
STATUTORY INSTRUMENTS

1999 No.367

FISH FARMING

The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999

<i>Made</i>	- - - -	<i>15th February 1999</i>
<i>Laid before Parliament</i>		<i>19th February 1999</i>
<i>Coming into force</i>	- -	<i>14th March 1999</i>

The Secretary of State, being a Minister designated^{M1} for the purposes of section 2(2) of the European Communities Act 1972^{M2} in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred on him by the said section 2 and of all other powers enabling him in that behalf, and having taken into account the selection criteria specified in Annex III to Council Directive [85/337/EEC](#) (on the assessment of the effects of certain public and private projects on the environment)^{M3}, as inserted by Council Directive [97/11/EC](#) (amending Council Directive [85/337/EEC](#))^{M4}, hereby makes the following Regulations:

Marginal Citations

- M1** [S.I. 1988/785](#).
M2 [1972 c.68](#).
M3 [O.J. No.L 175, 5.7.1985, p.40](#).
M4 [O.J. No.L 73, 14.3.1997, p.5](#).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 and shall come into force on 14th March 1999.

(2) These Regulations apply in any case where a person makes or is minded to make any application specified in paragraph (3) on or after 14th March 1999, and where—

- any part of the proposed development is to be carried out in a sensitive area, or
- the proposed development is designed to hold a biomass of 100 tonnes or greater, or
- the proposed development will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations.

(3) The following applications are specified for the purposes of paragraph (2)—

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (revoked). (See end of Document for details)

- (a) an application to the Crown Estate Commissioners for consent for fish farming in marine waters^{F1}, other than in the waters described in sub-paragraphs (b) and (c)];
- (b) [^{F2}an application to Shetland Islands Council for a licence under section 11 of the Zetland County Council Act 1974^{M5} as regards fish farming within the coastal area defined in that Act;]
- (c) [^{F2}an application to Orkney Islands Council for a licence under section 11 of the Orkney County Council Act 1974^{M6} as regards fish farming within a harbour area defined in that Act.]

Textual Amendments

- F1** Words in [reg. 1\(3\)\(a\)](#) omitted (S.) (1.4.2007) by virtue of [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), [12\(2\)\(a\)](#) (with art. 14(3)(4))
- F2** [Reg. 1\(3\)\(b\)\(c\)](#) omitted (S.) (1.4.2007) by virtue of [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), [12\(2\)\(b\)](#) (with art. 14(3)(4))

Marginal Citations

- M5** [1974 c.viii](#); see [section 3\(1\)](#) for the definition of “coastal area”.
- M6** [1974 c.xxx](#); see [section 3\(1\)](#) for the definition of “harbour area”.

Interpretation

2.—(1) In these Regulations, unless the contrary intention appears—

“the Directive” means Council Directive [85/337/EEC](#), as amended by Council Directive [97/11/EC](#)^{F3} and Council Directive [2003/35/EC](#);

“document” includes a map, diagram, illustration or other descriptive matter in any form and also includes where appropriate a copy of a document;

“environmental information” means—

- (a) any environmental statement, including any further information provided by the applicant, required to be provided by these Regulations;
- (b) any representations made by an authority, body or person required by these Regulations to be invited to make representations or be consulted; and
- (c) any representations duly made by any other person about the likely environmental effects of the proposed development;

“environmental statement” means a statement—

- (a) that includes such of the information referred to in Part I of Schedule 2 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but
- (b) which includes at least the information referred to in Part II of Schedule 2.

“fish farming” means keeping live fish, excluding shellfish, (whether or not for profit) with a view to their sale or to their transfer to other marine waters;

“inland waters” means waters within Great Britain which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows;

“local planning authority” means any authority which is a local planning authority for the purposes of the Town and Country Planning (Scotland) Act 1997 ^{M7} in Scotland or the Town and Country Planning Act 1990 ^{M8} in England and Wales;

“marine waters” means waters within seaward limits of the territorial sea adjacent to Great Britain, other than—

- (a) inland waters; ^{F4}...
- (b) waters within the jurisdiction of a local planning authority;
- (c) [^{F5}waters, not being inland waters, which are landward of the baselines from which the breadth of the territorial sea adjacent to Scotland is measured; and
- (d) waters which are seaward of those baselines up to a distance of 12 nautical miles;]

[^{F6}“nautical miles” means international nautical miles of 1,852 metres;]

