

**EXPLANATORY MEMORANDUM TO
THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT)
REGULATIONS 2007**

2007 No. 1518

- 1.** This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 These Regulations make provision requiring environmental impact assessments to be carried out prior to the granting of consent for certain regulated activities in UK waters and UK controlled waters, where this is required to comply with Council Directive 85/337/EC (the “Environmental Impact Assessment Directive” or “EIA Directive”). The types of regulated activities to which these Regulations apply are deposits in the sea, works to ensure navigational safety, and harbour works.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 These Regulations are made under section 2(2) of the European Communities Act 1972 and section 56 of the Finance Act 1973. They transpose the EIA Directive, as last amended by Directive 2003/35/EC (the “Public Participation Directive”), in relation to the follow types of regulated activities in the marine area-
- activities which are regulated under Part II of the Food and Environment Protection Act 1985 (“FEPA”), i.e. deposits in the sea;
 - works to ensure navigational safety which are regulated under section 34 of the Coast Protection Act 1949; and
 - harbour works (i.e. works involved in the construction of a harbour or in the making of modifications to an existing harbour) which require approval or consent pursuant to a local Act or an order made under section 14 or 16 of the Harbours Act 1964.
- 4.2 The EIA Directive applies to the assessment of the environmental effects of public and private projects which are likely to have significant effects on the environment. It only applies to projects for which consent is required under other legislation. Annex I to the Directive lists the projects for which an environmental impact assessment is mandatory before a decision is made by a regulator whether or not to grant consent for the project. Annex II to the Directive lists the projects for which an environmental impact assessment will be required if it is determined that such a project is likely to have significant effects on the environment. An

environmental impact assessment must identify, describe and assess the direct and indirect effects of a project on:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between two or more of the above factors.

- 4.3 The objective of the Public Participation Directive is to improve public participation and access to justice as part of the environmental impact assessment process, and it amended the EIA Directive to this effect.
- 4.4 Part 2 of the Harbour Works (Environmental Impact Assessment) Regulations 1999 (“the 1999 Regulations”) transposed the EIA Directive in relation to various harbour works, prior to the EIA Directive being amended by the Public Participation Directive. Part 2 of the 1999 Regulations is repealed and replaced by these Regulations, so that such works are regulated in compliance with the EIA Directive as amended by the Public Participation Directive.
- 4.5 These Regulations transpose the EIA Directive for the first time in relation to works to ensure navigational safety which require consent under section 34 of the Coast Protection Act 1949 (other than such works inside harbours, which are already covered by the 1999 Regulations).
- 4.6 These Regulations also ensure that the EIA Directive is fully transposed in relation to activities for which a licence is required under Part II of FEPA. FEPA itself requires a consideration of the effects on the environment of the deposit of a substance or article in the sea or on the sea bed, which in practice may often satisfy the requirements of the EIA Directive, but it is not considered that the provisions of FEPA by themselves suffice as adequate transposition.
- 4.7 These Regulations include provision enabling an appropriate authority carrying out an environmental impact assessment to charge reasonable fees in respect of expenses which it incurs under the Regulations in doing so. This may include the costs of a screening opinion to determine whether an environmental impact assessment is needed, and a scoping opinion to assess what information needs to be included in an environmental impact assessment, as well as the costs associated with the various stages of the environmental impact assessment process itself. This provision is made under the power in section 56 of the Finance Act 1973 with the consent of the Treasury.
- 4.8 In the Department’s view, these Regulations impose the minimum regulatory burden that is required in order for the UK to be compliant with the EIA Directive, as amended by the Public Participation Directive.
- 4.9 A Transposition Note is attached.
- 4.10 The draft EIA Directive was first considered by the Select Committee on European Scrutiny on 25 February 1981 (12th Report of Session 1980-81) and cleared on 9 November 1983 (4th Report of Session 1983-84).

5. Territorial Extent and Application

- 5.1 These Regulations apply to the United Kingdom, including its territorial waters and any part of the sea within an area designated under the Fishery Limits Act 1976 or section 1(7) of the Continental Shelf Act 1964, except that they do not apply to Northern Ireland insofar as they relate to works requiring consent under section 34 of the Coast Protection Act 1949 (because that section does not apply to Northern Ireland), or insofar as they relate to harbour works.
- 5.2 There are equivalent Regulations applying to harbour works in Northern Ireland, the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 These Regulations transpose the EIA Directive, as amended by the Public Participation Directive, by providing for the extra steps to be taken when regulatory approval is sought for an activity regulated under Part II of FEPA or section 34 of the Coast Protection Act 1949, or for harbour works.
- 7.2 Such applications for regulatory approval will still be determined by the bodies already responsible under the existing legislation. However, the ‘appropriate authority’ (that is, the Secretary of State, Welsh Ministers, Scottish Ministers or Northern Ireland Department of the Environment) will be responsible for carrying out the environmental impact assessment under these Regulations. In some cases the regulator and the appropriate authority will be the same, while in others they will be different, as, for example, where a harbour authority is the regulator under a local Act.
- 7.3 In achieving the minimum required to meet the requirements of the Directive, these Regulations provide for:
- (a) an environmental impact assessment to be carried out where the regulated activities relate to an Annex I project, or where they relate to an Annex II project and there are likely to be, because of its size, nature or location, significant effects on the environment;
 - (b) the appropriate authority to exempt a project from an environmental impact assessment where:
 - an exemption can be justified in accordance with Article 2(3) of the Directive and would not have significant effects on another EEA state; or
 - an assessment has been carried out, or is being carried out, by another consenting authority and is considered sufficient;

and for the Secretary of State to direct that an environmental impact assessment is not required where a regulated activity comprises or forms part

of a project serving national defence purposes, and where in the opinion of the Secretary of State compliance would have an adverse effect on those purposes.

- (c) a screening opinion, if requested, as to whether an environmental impact assessment is required, with 28 days consultation with consultation bodies, or such longer period agreed between the appropriate authority and a consultation body as is reasonable;
- (d) a scoping opinion, if requested, as to the scope of an environmental impact assessment, with 28 days consultation with consultation bodies, or such longer period agreed between the appropriate authority and a consultation body as is reasonable;
- (e) early and effective public participation through appropriate publicity of decisions made at these stages, and publicity and the opportunity for consultation bodies and the public to make representations on an application and environmental statement within 42 days of publication, or such longer period as agreed between the appropriate authority and a consultation body as is reasonable;
- (f) the steps to be taken in considering whether a representation from a member of the public is capable of being dealt with, and for instigating a local inquiry or appointing a person expert in the subject matter where a representation gives rise to a dispute calling for the resolution of a question of fact. The steps for publicising subsequent decisions are also provided for by the Regulations;
- (g) an offence of making a statement that an applicant knows is false, or where an applicant recklessly makes a statement which is false, or intentionally fails to disclose a material particular. This offence is similar to the equivalent offence under Part II of FEPA.

7.4 Although these Regulations will change little in practice (see the full Regulatory Impact Assessment below), they are politically and legally important as they are necessary to satisfy the European Commission that the UK has adequately transposed the EIA Directive, as amended by the Public Participation Directive. The European Commission has issued a Reasoned Opinion under Article 226 of the Treaty establishing the European Community against the UK for late transposition of the Public Participation Directive. There would be a severe risk to the UK's reputation if these Regulations were not brought into force, and there is no non-regulatory option available.

7.5 A draft of these Regulations was subject to public consultation between 15 December 2006 and 16 March 2007. The consultation and a summary of responses can be viewed at www.defra.gov.uk/corporate/consult/marineworks/index.htm. A brief summary of the consultation responses is provided in the full Regulatory Impact Assessment below.

- 7.6 Guidance for those applying for licences and consents under Part II of FEPA, section 34 of the Coast Protection Act 1949 and provisions relating to harbour works has been published by the Marine and Fisheries Agency (www.mceu.gov.uk/MCEU_LOCAL/fepa/applic-make.htm). Guidance on the extra steps required under these Regulations will be available around the time they are commenced.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum, which includes consideration of the impact of the Regulations on the public sector.

