
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke, re-enact and update, the Marine Works (Environmental Impact Assessment) Regulations 2007 (“the 2007 Regulations”). These Regulations apply in relation to Scotland only.

The Regulations implement 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 (OJ L 26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (OJ L 124, 25.04.2014, p.1), in relation to regulatory approvals required before certain projects may be taken forward in Scotland's marine environment.

The Regulations impose procedural requirements in relation to the consideration of applications for such regulatory approvals by the Scottish Ministers. All projects in schedule 1 require an environmental impact assessment (EIA). Projects in schedule 2 require an EIA if they are likely to have significant effects on the environment. Projects which require an EIA are referred to in the Regulations as “EIA projects”.

Regulation 4 prohibits the grant of a regulatory approval for an EIA project unless an environmental impact assessment has been carried out and the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them.

Regulation 26 makes equivalent provision in relation to the determination of an application for multi-stage regulatory approval. Regulation 5 sets out what the environmental assessment process comprises and regulation 6 sets out the content of an EIA report.

Part 2 sets out procedures for determining whether environmental impact assessment is required.

Regulation 7 sets out which events will establish whether proposed works would be an EIA project. Regulation 8 enables the Scottish Ministers to direct, in certain specified cases, that these Regulations do not apply. Regulation 10 enables a request to be made to the Scottish Ministers for a “screening opinion”. Regulation 9 makes general provision in relation to such an opinion, including that any opinion must be made by reference to the criteria in schedule 3.

Part 3 sets out procedures to be followed where the Scottish Ministers are considering an application for regulatory approval for an EIA project without an EIA report.

Regulation 14 enables an applicant for a regulatory approval to seek an opinion from the Scottish Ministers (“a scoping opinion”) on the information to be included in an EIA report. The types of information which may be required are set out in schedule 4. The Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion. Regulation 15 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the developer.

Regulation 16 requires publication of notice of the lodging of an EIA report to be given.

Regulation 17 requires the EIA report and other relevant information to be publicised. Regulation 18 provides for consultation where an EIA report is received by the Scottish Ministers.

Regulations 19 and 20 are concerned with the provision of copies of an EIA report.

Regulation 21 contains procedures for requiring the provision by the applicant of supplementary information over and above that contained in the EIA report. The applicant may also submit information relating to the EIA report voluntarily. Such information is together referred to as “additional information” (regulation 2(1)). Regulation 22 provides that notice of the receipt and availability of additional information provided by the applicant after the initial gathering of information for an EIA report has taken place will require to be publicised.

Regulation 23 sets out what information is to be contained in the decision notice following determination of an application for regulatory approval. Regulation 24 requires consideration to

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be given to the inclusion of monitoring measures. Regulation 25 requires the Scottish Ministers to notify the applicant, the consultation bodies and the public of their decision.

Part 8 makes provision relating to applications for multi-stage regulatory approvals which essentially mirror the provisions in the Regulations relating to applications for regulatory approval. Regulation 27 requires the Scottish Ministers to seek supplementary information if they identify that the environmental assessment has yet to consider certain significant environmental impacts of the works. Regulation 28 requires the Scottish Ministers to undertake screening in certain circumstances where considering an application for multi-stage regulatory approval. Regulation 29 modifies the application of the Regulations as they apply to applications for multi-stage regulatory approvals.

Part 9 makes provision for consultation between EEA States where EIA projects are likely to have significant effects on the environment in another EEA State.

Part 10 makes provision for offences. Regulation 32 provides that a person commits an offence if that person knowingly or recklessly provides a false or misleading statement in order to procure a decision or, with intent to deceive, to use a document which is false or misleading or to withhold material information. Regulation 33 provides for how this applies in the context of offences committed by bodies corporate, Scottish partnerships and other unincorporated associations.

Part 11 makes miscellaneous provision. Regulations 34, 35 and 36 make provision for the use of electronic communication. Regulation 37 makes provision to facilitate the access to legal challenge procedures for non-governmental organisations promoting environmental protection. Regulation 38 provides for co-ordination of assessments. Regulation 39 makes provision for the avoidance of conflicts of interest.

Part 12 makes transitional provisions and revokes the 2007 Regulations and relevant amending Regulations.

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