
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 115

The Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017

PART 2

**DETERMINING WHETHER ENVIRONMENTAL
IMPACT ASSESSMENT IS REQUIRED**

EIA projects

7.—(1) Subject to regulation 8, the occurrence of an event mentioned in paragraph (2) will determine for the purpose of these Regulations whether proposed works would be an EIA project.

(2) The events referred to in paragraph (1) are—

- (a) the adoption of a screening opinion by the Scottish Ministers to the effect that the proposed works are an EIA project; or
- (b) if no screening opinion has been adopted by the Scottish Ministers, the submission by the applicant in relation to those works of a report referred to by the applicant as an EIA report.

(3) A screening opinion by the Scottish Ministers determines for the purpose of these Regulations whether the proposed works are an EIA project (whether or not the applicant has submitted an EIA report) and a later screening opinion supersedes the terms of an earlier screening opinion.

Exemptions

8.—(1) The Scottish Ministers may, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive), direct that these Regulations do not apply in exceptional cases in relation to particular proposed works specified in the direction where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on the purpose of the proposed works.

(2) Where a direction is given under paragraph (1) the Scottish Ministers must—

- (a) send a copy of any such direction to—
 - (i) the applicant; and
 - (ii) any relevant local planning authority;
- (b) make available to the public concerned the information considered in making the direction and the reasons for making the direction;
- (c) consider whether another form of assessment would be appropriate; and
- (d) if in the opinion of the Scottish Ministers another form of assessment would be appropriate, take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.

(3) The Scottish Ministers may direct that these Regulations do not apply in relation to particular proposed works specified in the direction if the works comprise a project having the response to

civil emergencies as its sole purpose and where in the opinion of the Scottish Ministers compliance with these Regulations would have an adverse effect on that purpose.

(4) The Scottish Ministers may direct that these Regulations do not apply if they are satisfied that—

- (a) assessment of any effects on the environment of the works has already been, is being or is to be carried out by the Scottish Ministers or by another consenting authority; and
- (b) such assessment is, or will be, sufficient to meet the requirements of the Directive in relation to the works.

(5) The Scottish Ministers may, in accordance with Article 2(5) of the Directive (but without prejudice to Article 7 of the Directive), direct that the provisions of these Regulations relating to public consultation do not apply in cases where a project is adopted pursuant to an enactment (including an Act of the Scottish Parliament or any instrument made under such an Act), provided that the objectives of the Directive are met.

General provisions relating to screening

9.—(1) When making a determination as to whether schedule 2 works are an EIA project the Scottish Ministers must—

- (a) in all cases take into account—
 - (i) such of the selection criteria set out in schedule 3 as are relevant to the works; and
 - (ii) the available results of any relevant assessment; and
 - (b) where that determination is made following a request for a screening opinion under regulation 10(1), base their determination on the information provided in accordance with regulation 10(2).
- (2) Where the Scottish Ministers adopt a screening opinion—
- (a) that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 3 which are relevant to the works, the main reasons for their conclusions as to whether the works are, or are not, an EIA project; and
 - (b) where the screening opinion is to the effect that the works are not an EIA project, the statement referred to in sub-paragraph (a) must state any features of the proposed works or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

(3) The Scottish Ministers may adopt a screening opinion at their own volition.

(4) As soon as possible after adopting a screening opinion, the Scottish Ministers must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (2)(a) to—

- (a) the applicant; and
- (b) any relevant local planning authority.

Requests for a screening opinion

10.—(1) An applicant may request the Scottish Ministers to adopt a screening opinion.

(2) A request for a screening opinion under paragraph (1) must include—

- (a) a description of the location of the proposed works, including a plan sufficient to identify the area in which the works are proposed to be sited;
- (b) a description of the proposed works, including in particular—
 - (i) a list of all of the regulated activities which are proposed;

- (ii) a description of the physical characteristics of the proposed works and, where relevant, works to be decommissioned; and
 - (iii) a description of the location of the proposed works, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
 - (c) a description of the aspects of the environment likely to be significantly affected by the proposed works; and
 - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the proposed works on the environment resulting from either, or both, of the following:—
 - (i) the expected residues and emissions and the production of waste, where relevant;
 - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the proposed works or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.
- (4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant—
- (a) the selection criteria set out in schedule 3; and
 - (b) the available results of any relevant assessment.
- (5) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1), may consult such of the consultation bodies as the Scottish Ministers consider appropriate, as to the views of the consultation body or bodies on whether the proposed works are an EIA project unless the applicant has already conveyed the views of the body or bodies to the Scottish Ministers.
- (6) Where a consultation body is consulted by the Scottish Ministers under paragraph (5) it must give its views to the Scottish Ministers within—
- (a) a period of 3 weeks beginning on the date on which it was so consulted; or
 - (b) such longer period as the Scottish Ministers may determine.
- (7) The Scottish Ministers, on receiving a request for a screening opinion under paragraph (1), must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify the applicant, in writing, of the points on which they require further information.

Screening opinions – time period for decision

- 11.—(1)** Following a request for a screening opinion under regulation 10(1), the Scottish Ministers must adopt a screening opinion—
- (a) within 3 weeks of the latest of—
 - (i) the date of receipt of the request by the Scottish Ministers;
 - (ii) where the Scottish Ministers have consulted a consultation body or bodies by virtue of regulation 10(5), the date by which the consultation body or bodies must give views under regulation 10(6), (or, if earlier, the date by which the Scottish Ministers have received the views of each body which was consulted); or
 - (iii) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the Scottish Ministers and the applicant; or

(b) where notice is given under paragraph (2), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.

(2) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed works it is not practicable for them to adopt a screening opinion within the period of 90 days beginning with the date of the request, they may extend that period by notice, in writing, given to the applicant.

(3) Notice under paragraph (2) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to adopt a screening opinion pursuant to the request.

(4) The date on which a request for a screening opinion under regulation 10(1) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening opinion in accordance with regulation 10(2) and, as the case may be, regulation 10(3) is received by the Scottish Ministers.