9. Contact

Jonathan Lartice at the Department for Environment, Food and Rural Affairs Tel: 020 7270 8626 or e-mail: jonathan.lartice@defra.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

The Marine Works (Environmental Impact Assessment) Regulations 2007

Title of proposal

The Marine Works (Environmental Impact Assessment) Regulations 2007.

Purpose and intended effect of measures

Objective

1 The objective of the UK-wide Marine Works (Environmental Impact Assessment) Regulations 2007 (the ‘Marine Works Regulations’) is to transpose Council Directive 85/337/EEC (henceforth the ‘Environmental Impact Assessment Directive’), as last amended by Directive 2003/35/EC of the European Parliament and of the Council (henceforth, the ‘Public Participation Directive’) to various works in the marine area. The UK intends to transpose the Public Participation Directive by July 2007 at the latest to satisfy the European Commission and avoid infraction. The current system of marine licensing will be comprehensively improved under separate legislation, in line with better regulation. In the meantime, the Marine Works Regulations will achieve the minimum required in a short timescale to avoid infraction, and therefore avoid huge fines and harm to the UK’s reputation.

2 Although there is a statutory framework in place which enables the UK to be largely compliant with the Environmental Impact Assessment Directive, some of this legislation was not drafted specifically to transpose the Environmental Impact Assessment Directive. Complying with the Directive in practice is not sufficient to satisfy the Commission – domestic legislation therefore needs to provide a statutory framework that ensures full compliance.

3 To meet the requirements of the Public Participation Directive, the amended Environmental Impact Assessment Directive will therefore be transposed in relation to licence applications under Part II of the Food and Environment Protection Act 1985 and consent applications under section 34 of the Coast Protection Act 1949. Various harbour works legislation, which is already compliant with the Environmental Impact Assessment Directive, will also have the Public Participation Directive transposed to them (see ‘Background’ for a summary of this legislation). Environmental impact assessments under the Marine Works Regulations will be carried out by the ‘appropriate authority’. Where environmental impact assessments relate to activities regulated under Part II of the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949, the appropriate authority will be the same body as the regulator under those Acts (the Secretary of State or the relevant body in the Devolved Administrations, as explained below in paragraph 25). For harbour works where a harbour authority is the regulator, the appropriate authority will carry out the assessment (i.e. the relevant body as listed in paragraph 25, and not the harbour authority).

4 In practice, Part II of the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949 usually satisfy most of the requirements of the Environmental Impact Assessment Directive, either because adequate assessment is already carried out under the legislation, or because a particular marine project also requires a consent under other

regulations which transpose the Environmental Impact Assessment Directive (such as the Electricity Works (Environmental Impact Assessment) Regulations where offshore wind farms are concerned). However, the UK must satisfy the European Commission that domestic legislation for marine works is compliant with the Environmental Impact Assessment Directive in all circumstances, and does not merely provide regulators or appropriate authorities with the power to be compliant in practice.

5 Where the legislation is not compliant is in not guaranteeing the public, on a statutory basis, a certain period of time to view applications, environmental statements and the opinions of the appropriate authority at various stages relating to an application, as required by the Public Participation Directive. Even though the Environmental Impact Assessment Directive, as amended by the Public Participation Directive, is often complied with *in practice*, the *legislation* needs to be clear as to what exactly is required from regulators (or appropriate authorities) of, and applicants for, marine works in order to satisfy the European Commission. This is the case even where a Part II Food and Environment Protection Act 1985 licence or a section 34 Coast Protection Act 1949 consent is required for part of a project, but the environmental impact assessment for the project as a whole is carried out under other legislation where several licences are required for a project. Even if the environmental impact assessment is not carried out under the 1985 or the 1949 Acts, the European Commission still needs to be satisfied that there are no gaps in any of the legislation applying to such projects.

6 The Environmental Impact Assessment Directive has been transposed for section 34 of the Coast Protection Act 1949 through Part II of the Harbour Works (Environmental Impact Assessment) Regulations 1999, where consents under section 34 are for works within a harbour. We now need to satisfy the European Commission that these harbour works are compliant with the Public Participation Directive, along with the other works to which Part II of the Harbour Works (Environmental Impact Assessment) Regulations 1999 apply (see 'Background').

7 Regulators can currently charge an applicant for a licence under Part II of the Food and Environment Protection Act 1985 (sections 8(7)-(9)). This charge can cover the expense of processing an application, and the carrying out of necessary tests to determine whether to issue the licence, what provisions it should include, and monitoring the effect of the works on the environment and compliance with the licence. These fees were last set in July 2006 for England and Wales, in 2004 in Northern Ireland, and in 1995 for Scotland. The Act requires the consent of Treasury (or the Devolved Administration equivalent, as appropriate) and consultation with trade associations before fees are set.

8 The Marine Works Regulations will extend this power to the environmental impact assessment element of other approvals under the Regulations, such as those under section 34 of the Coast Protection Act 1949 and the various harbour works (it should be noted that the Secretary of State and equivalent regulators/appropriate authorities in the devolved administrations will be responsible for the environmental impact assessment for harbour works (as is currently the case) rather than harbour authorities). This is in line with the Treasury's policy of full cost recovery. Any new fees will be fully consulted on before they are implemented. For this reason, new fees do not form part of this RIA.

9 In summary, the objectives of the Marine Works Regulations are:

- to transpose the Environmental Impact Assessment Directive, as last amended by the Public Participation Directive;

- for the purpose of transposing the Environmental Impact Assessment Directive, as amended, the Regulations will provide for the necessary steps to be taken in addition to those required under Part II of the Food and Environment Protection Act 1985 and, in Great Britain only, section 34 of the Coast Protection Act 1949;
- to replace, also in Great Britain only, Part II of the Harbour Works (Environmental Impact Assessment) Regulations 1999;
- to therefore satisfy the European Commission that the relevant existing legislation is fully compliant with the Environmental Impact Assessment Directive;
- to help the Government to achieve its objective of living within environmental limits while achieving a sustainable economy. The reasonable fee, to be consulted on and set at a later date, will enable Government to provide better resourced, and faster, science backed environmental impact assessments;
- to avoid being fined for not having formally and fully transposed the Environmental Impact Assessment Directive, as last amended by the Public Participation Directive. The aims of the Public Participation Directive are in line with the Government's aim of good, participative governance and engaging people in decisions which affect them.

Table 1 summarises the application of the draft Regulations by country and existing regime.

Table 1: Application of draft Regulations by country and regime

Country	Part II FEPA 1985	Section 34 CPA 1949	Harbour Works 1999
England	New Regs apply	New Regs apply	New Regs apply
Wales	New Regs apply	New Regs apply	New Regs apply
Scotland	New Regs apply	New Regs apply	New Regs apply
Northern Ireland	New Regs apply	Not applicable	Not applicable

Background

10 **Part II of the Food and Environment Protection Act 1985** is the UK legislative framework for the control of substances and articles deposited in the sea, including construction, coastal defences and disposal in, and burial at, sea. Applications for licences under Part II of the Food and Environment Protection Act 1985 to carry out activities within English and Welsh waters are administered by the Marine & Fisheries Agency, acting on behalf of the Secretary of State and National Assembly for Wales. Where those applications relate to activities in waters adjacent to Wales (other than activities concerning or arising from the exploration for, or production of, petroleum), they are determined by the National Assembly for Wales. The National Assembly has delegated the exercise of this function to the minister for Environment, Planning and Countryside within the Welsh Assembly Government. Following the Assembly election in May 2007, this function will be transferred to the Welsh Ministers. In England, final determination is made by the Secretary of State. In Scotland, Part II of the 1985 Act is administered by the Fisheries Research Services, and in Northern Ireland by the Environment and Heritage Service, an agency of the Department of the Environment. Final determination is made by the Scottish Ministers in Scotland, and by the Department of the Environment in Northern Ireland. In determining whether to issue a licence under Part II of the Food and Environment Protection Act 1985, the licensing authority shall, under section 8(1):

a) have regard to the need:

- to protect the marine environment, the living resources which it supports and human health; and
- to prevent interference with legitimate uses of the sea; and

b) may have regard to such other matters as the authority considers relevant.

