

2007 No. 1518

ENVIRONMENTAL PROTECTION

**The Marine Works (Environmental Impact Assessment)
Regulations 2007**

<i>Made</i> - - - -	<i>21st May 2007</i>
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These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 56 of the Finance Act 1973(b).

The Secretary of State for Environment, Food and Rural Affairs has been designated for the purposes of section 2(2) of the European Communities Act 1972 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(c).

(a) 1972 c.68. The enabling powers conferred by section 2(2) were extended by virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c. 51). As regards functions transferred to the Scottish Ministers by the Scotland Act 1998 (c.46), these Regulations extend to Scotland pursuant to section 57(1) of that Act.

(b) 1973 c.51.

(c) S.I. 1988/785.

The Secretary of State for Environment, Food and Rural Affairs, with the consent of the Treasury, makes the following Regulations:

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(a);

“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(b);
 - (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;

“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);

(a) 1985 c.48.

(b) 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.

“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(a);

“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(b) or the Environmental Information (Scotland) Regulations 2004(c) 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(d) or the Freedom of Information (Scotland) Act 2002(e);

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

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

“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—

- (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(h) 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(i) 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) OJ No. 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.

(b) S.I. 2004/3391.

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

(d) 2000 c.36.

(e) 2002 asp 13.

(f) 1951 c. 30.

(g) 1964 c.40.

(h) 1990 c.8.

(i) 1997 c.8.

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

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

“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^(f); 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^(g); or
 - (iii) an order made under section 14 or 16 of the Harbours Act 1964;

“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;

(a) The Joint Nature Conservation Committee was re-constituted by section 31 of the Natural Environment and Rural Communities Act 2006 (2006 c.16).
 (b) Natural England is constituted by section 1 of the Natural Environment and Rural Communities Act 2006 (2006 c.16).
 (c) Scottish Natural Heritage is constituted by section 1 of the Natural Heritage (Scotland) Act 1991 (1991 c.28).
 (d) The Countryside Council for Wales is constituted by section 128 of the Environmental Protection Act 1990 (1990 c.43).
 (e) 1998 c.47.
 (f) 1949 c.74.
 (g) 1862 c.69.

“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(a);

“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(b); or
- (b) the Fishery Limits Act 1976(c);

“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(d);

“Wales” includes waters adjacent to Wales;

“waters adjacent to England” means—

- (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(e).

(a) 1998 c.46.
(b) 1964 c.29.
(c) 1976 c.86.
(d) 1987 c.49.
(e) 2006 c.32.

(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^(a) 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.

16th May 2007

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

We concur,

21st May 2007

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

^(a) S.I. 1999/3445.

**MATTERS RELEVANT TO CONSIDERATION OF WHETHER OR
NOT AN ANNEX II PROJECT IS LIKELY TO HAVE SIGNIFICANT
EFFECTS ON THE ENVIRONMENT**

Characteristics of the project

1. The characteristics of the project, having regard, in particular, to—
 - (a) its size;
 - (b) the combined effect of the project and other plans and projects;
 - (c) the use of natural resources in the course of the project;
 - (d) the production of waste, pollution and nuisances; and
 - (e) the risk of accidents, having regard in particular to substances or technologies used.

Location of the project

2. The environmental sensitivity of geographical areas likely to be affected by development under the project, having regard, in particular, to—
 - (a) their existing use;
 - (b) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) any wetland;
 - (ii) any coastal zone;
 - (iii) mountain and forest zones;
 - (iv) any nature reserve or parks;
 - (v) any area classified or protected under the legislation of any EEA State;
 - (vi) any area designated by any EEA State under the Wild Birds Directive or the Habitats Directive;
 - (vii) any area in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (viii) any densely populated area; and
 - (ix) any landscape of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The potential significant effects of development under the project in relation to the matters set out in paragraphs 1 and 2, having regard in particular to—
 - (a) the extent of the impact with reference to the geographical area and the size of the affected population;
 - (b) the nature of any impact on any other EEA state;
 - (c) the magnitude and complexity of the impact;
 - (d) the probability of the impact; and
 - (e) the duration, frequency and reversibility of the impact.

SCREENING OPINIONS

Request for a screening opinion

1.—(1) A request for a screening opinion must be accompanied by—

- (a) a chart or map (or both) sufficient to identify the location of the project and of the regulated activity;
- (b) a brief description (including a plan) of the nature and purpose of the project and the regulated activity and their possible effects on the environment;
- (c) a statement of the working methods to be used in the course of the project and in carrying out the regulated activity; and
- (d) such other information or representations as the applicant may wish to provide or make.

