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STATUTORY INSTRUMENTS

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**2017 No. 588**

**The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017**

**Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2017 and come into force on 16th May 2017.

(2) These Regulations do not extend to the Scottish inshore region, except in respect of activities and operations for which a licence is required under Part 2 of the Food and Environment Protection Act 1985(1).

(3) In paragraph (2), “the Scottish inshore region” has the meaning given by section 322 of the Marine and Coastal Access Act 2009(2).

(4) In these Regulations, “the 2007 Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007(3).

**Amendment of the Marine Works (Environmental Impact Assessment) Regulations 2007**

2. The 2007 Regulations are amended in accordance with regulations 3 to 32.

**New regulation 1A**

3. After regulation 1, insert—

**“Extent**

**1A.** These Regulations do not extend to the Scottish inshore region, except in respect of activities and operations for which a licence is required under Part 2 of the 1985 Act.”

**Amendment of regulation 2**

4.—(1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) omit the definitions of “Annex I project” and “Annex II project”;

(b) in the definition of “appropriate authority”(4)—

(i) in paragraph (b)(i), for “the Environment” substitute “Agriculture, Environment and Rural Affairs in Northern Ireland”;

(ii) for paragraph (b)(ii) substitute—

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(1) 1985 c. 48. See section 6A, inserted by article 10 of S.I. 2011/202, by virtue of which a licence under Part 2 is required only if the operation is one to which, by virtue of section 34 of the Marine (Scotland) Act 2010, Part 2 of that Act does not apply.  
(2) 2009 c. 23.  
(3) S.I. 2007/1518, amended by S.I. 2011/735, 2011/1043, 2013/755 and 2015/446.  
(4) The definition of “appropriate authority” was substituted by S.I. 2011/735 and was subsequently amended by S.I. 2015/446.

- “(ii) as regards any regulated activity in the Scottish offshore region, the Scottish Ministers;”;
- (c) for the definition of “consenting authority”(5), substitute—
- ““consenting authority”, in relation to a project, means any authority whose consent to any activity to be undertaken in the course of the project is required under any enactment;”;
- (d) in the definition of “the consultation bodies”, in paragraph (e), after “responsibilities” insert “or local or regional competences”;
- (e) in the definition of “EIA consent”, for “the effects of the regulated activity” substitute “the significant effects of the project”;
- (f) in the definition of “the EIA Directive”(6), for “adopted” substitute “amended by [Directive 2014/52/EU](#) of the European Parliament and of the Council(7)”;
- (g) after the definition of “England”, insert the following definitions—
- ““environmental impact assessment” means a process consisting of—
- (a) the preparation of an environmental statement in accordance with regulation 12 and Schedule 3;
- (b) the carrying out of consultations in accordance with regulation 17 and, where relevant, regulations 20 and 20A;
- (c) the consideration of the environmental statement and other information in accordance with regulation 21A(1);
- (d) the conclusion in respect of the likely significant effects of the project in accordance with regulation 21A(2); and
- (e) the consideration of that conclusion in reaching the EIA consent decision, in accordance with regulation 22(1)(b);”;
- ““EU environmental assessment” means an assessment carried out—
- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than the EIA Directive), or
- (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the EIA Directive,
- of the effect of anything on the environment;”;
- (h) after the definition of “fishery harbour”, insert—
- ““the Habitats Directive” means Council [Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora(8);”;
- (i) in the definition of “local planning authority”, in paragraph (b), for “the Department of the Environment” substitute “the Department for Infrastructure or, as the case may be, any district council in whose district, or adjacent to whose district, the regulated activity is proposed to be carried out”;
- (j) in the definition of “regulatory approval”(9), omit paragraph (c);
- (k) in the definition of “relevant authority”(10)—

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(5) The definition of “consenting authority” was substituted by [S.I. 2011/735](#).

(6) The definition of “the EIA Directive” was substituted by [S.I. 2015/446](#).

(7) OJ No L 124, 25.4.2014, p.1.

