
STATUTORY INSTRUMENTS

2007 No. 1518

The Marine Works (Environmental
Impact Assessment) Regulations 2007

PART 1

INTRODUCTION

Title and commencement

1. These Regulations may be cited as the Marine Works (Environmental Impact Assessment) Regulations 2007 and come into force on 24th June 2007.

Interpretation

2.—(1) In these Regulations—

“the 1985 Act” means the Food and Environment Protection Act 1985⁽¹⁾;

“Annex I project” means a project of a type specified in Annex I to the EIA Directive;

“Annex II project” means a project of a type specified in Annex II to the EIA Directive;

“applicant” means—

(a) an applicant (or prospective applicant) for the issue of a regulatory approval; or

(b) any person giving notice to a regulator for the purpose of obtaining a regulatory approval;

“application” includes the giving of notice to a regulator for the purpose of obtaining a regulatory approval;

“appropriate authority” means—

(a) where the regulator is the Secretary of State or a devolved authority, the regulator; and

(b) where the regulator is any other person—

(i) as regards any regulated activity in Northern Ireland, the Department of the Environment⁽²⁾;

(ii) as regards any regulated activity in Scotland, the Scottish Ministers;

(iii) as regards harbour works relating to fishery harbours in Wales, the Welsh Ministers;
and

(iv) in any other case, the Secretary of State.

“consenting authority”, in relation to a project, means any authority (other than the regulator or the appropriate authority) whose consent to any activity to be undertaken in the course of the project is required under any enactment;

(1) 1985 c.48.

(2) The Department of the Environment is constituted for the purposes of the Northern Ireland Act 1998 (1998 c.47) by section 21 of that Act and is continued in existence by article 3(3) and (8) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I. 1)) and Schedule 1 to that Order.

“the consultation bodies” means—

- (a) the local planning authority;
- (b) such of the nature conservation bodies as the appropriate authority considers likely to have an interest in the activity by reason of their responsibilities;
- (c) any relevant authority;
- (d) any consenting authority; and
- (e) such other bodies as the appropriate authority considers likely to have an interest in the regulated activity (whether by virtue of their having specific environmental responsibilities under an enactment or otherwise);

“deposit” means any activity for which a licence is (or would be) required under section 5 or section 6(1)(a) of the 1985 Act and includes a proposed deposit;

“devolved authority” means—

- (a) a Northern Ireland Department;
- (b) the Scottish Ministers; or
- (c) the Welsh Ministers;

“EIA consent” means consent for a regulated activity given by an appropriate authority in accordance with these Regulations and on the basis of an assessment of the effects of the regulated activity on the environment;

“EIA consent decision” means a decision whether to give EIA consent and (where the decision is to give such consent) as to the terms on which to do so;

“the EIA Directive” means Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment⁽³⁾;

“England” includes waters adjacent to England;

“environmental statement” means a statement complying with regulation 12(2);

“excluded information” means—

- (a) in the case of information to which the Environmental Information Regulations 2004⁽⁴⁾ or the Environmental Information (Scotland) Regulations 2004⁽⁵⁾ apply, any information that the regulator would be entitled to withhold in response to a request made in accordance with those Regulations; and
- (b) in any other case, any information which is exempt information for the purposes of the Freedom of Information Act 2000⁽⁶⁾ or the Freedom of Information (Scotland) Act 2002⁽⁷⁾;

“fishery harbour” has the meaning assigned to it in section 21(7) of the Sea Fish Industry Act 1951⁽⁸⁾;

“harbour” has the meaning assigned to it in section 57(1) of the Harbours Act 1964⁽⁹⁾;

“harbour works” means works involved in the construction of a harbour or in the making of modifications to an existing harbour;

“local planning authority” means—

(3) OJNo. L 175, 5.7.1985, p. 40, as last amended by Directive [2003/35/EC](#) of the European Parliament and of the Council of 26th May 2003, OJ No. L 156, 25.6.2003, p. 17.

(4) S.I. 2004/3391.

(5) S.S.I. 2004/520.

(6) 2000 c.36.