11 The requirements under section 8(1) of the Food and Environment Protection Act 1985 have enabled regulators to carry out an environmental appraisal of the effects of a project. Section 8(5) makes provision for the licensing authority to require an applicant for a licence to supply the information required to assess whether a licence should be issued and what conditions it ought to contain. Section 14 of the Act provides for the regulator to maintain a public register containing application and licence details, and in practice consultation is often carried out on applications under consideration. However, the Marine Works Regulations will provide the assurance required by the Commission that public participation is guaranteed by statute under all legislation relating to a project.

12 In practice, there are two main categories for which licences can be issued. These are:

- a construction licence, covering the deposit or placement of materials that it is proposed to use during construction works, land reclamation or beach replenishment; and
- a disposal licence, for materials that may be deposited in the sea such as dredged material or fish processing waste.

The Marine Works Regulations will only require an environmental impact assessment where this is required under the Environmental Impact Assessment Directive. Annexes I and II to Council Directive 97/11/EC, which amends the Environmental Impact Assessment Directive, lists the projects under the Environmental Impact Assessment Directive which require (in the case of Annex I projects), or may require (in the case of Annex II projects), an environmental impact assessment.

13 **Section 34 of the Coast Protection Act 1949**, which applies in Great Britain only, is the legislative framework which ensures that navigational safety is protected from any negative effects from coastal and offshore operations. Many applicants wishing to undertake coastal and offshore operations requiring a Part II Food and Environment Protection Act licence will also require a section 34 Coast Protection Act consent. No fees are payable for Coast Protection Act consents by the applicant; the Government currently meets the cost of processing these applications, and will continue to do so – the Marine Works Regulations will enable appropriate authorities to charge for the environmental impact assessment aspect only. Regulatory responsibility for section 34 of the Coast Protection Act in England and Wales rests with the Secretary of State for Environment, Food and Rural Affairs (administered by the Marine & Fisheries Agency). In Scotland, responsibility is devolved to the Scottish Ministers within the internal waters and territorial seas of the UK that are adjacent to Scotland, excluding activities in

relation to oil, gas and electricity generation. The Coast Protection Act 1949 does not apply in Northern Ireland.

14 Before giving consent for works to be carried out under the Coast Protection Act 1949, the regulator may request the ‘plans and particulars’ of the proposed operation as it considers necessary. The regulator can also request that notice of the application is published in such manner as is considered appropriate for informing persons affected by the proposed works, and may also request a local inquiry to be held before granting consent.

15 The scope of the impact assessment that is currently carried out is therefore already wide, although it focuses on navigational safety. Where proposed works are to be sited in, or partly in, a harbour or port, the Environmental Impact Assessment Directive has already been transposed for section 34 of the Coast Protection Act 1949 through the Harbour Works (Environmental Impact Assessment) Regulations 1999. Applications for consents under section 34 of the Coast Protection Act 1949 will often form part of an environmental impact assessment where they relate to projects under other regulations (for the licensing of wind farms, for example).

16 **Harbour Works (Environmental Impact Assessment) Regulations 1999** apply in Great Britain only. The Northern Ireland equivalent is the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003, which will be amended separately by Northern Ireland. Part II applies to harbour works carried out under section 34 of the Coast Protection Act 1949, as well as works authorised under a local Act or harbour order. In England and Wales, applications for consent under Part II of the Harbour Works (Environmental Impact Assessment) Regulations 1999 are administered by the Marine & Fisheries Agency, acting on behalf of the Secretary of State and the National Assembly for Wales, with final determinations made by the Secretary of State. Consents under Part II of the Regulations are granted by the National Assembly for Wales for harbour works relating to fishery harbours in Wales. Following the Assembly election in May 2007, they will be granted by the Welsh Ministers. In Scotland, responsibility is devolved to the Scottish Ministers. The Marine Works Regulations will replace Part II of the Harbour Works (Environmental Impact Assessment) Regulations 1999 so that consents for the works to which they apply will be fully compliant with the Public Participation Directive.

Table 2 indicates the number of new applications under Part II of the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949 over the past few years by country, where available.

Table 2: Number of applications by regime and country

Country	2002	2003	2004	2005	2006
FEPA 1985					
England & Wales	406	374	320	303	230
Wales only	Not available	Not available	Not available	38	30
Scotland	Not available	Not available	176	158	167
Northern Ireland	14	11	10	23	33
Section 34 CPA 1949					
England & Wales	134	123	182	169	168

Table 2: Number of applications by regime and country

Country	2002	2003	2004	2005	2006
Scotland	292	122	179	171	166

17 **The Environmental Impact Assessment Directive, as amended by the Public Participation Directive:** The Environmental Impact Assessment Directive applies to the assessment of environmental effects from public and private projects which are likely to have a significant effect on the environment. Annex I of the Environmental Impact Assessment Directive lists the projects which must be subject to an environmental impact assessment, while Annex II lists the projects for which a regulator (or appropriate authority for the purpose of the Marine Works Regulations) must consider whether an environmental impact assessment is required. Where an environmental impact assessment is required, the direct and indirect effects of a project on the following factors must be identified (following amendments made under Council Directive 97/11/EC¹):

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between two or more of these factors.

18 The Public Participation Directive aims to align community law with the UN Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). To this end, the Public Participation Directive amends the Environmental Impact Assessment Directive to require that Member States ensure, among other things, that the public is informed of proposed projects subject to an environmental impact assessment and given effective opportunities to participate in decision-making procedures to the extent required by the Directive.

Rationale for Government Intervention

19 The UK is required to transpose the Environmental Impact Assessment Directive, as amended. Failure to do so beyond June 2007 could lead to referral to Article 228 proceedings and a possible decision by the European Court of Justice under the Treaty establishing the European Community that the UK has failed to transpose the Directive and will be subject to a lump sum or penalty payment. Therefore, the risk in not taking action now is significantly greater than the risk in transposing, which is minimal.

20 Transposition of the Environmental Impact Assessment Directive, as amended, through the Marine Works Regulations will:

- enable the UK to avoid being subject to infraction proceedings and fined under Article 228 of the Treaty establishing the European Community;
- enable the UK to meet our goals under 'Objective', above.

¹ Council Directive 97/11/EC, Official Journal L 073, 14/03/1997, p.5. <http://ec.europa.eu/environment/eia/full-legal-text/9711.htm>

Consultation

21 *Within Government*

The Marine Works Regulations were developed in consultation with officials across Defra, other Government Departments and the Devolved Administrations as follows:

Devolved Administrations:

Department of the Environment in Northern Ireland
Scottish Executive Environment and Rural Affairs Department
Welsh Assembly Government

The public consultation on the draft Regulations and the Regulations themselves were cleared by Ministers in the Devolved Administrations.

Other Government Departments:

Department for Communities and Local Government
Department for Constitutional Affairs
Department of Trade and Industry
Department for Transport
Home Office
Treasury

22 *Public consultation*

A Defra led public consultation on the Marine Works (Environmental Impact Assessment) Regulations 2007 was undertaken over a 13 week period between 15 December 2006 and 16 March 2007. The consultation document can be viewed at www.defra.gov.uk/corporate/consult/marineworks/index.htm.

Approximately 2,000 stakeholders were notified of the consultation. Forty-seven responses were received, and a consultation summary has been published at the address above. Respondents included organisations representing those likely to apply for licences for marine works and those likely to apply themselves, non-departmental public bodies and other Government departments. Most responses to the consultation were generally supportive of the proposals, provided that certain standards were met in practice by the appropriate authority, such as agreeing reasonable timescales with applicants for providing information, and ensuring that the relevant bodies are consulted at the various stages of an application. The recovery of costs to the appropriate authority associated with the Marine Works Regulations was supported in principle, but assurances were sought that any new costs will be proportionate, and will cover only those costs relating to the work necessary to comply with the Environmental Impact Assessment Directive (i.e. they should not be used to fund extra work to fill knowledge gaps). Any new charges will be subject to full consultation with trade associations, and will be agreed with Treasury or the Devolved Administration equivalent, as appropriate, before being introduced.