“relevant authority” means the Crown Estate Commissioners ^{F7}...;

“scoping opinion” means a written statement of the opinion of the relevant authority under regulation 6 as to the information to be provided in the environmental statement;

“screening opinion” means a written statement of the opinion of the relevant authority under regulation 4 as to whether an environmental assessment is required;

“selection criteria” means the criteria set out in Schedule 1;

“sensitive area” means any of the following—

- (a) a site of special scientific interest, that is to say, land notified under section 28 (areas of special scientific interest) of the Wildlife and Countryside Act 1981 ^{M9};
- (b) land to which subsection (3) of section 29 (nature conservation orders) of the Wildlife and Countryside Act 1981 applies;
- (c) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949 ^{M10};
- (d) 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 ^{M11};
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979 ^{M12};
- (f) an area of outstanding natural beauty designated as such by an order made by the Countryside Commission, as respects England, ^{F8}... under section 87 (designation of areas of outstanding natural beauty) of the National Parks and Access to the Countryside Act 1949 ^{M13} as confirmed by the Secretary of State;
- (fa) [^{F9}an area of outstanding natural beauty in Wales designated as such by an order made—
under section 87 (designation of areas of outstanding natural beauty) of the National Parks and Access to the Countryside Act 1949; or
under section 82 (designation of areas) of the Countryside and Rights of Way Act 2000;]
- (g) an area designated ^{F10}... or as a national scenic area by a direction made by the Secretary of State under section 262C of the Town and Country Planning (Scotland) Act 1972 ^{M14};
- (h) national nature reserves designated by Scottish Natural Heritage under the Wildlife and Countryside Act 1981 ^{M15};
- (i) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats & c.) Regulations 1994 ^{M16};

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (revoked). (See end of Document for details)

- (j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat ^{M17}; ^{F11} ...
- (k) [^{F12a} National Park as defined by section 35(1) of the National Parks (Scotland) Act 2004;
- (l) land notified under sections 3(1) or 5(1) (sites of special scientific interest) of the Nature Conservation (Scotland) Act 2004; and
- (m) land in respect of which an order has been made under section 23 (nature conservation orders) of the Nature Conservation (Scotland) Act 2004.]

references to Schedules are references to Schedules to these Regulations.

(2) Expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

Textual Amendments

- F3** Words in reg. 2(1) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(1)(a)**
- F4** Word in reg. 2(1) omitted (S.) (1.4.2007) by virtue of [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **12(3)(a)** (with art. 14(3)(4))
- F5** Words in reg. 2(1) inserted (S.) (1.4.2007) by [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **12(3)(a)** (with art. 14(3)(4))
- F6** Words in reg. 2(1) inserted (S.) (1.4.2007) by [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **12(3)(b)** (with art. 14(3)(4))
- F7** Words in reg. 2(1) omitted (S.) (1.4.2007) by virtue of [The Town and Country Planning \(Marine Fish Farming\) \(Scotland\) Order 2007 \(S.S.I. 2007/268\)](#), arts. 1(1), **12(3)(c)** (with art. 14(3)(4))
- F8** Words in reg. 2(1) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 81(2)** (with Sch. 7)
- F9** Words in reg. 2(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 4 para. 81(3)** (with Sch. 7)
- F10** Words in reg. 2(1) omitted (1.2.2007) by virtue of [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(1)(b)(i)**
- F11** Word in reg. 2(1) omitted (1.2.2007) by virtue of [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(1)(b)(ii)**
- F12** Words in reg. 2(1) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(1)(b)(ii)**

Marginal Citations

- M7** 1997 c.8.
- M8** 1990 c.8.
- M9** 1981 c.69; section 28 was amended by the [Wildlife and Countryside \(Amendment\) Act 1985 \(c.31\)](#), the [Wildlife and Countryside \(Service of Notices\) Act 1985 \(c.59\)](#), the [Norfolk and Suffolk Broads Act 1988 \(c.4\)](#) and the [Planning \(Consequential Provisions\) Act 1990 \(c.11\)](#).
- M10** 1949 c.97; relevant amendments were made by the [Environment Act 1995 \(c.25\)](#), **Schedule 10**, paragraph 2.
- M11** See Command paper 9424.
- M12** 1979 c.46; see the definition in section 1(11).
- M13** 1949 c.97. Section 87 was amended by paragraph 1(12) of Schedule 8 to the [Environmental Protection Act 1990 \(c.43\)](#).
- M14** 1972 c.52. Section 6(9) of the [Natural Heritage \(Scotland\) Act 1991](#) contains a saving provision for any areas which were designated as national scenic areas under section 262C of the [Town and Country Planning \(Scotland\) Act 1972](#) as at the date of the repeal of section 262C by section 27 of and Schedule 11 to the [Natural Heritage \(Scotland\) Act 1991](#).