(7) 2002 asp 13.

(8) 1951 c. 30.

(9) 1964 c.40.

- (a) in relation to England or Wales, any authority that is a local planning authority for the purposes of the Town and Country Planning Act 1990⁽¹⁰⁾ in or adjacent to whose area the regulated activity is proposed to be carried out;
- (b) in relation to Northern Ireland, the Department of the Environment; and
- (c) in relation to Scotland—
 - (i) any authority that is a planning authority for the purposes of the Town and Country Planning (Scotland) Act 1997⁽¹¹⁾ in or adjacent to whose area the regulated activity is proposed to be carried out; and
 - (ii) where the regulated activity is carried out in or adjacent to a National Park, the National Park authority for the National Park;

“the nature conservation bodies” means—

- (a) the Joint Nature Conservation Committee⁽¹²⁾;
- (b) Natural England⁽¹³⁾;
- (c) Scottish Natural Heritage⁽¹⁴⁾; and
- (d) the Countryside Council for Wales⁽¹⁵⁾;

“Northern Ireland” has the meaning assigned to it by section 98(1) of the Northern Ireland Act 1998⁽¹⁶⁾;

“outlying waters” means United Kingdom controlled waters outside the Scottish zone, which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines from which the territorial sea is measured in any other part of the United Kingdom;

“the Public Register” means the register maintained by a regulator in accordance with section 14 of the 1985 Act;

“regulated activity” means any activity (or proposed activity) for which a regulatory approval is (or would be) required;

“regulator” means the person responsible for considering an application for a regulatory approval;

“regulatory approval” means—

- (a) a licence under Part 2 of the 1985 Act;
- (b) a consent under section 34 of the Coast Protection Act 1949⁽¹⁷⁾; or
- (c) except in relation to Northern Ireland, an approval or consent for harbour works under—
 - (i) a local Act;
 - (ii) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862⁽¹⁸⁾; or
 - (iii) an order made under section 14 or 16 of the Harbours Act 1964;

⁽¹⁰⁾ 1990 c.8.

⁽¹¹⁾ 1997 c.8.

⁽¹²⁾ The Joint Nature Conservation Committee was re-constituted by section 31 of the Natural Environment and Rural Communities Act 2006 (2006 c.16).

⁽¹³⁾ Natural England is constituted by section 1 of the Natural Environment and Rural Communities Act 2006 (2006 c.16).

⁽¹⁴⁾ Scottish Natural Heritage is constituted by section 1 of the Natural Heritage (Scotland) Act 1991 (1991 c.28).

⁽¹⁵⁾ The Countryside Council for Wales is constituted by section 128 of the Environmental Protection Act 1990 (1990 c.43).

⁽¹⁶⁾ 1998 c.47.

⁽¹⁷⁾ 1949 c.74.

⁽¹⁸⁾ 1862 c.69.

“regulatory decision” means a decision whether to grant or issue a regulatory approval and (where the decision is to grant or issue such an approval) as to the terms on which to do so;

“relevant authority” means—

- (a) where a regulated activity is likely to have a significant effect on the environment of Northern Ireland and the appropriate authority is not a Northern Ireland Department, such of the Northern Ireland Departments as the appropriate authority considers likely to have an interest in the activity by reason of their environmental responsibilities;
- (b) where a regulated activity is likely to have a significant effect on the environment of Scotland, the Scottish zone or outlying waters (or more than one of them) and the appropriate authority is not the Scottish Ministers, the Scottish Ministers;
- (c) where the regulated activity is likely to have a significant effect on the environment of the Scottish zone or outlying waters (or both) and the appropriate authority is not the Secretary of State, the Secretary of State;
- (d) where a regulated activity is likely to have a significant effect on the environment of Wales and the appropriate authority is not the Welsh Ministers, the Welsh Ministers; and
- (e) where a regulated activity is likely to have a significant effect on the environment of England and the appropriate authority is not the Secretary of State, the Secretary of State;

