7(4) which contains a statement which is false or misleading in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who fails without reasonable excuse to comply with a notice served upon him under regulation 11(1) or 12(1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where a body corporate is guilty of an offence under paragraph (1) or (2), and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.