(2) Where the regulated activity comprises the whole of (or forms part of) a project in respect of which the applicant has made an application to a consenting authority other than the regulator, an applicant seeking a screening opinion must—

- (a) inform the appropriate authority and the regulator (if the regulator is not also the appropriate authority) of any such application;
- (b) if any such consenting authority has requested an environmental statement in respect of that project, inform the appropriate authority and the regulator (if the regulator is not also the appropriate authority) of that request; and
- (c) if so requested by the appropriate authority, provide the appropriate authority with a copy of any environmental statement and of any other environmental information provided to any such consenting authority.

Payment of a fee for a screening opinion

2.—(1) The appropriate authority may require an applicant to pay a reasonable fee in respect of—

- (a) the administrative expenses of providing a screening opinion; and
- (b) the cost of carrying out any examinations or tests that, in the opinion of the appropriate authority, are necessary or expedient to enable the appropriate authority to produce its screening opinion.

(2) If the appropriate authority considers that it is appropriate to do so, it may—

- (a) require the applicant to make a reasonable advance payment against the fee that it is entitled to charge for its screening opinion;
- (b) determine the balance of the fee payable after carrying out the work necessary to produce its screening opinion in accordance with the remaining provisions of this Schedule; and
- (c) require the applicant to pay the balance of the fee that it is entitled to charge prior to the notification of its screening opinion.

Procedure for reaching a screening opinion

3.—(1) The appropriate authority must, if it considers that it has not been provided with sufficient information to enable it to give a screening opinion, notify the applicant in writing of the matters on which it requires further information and the applicant must supply that further information to the appropriate authority within such period as the appropriate authority may reasonably require.

(2) The applicant must supply the appropriate authority with such number of additional copies of the documentation as the appropriate authority may reasonably require.

(3) The appropriate authority need not deal further with the request for a screening opinion until the applicant has complied with the requirements of sub-paragraphs (1) and (2).

(4) Where an applicant has failed to comply with the requirements of sub-paragraph (1) or (2) 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 to which the request relates 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.

Consultation

4.—(1) The appropriate authority must consult such of the consultation bodies as it considers appropriate before giving a screening opinion.

(2) When carrying out any consultation under sub-paragraph (1), the appropriate authority must allow the consultation body a reasonable period within which to respond, and that period must not be less than 28 days from the date of the letter to the consultation body from the appropriate authority or such other period as may be agreed between the consultation body and the appropriate authority.

Notification of a screening opinion

5. The appropriate authority must, as soon as reasonably practicable, provide its screening opinion and a written statement of the reasons for its opinion to—

- (a) the applicant;
- (b) if the appropriate authority is not also the regulator, the regulator; and
- (c) such of the consultation bodies as it consulted in accordance with paragraph 4.

Availability of screening opinions for inspection

6.—(1) Subject to sub-paragraph (2), the appropriate authority must ensure that, as soon as possible after being sent to the applicant, its screening opinion is—

- (a) publicised in such manner as it considers appropriate; and
- (b) in the case of a deposit, made available on the Public Register.

(2) Sub-paragraph (1) does not require disclosure of any excluded information.

SCHEDULE 3

Regulation 12(2)

INFORMATION TO BE INCLUDED IN AN ENVIRONMENTAL STATEMENT

1. A description of the project and of the regulated activity, including details of the following matters—

- (a) the location, size and nature of the project and the regulated activity;
- (b) the quantity and nature and source of the materials to be used in the course of the project and the regulated activity;
- (c) the quantity, nature and source of any items or materials to be deposited in the sea in the course of the project and the regulated activity; and
- (d) the working methods to be used in the course of the project and the regulated activity.

2. A description of the aspects of the environment likely to be significantly affected by the project and the regulated activity, including—

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage; and
- (d) the interaction between any two or more of the things mentioned in the preceding sub-paragraphs.

3.—(1) A description, complying with sub-paragraph (2), of the likely significant effects of the project and the regulated activity on the environment resulting from—

- (a) the nature of the activities to be carried out and the manner in which they are to be carried out;
- (b) the use of natural resources;
- (c) the emission of pollutants;
- (d) the creation of nuisances; and
- (e) the elimination of waste.

(2) The description should cover each of the following categories of effect—

- (a) direct and indirect effects;
- (b) secondary effects;
- (c) cumulative effects;
- (d) short-term, medium-term and long-term effects;
- (e) permanent and temporary effects; and
- (f) positive and negative effects.

4. The forecasting methods used by the applicant to assess the main effects that the project and the regulated activity are likely to have on the environment.