“relevant legislation” means, in relation to an application, a regulatory decision or a regulatory approval, the legislation under which the application was made, the regulatory decision taken or the regulatory approval granted or issued (as the case may be);

“scoping opinion” means an opinion given by an appropriate authority as to the information to be provided in an environmental statement for an application;

“Scotland” includes waters adjacent to Scotland;

“the Scottish zone” has the meaning assigned to it by section 126(1) of the Scotland Act 1998⁽¹⁹⁾;

“screening opinion” means an opinion given by an appropriate authority as to whether or not an environmental impact assessment is required for a regulated activity;

“sea” includes—

- (a) any area submerged at mean high water springs;
- (b) so far as the tide flows at mean high water springs—
 - (i) an estuary or arm of the sea; and
 - (ii) the waters of any channel, creek, bay or river; and
- (c) the sea-bed and subsoil under the sea;

“United Kingdom controlled waters” means any part of the sea within the seaward limits of an area designated under—

- (a) section 1(7) of the Continental Shelf Act 1964⁽²⁰⁾; or
- (b) the Fishery Limits Act 1976⁽²¹⁾;

“United Kingdom waters” means any part of the sea within the seaward limits of United Kingdom territorial waters for the purposes of the Territorial Sea Act 1987⁽²²⁾;

“Wales” includes waters adjacent to Wales;

“waters adjacent to England” means—

⁽¹⁹⁾ 1998 c.46.

⁽²⁰⁾ 1964 c.29.

⁽²¹⁾ 1976 c.86.

⁽²²⁾ 1987 c.49.

- (a) United Kingdom waters, other than—
 - (i) waters adjacent to Northern Ireland;
 - (ii) waters adjacent to Scotland; or
 - (iii) waters adjacent to Wales; and
- (b) United Kingdom controlled waters, other than—
 - (i) waters adjacent to Northern Ireland;
 - (ii) waters adjacent to Scotland;
 - (iii) the sea within the Scottish zone;
 - (iv) outlying waters; or
 - (v) waters adjacent to Wales;

“waters adjacent to Northern Ireland” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland, as determined under section 98(8) of the Northern Ireland Act 1998;

“waters adjacent to Scotland” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, as determined under section 126(2) of the Scotland Act 1998; and

“waters adjacent to Wales” means the sea adjacent to Wales, as determined under section 158(3) of the Government of Wales Act 2006(23).

(2) In these Regulations, any term used in the EIA Directive has the same meaning as in that Directive.

Extension of powers to require the payment of fees in respect of applications

3.—(1) The power conferred upon a licensing authority by section 8(7) and (8) of the 1985 Act to require an applicant for a licence under Part 2 of the 1985 Act to pay reasonable fees in respect of administrative and other expenses also applies in relation to such an applicant in respect of expenses which the authority has incurred under these Regulations in its capacity as an appropriate authority.

(2) An appropriate authority may require an applicant for a regulatory approval other than a licence under Part 2 of the 1985 Act to pay to it reasonable fees in respect of administrative and other expenses which the authority has incurred under these Regulations in its capacity as an appropriate authority.

(3) Paragraphs (1) and (2) do not apply in relation to any expenses in respect of which a fee may be charged under any other provision of these Regulations.

- (4) Section 8(9) of the 1985 Act shall be treated as applying in relation to—
 - (a) the determination of fees payable in accordance with paragraph (1); and
 - (b) the determination of fees payable in accordance with—
 - (i) paragraph (2);
 - (ii) paragraph 2 of Schedule 2; or
 - (iii) paragraph 3 of Schedule 4,

with the modification that the reference in section 8(9) to persons who are likely to apply for licences shall be read as a reference to persons who are likely to apply for a regulatory approval.

PART 2

REGULATED ACTIVITY IN RELATION TO WHICH AN ENVIRONMENTAL IMPACT ASSESSMENT IS (OR MAY BE) REQUIRED

Environmental impact assessment

4. Where an environmental impact assessment is required in relation to a regulated activity in accordance with the remaining provisions of this Part—

- (a) Part 3 applies in relation to the regulated activity;
- (b) the duties of the regulator under the relevant legislation in relation to an application for a regulatory approval for the regulated activity are subject to the requirements of this Part and Part 3; and
- (c) unless the appropriate authority has given EIA consent—
 - (i) the regulator must not grant a regulatory approval in respect of the regulated activity; and
 - (ii) the applicant must not commence the regulated activity.