(8) OJ No L 206, 22.7.1992, p. 7. The Habitats Directive was last amended by Council [Directive 2013/17/EU](#), OJ No L 158, 10.6.2013, p. 193.

(9) The definition of “regulatory approval” was substituted by [S.I. 2011/735](#).

(10) The definition of “relevant authority” was substituted by [S.I. 2011/735](#).

- (i) in paragraph (a)—
    - (aa) for “Department” substitute “department”;
    - (bb) for “Departments” substitute “departments”;
  - (ii) in paragraph (b), for “Scotland” substitute “the Scottish inshore region”;
  - (l) after the definition of “the relevant Public Register”, insert the following definitions—
    - ““Schedule A1 project” means a project of a type specified in Schedule A1 to these Regulations;
    - “Schedule A2 project” means a project of a type specified in Schedule A2 to these Regulations;”;
  - (m) after the definition of “sea”, insert—
    - ““UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything on the environment;”;
  - (n) after the definition of “Wales”, insert—
    - ““the Wild Birds Directive” means [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds<sup>(11)</sup>.”.
- (3) After paragraph (1A), insert—
- “(1B) In these Regulations, “enactment” includes an enactment contained in, or in an instrument made under, Northern Ireland legislation.
  - “(1C) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of projects or regulated activities on the environment includes a reference to the effects of those projects or activities on the environment once they are completed and in operation.
  - “(1D) In paragraph (1C), the reference to the environment includes a reference to the matters referred to in regulation 21A(2)(a) to (e).”.

### **Amendment of regulation 3**

- 5.—(1) Regulation 3<sup>(12)</sup> (fees) is amended as follows.
- (2) In paragraph (3), after sub-paragraph (a), insert—
    - “(aa) regulation 10(4J);”.
  - (3) In paragraph (4), for sub-paragraph (c) substitute—
    - “(c) where the appropriate authority is the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, by that Department with the consent of the Department of Finance in Northern Ireland;”.

### **Amendment of regulation 7**

6. Regulation 7 (determination: Annex I projects) is amended as follows—
- (a) in the heading, for “Annex I” substitute “Schedule A1”;
  - (b) for “9 and 10” substitute “9 to 10”;
  - (c) for “an Annex I” substitute “a Schedule A1”.

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(11) OJ No L 20, 26.1.2010, p. 7. The Wild Birds Directive was amended by Council [Directive 2013/17/EU](#).

(12) Regulation 3 was substituted by [S.I. 2011/735](#).

### **Amendment of regulation 8**

7. Regulation 8 (determination: Annex II projects) is amended as follows—
- (a) in the heading, for “Annex II” substitute “Schedule A2”;
  - (b) in paragraph (1), for “9 and 10” substitute “9 to 10”;
  - (c) in paragraphs (1) and (2), for “an Annex II” substitute “a Schedule A2”.

### **Amendment of regulation 9**

- 8.—(1) Regulation 9 (projects serving national defence purposes) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) The Secretary of State may direct that an environmental impact assessment is not required in relation to a regulated activity or a part of a regulated activity where—
- (a) the project in relation to which the regulated activity is being carried out has national defence as its sole purpose; and
  - (b) the Secretary of State considers that an environmental impact assessment in relation to the regulated activity or the part of the regulated activity would have an adverse effect on the fulfilment of that purpose.”.

(3) After paragraph (1), insert—

“(1A) A direction under paragraph (1) that an environmental impact assessment is not required in relation to a regulated activity, or a part of a regulated activity, has the effect that the regulated activity, or the part of the regulated activity, is to be disregarded in any environmental impact assessment in relation to the regulated activity.”.

(4) In paragraphs (2) and (3), for “shall” substitute “must”.

