

1989 No. 424

HARBOURS, DOCKS, PIERS AND FERRIES

The Harbour Works (Assessment of Environmental Effects) (No.2) Regulations 1989

Approved by both Houses of Parliament

Made - - - - - *9th March 1989*

Coming into force *16th March 1989*

The Secretary of State for Transport and the Minister of Agriculture, Fisheries and Food as respects England, the Secretary of State for Wales as respects Wales and the Secretary of State for Scotland as respects Scotland, being Ministers designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) 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 by that section hereby make the following Regulations:—

Citation, Commencement and Extent

1.—(1) These Regulations may be cited as the Harbour Works (Assessment of Environmental Effects) (No.2) Regulations 1989.

(2) These Regulations shall come into force on the seventh day after the day on which they are made.

(3) These Regulations shall not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
“the appropriate Minister” means

- (a) in respect of harbour works not being works relating to fishery harbours or marine works, the Secretary of State for Transport;
- (b) in respect of harbour works relating to fishery harbours in England, the Minister of Agriculture, Fisheries and Food;
- (c) in respect of harbour works relating to fishery harbours in Wales, the Secretary of State for Wales;
- (d) in respect of harbour works relating to marine works in Scotland, the Secretary of State for Scotland;

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

“the Directive” means Council Directive No. 85/337/EEC(c) on the assessment of the effect of certain public and private projects on the environment;

“environmental assessment” means an assessment in accordance with the Directive;

(a) S.I. 1988/785.

(b) 1972 c. 68.

(c) O.J. No. L175. 5.7.85. p. 40.

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

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

“harbour authority” means the harbour authority as defined in section 57 of the Harbours Act 1964 in relation to the harbour where the harbour works are proposed to be carried out;

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

“marine work” has the meaning assigned to it in section 57 of the Harbours Act 1964;

“operations” means the operations described in section 34(1) of the Coast Protection Act 1949(c);

“provisional order” has the meaning assigned to it in section 57 of the Harbours Act 1964.

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

(3) In these Regulations reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations and any reference to a numbered paragraph or lettered sub-paragraph is a reference to the paragraph or sub-paragraph bearing that number or letter in these Regulations.

Scope

3. These Regulations apply to harbour works below the low water mark of medium tides, being works which are—

- (a) not subject to planning control pursuant to the Town and Country Planning Act 1971(d) or the Town and Country Planning (Scotland) Act 1972(e) or pursuant to orders made in exercise of powers conferred by the said Acts; and
- (b) not specifically described in or authorised to be carried out by a harbour revision order made pursuant to section 14 of the Harbours Act 1964, a harbour empowerment order made pursuant to section 16 of the Harbours Act 1964 or by a provisional order; and
- (c) not specifically described in or authorised to be carried out by any enactment conferring powers to carry out works at a harbour.

Scrutiny of applications relating to harbour works

4.—(1) Where an application or notice of one of the following descriptions is made or given—

- (a) an application for consent to the carrying out of operations pursuant to section 34 of the Coast Protection Act 1949;
- (b) notice from a harbour authority pursuant to regulations made under section 37 of the Merchant Shipping Act 1988(f) that application has been made for a licence to carry out operations; or
- (c) an application for the approval of any such work as is referred to in section 35(1)(g) of the Coast Protection Act 1949;

the appropriate Minister shall consider whether the application or notice relates in whole or in part to harbour works to which these Regulations apply and shall reach a decision thereon as soon as reasonably practicable.

(2) If the appropriate Minister decides that the application or notice relates to harbour works to which these Regulations apply, the proposed works shall not be commenced unless the appropriate Minister reaches a decision under regulation 4(5) or consents thereto under

(a) 1951 c. 30.

(b) 1964 c. 40.

(c) 1949 c. 74; section 34(1) was amended by section 36 of the Merchant Shipping Act 1988 (c. 12).

(d) 1971 c. 78.

(e) 1972 c. 52.

(f) 1988 c. 12.

regulation 8(3) or regulation 9(5) and he shall notify the developer of his decision and its effect forthwith.