Requirement of assessment by agreement

5. An environmental impact assessment is required in relation to a regulated activity if the applicant so agrees with the appropriate authority.

Requirement of assessment by determination

6. An environmental impact assessment is required in relation to a regulated activity if the appropriate authority so determines under regulation 7 or 8.

Determination: Annex I projects

7. Subject to regulations 9 and 10, the appropriate authority must determine that an environmental impact assessment is required in relation to any regulated activity that is to be carried out in the course of an Annex I project.

Determination: Annex II projects

8.—(1) Subject to regulations 9 and 10, the appropriate authority must determine that an environmental impact assessment is required in relation to a regulated activity that is to be carried out in the course of an Annex II project, if it concludes that the project in question is likely, because of its size, nature or location, to have significant effects on the environment.

(2) In reaching a conclusion as to whether or not an Annex II project is likely to have significant effects on the environment, the appropriate authority must have regard to the criteria set out in Schedule 1.

Projects serving national defence purposes

- 9.—(1) Where—
- (a) a regulated activity comprises or forms part of a project serving national defence purposes, and
 - (b) in the opinion of the Secretary of State, compliance with these Regulations would have an adverse effect on the fulfilment of those purposes,

the Secretary of State may direct that that an environmental impact assessment is not required in relation to that regulated activity.

- (2) Before making any such direction, the Secretary of State shall notify—
 - (a) where the Secretary of State is not also the appropriate authority, the appropriate authority;
 - (b) where the Secretary of State is not also the regulator, the regulator; and
 - (c) any relevant authority.
- (3) As soon as practicable after making any such direction, the Secretary of State shall send a copy of the direction to—
 - (a) where the Secretary of State is not also the appropriate authority, the appropriate authority;
 - (b) where the Secretary of State is not also the regulator, the regulator; and
 - (c) any relevant authority.

Exceptions

10.—(1) An appropriate authority may determine that an environmental impact assessment is not required in relation to regulated activity that is to be carried out in the course of an Annex I project or an Annex II project, if it is satisfied—

- (a) that—
 - (i) a determination that an environmental impact assessment is not required for the regulated activity can be justified in accordance with Article 2(3) of the EIA Directive (exemption for exceptional cases); and
 - (ii) the regulated activity would not be likely to have significant effects on the environment of another EEA State; or
 - (b) that—
 - (i) assessment of any effects on the environment of the project in question has already been, is being or is to be carried out by another consenting authority; and
 - (ii) such assessment is (or will be) sufficient to meet the requirements of the EIA Directive in relation to that project.
- (2) Where the appropriate authority determines in accordance with paragraph (1) that an environmental impact assessment is not required in relation to a regulated activity, it shall notify—
- (a) the applicant, and
 - (b) where the appropriate authority is not also the regulator, the regulator.
- (3) Where the appropriate authority determines in accordance with paragraph (1)(a) that an environmental impact assessment is not required in relation to a regulated activity, the applicant must provide the appropriate authority with such information as it requires to comply with the obligations imposed on member States by Article 2(3) of the EIA Directive, namely—
- (a) the obligation to take the following steps prior to the granting of a regulatory approval in relation to the regulated activity—
 - (i) informing the Commission of the reasons that the appropriate authority considers justify its determination; and
 - (ii) providing the Commission with information relating to the regulated activity and the proposed regulatory approval for the regulated activity; and
 - (b) the obligation to ensure that information relating to the regulated activity and the reasons for its determination are—
 - (i) published in such manner as it considers appropriate; and

(ii) in the case of a deposit, made available on the Public Register.