M15 1981 c.69.

M16 S.I. 1994/2716.

M17 See Command paper 6464.

Prohibition on the granting of consent or licence without consideration of environmental information

3.—(1) The relevant authority shall not grant consent or, as the case may be, a licence as regards fish farming in marine waters where the proposed development will be likely to have significant effects on the environment by virtue inter alia of its nature, size or location unless they have taken into consideration the environmental information in respect of the proposed development and state in their decision that they have done so.

(2) In a case to which regulation 15 (development in Great Britain likely to have significant effects in another Member State) applies, paragraph (1) of this regulation is subject to the procedures for which that regulation applies.

Screening opinion of the relevant authority

4.—(1) A person who is minded to apply for consent or, as the case may be, a licence as regards fish farming in marine waters may ask the relevant authority to state in writing their opinion as to whether an environmental assessment is required; and such an opinion is referred to in these Regulations as a “screening opinion”.

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

- (a) a plan showing the location and extent of the site of the proposed fish farm;
- (b) a brief outline of the proposed annual scale of production in tonnes (dead weight), the biomass capacity of the development, the equipment to be installed on site and of the possible effects of the development on the environment;
- (c) a statement of the proposed servicing methods and of any intended associated development; and
- (d) such other information or representations as the person making the request may wish to provide or make.

(3) The relevant authority receiving a request under paragraph (1) shall, if they consider that they have not been provided with sufficient information to give an opinion on the questions raised, notify the person making the request of particular points on which they require further information.

(4) In coming to a view as to whether consideration of environmental information is required the relevant authority shall consult such authorities, bodies or persons mentioned in Schedule 3 as they consider appropriate.

(5) The relevant authority shall respond to such a request within 6 weeks commencing with the date of receipt of the request or such longer period as may be agreed in writing with the person making the request.

(6) In giving a screening opinion, the relevant authority shall take into account such of the selection criteria set out in Schedule 1 as are relevant to the proposed development.

(7) If, in response to such a request, the relevant authority express a screening opinion to the effect that consideration of environmental information would be required before consent or a licence could be granted for the proposed development, they shall provide with the screening opinion a written statement giving clearly and precisely the reasons for their conclusion and provide notice that the applicant shall supply the authorities, bodies and persons, which have been consulted under paragraph (4), with such further information about the proposed development as they may request.

Status: Point in time view as at 01/04/2013.

Changes to legislation: There are currently no known outstanding effects for the The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (revoked). (See end of Document for details)

(8) Where the relevant authority express a screening opinion under paragraph (7) to the effect that consideration of environmental information would be required, that authority shall inform such of the authorities, bodies and persons mentioned in Schedule 3 as shall be appropriate according to the circumstances mentioned therein of the requirement for an environmental statement and that they may be required to make available to the applicant, in accordance with regulation 7(1), any information in their possession which he or they consider relevant to the preparation of an environmental statement.

(9) The relevant authority shall make available for public inspection at all reasonable hours at an appropriate place, a copy of—

- (a) any opinion given pursuant to a request under paragraph (1),
- (b) any accompanying statement of reasons,
- (c) the relevant request and the documents which accompanied it.

Application made to the relevant authority without an environmental statement

5. Where it appears to the relevant authority that an application for consent or, as the case may be, a licence as regards fish farming in marine waters has not been the subject of a screening opinion and the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, paragraphs (3) to (9) of regulation 4 shall apply as if the receipt of the application were a request made under paragraph (1) of regulation 4.

Scoping opinion of the relevant authority

6.—(1) A person who is minded to apply for consent or, as the case may be, a licence as regards fish farming in marine waters may ask the relevant authority to state in writing their opinion as to the information to be provided in the environmental statement; and such an opinion is referred to in these Regulations as a “scoping opinion”.