(3) If the appropriate Minister decides that the application or notice relates in whole or in part to harbour works to which these Regulations apply, he shall consider whether—

- (a) the proposed harbour works constitute a project which falls within Annex I of the Directive; or
- (b) the proposed harbour works constitute a project which falls within Annex II of the Directive and, if so, whether their characteristics require that they should be made subject to an environmental assessment.

(4) The appropriate Minister may require the developer to provide him with such of the following information as he deems necessary to enable him to consider whether proposed harbour works being the subject of an application or notice referred to in paragraph (1) constitute a project falling within paragraph (3)—

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

(5) If the appropriate Minister decides that proposed harbour works do not constitute a project falling within Annex I or Annex II to the Directive or that they constitute a project falling within Annex II the characteristics of which do not require that they should be made subject to an environmental assessment, he shall take no further action on the application or notice pursuant to these Regulations and he shall notify the developer and, in a case where a notice has been received under regulation 4(1)(b), the harbour authority, of his decision forthwith.

Harbour works subject to an environmental assessment

5.—(1) If the appropriate Minister decides that proposed harbour works constitute a project falling within Annex I of the Directive, or a project falling within Annex II and considers that their characteristics require that they should be made subject to an environmental assessment, he shall notify the developer and, in a case where a notice has been received under regulation 4(1)(b), the harbour authority, of his decision forthwith and direct the developer to supply him in such form as he may specify with the information referred to in Annex III to the Directive to the extent that he considers—

- (a) that it is relevant to any stage of the procedure set out in these Regulations and to the specific characteristics of the proposed harbour works to which the application or notice relates and to the environmental features likely to be affected; and
- (b) that (having regard in particular to current knowledge and methods of assessment) the developer may reasonably be required to compile that information.

(2) The information to be supplied to the appropriate Minister under paragraph (1) above shall include at least—

- (a) a description of the proposed harbour works comprising information on the site, design and size of the proposed harbour works;
- (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- (c) the data required to identify and assess the main effects which the proposed harbour works are likely to have on the environment;
- (d) a non-technical summary of the information mentioned in sub-paragraphs (a) to (c) above.

Publication of notice by developer

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

- (a) his name and the location and nature of the proposed harbour works;

- (b) that he has applied for consent or approval to the carrying out of the proposed works and specifying the relevant provision pursuant to which consent or approval was applied for;
- (c) that he has been directed to supply the information referred to in regulation 5(1);
- (d) that a copy of any information supplied under regulation 4(4) together with the information to be supplied under regulation 5(1) may be inspected by members of the public at all reasonable hours;
- (e) an address within the locality of the harbour where the harbour works are proposed to be carried out at which the documents open to inspection may be inspected, and the latest date on which they will be available (being a date not less than 42 days later than the date on which the notice is published);
- (f) an address within the locality of the harbour where the harbour works are proposed to be carried out (whether or not the same as that named under sub-paragraph (e)) at which copies of the information to be supplied under regulation 5(1) may be obtained, for so long as stocks last, and, if a charge is to be made for a copy, the amount of the charge; and
- (g) that any person who wishes to make representations concerning the proposed harbour works should do so in writing, within 7 days from the date specified in accordance with sub-paragraph (e), to the appropriate Minister.

(2) On the date of publication of the notice under paragraph (1) above the developer shall also post at a place to which members of the public have access at the offices of the harbour authority for the harbour in respect of which the harbour works are proposed to be carried out or if there is not such place, shall post outside the offices of the said harbour authority, a notice containing the information specified in paragraph (1).

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

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

(4) The information supplied to the appropriate Minister under regulation 5(1) shall be accompanied by—

- (a) a copy of the notice referred to in paragraph (1) above certified by or on behalf of the developer as having been published in a named newspaper on a date specified in the certificate; and
- (b) a certificate by or on behalf of the developer which states—
 - (i) that he has posted a notice at or outside the offices of the harbour authority for the harbour in which the harbour works are proposed to be carried out in accordance with paragraph (2) above, and when he did so; and
 - (ii) that he has complied with the requirements of paragraph (3)(b) and will comply with the requirements of paragraph 3(c) should this be necessary.

