
STATUTORY INSTRUMENTS

2011 No. 735

The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011

PART 2

Amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007

Amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007

2. The Marine Works (Environmental Impact Assessment) Regulations 2007⁽¹⁾ are amended as follows.

Amendments to regulation 2

3.—(1) In paragraph (1) of regulation 2 (interpretation)—

(a) after the definition of “the 1985 Act”, insert—

““the 2009 Act” means the Marine and Coastal Access Act 2009⁽²⁾;

“the 2010 Act” means the Marine (Scotland) Act 2010⁽³⁾”;

(b) for the definition of “appropriate authority”, substitute—

““appropriate authority” means—

(a) where the regulator is the Secretary of State, the Marine Management Organisation or a devolved authority, the regulator;

(b) where the regulator is any other person—

(i) as regards any regulated activity in Northern Ireland, the Department of the Environment;

(ii) as regards any regulated activity in Scotland or the Scottish offshore region (or both), the Scottish Ministers;

(iii) as regards harbour works in Wales relating to fishery harbours or carried out for the purposes of extracting minerals by dredging, the Welsh Ministers; and

(iv) in any other case, the Secretary of State;

and for the purpose of sub-paragraph (a), “a devolved authority” means any Northern Ireland Department, the Scottish Ministers or the Welsh Ministers;”;

(c) for the definition of “consenting authority”, substitute—

““consenting authority”, in relation to a project, means any authority—

⁽¹⁾ [S.I. 2007/1518](#), amended in relation to England and Wales by [S.I. 2009/2258](#) (revoked by these Regulations).

⁽²⁾ [2009 c. 23](#).

⁽³⁾ [2010 asp 5](#).

- (a) whose consent to any activity to be undertaken in the course of the project is required under any enactment, or
- (b) whose determination was required under any of the Government View documents, and for this purpose, “the Government View documents” means—
 - (i) the document entitled “Offshore Dredging for Sand, Gravel and Other Minerals”, dated April 1989, and published by the Department of the Environment and the Welsh Office;
 - (ii) the document entitled “Government View: New Arrangements for the Licensing of Minerals Dredging”, dated May 1998, and published by the Department of the Environment, Transport and the Regions and the Welsh Office; and
 - (iii) the document entitled “Government View: Interim Arrangements for the Licensing of Marine Minerals Dredging in Northern Ireland”, dated May 2006, and published by the Department of the Environment;”;
- (d) for the definition of “England”, substitute—

““England” includes any part of the territorial sea that is not part of Scotland, Wales or Northern Ireland;”;
- (e) after the definition of “harbour” insert—

““harbour authority” has the same meaning as in section 57(1) of the Harbours Act 1964(4)
- (f) for the definition of “harbour works”, substitute—

““harbour works” means—

 - (a) works involved in the construction of a harbour;
 - (b) works involving the making of modifications to an existing harbour;
 - (c) any dredging operation undertaken by or on behalf of a harbour authority and carried out for the purpose of extracting minerals; and
 - (d) works involving the deposit of spoil from any such dredging operation;”;
- (g) for the definition of “regulatory approval”, substitute—

““regulatory approval” means—

 - (a) a licence under Part 2 of the 1985 Act(5);
 - (b) a marine licence, or variation of a marine licence, under Part 4 of the 2009 Act;
 - (c) a marine licence, or variation of a marine licence, under Part 4 of the 2010 Act; or
 - (d) except in relation to Northern Ireland, an approval or consent for harbour works under—
 - (i) any local Act;
 - (ii) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(6); or

(4) 1964 c. 40.

(5) Regulation 2(1) of the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) defines “the 1985 Act” as the Food and Environment Protection Act 1985 (c. 48). Part 2 of the 1985 Act is amended by the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”), s.112(1) and paragraph 2 of Schedule 8, which amendments are to be commenced from a date to be appointed by an order made under s.324(3) of the 2009 Act. The effect of those amendments is to limit the application of Part 2 of the 1985 Act to the Scottish inshore region. See section 322(1) of the 2009 Act, and regulation 3(1)(k) of these Regulations for the meaning of “the Scottish inshore region”.

(6) 1862 c. 69. Section 9 was amended by SR & O 1921/1804.

- (iii) any order under section 14 or 16 of the Harbours Act 1964(7);”;
- (h) for the definition of “relevant authority”, substitute—
- ““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, or the Scottish offshore region (or both) 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 offshore region 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;
 - (e) where a regulated activity is likely to have a significant effect on the environment of England or a relevant offshore region and the appropriate authority is the Marine Management Organisation, the Secretary of State; and
 - (f) where a regulated activity is likely to have a significant effect on the environment of England or a relevant offshore region and the appropriate authority is the Secretary of State, the Marine Management Organisation;”;
- (i) after the definition of “relevant legislation”, insert—
- ““relevant offshore region” means—
- (a) the English offshore region;
 - (b) the Welsh offshore region; or
 - (c) the Northern Ireland offshore region;
- within the meaning of those expressions given by section 322(1) of the 2009 Act;
- “the relevant Public Register” means the register on which information must be recorded in accordance with (as the case may be)—
- (a) section 14 of the 1985 Act(8);
 - (b) section 101 of the 2009 Act; or
 - (c) section 54 of the 2010 Act;”;
- (j) for the definition of “Scotland”, substitute—
- ““Scotland” (other than in the definition of “the Scottish offshore region”) includes the Scottish inshore region;”;
- (k) after the definition of “Scotland”, insert—