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

- (a) a plan showing the location and extent of the site of the proposed fish farm;
- (b) a brief outline of the proposed annual scale of production in tonnes (dead weight), the biomass capacity of the development, the equipment to be installed on site and of the possible effects of the development on the environment;
- (c) a statement of the proposed servicing methods and of any intended associated development; and
- (d) such other information or representations as the person making the request may wish to provide or make.

(3) The relevant authority receiving a request under paragraph (1) shall, if they consider that they have not been provided with sufficient information to give a scoping opinion, notify the person making the request of the particular points on which they require further information.

(4) The relevant authority shall not give a scoping opinion in response to a request under paragraph (1) until they have consulted the person who made the request and such bodies mentioned in Schedule 3 as they consider appropriate.

(5) The relevant authority shall, subject to paragraph (6), respond to such a request within 6 weeks commencing with the date of receipt of the request or such longer period as may be agreed in writing with the person making the request.

(6) Where a person has, at the same time as making a request for a screening opinion under paragraph (1) of regulation 4, asked the relevant authority for an opinion under paragraph (1) of this regulation, and the relevant authority have given a screening opinion to the effect that consideration of environmental information is required, the relevant authority shall give a scoping opinion within 6

weeks commencing with the date on which that screening opinion was given or such longer periods as may be agreed in writing with the person making the request.

(7) In giving a scoping opinion the relevant authority shall take into account—

- (a) the specific characteristics of the proposed development; and
- (b) the environmental features likely to be affected by the development.

(8) Where the relevant authority have given a scoping opinion in response to a request under paragraph (1) they shall not be precluded from requiring of the person to whom that opinion was given further information in connection with a statement submitted by the applicant which he refers to as an environmental statement for the purposes of these Regulations in connection with an application for consent or a licence for the same, or substantially the same, development as was referred to in the request.

Provision of relevant information

7.—(1) Subject to paragraph (2), any authority, body or person notified in accordance with these Regulations that a person has applied for consent or a licence for a development to which the prohibition in regulation 3 applies shall, if requested by the applicant, or may, without any such request, enter into consultation with him with a view to ascertaining whether they have any information in their possession which he or they consider relevant to the preparation of the environmental statement and shall make any such information available to him.

(2) Nothing in paragraph (1) shall require the disclosure of any information which the body concerned are entitled or bound to hold in confidence or must be so treated under regulation 4 of the Environmental Information Regulations 1992 ^{M18}.

Marginal Citations

M18 S.I. 1992/3240, as amended by S.I. 1998/1447.

Publicity where an environmental statement is received

^{F13}8.—(1) Where the relevant authority receive an environmental statement relating to an application to which the prohibition in regulation 3 applies, they shall—

(a) publish as soon as possible in a local newspaper circulating in the locality in which the proposed development is to be situated and in the Edinburgh Gazette a notice stating—

(i) that copies of the application, environmental statement and the reports and advice referred to in Article 6(3)(b) of the Directive may be inspected in—

(aa) a specified office of the relevant authority, being an office of the relevant authority in the locality nearest to the proposed development; and

(bb) a specified Post Office being a Post Office in the locality nearest to the proposed development,

during the period of 28 days after the first publication of the said notice;

(ii) the address at which copies of the application and the environmental statement may be obtained;

(iii) the cost of a copy of the environmental statement;

(iv) that representations may be made to the relevant authority, at the office referred to in paragraph (1)(a)(i), within the period specified in paragraph (1)(a); and

(v) the nature of the possible decisions;

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Changes to legislation: There are currently no known outstanding effects for the The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 (revoked). (See end of Document for details)

- (b) prior to the first publication of the notice referred to in paragraph (1)(a)–
- (i) make available in the office of the relevant authority referred to in paragraph (1)(a)(i); and
 - (ii) send to the Post Office referred to in paragraph (1)(a)(ii),
the documents referred to in paragraph (1)(a).
- (2) Where the relevant authority are required to publish a notice in a local newspaper and the Edinburgh Gazette in accordance with paragraph (1), the applicant shall pay the cost to be incurred by the relevant authority in arranging such advertisement at the time of submitting his statement.]

Textual Amendments

F13 Reg. 8 substituted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(2)**

Consultation on environmental statement

9.—(1) Where the relevant authority receive an environmental statement relating to an application to which the prohibition in regulation 3 applies, they shall consult the authorities, bodies and persons mentioned in Schedule 3, according to the circumstances mentioned therein, about the environmental statement and such other persons, groups or bodies as they consider appropriate.

