
STATUTORY INSTRUMENTS

2007 No. 1518

The Marine Works (Environmental
Impact Assessment) Regulations 2007

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.