The following changes were made to the draft Marine Works Regulations following consultation:

- Provision was made to ensure that relevant bodies designated by statutory provision as having specific environmental responsibilities and which the appropriate considers likely to have an interest in the regulated activity will be consultation bodies;
- The Joint Nature Conservation Committee will be included as a nature conservation body for consultation purposes;
- Thresholds will not be included in the Regulations. A number of consultation respondents were supportive of thresholds that would indicate when an environmental impact assessment might be required, although concern was also expressed that thresholds could conflict with those in other regulations over time, or lead to confusion as to which environmental impact assessment regulations are the most relevant to a project;
- Timescales within which information must be provided to appropriate authorities will be reasonable before a regulator or appropriate authority considers withdrawing an application.

Options

23 *Option 1 – Do nothing*

If we do nothing:

- the UK will be subject to infraction proceedings and potentially fined for not transposing the Environmental Impact Assessment Directive (as amended), harming the UK's reputation and resulting in an additional burden to the public purse;
- the legality of marine works may be challenged in the UK courts, at a cost to both industry and regulators (appropriate authorities), and therefore the taxpayer.

24 *Option 2 – Lay and commence the Marine Works (Environmental Impact Assessment) Regulations 2007*

This will enable the UK to satisfy the EU that the Environmental Impact Assessment Directive, as amended, has been transposed. This means that:

- existing domestic legislation will include the statutory provision required by the EU Commission so that it meets the requirements of the Environmental Impact Assessment Directive, as amended;
- industry will be assured that marine works licences will be less open to legal challenge for non-compliance to the Environmental Impact Assessment Directive.

Costs and benefits

25 *Sectors and groups affected*

- Regulators (where they are appropriate authorities):
 - In relation to Northern Ireland (other than in relation to any matter which is reserved or excepted under the Northern Ireland Act 1998), the Department of the Environment;
 - In relation to Scotland (other than in relation to any matter which is reserved under the Scotland Act 1998), the Scottish Ministers (Scottish Executive);

- In relation to Wales (as regards Part II of the Food and Environment Protection Act 1985, section 34 of the Coast Protection Act 1949, or harbour works relating to a fishing harbour), the Welsh Ministers (Welsh Assembly Government);
- In any other case, the Secretary of State (Marine & Fisheries Agency);
- Industry:
 - The dredging industry;
 - The maritime industry;
 - Private terminal operators.
- Statutory consultees:
 - Appropriate authorities, where a regulated activity in their area is regulated by another appropriate authority;
 - Local planning authorities;
 - Any consenting authority;
 - Nature conservation bodies (Natural England, Scottish Natural Heritage, Countryside Council for Wales, Joint Nature Conservation Committee) and any other bodies that the appropriate authority considers to have an interest, or which are designated by statutory provision as having an interest.

Options – Assessment of impacts

Option 1 – Do nothing

26 The costs under Option 1 will be similar across England, Wales, Scotland and Northern Ireland.

Economic benefits

27 No benefits are identified under Option 1 for Government, industry, the general public or the marine environment as this is a continuation of the current situation. Costs saved in not requiring extra publicity will be minimal, given that the publicity requirements under the Marine Works Regulations are not significantly greater than is currently the case. This is the case across England, Wales, Scotland and Northern Ireland.

Economic costs

To Government/regulators (where they are appropriate authorities):

28 The most significant cost associated with Option 1 is the cost associated with infraction proceedings against the UK for failing to transpose the Environmental Impact Assessment Directive, as amended by the Public Participation Directive, for marine works. Non-compliance with a European Directive can result in a fixed lump sum penalty and/or a daily fine. It is not possible to calculate the daily penalty rate as this is set by the Commission based on the seriousness of the infringement and its duration. However, as an indication of the possible level of the fine, we estimate that a lump sum fine would be at least €1 million.

To industry:

29 No quantified costs are identified under Option 1. However, there may be a cost associated with legal uncertainty surrounding current requirements for an environmental

assessment under Part II of the Food and Environment Protection Act 1985 and section 34 of the Coast Protection Act 1949 outside of harbours. In the few cases where works under these Acts are not considered for an environmental impact assessment where required under other regulations (the Electricity Works (Environmental Impact Assessment) Regulations 2000 or the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, for example), the courts could rule that the consenting regime does not fully meet the requirements of the Environmental Impact Assessment Directive.

Social Impact:

30 Under Option 1, although currently the public are presently generally consulted on marine works in practice, the provision for consultation does not always go as far as required by the Public Participation Directive. Table 3 summarises current publicity arrangements, not all of which are a statutory requirement:

Table 3: Current publicity by country and regime		
Country	Existing arrangements for consultation under Food and Environment Protection Act 1985 and Coast Protection Act 1949	Harbour Works 1999
England & Wales	<p>Applications under Coast Protection Act 1949 should be advertised and plans open to inspection by public. Consultation should be undertaken by applicant with relevant stakeholders. This is a statutory requirement, but with no timescales for publicity set in legislation.</p> <p>For Part II Food and Environment Protection Act 1985, the regulator consults with stakeholders. This is not a statutory requirement, although the Act does provide a duty for regulators to maintain a public register of application and licence details.</p>	<p>Publication of application details in a local newspaper.</p> <p>Application & environmental statement available for public inspection within 42 days of publication of notice.</p> <p>Address from which application & environmental statement may be obtained from</p>
Scotland	<p>Public notice placed in a local newspaper for all Coast Protection Act 1949 applications, except marine farms, which are advertised separately under The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, and allow 28 days for comments and/or objections.</p> <p>For Part II Food and Environment Protection Act 1985, consultation with selected consultees by licensing authority. No adverts placed. The Act does provide a duty for regulators to maintain a public register of application and licence details.</p>	
Northern Ireland	For Part II Food and Environment Protection Act 1985, consultation with selected consultees by licensing authority.	n/a

Environmental Impact

31 The environmental impact of Option 1 will be low. An appraisal of the environmental effects of works is already assessed where required, either through Part II of the Food and Environment Protection Act 1985 or section 34 of the Coast Protection Act 1949 in harbours. Coast Protection Act consents outside of harbours are usually considered for environmental impact assessments under other legislation where the works relate to a project for which the Environmental Impact Assessment Directive has been transposed (such as the Electricity Works (Environmental Impact Assessment) Regulations 2000). However, through not formally transposing the Public Participation Directive, there is a risk the European Commission will not be satisfied that the public are guaranteed, on a statutory basis, participation in the environmental decision making process. Public participation may be useful in highlighting unforeseen risks to the environment of proposed projects.

Option 2

32 *Option 2 – Lay and commence the Marine Works (Environmental Impact Assessment) Regulations 2007*

Benefits

Economic benefits

The main benefits to come from making the Marine Works Regulations will be:

- 33 For Government/regulators (where they are appropriate authorities):
- Transposition of the Environmental Impact Assessment Directive, as amended, and therefore the avoidance of the costs associated with infraction proceedings;
 - Legal assurance that licences are compliant with the Environmental Impact Assessment Directive, as amended.
- 34 For industry:
- Industry will be reassured that licences for their marine works are unlikely to be challenged through the courts for not being issued in compliance with the Environmental Impact Assessment Directive.
 - Individual businesses may raise their reputation as businesses with a concern in the environment.

Social Impact

35 The Marine Works Regulations will ensure that a minimum period of 42 days is provided for representations to be made on an application and its environmental statement. This provision is similar to that in other regulations transposing the Environmental Impact Assessment Directive (namely, the Harbour Works (Environmental Impact Assessment) Regulations 1999). A longer consultation period may be allowed where an appropriate authority agrees with a consultation body that a longer period is reasonable.

Environmental Impact

36 The Marine Works Regulations will ensure that the impact assessment and consultation that presently occurs in practice in most cases meets the requirements of the Environmental Impact Assessment Directive to the satisfaction of the European Commission (i.e. there will be no gaps in the legislation should a project not be covered by other environmental impact assessment regulations).

37 In particular, the Regulations will enable greater public participation in the assessment of the impact on:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage; and
- the interaction between two or more of these factors.

Costs

Economic cost

To Government/regulators (where they are appropriate authorities):

38 Any new burdens under the Marine Works Regulations will be minimal. Where deposits are concerned, an appraisal of environmental effects and some consultation already occurs under Part II of the Food and Environment Protection Act 1985. As an indication of current costs to Government of operating Part II of the Food and Environment Protection Act 1985, Table 4 shows the operating costs in England and Wales until end of year 2004/2005. The average revenue per licence (i.e. the average cost to applicants) is also shown. Tables 5 and 6 show similar costs for Scotland and Northern Ireland respectively. Not all Part II Food and Environment Protection Act 1985 licences relate to projects covered by the Environmental Impact Assessment Directive. It should be noted that where there is currently a shortfall between revenue and costs which may need to be rectified in the future, this is a matter relating to the existing system, and cannot be a new cost attributed solely to the Marine Works Regulations.