(2) Where an applicant submits an environmental statement to the relevant authority he shall supply them with enough copies of the environmental statement or parts thereof to enable them to comply with paragraph (1) and one additional copy.

- (3) Where, under this regulation, the relevant authority consult any authority, body or person–
- (a) they shall give not less than 28 days’ notice to such authority, body or person that environmental information is to be taken into consideration; and
 - (b) they shall not grant consent or a licence for the development to which the environmental information relates until after the expiration of the period of such notice.

(4) Where any authority, body or person which the relevant authority is required to consult under this regulation consider that consultation with them is not required in respect of any environmental statement relating to any case or class of case, or relating to any specified area they shall so inform the relevant authority in writing and notwithstanding the foregoing provisions of this regulation the relevant authority shall not be required so to consult them.

Further information and evidence relating to environmental statements

10.—(1) The relevant authority, when dealing with an application in relation to which an environmental statement has been provided which is referred to by the applicant as an environmental statement for the purposes of these Regulations, may in writing require the applicant to provide such further information as may be specified to enable the application to be determined, or concerning any matter which is required to be dealt with in the environmental statement; and where in the opinion of the relevant authority–

- (a) the applicant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in Schedule 2; and
- (b) that further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

they shall notify the applicant in writing and the applicant shall provide that further information.

(2) The relevant authority may in writing require to be produced to them such evidence, in respect of any environmental statement which it falls to them to take into consideration, as they may reasonably call for to verify any information it contains.

[^{F14}Publicity where further relevant information received

10A.—(1) Where the relevant authority receive further information whether under regulation 10 or otherwise, relevant for the decision to which the prohibition in regulation 3 applies they shall—

- (a) publish as soon as possible in a local newspaper circulating in the locality in which the proposed development is to be situated and in the Edinburgh Gazette a notice stating—
 - (i) that the further information may be inspected in—
 - (aa) a specified office of the relevant authority, being an office of the relevant authority in the locality nearest to the proposed development; and
 - (bb) a specified Post Office being a Post Office in the locality nearest to the proposed development,
 - during the period of 28 days after the first publication of the said notice; and
 - (ii) that representations may be made to the relevant authority, at the office referred to in paragraph (1)(a)(i), within the period specified in paragraph (1)(a); and
 - (b) prior to the first publication of the notice referred to in paragraph (1)(a)—
 - (i) make available in the office of the relevant authority specified in the said notice; and
 - (ii) send to the Post Office specified in the said notice,
- the further information received.

(2) Where the relevant authority are required to publish a notice in a local newspaper and the Edinburgh Gazette in accordance with paragraph (1) the applicant shall pay the cost to be incurred by the relevant authority in arranging such advertisement.]

Textual Amendments

F14 Reg. 10A inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(3)**

Intimation of decision

11. Where the relevant authority have decided an application to which the prohibition in regulation 3 applies, they shall—

- (a) inform the applicant and all authorities, bodies or persons consulted under regulation 9 of their decision, and of any conditions attached to it;
- (b) inform the public of the decision, by publishing a notice in a newspaper circulating in the locality of the site concerned, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection, at all reasonable hours and free of charge, a statement containing—
 - (i) the content of the decision and any conditions attached thereto;
 - (ii) the main reasons and considerations on which the decision is based [^{F15}including, if relevant, details of how information, evidence and representations submitted were taken into account; and]

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- (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development; ^{F16}and
- (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.]

Textual Amendments

- F15** Words in reg. 11(c)(ii) substituted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(4)(a)**
- F16** Reg. 11(c)(iv) and word inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(4)(b)**

Orkney and Shetland: calculation of period for decision on works licence application

12. For the purpose of calculating the period of time which elapses before Shetland County Council or, as the case may be, Orkney Islands Council are deemed to have refused an application for a works licence by virtue of section 11(4)(b) of the Zetland County Council Act 1974 or section 11(5) of the Orkney County Council Act 1974 respectively, no account shall be taken of any period falling between the date of making the application and the date of receipt by the Council of an environmental statement relating to the application.

Orkney and Shetland: appeals against decision on works licence

13.—(1) This regulation applies where an appeal is made to the Secretary of State under section 13 of the Zetland County Council Act 1974, or section 13 of the Orkney County Council Act 1974, against a decision which relates to an application for a development to which the prohibition in regulation 3 applies.