(4) Where the appropriate authority determines in accordance with paragraph (1)(b) that an environmental impact assessment is not required in relation to a regulated activity—

- (a) the regulator must defer reaching its regulatory decision until the other consenting authority informs the regulator that a decision to grant a regulatory approval would be compatible with that authority's measures to comply with the EIA Directive; and
- (b) any decision to grant a regulatory approval must take into account any comments of the other consenting authority relating to the regulated activity.

Screening opinions

11.—(1) An applicant may request a screening opinion from the appropriate authority at any time before he applies for a regulatory approval in relation to a regulated activity.

(2) If the request is made and the applicant does not defer making his application until the screening opinion is given, the regulator must not deal with the application until after the appropriate authority has given its screening opinion.

(3) If an applicant makes an application for a regulatory approval in relation to a regulated activity without having requested a screening opinion and the regulator considers that the regulated activity is one in relation to which it must be determined in accordance with regulation 7 or 8 that an environmental impact assessment is required, the regulator—

- (a) must direct the applicant to request a screening opinion from the appropriate authority; and
- (b) must not deal with the application until after the appropriate authority has given its screening opinion.

(4) The procedures for requesting and giving screening opinions are set out in Schedule 2.

(5) If the screening opinion is that an environmental impact assessment is not required for the project in the course of which the regulated activity would be carried out, the application may (subject to regulation 10(3) or (4), if either applies) proceed in accordance with the relevant legislation.

(6) If the screening opinion is that an environmental impact assessment is required for the regulated activity, the regulator must reject the application unless it is one which is capable of being dealt with in accordance with Part 3 without changes being made to the application.

(7) Where paragraph (2), (3), (5) or (6) applies in relation to an application under relevant legislation that provides that an applicant may proceed to carry out a regulated activity without further consent unless the regulator takes some step within a specified period—

- (a) any time prior to the giving of the screening opinion by the appropriate authority does not count in the calculation of that period; and
- (b) where the appropriate authority gives a screening opinion to the effect that an environmental impact assessment is required for the regulated activity, the regulator is to be treated for the purposes of the relevant legislation as having taken, within the specified period, a step of such a kind as precludes the applicant from proceeding to carry out the regulated activity without further consent.

(8) Paragraphs (2), (3)(5), (6) and (7) apply notwithstanding any provision to the contrary in the relevant legislation.

PART 3

ENVIRONMENTAL IMPACT ASSESSMENTS

Application for a regulatory approval in relation to a regulated activity

12.—(1) Where an application is made for a regulatory approval in relation to a regulated activity to which this Part applies, neither the regulator nor the appropriate authority may deal with the application or exercise any functions under these Regulations in relation to it until the appropriate authority has received the following material from the applicant—

- (a) a chart or map (or both) sufficient to identify where the regulated activity would be carried out and the extent of any operations which it would involve;
- (b) a description (including a plan) of the nature of the project, identifying the regulated activity to be carried out in the course of that project;
- (c) a statement of the working methods to be used in the course of the project and in carrying out the regulated activity;
- (d) an environmental statement in respect of the project; and
- (e) a copy of any environmental statement in respect of the project provided or to be provided to any other consenting authority.

(2) An environmental statement must—

- (a) be in writing; and
- (b) contain the information specified in Schedule 3.

(3) The appropriate authority may specify—

- (a) the format in which the applicant must provide the material referred to in paragraph (1); and
- (b) the number of copies of the material in that format that the applicant must provide to it and to the regulator (if the regulator is not also the appropriate authority).

(4) The applicant must comply with any reasonable requirement made in accordance with paragraph (3) and, until this has been done—

- (a) neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application; and
- (b) the regulator must not reach its regulatory decision.

(5) Where an applicant has failed to comply with the requirements of paragraphs (1) and (2), or any requirements of the appropriate authority under paragraph (3), within such reasonable period as the appropriate authority has specified or such longer period as the appropriate authority may reasonably allow—

- (a) the regulator may treat the application as having been withdrawn; and
- (b) the appropriate authority (if the regulator is not also the appropriate authority) may direct the regulator to do so.

Scoping opinions

13.—(1) The applicant may request a scoping opinion from the appropriate authority.