5. A description of the measures envisaged to prevent, reduce and offset any significant adverse effects of the project and the regulated activity on the environment.

6. An outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects of those alternatives and the project as proposed.

7. A non-technical summary of the information provided under paragraphs 1 to 6.

8. Any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any information of a kind specified in paragraphs 1 to 6.

SCHEDULE 4

Regulation 13(2)

SCOPING OPINIONS

Request for a scoping opinion

1. A request for a scoping opinion must be accompanied by—

- (a) a chart, plan or map sufficient to identify the location of the regulated activity and of other activities to be carried out in the course of the project;
- (b) a brief description of the nature and purpose of the project and the regulated activity and their possible effects on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

Information required where another application has been made

2. Where the regulated activity is to be carried out in the course of a project in respect of which the applicant has made an application to a consenting authority other than the regulator, an applicant seeking a scoping opinion must—

- (a) inform the appropriate authority and the regulator (if the regulator is not also the appropriate authority) of any such application;
- (b) if any such consenting authority has requested an environmental statement in respect of that project, inform the appropriate authority and the regulator (if the regulator is not also the appropriate authority) of that request; and
- (c) if so requested by the appropriate authority or the regulator, provide the appropriate authority with a copy of any environmental statement and of any other environmental information provided to any such consenting authority.

Payment of a fee for a scoping opinion

3.—(1) The appropriate authority may require an applicant to pay a reasonable fee in respect of—

- (a) the administrative expenses of providing a scoping opinion; and
- (b) the cost of carrying out any examinations or tests that, in the opinion of the appropriate authority, are necessary or expedient to enable the appropriate authority to produce its scoping opinion.

(2) If the appropriate authority considers that it is appropriate to do so, it may—

- (a) require the applicant to make a reasonable advance payment against the fee that it is entitled to charge for its scoping opinion;
- (b) determine the balance of the fee payable after carrying out the work necessary to produce its scoping opinion in accordance with the remaining provisions of this Schedule; and
- (c) require the applicant to pay the balance of the fee that it is entitled to charge prior to the notification of its scoping opinion.

Procedure for reaching a scoping opinion

4.—(1) The appropriate authority must, if it considers that it has not been provided with sufficient information to enable it to give a scoping opinion, notify the applicant in writing of the matters on which it requires further information and the applicant must supply that further information to the appropriate authority within such period as the appropriate authority may reasonably require.

(2) The applicant must supply the appropriate authority with such number of additional copies of the documentation as the appropriate authority may reasonably require.

(3) The appropriate authority need not deal further with the request for a scoping opinion until the applicant has complied with the requirements of sub-paragraphs (1) and (2).

(4) Where an applicant has failed to comply with the requirements of sub-paragraph (1) or (2) within such reasonable period as the appropriate authority has specified, or such longer period as the appropriate authority may reasonably allow—

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

Matters to be considered in reaching a scoping opinion

5. In reaching a scoping opinion, the appropriate authority must consider—

- (a) the specific characteristics of the project;
- (b) the nature and purpose of regulated activities of the type concerned in the project;
- (c) the environmental features likely to be affected by the project; and
- (d) the extent to which the applicant may reasonably be required to compile the information, having regard, inter alia, to current knowledge and methods of assessment.

Consultation

6.—(1) The appropriate authority must consult such of the consultation bodies as it considers appropriate before giving a scoping opinion.

(2) When carrying out any consultation under sub-paragraph (1), the appropriate authority must allow the consultation body a reasonable period within which to respond and that period must not be less than 28 days from the date of the letter that the consultation body receives from the appropriate authority or such other period as may be agreed between the consultation body and the appropriate authority.

Notification of a scoping opinion

7. The appropriate authority must, as soon as reasonably practicable, provide its scoping opinion and a written statement of the reasons for its opinion to—

- (a) the applicant;
- (b) if the appropriate authority is not also the regulator, the regulator; and
- (c) such of the consultation bodies as it consulted in accordance with paragraph 6.

Availability of scoping opinions for inspection

8.—(1) Subject to sub-paragraph (2), the appropriate authority must ensure that, as soon as possible after being sent to the applicant—

- (a) its scoping opinion is publicised in such manner as it considers appropriate; and
- (b) in the case of a deposit, its scoping opinion is made available on the Public Register.

(2) Sub-paragraph (1) does not require disclosure of any excluded information.

SCHEDULE 5

Regulations 21 and 22(a)(iv)

CONSIDERATION OF REPRESENTATIONS FROM THE PUBLIC

1.—(1) In relation to each representation made pursuant to the statement referred to in regulation 16(2)(g), the appropriate authority must consider whether or not the representation is capable of being dealt with in accordance with this Schedule.