(2) The Secretary of State shall not dispose of any such appeal by confirming a decision of the Council concerned to grant the licence unless he has taken into consideration the environmental information in respect of the proposed development and states in his decision that he has done so.

(3) For the purposes of any such appeal, regulation 10 shall apply with the following modifications—

- (a) for any reference to “the relevant authority” there is substituted “ the Secretary of State ”;
- (b) any reference to “the applicant” means the person who submitted the application to the Council for a licence; and
- (c) any reference to the “application” means the appeal relating to that application.

(4) The Secretary of State shall intimate his decision on the appeal to the Council and to the appellant.

(5) Regulation 11 shall apply to the Council in relation to the decision of the Secretary of State on any such appeal as it applies to a decision by them on an application to which the prohibition in regulation 3 applies.

Charges

14.—(1) A reasonable charge reflecting the costs of printing, copying and distribution may be made to the public for copies of an environmental statement made available to them under regulation 8 and for copies in excess of one copy for each authority, body or person consulted under regulation 9.

(2) An authority, body or person entering into consultation under regulation 9, having been requested to do so, may make a reasonable charge reflecting the costs of making available information which they had in their possession.

[^{F17} Access to review procedure before a court

14A. Any non-governmental organisation promoting environmental protection and meeting any requirements under the law shall be deemed to have an interest for the purposes of Article 10a(a) of the Directive and rights capable of being impaired for the purposes of Article 10a(b) of the Directive.]

Textual Amendments

F17 Reg. 14A inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(5)**

Development in Great Britain likely to have significant effects in another Member State

- 15.**—(1) Where—
- (a) it comes to the attention of the Secretary of State that development proposed to be carried out is likely to have significant effects on the environment in another Member State; or
 - (b) another Member State likely to be significantly affected by such development so requests,
- the Secretary of State shall—
- (i) send to the Member State as soon as possible and no later than their date of publication in the London Gazette or the Edinburgh Gazette referred to in sub-paragraph (ii) below, the particulars mentioned in paragraph (2) and, if he thinks fit, the information referred to in paragraph (3); and
 - (ii) publish the particulars mentioned in sub-paragraph (i) above in a notice in the London Gazette or, having regard to the location of the proposed development, in the Edinburgh Gazette, with an indication of where further information is available; and
 - (iii) give the Member State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.
- (2) The particulars referred to in paragraph (1)(i) are—
- (a) a description of the development, together with any available information on its possible transboundary impact; and
 - (b) information on the nature of the decision which may be taken.
- (3) Where a Member State indicates, in accordance with paragraph (1)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Secretary of State shall as soon as possible send to that Member State the following information—
- (a) a copy of the application concerned;
 - (b) a copy of the environmental statement in respect of the development to which that application relates; and
- [^{F18}(bb) a copy of the notice referred to in regulation 8(1);
- (bbb) copies of the information referred to in Article 6(3)(b) of the Directive;
 - (bbbb) copies of the information referred to in regulation 10A.]
- (c) relevant information regarding the procedure under these Regulations,

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but only to the extent that such information has not been provided to the Member State earlier in accordance with paragraph (1)(i).

- (4) The Secretary of State in so far as he is concerned, shall also—
- (a) arrange for the particulars and information referred to in paragraphs (2) and (3) to be made available, within a reasonable time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the Member State likely to be significantly affected; and
 - (b) ensure that those authorities and the public concerned are given an opportunity, before consent or a licence for the development is granted, to forward to the Secretary of State, within a reasonable time, their opinion on the information supplied.
- (5) The Secretary of State shall in accordance with Article 7(4) of the Directive—
- (a) enter into consultations with the Member State concerned regarding, inter alia, the potential transboundary effects of the development and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with the other Member State a reasonable period of time for the duration of the consultation period.
- (6) Where a Member State has been consulted in accordance with paragraph (4), on the determination of the application concerned the Secretary of State shall inform the Member State of the decision and shall forward to it a statement of—
- (a) the content of the decision and any conditions attached thereto;
 - (b) the main reasons and considerations on which the decision is based; and
 - (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development.