Table 4: Operating data for Food and Environment Protection Act 1985 licences in England and Wales					
	2000/01	2001/02	2002/03	2003/04	2004/05
Total Number of FEPA Licences	421	412	389	394	330
Revenue					
Total Revenue	£810,354	£1,057,702	£921,984	£697,456	£950,693
Average Revenue per licence	£1,925	£2,567	£2,370	£1,770	£2,881
Costs					
Total: Defra – Case handling/decision-making	£209,486	£258,065	£283,681	£301,170	£432,786
Average per licence	£498	£626	£729	£764	£1,311
MFA – Enforcement	£113,439	£103,409	£128,677	£139,238	£143,178
Average per licence	£269	£251	£331	£353	£434
CEFAS - Scientific Assessment, analysis and monitoring	£759,658	£777,670	£1,106,159	£1,310,981	£1,336,195
Average per licence	£1,804	£1,888	£2,844	£3,327	£4,049
Total	1,082,583	1,139,144	1,518,517	1,751,389	1,912,159
Average per licence	£2,571	£2,765	£3,904	£4,445	£5,794
Source: Defra (2006). Charges include cost of staff time spent on processing licence applications, scientific consumables, equipment and research vessel days required, accommodation and travel. Figures beyond 2004/05 are not available yet.					

Table 5: Operating data for Food and Environment Protection Act 1985 licences in Scotland			
	2003/04	2004/05	2005/06
Total Number of FEPA Licences	127	159	134
Revenue			
Total Revenue	£95,675	£188,935	£122,225
Average Revenue per licence	£753	£1,188	£912
Costs			
Total: FRS – Case handling/decision-making	£78,000	£73,000	£79,000
Average per licence	£614	£459	£590
FRS – Enforcement	£31,000	£29,000	£31,000
Average per licence	£244	£182	£231
FRS – Scientific Assessment, analysis and monitoring	£281,000	£262,000	£283,000
Average per licence	£2,213	£1,598	£1,626
FRS – Total	£390,000	£364,000	£393,000
Average per licence	£3,071	£1,648	£2,933
Source: Scottish Executive (2007). Charges include cost of staff time spent on processing licence applications, scientific consumables, equipment and research vessel days required, accommodation and travel. Figures for 2006/07 are not available yet.			

Table 6: Operating data for Food and Environment Protection Act 1985 licences in Northern Ireland			
	2004/2005	2005/2006	2006/2007
Total Number of FEPA Licences	16	32	26
Revenue			
Total Revenue	£10,975	£47,460	£35,170
Average Revenue per Licence	£686	£1,483	£1,352
Source: Environment and Heritage Service, Northern Ireland (2007)			

39 The Environmental Impact Assessment Directive has already been transposed for section 34 of the Coast Protection Act 1949 for works in harbours – extra advertising costs under the Marine Works Regulations to be compliant with the Public Participation Directive are estimated to be minimal (see paragraph 50). Works under section 34 of the Coast Protection Act 1949 occurring outside of harbours are usually considered as part of an environmental impact assessment where works relate to a project under other legislation, such as the Electricity Works (Environmental Impact Assessment) Regulations 2000 where offshore wind farms are concerned, for example.

40 Government/the regulator (the appropriate authority for the purpose of the Marine Works Regulations) has not been able to charge for the cost of processing applications for consent under section 34 of the Coast Protection Act 1949, unlike applications under Part II of the Food and Environment Protection Act 1985. However, Government will be able to recover costs for the environmental impact assessment element of applications for consent under section 34 of the Coast Protection Act 1949, and fees for these expenses will be consulted on in the usual course of consulting periodically on fees under Part II of the Food and Environment Protection Act 1985. This consultation will include a regulatory impact assessment of the proposed levels for fees, and HM Treasury (or Devolved Administration equivalents, where appropriate) and organisations appearing to Ministers to represent those likely to apply for a licence will be consulted before any fees are introduced. There will be separate consultations, as necessary, in England and Wales, Northern Ireland (only where costs for environmental impact assessments for licences under the Food and Environment Protection Act 1985 are concerned) and Scotland.

41 Where a section 34 consent relates to a project already requiring an environmental impact assessment under domestic legislation, it is expected that the environmental impact assessment will be carried out under other legislation applying the Environmental Impact Assessment Directive to such projects. If the appropriate authority is satisfied with the environmental impact assessment, a separate assessment under the Marine Works Regulations will not be required.

42 If the requirement for an assessment of proposed section 34 Coast Protection Act work is to be determined under the Marine Works Regulations, it is anticipated that two staff days will be required to carry out a screening opinion. Based on staff costs (taken from Defra/MFA costs) of £260 per day, this gives an estimated cost of £520 per screening opinion. Provision of a scoping opinion may take between 4 to 5 staff days, with an associated cost of £1,000 to £1,300, based on £260 per staff day. Further assessment of the Environmental Statement may take up to 10 days of staff time, at a cost of £2,600. Table 7 illustrates these costs. This is consistent with the costs in Tables 4, 5 and 6 on current costs under Part II of the Food and Environment Protection Act 1985, under which regulators already carry out an assessment of environmental impacts which often meets the requirements of the Environmental Impact Assessment Directive in practice.

Table 7: Operating costs per environmental impact assessment under Coast Protection Act 1949

Costs (at £260 per day)	2 days	4 days	5 days	10 days
Screening opinion	£520			
Scoping opinion		£1,040	£1,300	
Assessment of Environmental Statement				£2,600

To industry:

43 Any new burdens under the Marine Works Regulations will be minimal. As mentioned above, impacts on the environment are already assessed, either through Part II of the Food and Environment Protection Act 1985 or through the Harbour Works (Environmental Impact Assessment) Regulations 1999 where section 34 Coast Protection Act 1949 consents inside harbours and works under local Acts and other harbour works are concerned. Section 34 consents outside of harbours are usually covered by existing environmental impact assessment regulations where they relate to a project (such as an offshore wind farm project). Although current charges under Part II of the Food and Environment Protection Act 1985 do not provide for full cost recovery and may need to be increased in the future, such an increase would not be attributed solely to costs associated with the Marine Works Regulations, which are minimal (and if any new charges are introduced, they will be subject to full consultation first).

44 However, where an environmental impact assessment *is* required under the Marine Works Regulations, it is expected that most of any new costs will be for assessments under section 34 of the Coast Protection Act 1949 where works outside of harbours require an environmental impact assessment (see paragraph 42 above). The current charges under the Food and Environment Protection Act 1985 are outlined in Tables 8, 9 and 10, with estimated extra costs to regulators under section 34 of the Coast Protection Act 1949 outlined in paragraph 42 and Table 7. Fees are already charged under the Food and Environment Protection Act 1985, and

it is intended that any extra costs to regulators (appropriate authorities), including expenses relating to environmental impact assessments for section 34 of the Coast Protection Act 1949 and harbour works consents, will be charged to industry. Any new fees to recover expenses will be subject to full consultation as part of the periodic consultation on amended fees under the Food and Environment Protection Act 1985. This consultation will include a regulatory impact assessment, and fees will be agreed with HM Treasury or relevant Devolved Administration equivalents, as appropriate.

Fees charged under Part II of the Food and Environment Protection Act 1985

45 Fees under Part II of the Food and Environment Protection Act 1985 are determined separately for England and Wales, Scotland and Northern Ireland. The tables below show the different fee structures and licence fees.

England and Wales

46 Table 8 shows fees charged in England and Wales under Part II of the Food and Environment Protection Act 1985, as last consulted on in February 2006 and effective from 24 July 2006.