(7) 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), paragraphs 3 and 14 of Schedule 6 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), paragraphs 1 and 2 of Schedule 3; S.I. 2006/1177; the Planning Act 2008 (c. 29), paragraphs 8, 9 and 10 of Schedule 2; and S.I. 2006/1177. Section 14 was additionally amended by S.I. 2009/1941. Section 16 was additionally amended by the Marine and Coastal Access Act 2009 (c. 23), paragraphs 1 and 2 of Schedule 21.

(8) Section 14 of the 1985 Act was amended by section 147 of the Environment Protection Act 1990 (c. 43), which came into force on 31st May 1991 pursuant to article 2 of S.I. 1991/1319. Section 14 of the 1985 Act places a duty on the licensing authority to maintain a register of certain information relating to licensing under Part 2 of that Act.

“the Scottish inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

“the Scottish offshore region” means so much of the UK marine area as lies outside the Scottish inshore region and consists of—

- (a) areas of sea which lie within the Scottish zone, and
- (b) areas of sea which lie outside the Scottish zone but 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 in any other part of the United Kingdom;

and for this purpose “the Scottish zone” has the meaning given by section 126(1) of the Scotland Act 1998⁽⁹⁾;;

- (l) for the definition of “sea”, substitute—

““sea” includes—

- (a) any area submerged at mean high water spring tide, and
- (b) the waters of every estuary, arm of the sea, river or channel, so far as the tide flows at mean high water spring tide,

and any reference to an area of sea includes the bed and subsoil of the sea within that area;;

- (m) for the definition of “Wales”, substitute—

““Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006⁽¹⁰⁾;;

- (n) after the definition of “sea”, insert—

““UK marine area” has the same meaning as in section 42 of the 2009 Act;;

- (o) omit the definitions of—

- (i) “deposit”;
- (ii) “devolved authority”;
- (iii) “outlying waters”;
- (iv) “the Public Register”;
- (v) “the Scottish zone”;
- (vi) “United Kingdom controlled waters”;
- (vii) “United Kingdom waters”;
- (viii) “waters adjacent to England”;
- (ix) “waters adjacent to Northern Ireland”;
- (x) “waters adjacent to Scotland”; and
- (xi) “waters adjacent to Wales”.

- (2) After regulation 2(1), insert—

“(1A) The area of sea referred to in sub-paragraph (a) of the definition of “sea” in paragraph (1) includes waters in any area—

- (a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but

⁽⁹⁾ 1998 c. 46.

⁽¹⁰⁾ 2006 c. 32.

- (b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.”.

Proposed activity which would otherwise be a regulated activity

4. After regulation 2 (interpretation), insert—

“Proposed activity which would otherwise be a regulated activity

2A.—(1) Paragraph (2) applies where—

- (a) an activity is proposed to be carried out which would be a regulated activity if carried out by a person other than the person who would be the regulator in relation to that activity; and
- (b) the person by whom the activity is proposed to be carried out (“the relevant person”) is the person who would be the regulator in relation to that activity if it were carried out by any other person.

(2) Where this paragraph applies, these Regulations apply in relation to that proposal as if—

- (a) the activity were a regulated activity, the relevant person had made an application for regulatory approval in respect of that activity and, in relation to the carrying out of that activity by that person, that person were also the regulator; and
- (b) accordingly—
 - (i) references to the regulator’s dealing with the application or to a regulatory decision were references to determining whether to carry out the proposal;
 - (ii) references to granting a regulatory approval were references to a decision to proceed to carry out the proposal; and
 - (iii) references to treating the application as withdrawn were references to treating the proposal as abandoned.”.

Fees

5. For regulation 3, substitute—

“Fees

3.—(1) An appropriate authority may require an applicant for a regulatory approval to pay to it reasonable fees in respect of relevant expenses.

(2) In paragraph (1) “relevant expenses” means administrative and other expenses which the authority reasonably incurs under these Regulations in its capacity as an appropriate authority (including any expenses in respect of examinations and tests carried out for that purpose), but does not include any expenses in respect of which a fee may be charged under any other provision of these Regulations.

(3) Paragraph (4) applies to any requirement imposed under—

- (a) paragraph (1);
- (b) paragraph 2 of Schedule 2;
- (c) paragraph 3 of Schedule 4; or
- (d) regulation 24A.