Textual Amendments

F18 Reg. 15(3)(bb)-(bbbb) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(6)**

[^{F19}Development in another Member State likely to have significant effects in Scotland

15A.—(1) Where the Scottish Ministers receive from another Member State pursuant to Article 7(2) of the Directive information which that Member State has gathered from the developer of a proposed project in that Member State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers shall, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that Member State regarding, inter alia, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects; and
 - (b) determine in agreement with that Member State a reasonable period, before development consent for the project is granted, during which the public concerned in Scotland may submit to the competent authority in that Member State representations pursuant to Article 7(3)(b) of the Directive.
- (2) The Scottish Ministers, insofar as they are concerned, shall also—
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable 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;

- (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant Member State, within a reasonable time, their opinion on the information supplied; and
- (c) so far as they have received such information, notify those authorities and the public concerned of the content of any decision of the competent authority of the relevant Member State; and in particular—
 - (i) any conditions attached to it;
 - (ii) the main reasons and considerations on which the decision was based; and
 - (iii) a description of the main measures to avoid, reduce and if possible, offset the major adverse effects that have been identified.]

Textual Amendments

F19 [Reg. 15A](#) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(7)**

Revocation and transitional savings

16.—(1) Subject to paragraph (2), the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988 ^{M19} are hereby revoked.

(2) The Regulations referred to in paragraph (1) shall continue to apply to applications to which those Regulations applied immediately before the coming into force of these Regulations.

Marginal Citations

M19 [S.I. 1988/1218](#).

St Andrew's House, Edinburgh

Donald C Dewar
One of Her Majesty's Principal Secretaries of
State

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SCHEDULE 1

Regulations 2 and 4

SELECTION CRITERIA FOR SCREENING OPINIONS

Characteristics of developments

1. The characteristics of developments must be considered having regard, in particular, to:
 - (a) the size of the development;
 - (b) the cumulation with other developments;
 - (c) the use of natural resources;
 - (d) the production of waste;
 - (e) pollution and nuisances; and
 - (f) the risk of accidents, having regard in particular to substances or technologies used.

Location of developments

2. The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to:
 - (a) the existing land use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area; and
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands;
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds ^{M20} and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ^{M21};
 - (vi) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (vii) densely populated areas; and
 - (viii) landscapes of historical, cultural or archaeological significance.

Marginal Citations

M20 O.J. No. L103, 25.4.1979, p.1.

M21 O.J. No. L206, 22.7.1992, p.7.

Characteristics of the potential impact

3. The potential significant effects of developments must be considered in relation to criteria set out under paragraphs 1 and 2, and having regard in particular to:
 - (a) the extent of the impact (geographical area and size of the affected population);

- (b) the transfrontier nature of the impact;
- (c) the magnitude and complexity of the impact;
- (d) the probability of the impact; and
- (e) the duration, frequency and reversibility of the impact.

SCHEDULE 2

Regulations 2 and 10

MATTERS FOR INCLUSION IN ENVIRONMENTAL STATEMENT

PART I

1. Description of the development, including in particular:
 - (a) a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases;
 - (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used;
 - (c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.
2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.
3. A description of the aspects of the environment likely to be significantly affected by the proposed development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed development on the environment resulting from:
 - (a) the existence of the development;
 - (b) the use of natural resources;
 - (c) the emission of pollutants, the creation of nuisances and the elimination of waste; and
 - (d) the description by the developer of the forecasting methods used to assess the effects on the environment.
5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

PART II

8. A description of the development comprising information on the site, design and size of the development.

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9. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.
10. The data required to identify and assess the main effects which the development is likely to have on the environment.
11. An outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects.
12. A non-technical summary of the information provided under paragraphs 8 to 11.

SCHEDULE 3

Regulations 4, 6 and 9

BODIES TO BE CONSULTED

1. Any planning authority whose area adjoins the area of marine waters where the proposed development is to be situated.
 - (a) (a) The Secretary of State for Scotland, Scottish Natural Heritage and the Scottish Environment Protection Agency, where the proposed development is to be situated in an area of marine waters adjoining Scotland;
 - (b) the Secretary of State for the Environment, Transport and the Regions, the Countryside Commission, the Nature Conservancy Council for England and the Environment Agency, where the proposed development is to be situated in an area of marine waters adjoining England;
 - (c) the Secretary of State for Wales [^{F20}and the Natural Resources Body for Wales], where the proposed development is to be situated in an area of marine waters adjoining Wales.