Table 8: FEPA Licence Fees – England and Wales						
Construction Licence Fees						
Construction cost	£5K – 50K	£50K – £2m	£2m - £5m	£5m - £20m	Over £20m	Over £50m
Full Fees	£525	£1,625	£3,525	£6,160	£12,010	£23,425
Renewal Fees	£135	£645	£1,020	£1,730	£3,365	£6,015
Disposal Licence Fees						
Tonnage (wet weight – i.e. as dredged)	0 – 9,999	10,000 – 49,999	50,000 – 99,999	100,000 – 499,999	500,000 – 999,999	1,000,000
Full Fees	£3,000	£6,000	£8,000	£12,000	£15,500	£25,000
Renewal Fees	£2,250	£4,500	£6,000	£9,000	£11,625	£18,750
Capital Disposal Fees	£3,500	£7,500	£10,000	£14,500	£20,000	£31,000
Source: Defra (2006): www.defra.gov.uk/environment/water/marine/pdf/feeslicenceincrease-july06.pdf						

Scotland

47 Table 9 shows the current Part II Food and Environment Protection Act 1985 licence charging regime in Scotland.

Table 9: FEPA Licence Fees – Scotland			
Construction Licence Fees			
	Project value up to £3,135	Project value between £3,135 and £26,125	Project value over £26,125
Full Fees	£105	£420	£1,045
Licence variations / extensions	£10, £25, £55 or £80 depending on nature of variation	£10, £25, £55 or £80 depending on nature of variation	£10, £25, £55 or £80 depending on nature of variation
Disposal Licence Fees			
	Up to 10,000 tonnes	10,001 to 100,000 tonnes	100,001 to 300,000 tonnes
			Over 300,000 tonnes

Full Fees	£995	£1,985	£3,975	£6,690
Licence variations / extensions	£10, £25, £55 or £80 depending on nature of variation	£10, £25, £55 or £80 depending on nature of variation	£10, £25, £55 or £80 depending on nature of variation	£10, £25, £55 or £80 depending on nature of variation
Capital Disposal Fees	N/A	N/A	N/A	N/A
Source: Scottish Executive, 2007.				

Northern Ireland

48 Table 10 shows the current Part II Food and Environment Protection Act 1985 licence charging regime in Northern Ireland.

Table 10: FEPA Licence Fees – Northern Ireland									
Construction Licence Fees									
Construction cost	£5K – 20K	£20K – £50K	£50K- £200K	£200K - £500K	£500K - £1m	£1m - £3m	£3m - £5m	£5m - £20m	£20m +
Licence application fee	£130	£200	£400	£600	£670	£1,330	£1,660	£2,000	£3,330
Licence issue fee	£270	£400	£800	£1,200	£1,330	£2,670	£3,340	£4,000	£6,670
Total	£400	£600	£1,200	£1,800	£2,000	£4,000	£5,000	£6,000	£10,000
Disposal Licence Fees									
Tonnage (wet weight – i.e. as dredged)	0 – 9,999	10,000 – 24,999	25,000 – 49,999	50,000 – 99,999	100,000 – 499,999	500,000 – 999,999	1,000,000 +		
Maintenance dredging disposal:									
Licence application fee	£600	£830	£1,160	£1,660	£2,330	£3,330	£5,660		
Licence issue fee	£1,200	£1,670	£2,340	£3,340	£4,670	£6,670	£11,340		
Total	£1,800	£2,500	£3,500	£5,000	£7,000	£10,000	£17,000		
Capital dredging disposal:									
Licence application fee	£820	£1,140	£1,600	£2,280	£3,200	£4,570	£7,760		
Licence issue fee	£1,640	£2,280	£3,190	£4,570	£6,390	£9,130	£15,530		
Total	£2,460	£3,420	£4,790	£6,850	£9,590	£13,700	£23,290		
Source: Environment and Heritage Service, Northern Ireland (2007)									

49 As stated above, not all activities licensed under Part II of the Food and Environment Protection Act 1985 will be projects under the Environmental Impact Assessment Directive. It will be for the appropriate authority to make determinations case-by-case under the Marine Works Regulations when deciding whether an activity is a project under the Directive. The tables above do, however, illustrate the current costs to regulators and industry under Part II of the Food and Environment Protection Act 1985, under which the assessment of environmental effects is often comparable to what is required under the Environmental Impact Assessment Directive.

50 Additional costs to industry may arise through:

- Consultation with such consultation bodies as the regulator (appropriate authority) thinks appropriate on screening and scoping opinions (where requested), and the application, environmental statement and any further information supplied by the applicant. The costs associated with such consultation will vary case by case depending, for example, on what issues are raised through consultation. It will also depend on the length of the consultation period (at least 28 days for the screening or scoping opinion and at least 42 days for the application and environmental statement, or such longer period as agreed between the appropriate authority and consultation body, where the appropriate authority considers it reasonable to do so), and whether the appropriate authority directs the applicant to provide relevant information to the consultation bodies where the environmental statement and application are concerned. A general quantification cannot therefore be made. Such consultation is a requirement of the Environmental Impact Assessment Directive. Any associated costs will be far less than the costs to the UK of not complying with the Directive.
- Advertising requirements (i.e. the cost to the applicant should the appropriate authority direct them to publicise the application and environmental statement). The cost of advertising for two successive weeks is estimated to be £400 for environmental impact assessments relating to harbour works and section 34 of the Coast Protection Act 1949. For licences under Part II of the Food and Environment Protection Act 1985, a cost of £800 per application is estimated to meet this requirement in England, Wales and Northern Ireland, and £400 in Scotland. Where consent is required under the Coast Protection Act 1949 and the Food and Environment Protection Act 1985, a single advertisement will be satisfactory in many cases.

Social Impact:

51 No social costs are identified under Option 2.

Environmental Impact:

52 No environmental costs have been identified under Option 2.

Table 11 provides a checklist of impacts, which are included in the RIA Guidance (Cabinet Office, 2006²). These have been taken into consideration for estimating the costs and benefits.

Table 11: RIA checklist of impacts

Impacts	Assessment
Economic impacts	

² Available from www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/index.asp

Table 11: RIA checklist of impacts

Impacts	Assessment
Will the proposal result in receipts or savings to the Government?	Yes, from avoided legal costs, and recovery of costs for additional steps under the Marine Works Regulations for section 34 Coast Protection Act 1949 licences, once charges have been consulted on and set. Whether such charges are introduced is a matter for appropriate authorities and Treasury (or Devolved Administration equivalents, as appropriate).
Will the proposal affect the costs, quality or availability of goods or services?	In a small number of additional cases where an environmental impact assessment is required, costs may increase.
Will the proposal result in new technologies?	Unlikely.
Will the proposal result in a change in the investment behaviour both into the UK and UK firms overseas and into particular industries?	Unlikely.
Will it impact on the levels of competition within the affected sector?	Unlikely.
Will the proposal impact on the public sector, including the resources of front-line delivery staff?	Potentially, through recovery of costs for additional steps under the Marine Works Regulations for section 34 Coast Protection Act licences. These costs and charges will be subject to full consultation before introduction.
Will the proposal impact on business, charities and voluntary organisations? This could be in the form of a change in prices, outputs, levels of employment or competitiveness?	Businesses will be affected, but unlikely to be a significant impact.
Will the proposal impact on consumers?	In those cases where costs to industry are increased, these may be passed on to consumers. The resulting increase in costs to individual consumers is likely to be small.
Social impacts	
Will the proposal influence health-related behaviour or affect demand for health services?	Unlikely.
Will the proposal influence safety at work or affect the likelihood of accidents in the community?	Unlikely.
Will the proposal affect the rate of crime or crime prevention or create a new offence/opportunity for crime?	It will be an offence, for the purpose of obtaining an EIA consent, to intentionally provide false information.
Will the proposal affect the levels of skills and education?	Unlikely.
Will the proposal affect the provision of facilities or services that support community cohesion or in other ways that affect the quality of life in the local community?	Unlikely.