(2) The procedures for requesting and giving scoping opinions are set out in Schedule 4.

(3) Where a scoping opinion is given—

- (a) the appropriate authority must not deliver its environmental impact assessment, and

(b) the regulator must not reach its regulatory decision, unless the applicant has submitted an environmental statement containing all of the information specified in the scoping opinion.

Provision of further information

14.—(1) Where the appropriate authority reasonably considers that—

- (a) it requires further information properly to consider the likely environmental effects of the project which gives rise to the regulated activity covered by the application, and
- (b) the applicant is (or should be) able to provide such information,

the appropriate authority must notify the applicant in writing of the matters on which it requires further information.

(2) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until any further information required in accordance with paragraph (1) has been provided to the appropriate authority and to the regulator (if the regulator is not also the appropriate authority).

(3) Where an applicant has failed to provide any information required in accordance with paragraph (1) within such reasonable period as the appropriate authority has specified, or such longer period as the appropriate authority may reasonably allow—

- (a) the regulator may treat the application as having been withdrawn; and
- (b) the appropriate authority (if the regulator is not also the appropriate authority) may direct the regulator to do so.

Availability of information held by regulator

15.—(1) The regulator and the appropriate authority (if the regulator is not also the appropriate authority) may make available to the applicant any information in their possession which may be relevant to—

- (a) the preparation of the environmental statement, or
- (b) the provision of the further information required in accordance with regulation 14(1).

(2) Subject to paragraphs (3) and (4), the regulator and the appropriate authority (if the regulator is not also the appropriate authority) must make such information available if the applicant so requests.

(3) Paragraph (2) does not require the disclosure of any excluded information.

(4) Where an applicant requests information under paragraph (2), the regulator or the appropriate authority (as the case may be) may impose, as a condition of providing the information, a reasonable charge reflecting the cost of identifying, preparing and copying the information.

Publicity

16.—(1) The appropriate authority must—

- (a) publicise the application and the environmental statement in respect of the project to which it relates (or, as the case may be, the provision of further information)—
 - (i) by publishing, in two successive weeks, a notice containing the information set out in paragraph (2) in such newspapers or other publications as it thinks fit; and
 - (ii) in such other manner (if any) as it considers appropriate; or
- (b) direct the applicant to do so.

- (2) The information referred to in paragraph (1)(a)(i) is—
- (a) the applicant's name and address;
 - (b) a statement that an application for a licence or consent for a regulated activity has been made and that the environmental statement has been prepared or, as the case may be, that the further information has been furnished to the appropriate authority;
 - (c) a statement of the nature, size and location of the project;
 - (d) a brief explanation of the relevant legislation under which the application has been made;
 - (e) the address of an office of the appropriate authority or other place nominated by the appropriate authority at which copies of the application and environmental statement or, as the case may be, the further information may be inspected free of charge at all reasonable hours within 42 days beginning with the date of publication of the notice;
 - (f) the address at which copies of the application and environmental statement or, as the case may be, the further information may be obtained from the appropriate authority and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying), of the charge; and
 - (g) a statement that any person wishing to make representations regarding the application and environmental statement or, as the case may be, the further information should make them in writing to the appropriate authority at an address specified by the appropriate authority, within 42 days beginning with the date of publication of the notice.

(3) The applicant must comply with any reasonable direction made in accordance with paragraph (1)(b) and neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, unless or until this has been done.

(4) Where the applicant has failed to comply with a direction made in accordance with paragraph (1)(b) within such reasonable period as the appropriate authority has specified, or such longer period as the appropriate authority may reasonably allow—

- (a) the regulator may treat the application as having been withdrawn, and
- (b) the appropriate authority (if the regulator is not also the appropriate authority) may direct the regulator to do so.

(5) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until the period for representations has expired.

