

Annex 1

Transposition Note for the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2015

1. The Marine Works (Environmental Impact Assessment) Regulations 2007¹ (the “MWR”) (as amended²) transposed, for the regulated activities to which they apply, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (the “1985 EIA Directive”), as amended³.
2. The Transposition Note for the MWR can be found at the end of the Explanatory Memorandum for those Regulations available on the legislation.gov.uk website at: http://www.legislation.gov.uk/uksi/2007/1518/pdfs/uksiem_20071518_en.pdf. The Transposition Note for the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011 can be found in Annex 1 of the Explanatory Memorandum for those Regulations available on the legislation.gov.uk website at: http://www.legislation.gov.uk/uksi/2011/735/pdfs/uksiem_20110735_en.pdf.
3. Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment codified amendments to, and repealed, the 1985 EIA Directive. References to the 1985 EIA Directive in the Transposition Notes mentioned above should be read in accordance with the correlation table in Annex VI of Directive 2011/92/EU⁴.
4. This instrument amends references to the 1985 EIA Directive in the MWR (as amended) to reflect Directive 2011/92/EU as adopted⁵. It also amends the MWR to make provision for the Natural Resources Body for Wales to be included as an “appropriate authority” where it is the “regulator”, as defined in regulation 2(1) of the MWR.

| Directive | | | |
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| Council Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) | | | |
| Articles | Objectives | Implementation | Responsibility |
| Article 1 | States the purpose of the Directive: namely, assessment of the environmental effects of those public and private projects likely to have significant | The Marine Works (Environmental Impact Assessment) Regulations 2007 (“the principal regulations”) make the “appropriate authority” responsible for | The appropriate authority as defined in amended regulation 2(1) of the principal regulations. |

¹ SI 2007/1518.

² Relevant amendments to SI 2007/1518 were made by the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011 (SI 2011/735).

³ Relevant amendments to the 1985 EIA Directive were made by Directive 97/11/EC and Directive 2003/35/EC.

⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0092>.

⁵ Directive 2011/92/EU has since been amended by Directive 2014/52/EU of the European Parliament and of the Council of 16th April 2014 (OJ No. L124, 25.4.2014, p.1), which is required to be transposed by 16th May 2017, but (pending such transposition, and by virtue of the exclusion of section 20A of the Interpretation Act 1978 (c.30)), the definition of “the EIA Directive” as amended by this instrument is to be construed without reference to the amending Directive.

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| | effects on the environment. Also contains definitions. | <p>carrying out an impact assessment.</p> <p>Regulation 3(a) of this instrument amends the definition of “appropriate authority” in regulation 2(1) of the principal regulations, to include the Natural Resources Body for Wales (“the NRW”) as such an authority where it is the regulator.</p> <p>Regulation 3(b) of this instrument amends the definition of “the EIA Directive” to refer to Directive 2011/92/EU as adopted.</p> | |
| Article 2 | Under Article 2(4), Member States may, in exceptional cases, exempt a specific project in whole or part from the provisions laid down by the Directive. | <p>Regulation 10 of the principal regulations enables the appropriate authority to determine in specified circumstances that an EIA is not required, and requires it to give appropriate notifications of such a decision.</p> <p>Regulation 5 of this instrument amends regulation 10 of the principal regulations to update references to the 1985 EIA Directive to reflect Directive 2011/92/EU as</p> | The appropriate authority |

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| | | <p>adopted.</p> <p>Regulation 10A provides that where the Marine Management Organisation (MMO) is the appropriate authority, it may not make a determination under regulation 10(1)(a)(i) unless the Secretary of State makes a direction that an EIA is not required for an exceptional case. The Secretary of State has to be satisfied that this accords with Article 2(4).</p> <p>Regulation 6 substitutes new regulation 10A of the principal regulations, to update references to the 1985 EIA Directive to reflect Directive 2011/92/EU as adopted and to provide that where either the MMO or the NRW is the appropriate authority, either body may not make a determination under regulation 10(1)(a)(i) unless the Secretary of State or Welsh Ministers (respectively) makes a direction that an EIA is not</p> | <p>The appropriate authority; the Secretary of State; the Welsh Ministers.</p> |
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| | | required for an exceptional case. The Secretary of State and Welsh Ministers must be satisfied that the exemption in Article 2(4) is justified. | |
| Article 11 | Article 11 requires Member States to ensure that members of the public have access to legal or other independent procedures for challenging decisions, acts or omissions relating to the public participation provisions of this Directive | <p>In relation to Scotland, regulation 28 makes specific provision to ensure that non-governmental organisations promoting environmental protection are deemed to have the necessary title and interest to sue.</p> <p>Regulation 7 amends regulation 28 of the principal regulations to update references to the 1985 EIA Directive to reflect Directive 2011/92/EU as adopted.</p> | Member States |