Table 11: RIA checklist of impacts

Impacts	Assessment
<p>Could the proposal result in any changes in, or a differential impact on, any of the following?</p> <ul style="list-style-type: none"> • Income groups • Devolved countries • Particular regions of the UK 	<p>Minor differences amongst devolved countries reflect the different administrative regimes and variations in number and types of applications. These will not change with the introduction of the Regulations.</p>
Environmental impacts	
Will the policy option lead to a change in the emission of greenhouse gases?	Unlikely.
Will the policy option be vulnerable to the predicted effects of climate change?	Unlikely.
Will the policy option lead to a change in the financial costs or the environmental and health impacts of waste management?	Unlikely.
Will the policy option impact significantly on air quality?	Unlikely.
Will the policy option involve any material change to the appearance of the landscape or townscape?	Unlikely.
<p>Will the proposal change</p> <ul style="list-style-type: none"> • the degree of water pollution • levels of abstraction of water or • exposure to flood risk? 	<p>Possibly, as it could affect development options in the marine environment, but impacts are not expected to be significant.</p>
Will the policy option disturb or enhance habitat or wildlife?	<p>It may enhance habitats and wildlife by providing a statutory basis for considering environmental impacts, but improvements are not expected to be significant compared to the current situation.</p>
Will the policy option affect the number of people exposed to noise or the levels to which they are exposed?	Unlikely.

Small firms impact test

53 Since the list of activities to be regulated through the Marine Works Regulations is not to be extended, and the provision of environmental information is already required from small firms, the impact of these Regulations on them is expected to be low. The Regulations will be equitable, and will not place any unfair burdens on small firms.

Competition assessment

54 The Marine Works Regulations will transpose the requirements of the Environmental Impact Assessment Directive and the Public Participation Directive. Therefore, no change is expected in the investment behaviour into the UK compared to other Member States.

55 The Regulations will not affect competition within sectors carrying out marine works. The Regulations do not extend to activities which are not already regulated. Impact on consumers, where it occurs, is likely to be minimal.

Table 12: Competition filter test questions

Question	Answer Yes/No
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential firms that existing firms do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential firms that existing firms do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of firms to choose the price, quality, range or location of their products?	No

Enforcement, sanctions and monitoring

56 A person would be guilty of an offence if, for the purpose of obtaining (whether for their own benefit, that of another or both) the grant, transfer or variation of an EIA consent, they:

- made a statement that they knew to be false;
- recklessly made a statement which was false; or
- intentionally failed to disclose any relevant information.

57 A person guilty of an offence will be liable to:

- on summary conviction, a fine of an amount not exceeding the statutory maximum (currently £5,000); and
- on conviction on indictment, a fine.

58 Where an offence is committed by a corporate body and 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 will be guilty of that offence and liable to be proceeded against and punished accordingly.

59 The offence and the penalties under this section are similar to those under sections 9(2), 21(3) and (6) of the Food and Environment Protection Act 1985.

Implementation and delivery plan

60 Guidance on the Food and Environment Protection Act 1985 and the Coast Protection Act 1949 is available from the appropriate authorities. Guidance will be provided on the extra requirements around the time of commencement of the Marine Works Regulations.

Post-implementation review and monitoring

61 The licensing system is under review as part of the work contributing to the Marine Bill and subordinate regulations.

Summary and Recommendation

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1. Do nothing	No benefits have been identified. Industry may see the prevention of costs associated with extra publicity as a benefit, but this is far outweighed by the risk of infraction and the risk associated with licences being non-compliant.	The infraction cost for non-transposition of the Environmental Impact Assessment Directive, as amended, will be very considerable. There may also be a cost to industry associated with licences and consents being challenged for non-compliance with a Directive. Such challenges are likely to involve regulators as well.
2. Make and commence Marine Works Regulations 2007	The UK will avoid fines for not having transposed the Environmental Impact Assessment Directive, as amended. There will be a statutory guarantee of public participation, where required. Licences and consents will be less susceptible to challenges for non-compliance with a Directive.	Any greater costs to the appropriate authority will be potentially offset by the reasonable fee. This will increase the costs to industry, but it is a cost for complying with an EC requirement in order to carry out a commercial activity. Any new costs will be fully consulted on with Treasury or Devolved Administration equivalents, as appropriate, and industry before introduction.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed:...Ben Bradshaw.....

Date:.....16th May 2007.....

Ben Bradshaw
Minister of State
Local Environment, Marine and Animal Welfare
Department for Environment, Food and Rural Affairs

Contact points:

Jonathan Lartice
Marine Environment, licensing policy
2C, 3-8 Whitehall Place,
London, SW1A 2HH
020 7270 8626
Jonathan.lartice@defra.gsi.gov.uk

Transposition Note for the Marine Works (Environmental Impact Assessment) Regulations 2007

1 This note sets out the way in which the Marine Works (Environmental Impact Assessment) Regulations 2007 (the ‘Marine Works Regulations’) transpose, for the regulated activities to which they apply, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive") and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 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 (the “Public Participation Directive”).

2 The EIA Directive was transposed (to the extent that it applies to harbour works) by the Harbour Works (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/3445), which were amended by the Harbour Works (Environmental Impact Assessment) (Amendment) Regulations 2000 (S.I. 2000/2391). These two sets of Regulations are referred to in this note as the ‘Harbour Works Regulations’. They apply in Great Britain only.

3 The Harbour Works Regulations are partially revoked by the Marine Works Regulations, which replace the Harbour Works Regulations except in relation to the procedure under the Harbours Act 1964 for obtaining a harbour empowerment order or a harbour revision order. The Marine Works Regulations transpose the Public Participation Directive in relation to the harbour works to which they apply.

4 The Marine Works Regulations also transpose the EIA Directive for the first time in relation to applications for licences under Part II of the Food and Environment Protection Act 1985 and consents under section 34 of the Coast Protection Act 1949 outside of harbours. The latter has been compliant with the EIA Directive (prior to its amendment by the Public Participation Directive) for works within harbours under the Harbour Works Regulations. Such consents (along with licences under Part II of the Food and Environment Protection Act 1985) will now be compliant with the EIA Directive, as last amended by the Public Participation Directive, both inside and outside of harbours.

5 Cross references in this Transposition Note are to the Marine Works Regulations. References to the Articles of the Directive are to provisions of the consolidated version of the EIA Directive, as last amended by the Public Participation Directive.

Directive			
Council Directive 85/337/EEC of 27 June 1985 (as amended by Directive 97/11/EC and Directive 2003/35/EC) on the assessment of the effects of certain public and private projects on the environment.			
Articles	Objectives	Implementation	Responsibility
Article 1	States the purpose of the Directive: namely, assessment of the environmental effects of those public and private projects likely to have significant effects on the environment. Also contains definitions.	The Regulations make the “appropriate authority” responsible for carrying out an environmental impact assessments (“EIA”). The appropriate authority, as defined in regulation 2, is either the Secretary of State or a devolved authority (that is, a Northern Ireland Department, the Scottish Ministers or the Welsh Ministers).	The appropriate authority, as defined in regulation 2.

	<p>Article 1(4) permits Member States to decide on a case by case basis not to apply the Directive to projects serving national defence purposes, if they deem that application would have an adverse effect on those purposes.</p>	<p>Provision is made in regulation 9 for the Secretary of State to direct that an EIA is not required in relation to a regulated activity where it comprises or forms part of a project serving national defence purposes and, in the opinion of the Secretary of State, compliance with the Regulations would have an adverse effect on those purposes.</p>	<p>The Secretary of State.</p>
Article 2	<p>Article 2(1) requires Member States to adopt measures to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, <i>inter alia</i>, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.</p> <p>Article 2(2) allows Member States to integrate environmental impact assessment into existing or yet to be established project consent procedures.</p> <p>Article 2(3) is a discretionary provision enabling Member States to, exceptionally, exempt projects (in whole or in part) from the provisions in the Directive. It requires that Member States should decide whether such projects should be subject to another form of assessment. There are</p>	<p>Article 2(1) is transposed through Part 2 of the Marine Works Regulations, particularly regulation 7 (for Annex I projects under the EIA Directive) and regulation 8 (Annex II projects) . Where an EIA is required, the applicant must obtain an ‘EIA consent’ under the Regulations before the regulator can proceed to make a determination for regulatory approval.</p> <p>Article 2(2) is transposed through the approach adopted by the Regulations of providing for the extra steps to be taken when an applicant seeks a regulatory approval under existing legislation (i.e. a licence under Part II of the Food and Environment Protection Act 1985, a consent under section 34 of the Coast Protection Act 1949, or a consent for harbour works to which Part II of the Harbour Works Regulations applied).</p> <p>Regulation 10 enables the appropriate authority to determine in specified circumstances that an EIA is not required, and requires it to give appropriate notifications of such a decision.</p>	<p>The appropriate authority.</p> <p>The appropriate authority.</p>