Consultation on and holding of inquiry into proposed harbour works

7.—(1) The appropriate Minister may direct the developer to supply such bodies as he may specify being bodies appearing to him to have environmental responsibilities, with copies of the information supplied to him under regulation 5(1).

(2) Where the developer is not the harbour authority, the appropriate Minister shall direct the developer to supply the harbour authority with copies of the information supplied to him under regulation 5(1).

(3) Where he has given a direction under paragraph (1) or (2) above the appropriate Minister shall consult the bodies specified therein or the harbour authority before reaching a decision on the merits of proposed harbour works.

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

Decisions on applications

8.—(1) Where the appropriate Minister is satisfied that the developer has complied with his direction under regulation 5(1), with regulation 6 and with any direction under regulation 7(1) or (2), and he has received the report of any inquiry held under regulation 7(4), he shall reach a decision on the merits of the proposed harbour works.

(2) In reaching his decision concerning proposed harbour works, the appropriate Minister shall consider the information supplied to him under regulation 5(1), any representations received pursuant to regulation 6(1) or 6(2), any consultations under regulation 7(3), and the report of any inquiry held under regulation 7(4), and he shall have regard in particular—

- (a) to the effect of the proposed harbour works on the environment;
- (b) to the desirability of the proposed works being carried out in the interests of securing the improvement, maintenance or management of the harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea; and
- (c) to any other benefits which may be derived from the proposed works.

(3) The appropriate Minister may—

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

(4) The appropriate Minister shall—

- (a) notify his decision and the reasons and considerations upon which it was based to the developer and to all bodies and persons who were consulted on or made representations concerning the proposed harbour works; and
- (b) publish his decision in such manner as he thinks fit.

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

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

(6) A consent under paragraph (3) may be granted so as to continue in force, unless renewed, only if the harbour works for which the consent is granted are begun or completed within such period as may be specified in the consent, and any renewal of a consent may be limited in the same way.

Harbour works carried out without a decision

9.—(1) If a developer carries out harbour works to which it appears to the appropriate Minister that these Regulations apply and which have not been the subject of a decision under regulation 4(5), regulation 8 or this regulation, the appropriate Minister shall serve notice in writing on the developer requiring him, if appropriate, to cease the works forthwith and to supply the appropriate Minister with such of the information referred to in regulation 4(4) or, if applicable, in regulation 5(1) as he may specify within such period as he may specify.

(2) On receipt of the information required from the developer, the appropriate Minister shall consider the harbour works in accordance with these Regulations whether or not an application or notice has been received pursuant to regulation 4(1).

(3) If the developer no longer owns, occupies or enjoys any use of the harbour works when the appropriate Minister decides to serve a notice under paragraph (1) the notice may be served on any other person who for the time being owns, occupies or enjoys any use of the harbour works.

(4) If a developer fails to supply the appropriate Minister with such of the information referred to in regulation 4(4) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Minister shall make such investigations as he considers necessary to enable him to decide whether the harbour works constitute a project the characteristics of which require that they should be made subject to an environmental

assessment and shall notify his decision to the developer under regulation 4(5) or regulation 5(1).

(5) If a developer fails to supply the appropriate Minister with such of the information referred to in regulation 5(1) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Minister shall make such investigations, invite such representations and hold such consultations with bodies referred to in regulation 7 as he considers necessary to enable him to reach a decision on the merits of the harbour works.

(6) In reaching a decision under paragraph (5) the appropriate Minister shall have regard to the considerations specified in regulation 8(2).

(7) The provisions of regulation 8(3), (4), (5) and (6) shall apply in relation to a decision reached under paragraph (5) to the extent that they are appropriate.

Enforcement

10.—(1) If a developer carries out harbour works in respect of which consent has been refused under regulation 8 or regulation 9 or in contravention of a condition subject to which consent was granted, the appropriate Minister may serve notice in writing on the developer requiring him, within such period (not being less than thirty days) as may be specified in the notice, to remove the works and reinstate the site or to make such alterations thereto as may be so specified, or, if it appears to the appropriate Minister urgently necessary to do so, he may himself remove or alter the works and reinstate the site.