Textual Amendments

F20 Words in Sch. 3 para. 2(c) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 4 para. 82](#) (with Sch. 7)

3. Where the proposed development is to be situated in the marine waters landward of a line drawn between Burrow Head and St Bees Head—
 - (a) both the Environment Agency and the Scottish Environment Protection Agency; and
 - (b) both the Secretary of State for Scotland and the Secretary of State for the Environment, Transport and the Regions and both Scottish Natural Heritage and the Nature Conservancy Council for England.
4. Any district salmon fishery board within whose area the proposed development is to be situated.
- ^{F21}5. Any other body designated by statutory provision as having specific environmental responsibilities.]

Textual Amendments

F21 [Sch. 3 para. 5](#) inserted (1.2.2007) by [The Environmental Impact Assessment \(Scotland\) Amendment Regulations 2006 \(S.S.I. 2006/614\)](#), regs. 1, **9(8)**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement for Great Britain Council Directive [85/337/EEC](#) (O.J. No.L175, 5.7.1985, p.40), as amended by Council Directive [97/11/EC](#) (O.J. No.L73, 14.3.1997, p.5) (“the Directive”) on the assessment of the environmental effects of certain projects in respect of fish farming in marine waters.

The Regulations repeal, and re-enact with amendments, the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988 (S.I. 1988/1218) (“the 1988 Regulations”).

The Regulations apply to applications as regards fish farming in marine waters, made on or after 14th March 1999, where any part of the proposed development is in a sensitive area, or the proposed development is designed to hold a biomass of 100 tonnes or greater, or will extend to 0.1 hectare or more of the surface area. The Regulations provide that decisions on whether consideration of environmental information in respect of such applications for fish farming in marine waters is required shall be taken by the “relevant authority”, being generally the Crown Estate Commissioners; except where the application is for a works licence in respect of a fish farm in marine waters within the coastal area for the purposes of the Zetland County Council Act 1974 in which case the decision shall be taken by Shetland Islands Council, and where the application relates to the harbour area for the purposes of the Orkney County Council Act 1974 in which case the decision shall be taken by Orkney Islands Council.

Regulation 3 provides that the relevant authority shall not grant consent for fish farming in marine waters where the project is likely to have significant effects on the environment, without taking into consideration environmental information in respect of the proposed project.

Regulation 4 provides procedures for allowing a person proposing to apply for such consent to seek a screening opinion from the relevant authority, being an opinion as to whether an environmental assessment is required in relation to the proposed application.

Regulation 5 provides for an application for consent for fish farming in marine waters, without an environmental statement, to be treated as a request for a screening opinion under regulation 4.

Regulation 6 enables a person proposing to apply for consent for fish farming in marine waters to seek from the relevant authority a scoping opinion, being an opinion as to the information to be provided in the environmental statement.

Regulation 7 provides that any bodies with relevant information in their possession shall make it available to the applicant.

Regulation 8 provides that the environmental statement shall be publicised through press advertisement and made available for public inspection, with the opportunity for representations to be made.

Regulation 9 provides that the relevant authority shall consult the bodies mentioned in Schedule 3 about the environmental statement.

Regulation 10 enables the relevant authority when taking into consideration environmental information, to require further information or the verification of information.

Regulation 11 requires the relevant authority to publicise their decision in cases involving consideration of environmental information.

Regulations 12 and 13 make provision in connection with the application of these Regulations to applications under the Zetland County Council Act 1974 and the Orkney County Council Act 1974 to the Shetland Islands Council and Orkney Islands Council respectively. Regulation 12 provides that no account shall be taken of any period falling between the date of making the application and the date of receipt by the Council of an environmental statement, for calculating the period of time which elapses before the Council is deemed to have refused the application.

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Regulation 13 makes provision in connection with the functions of the Secretary of State on any appeal to him under the respective 1974 Acts against a decision of the Council concerned. Regulation 14 provides that a reasonable charge may be made for making available copies of the environmental statement and of any relevant information in the preparation of the statement. Regulation 15 implements Article 7 of the Directive by providing for consultation between Member States in cases of development likely to have significant effects in another Member State. Regulation 16 provides for the revocation of the 1988 Regulations, with transitional savings. Schedule 1 describes the selection criteria in relation to screening opinions of a relevant authority. Schedule 2 sets out the information that is required in an environmental statement. Schedule 3 lists the bodies to be consulted by the relevant authority under the Regulations.

Status:

Point in time view as at 01/04/2013.

Changes to legislation:

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