### **New regulation 9A**

9. After regulation 9, insert—

#### **“Projects in response to a civil emergency**

- 9A.—(1) The appropriate authority may direct that an environmental impact assessment is not required in relation to a regulated activity where—
- (a) the project in relation to which the regulated activity is being carried out has the response to a civil emergency as its sole purpose; and
  - (b) the appropriate authority considers that an environmental impact assessment in relation to the regulated activity would have an adverse effect on the fulfilment of that purpose.
- (2) Before making any such direction, the appropriate authority must notify—
- (a) where the appropriate authority is not also the regulator, the regulator;
  - (b) where the appropriate authority is the Marine Management Organisation or the Natural Resources Body for Wales, the Secretary of State, or the appropriate devolved authority; and
  - (c) any relevant authority.”.

### **Amendment of regulation 10**

- 10.—(1) Regulation 10 (exceptions) is amended as follows.

- (2) In paragraph (1)(13)—
- (a) for “an Annex I” substitute “a Schedule A1”;
  - (b) for “an Annex II” substitute “a Schedule A2”;
  - (c) in sub-paragraph (b)(i), after “assessment of any” insert “significant”.
- (3) In paragraph (2), for “shall” substitute “must”.
- (4) After paragraph (2), insert—
- “(2A) Where the appropriate authority determines in accordance with paragraph (1)(a) that an environmental impact assessment is not required in relation to a regulated activity, it must—
- (a) consider whether another form of assessment of the likely significant effects of the project on the environment is appropriate; and
  - (b) make available to the public concerned—
    - (i) the determination, including an explanation of the reasons for it; and
    - (ii) the information obtained under any other assessment referred to in sub-paragraph (a).”.
- (5) In paragraph (3)(b)(ii)(14), for “, the 2009 Act or the 2010 Act” substitute “or the 2009 Act”.
- (6) After paragraph (3), insert—
- “(3A) Paragraphs (4) to (4J) apply 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 by reason of an assessment carried out by another consenting authority.”.
- (7) For paragraph (4)(15) substitute—
- “(4) The regulator—
- (a) 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; and
  - (b) for the purpose of so determining must consider whether it is appropriate to seek the views of the other consenting authority.”.
- (8) After paragraph (4) insert—
- “(4A) Any decision to grant a regulatory approval must take into account the following information relating to the other consenting authority’s assessment referred to in paragraph (1)(b)—
- (a) the conclusion of the assessment;
  - (b) any relevant conditions attached to any consent granted in respect of the project by the other consenting authority and which relate to the likely significant environmental effects of the project on the environment;
  - (c) a description of any features of the project and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset likely significant adverse effects of the project on the environment;
  - (d) any monitoring measures considered appropriate by the other consenting authority in relation to the project; and

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(13) Paragraph (1) was amended by [S.I. 2011/735](#) and [2015/446](#).

(14) Paragraph (3) was amended by [S.I. 2015/446](#). Sub-paragraph (b)(ii) of paragraph (3) was substituted by [S.I. 2011/735](#).

(15) Paragraph (4) was substituted by [S.I. 2011/735](#).

(e) any comments of the other consenting authority relating to the regulated activity.

(4B) The regulator must be satisfied that the information incorporated in the other consenting authority's assessment and consent (if any) is up to date at the time that the regulatory decision is taken, but that information and the other consenting authority's assessment and consent (if any) must be taken to be up to date if, in the opinion of the regulator, they address the significant effects that the proposed project is likely to have on the environment.

(4C) The regulatory decision must be taken within a period of time which—

- (a) is reasonable, taking into account the nature and complexity of the regulated activity; and
- (b) begins with the date on which the other consenting authority's decision is published.

(4D) Where the regulator decides to refuse regulatory approval, the regulator must state the main reasons for the refusal.

(4E) Where the regulator decides to grant regulatory approval, the regulator must incorporate in the regulatory decision—

- (a) a summary of the other consenting authority's conclusion referred to in paragraph (4A)(a);
- (b) any environmental conditions, mitigating or monitoring measures attached to the regulatory decision; and
- (c) a statement including—
  - (i) the main reasons and considerations on which the regulatory decision is based including, if relevant, information about the participation of the public; and
  - (ii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results have been incorporated or otherwise addressed.