(2) If the appropriate authority concludes that the representation is not capable of being dealt with in accordance with this Schedule—

- (a) it must have such regard (if any) as it considers appropriate in all the circumstances to the representation when reaching its EIA consent decision; and
- (b) the remaining provisions of this Schedule do not apply to the representation.

2.—(1) If the appropriate authority concludes in accordance with paragraph 1(1) that the representation is capable of being dealt with in accordance with this Schedule, it must consider whether or not the representation is relevant to the EIA consent decision.

(2) If the appropriate authority concludes that the representation is not relevant to the EIA consent decision, it must consider whether it is relevant in some other way to the project in the course of which the regulated activity is to be carried out.

(3) If the appropriate authority concludes that the representation is not relevant to that project in any other way—

- (a) it need not have any further regard to the representation; and
- (b) the remaining provisions of this Schedule do not apply to the representation.

(4) If the appropriate authority concludes that the representation is relevant in some other way to the project in the course of which the regulated activity is to be carried out—

- (a) it must copy the representation to the regulator and any consenting authorities in so far as the appropriate authority regards the representation as relevant to any of their functions that are relevant to compliance with the EIA Directive;
- (b) it need not have any further regard to the representation; and
- (c) the remaining provisions of this Schedule do not apply to the representation.

3.—(1) If the appropriate authority concludes in accordance with paragraph 2(1) that the representation is relevant to the regulated activity, it must consider whether the representation is capable of being addressed by an arrangement made between it, the applicant and the maker of the representation.

(2) If the appropriate authority concludes that the representation is capable of being addressed by means of such an arrangement, it may invite the applicant and the maker of the representation to enter into discussions with it and each other with a view to making the arrangement.

(3) If an arrangement is made—

- (a) the appropriate authority must have regard to the arrangement when reaching its EIA consent decision; and
- (b) the remaining provisions of this Schedule do not apply to the representation.

4.—(1) If either—

- (a) the appropriate authority concludes in accordance with paragraph 3(1) that the representation is capable of being satisfied by an arrangement made between it, the applicant and the maker of the representation but no such arrangement is made within a reasonable period, or
- (b) the appropriate authority concludes in accordance with paragraph 3(1) that the representation is not capable of being satisfied by an arrangement made between it, the applicant and the maker of the representation,

the appropriate authority must consider whether the representation gives rise to a dispute that calls for resolution of a question of fact in order to enable it to make its EIA consent decision.

(2) If the appropriate authority concludes that the representation gives rise to such a dispute, it may, if it considers that it is appropriate to do so—

- (a) instigate a local inquiry; or
- (b) appoint a person whom it considers expert in the subject-matter of the dispute to report to it on the question of fact.

(3) If the appropriate authority concludes that the representation does not give rise to such a dispute or if it does not think that it is appropriate to instigate a local inquiry or appoint a person to report to it—

- (a) it must have such regard (if any) as it considers appropriate in all the circumstances to the representation when reaching its EIA consent decision;
- (b) the remaining provisions of this Schedule do not apply to the representation.

5.—(1) If the appropriate authority instigates a local inquiry in accordance with paragraph 4(2)(a)—

- (a) it must give notice of that inquiry in such manner as it thinks fit; and
- (b) all persons interested are permitted to attend, and be heard at, the inquiry.

(2) The appropriate authority must not reach its EIA consent decision until the inquiry has been completed.

(3) The appropriate authority must have regard to the outcome of the inquiry when reaching its EIA consent decision.

6.—(1) Subsections (2) to (5) of section 250 (power to direct inquiries) of the Local Government Act 1972^(a) apply in relation to an inquiry instigated under paragraph 4(2)(a) and held in England or Wales as they apply in relation to an inquiry held under that section.

(2) Schedule A1 (provisions applicable to inquiries and investigations) to the Interpretation Act (Northern Ireland) 1954^(b) applies in relation to an inquiry instigated under paragraph 4(2)(a) and held in Northern Ireland as it applies to an inquiry held under an enactment passed or made as mentioned in section 23 (inquiries and investigations) of that Act.

(3) The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997^(c) apply in relation to an inquiry instigated under paragraph 4(2)(a) and held in Scotland as they apply to an inquiry held under those Rules.

7.—(1) If the appropriate authority appoints a person to report to it in accordance with paragraph 4(2)(b), it must—

- (a) notify the applicant and the maker of the representation, and the regulator (if the appropriate authority is not also the regulator)—
 - (i) that it has so done; and
 - (ii) its reasons for doing so;
- (b) send details of the appointed person and of the question of fact to the applicant and the maker of the representation and to the regulator (if the appropriate authority is not also the regulator).