Consultation on proposed regulated activity

17.—(1) The appropriate authority must either—

- (a) supply the following material to such of the consultation bodies as it considers appropriate—
 - (i) a copy of the application;
 - (ii) a copy of the environmental statement;
 - (iii) a copy of any further information supplied by the applicant to the appropriate authority; and
 - (iv) a letter stating that any representations in response to consultation regarding the application should be made in writing to the appropriate authority, at an address specified by the appropriate authority, within 42 days from the date of the letter (or such longer period as may be agreed between the consultation body and the appropriate authority in accordance with paragraph (2)); or

(b) direct the applicant to do so.

(2) The appropriate authority may agree a longer consultation period with a consultation body where, in the opinion of the appropriate authority, it is reasonable to do so.

(3) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until the applicant has complied with any direction made in accordance with paragraph (1)(b).

(4) Where the applicant has failed to comply with a direction made in accordance with paragraph (1)(b) within such reasonable period as the appropriate authority has specified, or such longer period as the appropriate authority may reasonably allow—

(a) the regulator may treat the application as having been withdrawn, and

(b) the appropriate authority (if the regulator is not also the appropriate authority) may direct the regulator to do so.

(5) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until the consultation period (including any extension agreed in accordance with paragraph (2)) has expired.

Provision of information to affected EEA States

18.—(1) The appropriate authority must supply the material set out in paragraph (3) to the authorities of any EEA State that it considers is affected by the application.

(2) An EEA State is affected by an application for the purposes of paragraph (1) if the environment in that State is likely to be significantly affected by the project in the course of which the regulated activity to which the application relates is to be carried out.

(3) The material referred to in paragraph (1) is—

(a) a copy of the application;

(b) a copy of the environmental statement;

(c) a copy of any further information provided by the applicant pursuant to a notification under regulation 14(1);

(d) any additional information which the regulator or the appropriate authority has about the possible impact of the project on the EEA State and the environment in that State;

(e) an explanation of how and within what period the authorities of the EEA State can make representations in response to consultation in relation to the project as part of the procedure under regulation 20; and

(f) an explanation of the decisions that the regulator can make in relation to the application.

(4) The appropriate authority must provide this information to the authorities of the EEA State—

(a) as soon as practicable; and

(b) in any event, no later than the date on which the notice advertising the environmental statement or the additional information (as the case may be) is published.

(5) Paragraph (1) does not require the disclosure of any excluded information.

(6) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until the period for consultation under regulation 20 has expired.

Provision of information to other EEA States

19.—(1) The appropriate authority must supply a copy of the environmental statement, and any additional information provided by the applicant pursuant to a notification under regulation 14(1), to the authorities of an EEA State if they request it.

(2) The appropriate authority must provide the information referred to in paragraph (1) as soon as practicable after receiving such a request.

(3) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until—

- (a) the material referred to in paragraph (1) has been supplied in accordance with that paragraph; and
- (b) the period for consultation under regulation 20 has expired.

Consultation of EEA States

20. The appropriate authority must—

- (a) consult the authorities of any EEA State to which information has been provided under regulation 18 or regulation 19; and
- (b) must allow such reasonable period as may have been agreed with those authorities for them to make representations as to—
 - (i) the possible significant effects of the regulated activity on the environment in that EEA State; and
 - (ii) the measures envisaged to reduce or eliminate such effects.

Consideration of representations from the public

21.—(1) Subject to paragraph (2), the appropriate authority must apply the provisions of Schedule 5 in relation to each representation it receives pursuant to the statement referred to in regulation 16(2)(g).

(2) To the extent that the appropriate authority considers that representations made to it pursuant to the statement referred to in regulation 16(2)(g) are similar in material respects or deal with similar or related issues, it may group such representations and apply the provisions of Schedule 5 to each such group.

The EIA consent decision

22. In reaching its EIA consent decision, the appropriate authority must—

- (a) do so on the basis of the following—
 - (i) the application;
 - (ii) the environmental statement;
 - (iii) any further information provided by the applicant pursuant to a notification under regulation 14(1);
 - (iv) the outcome of the process set out in Schedule 5 in relation to any representations received pursuant to the statement referred to in regulation 16(2)(g);
 - (v) any representations in response to consultation made by the consultation bodies pursuant to the letter referred to in regulation 17(1)(a)(iv); and

- (vi) the outcome of any consultations of the authorities of other EEA States carried out in accordance with regulation 20;
- (b) have regard to the relevant legislation; and
- (c) take into account the direct and indirect effects of the project on—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in the preceding sub-paragraphs.