(4F) The regulator must, as soon as reasonably possible, send a copy of its regulatory decision to—

- (a) the applicant;
- (b) if the regulator is not also the appropriate authority, the appropriate authority;
- (c) every consultation body to whom the other consenting authority sent written notice of its decision;
- (d) the authorities of any EEA State to whom the other consenting authority sent written notice of its decision; and
- (e) any other person or body consulted by the regulator under section 8(11B) of the 1985 Act<sup>(16)</sup> or section 69(4) of the 2009 Act.

(4G) The regulator must, as soon as possible after its decision is sent to the applicant pursuant to paragraph (4F), ensure that—

- (a) notice of that decision is published on the regulator's website and in such other manner as it considers appropriate; and
- (b) it promptly makes a written copy of the regulatory decision available for public inspection.

(4H) In paragraph (4G), "public inspection" means—

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<sup>(16)</sup> Section 8(11B) was inserted by paragraph 16(4) of Part 3 of Schedule 3 to the Food Standards Act 1999 (c. 28).

- (a) in the case of an activity requiring regulatory approval under the 1985 Act or the 2009 Act, inspection on the relevant Public Register; and
  - (b) in the case of other regulated activities, inspection at the address nominated by the appropriate authority under regulation 16(2)(e).
- (4I) The notice in paragraph (4G)(a) must state—
- (a) that the regulator has made available for public inspection the written copy of the regulatory decision; and
  - (b) the times at which the relevant Public Register or the information at the address referred to in paragraph (4H)(b) may be inspected.
- (4J) A decision to grant regulatory approval which includes a monitoring measure may include 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.”.

#### **Amendment of regulation 10A**

**11.** In regulation 10A(2) and (5)(17) (further provisions in relation to Article 2(4) of the EIA Directive)—

- (a) for “an Annex I” substitute “a Schedule A1”;
- (b) for “an Annex II” substitute “a Schedule A2”.

#### **Amendment of regulation 12**

**12.**—(1) Regulation 12 (application for a regulatory approval in relation to a regulated activity) is amended as follows.

(2) In paragraph (2)—

- (a) at the end of sub-paragraph (a), omit “and”;
- (b) for sub-paragraph (b) substitute—

“(b) include at least—

- (i) a description of the project and the regulated activity, comprising information on the site, design, size and other relevant features of the project and the regulated activity;
- (ii) a description of the likely significant effects of the project and the regulated activity on the environment;
- (iii) a description of the features of the project and the regulated activity or the measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (iv) a description of the reasonable alternatives studied by the applicant which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;
- (v) a non-technical summary of the information referred to in paragraphs (i) to (iv); and
- (vi) any additional information specified in Schedule 3 relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected;”;

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(17) Regulation 10A was inserted by [S.I. 2011/735](#) and subsequently substituted by [S.I. 2015/446](#).

(c) after sub-paragraph (b), insert—

- “(c) where a scoping opinion has been given in accordance with regulation 13 and Schedule 4, be based on the most recent scoping opinion given (so far as the project remains materially the same as the project which was subject to that opinion);
- (d) include the information reasonably required for reaching a conclusion about the significant effects of the project on the environment, taking into account current knowledge and methods of assessment;
- (e) (with a view to avoiding duplication of assessments), be prepared taking into account the results of any relevant UK environmental assessment which are reasonably available to the applicant;
- (f) be prepared by competent persons; and
- (g) be accompanied by a statement from the applicant outlining the relevant experience or qualifications of such persons.”.

(3) After paragraph (3), insert—

“(3A) The appropriate authority must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.”.

#### **Amendment of regulation 14**

**13.**—(1) Regulation 14 (provision of further information) is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where the appropriate authority reasonably considers that—

- (a) it requires relevant further information, and
- (b) the applicant is (or should be) able to provide such information,

the appropriate authority must notify the applicant in writing of the matters on which it requires further information.”.