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

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

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

Penalties

11.—(1) A person who issues a certificate purporting to comply with regulation 6(4) which contains a statement which he knows to be false or misleading in a material particular, or who recklessly issues a certificate purporting to comply with regulation 6(4) which contains a statement which is false or misleading in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who fails without reasonable excuse to comply with a notice served upon him under regulation 9(1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where a body corporate is guilty of an offence under paragraph (1) or (2) above and the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any 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, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, paragraph (2) shall apply 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.

20th February 1989

Paul Channon
Secretary of State for Transport

1st March 1989

John MacGregor
Minister of Agriculture, Fisheries and Food

8th March 1989

Peter Walker
Secretary of State for Wales

9th March 1989

James Douglas-Hamilton
Parliamentary Under Secretary of State for Scotland

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement for England and Wales and Scotland Council Directive 85/337/EEC of 27 June 1985 (O.J. No. L175 15.7.85, p. 40) on the assessment of the effects of certain public and private projects on the environment, in respect of certain harbour works, namely harbour works below medium low water mark for which consent under the Town and Country Planning Acts is not required and which are not authorised by or under any enactment.

Regulation 4 obliges the appropriate Minister to consider whether applications or notices received pursuant to the Coast Protection Act 1949 or other legislation relate to harbour works to which the Regulations apply. If he decides that they do, he must consider whether the proposed works fall within Annex I or Annex II to the Directive and, in the latter case, whether their characteristics require that they be made subject to an environmental assessment in accordance with the Directive. The works are not to be carried out unless the consent of the appropriate Minister is obtained or he has decided that an environmental assessment is not required.

Regulation 5 states that where the harbour works require the consent of the appropriate Minister, he shall direct the developer to supply him with such of the information specified in Annex III to the Directive as may be relevant and obtainable.

Regulation 6 provides that the developer must publish a notice in a local newspaper, and at or outside the premises of the harbour authority, indicating the nature of the proposed works, that he has been directed to supply the information specified in Annex III and stating where copies of the application and information may be inspected and obtained and how representations may be made. The developer is to furnish the appropriate Minister with a certificate to the effect that these steps have been carried out.

Regulation 7 provides for consultation with bodies having environmental responsibilities, and, in appropriate cases, with the harbour authority for the harbour at which the works are proposed to be carried out and the holding of inquiries into proposed works.

Regulation 8 requires the appropriate Minister to consider the information specified in Annex III to the Directive, any representations, consultations, and the report of any inquiry in reaching his decision and to have regard to the effect of the proposed works on the environment and on the development of the harbour. He is required to notify his decision and the reasons and considerations upon which it is based to the developer and to all bodies or persons who were consulted or made representations and to publish his decision.

Regulation 9 empowers the appropriate Minister to serve notice on a developer who carries out harbour works to which the Regulations apply and which may require to be subject to an environmental assessment, directing the developer to cease the works and to provide the appropriate Minister with specified information concerning the works to enable him to consider their status and merits. If the developer fails to provide the specified information, the appropriate Minister shall make such investigations as he considers necessary and shall proceed to reach a decision either on whether an assessment is required or, if appropriate, on the merits of the harbour works.

Regulation 10 deals with the enforcement of decisions pursuant to the Regulations by providing for the service of notice on the developer requiring him to remove the works and reinstate the site and empowering the appropriate Minister to take the necessary remedial action where a notice is not complied with.

If the developer no longer has any interest in the harbour works when a notice or application is sought to be served or made under regulation 9 or 10, the appropriate Minister may instead proceed against the person who is then interested in the harbour works.

Regulation 11 creates criminal offences in respect of non-compliance with the regulations. Where a certificate provided under regulation 6 is false or misleading the person who made it is guilty of an offence if he made it knowing it was false or misleading or recklessly. The offender is liable on a summary conviction to a fine not exceeding level 3 on the standard scale. Failure to comply with a notice served under regulation 9 is also an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

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