Notification and publication of decisions

23.—(1) The appropriate authority must send written confirmation of its EIA consent decision to—

- (a) the applicant;
 - (b) if the appropriate authority is not also the regulator, the regulator;
 - (c) any person from whom the appropriate authority received representations pursuant to the statement referred to in regulation 16(2)(g);
 - (d) any consultation body that responded to the consultation pursuant to the letter referred to in regulation 17(1)(a)(iv); and
 - (e) the authorities of any EEA State who were consulted in accordance with regulation 20.
- (2) The written confirmation must include the following—
- (a) a reference to the environmental information that the appropriate authority has taken into consideration;
 - (b) the main reasons and considerations on which the EIA consent decision was based; and
 - (c) if the EIA consent decision involves giving EIA consent, a description of the measures that must be taken in consequence of the EIA consent decision to avoid, reduce and, if possible, offset the principal adverse effects of the regulated activity.

(3) The appropriate authority must, as soon as possible after written confirmation is sent to the applicant pursuant to paragraph (1), ensure that—

- (a) its decision is publicised in such manner as it considers appropriate; and
- (b) in the case of a deposit—
 - (i) its regulatory decision and the information set out in paragraph (2) are made available on the Public Register; and
 - (ii) a notice of its decision, stating that the information referred to in paragraph (2) is available in the Public Register and giving details of the times at which the Public Register may be inspected, is published in the newspapers or other publications in which notice of the application was published in accordance with regulation 16(1).

Effect of EIA consent decision on application and regulatory decision

24.—(1) Where the appropriate authority has given EIA consent in respect of a regulated activity—

- (a) the regulator may proceed to deal with the application and take its regulatory decision in accordance with the relevant legislation; and

- (b) when doing so, the regulator must have regard to the EIA consent and, in particular, to—
 - (i) any considerations set out in the written confirmation of the EIA consent in accordance with regulation 23(2)(b); and
 - (ii) any measures described in the written confirmation of the EIA consent in accordance with regulation 23(2)(c).

(2) Where the appropriate authority has refused EIA consent in respect of a regulated activity, the regulator may not grant a regulatory approval for that regulated activity and must treat the application for that regulated activity as having been withdrawn.

PART 4

OFFENCES

Provision of false etc information

25.—(1) A person is guilty of an offence if, for the purpose of procuring or obtaining an EIA consent (whether for the benefit of himself, another or both), he—

- (a) makes a statement that he knows to be false in a material particular;
- (b) recklessly makes a statement which is false in a material particular; or
- (c) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

Offences committed by bodies corporate

26.—(1) Where an offence under regulation 25 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Offences committed by Scottish partnerships

27. Where an offence under regulation 25 which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, one or more of the partners or any person who was purporting to act in such capacity, he as well as the partnership is guilty of that offence and liable to be proceeded against and punished accordingly.

PART 5

MISCELLANEOUS

Access to review procedure before a court

28. In relation to Scotland, any non-governmental organisation promoting environmental protection and meeting any other requirements under the law shall be deemed to have an interest for the purposes of Article 10a(a) of the EIA Directive and rights capable of being impaired for the purposes of Article 10a(b) of the EIA Directive.

Revocation

29. Part 2 of, and Schedules 1 and 2 to, the Harbour Works (Environmental Impact Assessment) Regulations 1999(24) are revoked.

Transitional and saving provisions

30.—(1) These Regulations shall not apply in relation to an application made before 24th June 2007.

(2) The revocation made by regulation 29 does not affect the application of the provisions referred to in that regulation in relation to an application made before 24th June 2007.

Ben Bradshaw
Minister of State
Department for Environment, Food and Rural
Affairs

16th May 2007

We concur,

Alan Campbell
Frank Roy
Two of the Lords Commissioners of Her
Majesty's Treasury

21st May 2007