(3) After paragraph (1), insert—

“(1A) In paragraph (1), “relevant further information” means—

- (a) further information properly to consider the likely significant environmental effects of the project which gives rise to the regulated activity covered by the application; or
- (b) where—
  - (i) the applicant has submitted an environmental statement, or
  - (ii) a scoping opinion has been given in accordance with regulation 13 and Schedule 4,

further information which is directly relevant to reaching a conclusion about the significant effects of the project described in the environmental statement.”.

#### **New regulation 15A**

**14.** After regulation 15, insert—

##### **“Co-ordination**

**15A.** Where, in respect of a regulated activity, there is a requirement to carry out—

- (a) an environmental impact assessment; and

(b) an assessment under the Habitats Directive or the Wild Birds Directive, the appropriate authority must, where appropriate, ensure that the assessments are co-ordinated.”.

### **Amendment of regulation 16**

**15.**—(1) Regulation 16 (publicity) is amended as follows.

(2) For paragraph (1) substitute—

“(1) The appropriate authority must, as soon as reasonably possible, publicise the application and the environmental statement in respect of the project to which it relates or, as the case may be, any further information provided by the applicant pursuant to a notification under regulation 14, by—

(a) publishing a notice containing the information set out in paragraph (2) on the appropriate authority’s website; and

(b) publishing, or directing the applicant to publish, the notice—

(i) in two successive weeks, in such newspapers or other publications as the authority thinks fit; or

(ii) in such other manner (if any) as the authority considers appropriate.”.

(3) In paragraph (2)—

(a) for sub-paragraph (d) substitute—

“(d) the fact that the project is subject to an environmental impact assessment and, where relevant, that regulation 18 applies;”;

(b) after sub-paragraph (d), insert—

“(da) details of the appropriate authority responsible for making the EIA consent decision and, where the appropriate authority is not the regulator, details of the regulator;

(db) the nature of possible decisions, including any decision to grant regulatory approval;”;

(c) for sub-paragraph (e) substitute—

“(e) the address of an office of the appropriate authority, or other place nominated by the appropriate authority, at which the documents listed in paragraph (2A) may be inspected free of charge at all reasonable hours within 42 days beginning with the date of first publication of the notice under paragraph (1)(b)(i);”;

(d) for sub-paragraph (f) substitute—

“(f) the contact details of the appropriate authority for obtaining copies of the documents listed in paragraph (2A) and, if a charge is to be made for a copy, the amount (not exceeding a reasonable charge for copying), of the charge;”;

(e) in sub-paragraph (g), for the words from “with the date of” to the end substitute “with the date of first publication of the notice under paragraph (1)(b)(i); and”;

(f) after sub-paragraph (g), insert—

“(h) details of the arrangements for public participation in accordance with Schedule 5.”.

(4) After paragraph (2), insert—

“(2A) The appropriate authority must take steps to secure that the following documents relating to the application are made available for public inspection at all reasonable hours at the address referred to in paragraph (2)(e)—

- (a) any screening opinion given in accordance with regulation 11 and Schedule 2;
- (b) any scoping opinion given in accordance with regulation 13 and Schedule 4 (including any written statement of reasons);
- (c) the environmental statement and any further information provided by the applicant pursuant to a notification under regulation 14; and
- (d) in accordance with national legislation, the main reports or advice issued to the appropriate authority at the time when the public concerned is first notified under paragraph (1).

(2B) The appropriate authority must ensure that the documents listed in paragraph (2A) are electronically accessible to the public, through at least an appropriate central portal or easily accessible points of access.

(2C) The applicant must ensure that a reasonable number of copies of the environmental statement and any further information provided by the applicant pursuant to a notification under regulation 14 are available at the address notified under paragraph (2)(e).”.

#### **Amendment of regulation 17**

**16.** In regulation 17(1) (consultation on proposed regulated activity), after “The appropriate authority must”, insert “as soon as reasonably possible”.