- (4) The determination of the amount of a reasonable fee in accordance with any requirement to which this paragraph applies must be made—
- (a) where the appropriate authority is the Secretary of State, by the Secretary of State with the consent of the Treasury;
 - (b) where the appropriate authority is the Marine Management Organisation, by the Marine Management Organisation, with the consent of—
 - (i) the Secretary of State; and
 - (ii) the Treasury;
 - (c) where the appropriate authority is the Department of the Environment, by the Department of the Environment with the consent of the Department of Finance and Personnel;
 - (d) where the appropriate authority is the Welsh Ministers, by the Welsh Ministers with the consent of the Treasury; and
 - (e) where the appropriate authority is the Scottish Ministers, by the Scottish Ministers.
- (5) Before determining the amount of a fee which is imposed under any requirement referred to in paragraph (3), the authority must consult such organisations as appear to it to represent persons who are likely to apply for regulatory approval.”.

Amendments to regulation 10

6. In regulation 10 (exceptions)—
- (a) in paragraph (1)(b)(i), after “to be carried out by”, insert “the appropriate authority or by”;
 - (b) in paragraph (3)(b), for paragraph (ii), substitute—
 - “(ii) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.”;
 - (c) for paragraph (4), substitute—
 - “(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—
 - (i) must not grant regulatory approval unless it has determined that to do so would be compatible with the other consenting authority’s measures to comply with the EIA Directive⁽¹¹⁾; and
 - (ii) for the purpose of so determining must consider whether it is appropriate to seek the views of the other consenting authority; 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.”; and
 - (d) after paragraph (4), add—
 - “(5) Paragraph (1) is subject to regulation 10A.”.

(11) Regulation 2(1) of the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) defines “the EIA Directive” as Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No. L 175, 5.7.1985, p. 40); relevant amendments have been made by Council Directive 97/11/EC (OJ No. L 73, 14.3.1997, p. 5), and Directive 2003/35/EC of the European Parliament and of the Council (OJ No. L 156, 25.6.2003, p. 17).

Further provisions in relation to Article 2(3) of the EIA Directive

7. After regulation 10 (exceptions), insert—

“Further provisions in relation to Article 2(3) of the EIA Directive

10A.—(1) The Marine Management Organisation may not make a determination under regulation 10(1)(a)(i) unless the Secretary of State has given a direction under paragraph (2).

(2) The Secretary of State may direct that an environmental impact assessment is not required in relation to any regulated activity that is to be carried out in the course of an Annex I project or an Annex II project, if the Secretary of State is satisfied that—

- (a) the Marine Management Organisation is the appropriate authority having the function of determining whether an environmental impact assessment is required in relation to the regulated activity;
- (b) a direction 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
- (c) the regulated activity would not be likely to have significant effects on the environment of another EEA State.

(3) As soon as practicable after making any such direction, the Secretary of State must send a copy of the direction to—

- (a) the Marine Management Organisation;
- (b) where the Marine Management Organisation is not also the regulator, the regulator; and
- (c) any relevant authority.”.

Amendments to regulation 11

8. In regulation 11 (screening opinions), in paragraph (3), for “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” substitute—

“the regulator considers that the regulated activity is or may be one in relation to which an environmental impact assessment is required under regulation 7 or 8”.

Amendments to regulation 23

9. In regulation 23 (notification and publication of decisions)—

(a) for paragraph (2)(c), substitute—

“(c) if the EIA consent decision involves giving EIA consent, a description of any measures that must be taken in consequence of the EIA consent decision—

- (i) to avoid, reduce and, if possible, offset the principal adverse effects of the regulated activity; and
- (ii) to monitor the risk of the regulated activity having any such effects, the extent of any such effects, or the effectiveness of any measures for the purposes in paragraph (i).”; and

(b) for paragraph (3), substitute—

“(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 EIA consent decision is publicised in such manner as it considers appropriate; and
- (b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act—
 - (i) its EIA consent decision and the information set out in paragraph (2) are made available on the relevant Public Register; and
 - (ii) a notice of that decision, stating that the information referred to in paragraph (2) is available in the relevant Public Register and giving details of the times at which the relevant 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).”.

Fees in relation to monitoring measures

10. After regulation 24 (effect of EIA consent decision on application and regulatory decision), insert—

“Fees in relation to the assessment etc. of the results of monitoring measures

24A.—(1) A decision to grant regulatory approval which includes a monitoring condition may include a fee condition of the kind described in paragraph (3).

(2) For the purposes of this regulation, a monitoring condition is a condition requiring any measure to be taken relating to monitoring of a kind referred to in regulation 23(2)(c)(ii).

(3) A fee condition of the kind referred to in paragraph (1) is a condition as to the payment of a reasonable fee, determined in accordance with regulation 3(4) and (5), in respect of expenses incurred in assessing and interpreting the results of any monitoring measure.”.

Amendments to Schedule 2

11. In Schedule 2, in paragraph 6 (availability of screening opinions for inspection), for paragraph (1)(b), substitute—

“(b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.”.

Amendments to Schedule 4

12. In Schedule 4, in paragraph 8 (availability of scoping opinions for inspection), for sub-paragraph (1), substitute—

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

- (a) publicised in such a manner as it considers appropriate; and
- (b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.”.