(2) The appointed person must provide such opportunity for each of the applicant, the maker of the representation, the appropriate authority and the regulator (if the appropriate authority is not also the regulator) to address him orally or in writing, or both, as he considers expedient for the purposes of making his report.

(3) The appropriate authority must not reach its EIA consent decision until either the appointed person has made his report or a reasonable period has expired.

(4) The appointed person's report to the appropriate authority should contain his findings of fact on the subject-matter of the dispute and should be sent to the appropriate authority and the regulator (if the appropriate authority is not also the regulator) and copied to the applicant and the maker of the representation.

(5) When reaching its EIA consent decision, the appropriate authority must—

- (a) have regard to the appointed person's report; and
- (b) have such regard as the appropriate authority considers appropriate in all the circumstances to any representations made to the appointed person.

(a) 1972 c.70.

(b) 1954 c.33 (N.I.).

(c) S.I. 1997/796 (S.75).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in relation to certain marine works, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p.40), as last amended by Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p.17). In its amended form, Directive 85/337 is referred to in these Regulations as “the EIA Directive” (regulation 2(1)).

The marine works in relation to which these Regulations implement the EIA Directive are those for which a regulatory approval (as defined in regulation 2(1)) is required. These include harbour works previously covered by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445), as amended by the Harbour Works (Environmental Impact Assessment) (Amendment) Regulations 2000 (S.I. 2000/2391).

In relation to such works, these Regulations also implement the provisions of Directive 2003/35/EC.

Regulation 3 provides for charges to be made in relation to functions carried out under these Regulations. There are also specific charging provisions in regulation 15, to enable the regulator or appropriate authority to charge for providing information to an applicant, and in Schedules 2 and 4, to enable the appropriate authority to charge for expenses incurred in providing a screening opinion or scoping opinion.

Part 2 (regulations 4 to 11) specifies the circumstances in which an environmental impact assessment is required in relation to marine works. In the case of marine works to be carried out in the course of a project of a type listed in Annex I to the EIA Directive, an environmental impact assessment is required unless one of the exceptions in regulation 9 or 10 applies (regulation 7). In the case of marine works to be carried out in the course of a project of a type listed in Annex II to the EIA Directive, an environmental impact assessment is required if the project would have significant effects on the environment, unless one of the exceptions in regulation 9 or 10 applies (regulation 8). Schedule 1 sets out the criteria that are to be used in determining whether or not a project would have significant effects on the environment.

Regulation 11 and Schedule 2 provide for screening opinions to be provided in which determinations as to whether or not an environmental impact assessment is required are to be given. Regulation 11 also provides for the relationship between the screening opinion process and the procedures that would otherwise apply to the application for a regulatory approval.

Part 3 (regulations 12 to 24) provides for the environmental impact assessment process itself. Regulation 12 and Schedule 3 require certain information and documentation to be provided for an environmental impact assessment to be carried out. Regulation 13 and Schedule 4 provide for scoping opinions (defined in regulation 2(1)) to be provided, in which the information to be provided can be determined in advance. Regulation 14 provides for additional information to be provided where necessary in order for the environmental impact assessment to be carried out. Regulation 15 provides for information held by a regulator or an appropriate authority to be provided to an applicant. Regulation 16 provides for public participation in the environmental impact assessment process by requiring applications to be publicised, so as to enable representations to be made by members of the public. Regulation 21 and Schedule 5 provide for the way in which such representations are taken into account as part of the environmental impact assessment process. Regulation 17 provides for information regarding applications to be provided to bodies with environmental responsibilities and for consultation to be carried out with those bodies. Regulations 18 and 19 provide for information regarding applications to be provided to other EEA States and regulation 20 provides for consultation with other EEA States. Regulation 22 makes provision in relation to the decision as to whether or not EIA consent for marine works is to be given, and regulation 23 provides for that decision to be notified to those who have taken

part in the process and publicised. Regulation 24 provides for the effect of the EIA consent decision on the application and the subsequent procedure in relation to the application.

Part 4 (regulations 25 to 27) creates an offence of providing false information for the purposes of obtaining a regulatory approval.

Part 5 (regulations 28 to 30) contains miscellaneous provisions. Regulation 28 applies to Scotland only and provides that certain non-governmental organisations are deemed to have title and interest to sue in relation to the environmental impact assessment of marine works. Regulations 29 and 30 contain revocations, transitional provisions and savings.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.defra.gov.uk and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

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