#### **Substitution of regulation 18**

**17.** For regulation 18 (provision of information to affected EEA States) substitute—

##### **“Provision of information to affected EEA States**

**18.—(1)** The appropriate authority must as soon as possible comply with paragraph (2) where—

- (a) it comes to the attention of the appropriate authority that a proposed project is the subject of an environmental impact assessment and is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by the project so requests.

(2) The appropriate authority must—

- (a) send to the EEA State the particulars mentioned in paragraph (3) and such of the information referred to in paragraph (5) as is relevant;
- (b) publish, or direct the applicant to publish, those particulars in a notice placed in the relevant Gazette indicating the address where additional information is available; and
- (c) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars referred to in paragraph (2)(a) are—

- (a) a description of the project together with any available information on its possible significant effect on the environment in the other EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) The appropriate authority must send these particulars, and such of the information referred to in paragraph (5) as is relevant, to the authorities of the EEA State—

- (a) as soon as possible; and
- (b) in any event, no later than the date on which the particulars are published in the relevant Gazette.

(5) The information referred to in paragraph (2)(a) is—

- (a) a copy of the application for regulatory approval;
- (b) a copy of the environmental statement in respect of the project to which that application relates;
- (c) a copy of any further information provided by the applicant pursuant to a notification under regulation 14(1); and
- (d) any relevant information regarding the procedure under these Regulations including an explanation of the decisions that the regulator can make in relation to the application.

(6) Where a EEA State indicates, in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the appropriate authority must, as soon as possible, send to that EEA State the following information—

- (a) any information provided by the applicant;
- (b) the results of any relevant EU environmental assessment which are reasonably available to the appropriate authority; and
- (c) such of the selection criteria set out in Schedule 1(18) as are relevant to the project.

(7) Paragraphs (2) and (6) do not require the disclosure of any excluded information.

(8) Neither the regulator nor the appropriate authority need deal further with, or exercise any functions under these Regulations in relation to, the application, and the regulator must not reach its regulatory decision, until the period for consultation under regulation 20 has expired.

(9) In this regulation, “the relevant Gazette” means—

- (a) in relation to projects in the English inshore region or the English offshore region, the London Gazette;
- (b) in relation to projects in the Welsh inshore region or the Welsh offshore region, the London Gazette;
- (c) in relation to projects in the Northern Ireland inshore region or the Northern Ireland offshore region, the Belfast Gazette;
- (d) in relation to projects in the Scottish inshore region or the Scottish offshore region, the Edinburgh Gazette.

(10) In paragraph (9), the expressions—

- (a) English inshore region,
- (b) English offshore region,
- (c) Northern Ireland inshore region,
- (d) Northern Ireland offshore region,
- (e) Welsh inshore region, and
- (f) Welsh offshore region,

have the meanings given by section 322 of the 2009 Act.”.

### **Omission of regulation 19**

**18.** Omit regulation 19 (provision of information to other EEA States).

### **Amendment of regulation 20**

**19.** In regulation 20 (consultation of EEA States)—

- (a) in paragraph (a), omit “or regulation 19”;
- (b) for paragraph (b) substitute—
  - “(b) allow such reasonable period as may have been agreed with those authorities for them to—
    - (i) ensure that the authorities and the public concerned in that EEA State are given an opportunity to forward their opinion on the information supplied; and
    - (ii) make representations as to—
      - (aa) the possible significant effects of the regulated activity on the environment in that EEA State; and
      - (bb) the measures envisaged to reduce or eliminate such effects.”.