	requirements for publicity and notification of these projects to the Commission and other Member States.		
Article 3	Defines the factors which are to be identified, described and assessed in an EIA.	Where an application is made for a regulatory approval for a project which requires an EIA, regulation 12(1) and (2) and Schedule 3 require the applicant to provide the appropriate authority with (among other things) an environmental statement, which must identify and describe the effects of the project on the factors specified in article 3. Regulations 22(a) and (c) requires the appropriate authority to consider the environmental statement and the factors specified in article 3 in its EIA consent decision.	The appropriate authority.
Article 4	<p>Article 4(1) requires projects listed in Annex I to the Directive to be made subject to an EIA.</p> <p>Articles 4(2) and 4(3) enable Member States to determine by case by case examination and/or thresholds based on the criteria in Annex III to the Directive whether projects of the type listed in Annex II to the Directive should be subject to an EIA.</p> <p>Article 4(4) requires determinations as to whether Annex II projects should be subject to an EIA to be</p>	<p>Article 4(1) is implemented as indicated below by reference to the implementation of Articles 5-10.</p> <p>When determining whether an Annex II project requires an environmental impact assessment, regulation 8(2) requires the appropriate authority to have regard to the criteria in Schedule 1. Regulation 11 enables an applicant to request a screening opinion, and for the regulator to direct the applicant to request a screening opinion from the appropriate authority where one has not been requested and the regulator considers that the regulated activity is an Annex I or Annex II project for which an environmental impact assessment is required. Schedule 2 provides for the process to follow once a screening opinion has been requested.</p> <p>Paragraph 6 of Schedule 2 provides for an appropriate authority's screening opinion to be made available to the public. Regulation 16 requires the appropriate authority to publicise</p>	<p>The appropriate authority.</p> <p>The appropriate authority.</p> <p>The appropriate authority.</p>

	made available to the public.	the application and environmental statement.	
Article 5	Article 5(1) requires Member States to adopt measures to ensure that where projects require an EIA, the applicant provides in an appropriate form such of the information specified in Annex IV as is relevant and the developer may reasonably be required to compile.	Transposed through regulation 12 and Schedule 3, which specify the material to be included with an application. Regulation 25 makes it an offence for an applicant to provide false information when seeking an EIA consent.	The appropriate authority.
	Article 5(2) requires measures to be adopted to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the authority. Giving such an opinion does not require the authority from subsequently requiring the developer to submit further information.	Transposed by regulation 13 and Schedule 4, which enable the applicant to request a scoping opinion from the appropriate authority. Regulation 14 makes provision for the appropriate authority to require the applicant to provide further information.	The appropriate authority.
	Article 5(3) specifies the minimum information that an applicant must provide.	Transposed through regulation 12 and Schedule 3.	The appropriate authority.
	Article 5(4) requires Member States to ensure that authorities holding information relevant to an EIA shall make that information available to the developer.	Transposed through regulation 15, which provides that 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 the preparation of the environmental statement or the provision of any	The appropriate authority and the regulator, as defined in regulation 2.

		<p>further information required by the appropriate authority. Where it is requested by the applicant, they must provide the information (unless it is 'excluded information' as defined in regulation 2(1)). A reasonable charge may be made reflecting the cost of identifying, preparing and copying the information.</p>	
Article 6	<p>Article 6(1) requires Member States to designate bodies, either generally or on a case by case basis, who by reason of their specific environmental responsibilities should be given an opportunity to comment on requests for development consent. Detailed arrangements must be made for consulting these bodies.</p> <p>Article 6(2) to (6) deals with public participation. Article 6(2) specifies information about the request for development consent and its handling which must be made available to the public early in the decision making procedure. Article 6(3) specifies further information that must be provided to the public who may be affected or have an interest ('the public concerned'). Article 6(4) requires the public concerned to be given</p>	<p>Transposed through regulation 11 and paragraph 4 of Schedule 2 (consultation with consultation bodies on screening opinions), regulation 13 and paragraph 6 of Schedule 4 (consultation with consultation bodies on scoping opinions), and regulation 17 (consultation on the application, environmental statement and further information supplied by the applicant). The 'consultation bodies' are defined in regulation 2(1) to include (among others) the local planning authority, such of the nature conservation bodies (the Joint Nature Conservation Committee, Natural England, Scottish Natural Heritage, and the Countryside Council for Wales) and such other bodies as the appropriate authority considers likely to have an interest in the regulated activity.</p> <p>These requirements are transposed by regulation 16 (publicity) and regulation 21 and Schedule 5 (consideration of representations from the public). Regulation 16 requires applications and environmental statements to be publicised through a notice appearing for two successive weeks in such newspapers or other publications as the appropriate authority thinks fit. 28 days are provided for responding to consultation on the screening or scoping opinion, and 42 days for responding to the consultation on the application and environmental statement. Schedule 5 provides for the steps to be taken in dealing with representations made by the public,</p>	<p>The appropriate authority.</p> <p>The appropriate authority.</p>

	<p>early and effective opportunities to express comments and opinions before the decision is taken. Article 6(5) requires Member States to determine the detailed arrangements for informing and consulting the public, and article 6(6) requires that sufficient time should be allowed for informing the public and enabling the public's participation.</p>	<p>which include the holding of a local inquiry in certain cases where a dispute on a question of fact needs to be resolved to enable the appropriate authority to make its decision. Regulation 23(3) provides for the appropriate authority to publicise its decisions.</p>	
Article 7	<p>Article 7(1) requires information to be provided to another Member State where a project is likely to have significant effects on its environment, and for the affected Member State to be given an opportunity to participate in the environmental decision making procedures.</p> <p>Article 7(2) and (3) require the public concerned in that Member State to participate effectively in the environmental decision making procedures by being provided with information and given an opportunity to forward their opinion.</p> <p>Article 7(4) also requires Member States to consult on the transboundary effects of the project and measures to reduce or eliminate</p>	<p>Article 7 is transposed through regulations 18 (provision of information to affected EEA States), 19 (provision of information to other EEA States where requested), 20 (consultation of EEA States, allowing a reasonable period as agreed with the EEA State authority), 22(a)(vi) (outcome of consultation with EEA States) and 23(1)(e) (notification of EEA States who were consulted on EIA consent).</p>	<p>The appropriate authority.</p>

	them.		
Article 8	Requires that in making a decision Member States consider all information gathered during the consultation process.	Transposed through regulation 22.	The appropriate authority.
Article 9	Article 9(1) requires that Member States inform the public of the main reasons for the decision, information about the public participation process, any conditions attached to the grant of consent and any measures to avoid, reduce or offset the major adverse effects. Article 9(2) similarly requires any other Member States that was consulted to be informed.	Transposed through regulation 23.	The appropriate authority.
Article 10	Ensures that the Directive shall not override national legal provisions and practices on commercial/industrial confidentiality, including intellectual property, and the safeguarding of public interest.	Regulation 15, which requires the appropriate authority and the regulator to provide certain information to the applicant, includes in paragraph (3) an exemption for 'excluded information' as defined in regulation 2(1). Similar exemptions are contained in regulation 18 (provision of information to affected EEA States), Schedule 2, paragraph 6 (availability of screening opinions for inspection) and Schedule 4, paragraph 8 (availability of scoping provisions for inspection).	The appropriate authority and the regulator.

Article 10a	Article 10a requires Member States to ensure that members of the public have access to legal or other independent procedures for challenging decisions, acts or omissions relating to the public participation provisions of the Directive.	<p>The right to a judicial review is considered to be sufficient for these purposes.</p> <p>In relation to Scotland, regulation 28 makes specific provision to ensure that non-governmental organisations promoting environmental protection are deemed to have the necessary title and interest to sue.</p>	
Article 12	Requires Member States to take measures to comply with this Directive within 3 years of its notification.	The making of these Regulations ensures that the regulated activities to which they apply are compliant as a matter of law (rather than through complementary regimes or through good administrative practice) with the EIA Directive, as last amended by the Public Participation Directive.	The Secretary of State.