### **New regulation 20A**

**20.** After regulation 20, insert—

#### **“Projects in another EEA State likely to have significant transboundary effects**

**20A.**—(1) Where an appropriate authority receives from an EEA State, pursuant to Article 7(1) or 7(2) of the EIA Directive, information which that EEA State has gathered in respect of a proposed project in that EEA State which is likely to have significant effects on the environment in the relevant UK area, the appropriate authority must, in accordance with Article 7(4) of the EIA Directive—

- (a) enter into consultations with that EEA State regarding the potential transboundary effects of the proposed project on the environment and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine in agreement with that EEA State a reasonable period, before EIA consent for the project is granted, during which members of the public may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the EIA Directive.
- (2) The appropriate authority must also—
- (a) arrange for the information referred to in paragraph (1) to be made available within a reasonable time, and for a period of no fewer than 30 days, to the authorities which are likely to be concerned by the project by reason of their specific environmental responsibilities and to the public concerned;
  - (b) ensure that those authorities and the public concerned are given an opportunity, before EIA consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied; and

- (c) make available to the public concerned any information received from the competent authority of the relevant EEA State, in order to comply with Article 9(2) of the EIA Directive.

(3) In paragraph (1), the “relevant UK area” means the United Kingdom and the UK marine area but does not include the Scottish inshore region, except in respect of activities and operations in that region for which a licence is required under Part 2 of the 1985 Act.”.

## **New regulation 21A**

**21.** After regulation 21, insert—

### **“Conclusion about environmental impact**

**21A.—(1)** The appropriate authority must consider (ensuring that in doing so it has or has access to any expertise it considers necessary)—

- (a) the environmental statement;
- (b) any further information provided by the applicant pursuant to a notification under regulation 14(1);
- (c) the outcome of the process set out in Schedule 5 in relation to any representations received pursuant to the statement referred to in regulation 16(2)(g);
- (d) any representations in response to consultation made by the consultation bodies pursuant to the letter referred to in regulation 17(1)(a)(iv);
- (e) the outcome of any consultation of the authorities of other EEA States carried out in accordance with regulation 20; and
- (f) any features of the project in relation to the regulated activity being carried out, or measures which the applicant proposes to take, which would have the effect of avoiding, preventing, reducing or offsetting any likely significant adverse environmental effects of the regulated activity.

(2) Following the consideration required by paragraph (1), the appropriate authority must reach a conclusion about the likely significant effects of the project (including the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters) on—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats Directive and the Wild Birds Directive;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).”.

## **Substitution of regulation 22**

**22.** For regulation 22 (the EIA consent decision) substitute—

### **“The EIA consent decision**

**22.—(1)** In reaching its EIA consent decision, the appropriate authority must have regard to the relevant legislation and must consider—

- (a) the application;

- (b) its conclusion under regulation 21A(2) (including whether the conclusion is up to date);
- (c) whether monitoring of the significant adverse environmental effects of the regulated activity is appropriate and, if so—
  - (i) whether (in order to avoid duplication) existing monitoring arrangements in accordance with an obligation under the law of any part of the United Kingdom can be relied on; and
  - (ii) whether conditions need to be attached to the regulatory approval;
- (d) if monitoring is considered to be appropriate, whether conditions need to be attached to the regulatory approval to make provision for potential remedial action; and
- (e) whether any other conditions need to be attached to the regulatory approval with respect to the likely significant effects of the project.

(2) The appropriate authority must not, following its consideration under regulation paragraph (1)(c), attach conditions to a regulatory approval in respect of a regulated activity unless it is satisfied that the type of parameters to be monitored and the duration of monitoring are proportionate to the nature, location and size of the regulated activity and the significance of its effect on the environment.

(3) The appropriate authority must not make a decision under paragraphs (1) and (2) unless it is satisfied that any conclusion under regulation 21A(2) in respect of the regulated activity is up to date (and a conclusion is taken to be up to date if, in the opinion of the appropriate authority, it addresses the likely significant environmental effects of the project).

(4) Taking into account the nature and complexity of the application and the regulated activity, the appropriate authority must reach its EIA consent decision within a reasonable period of time beginning with the date on which it is given all the information it is required to consider under regulation 21A(1).”.

### **Amendment of regulation 23**

**23.**—(1) Regulation 23 (notification and publication of decisions) is amended as follows.

(2) In the heading, after “of”, insert “EIA consent”.

(3) In paragraph (1), after “The appropriate authority must”, insert “as soon as reasonably possible”.

(4) For paragraphs (2) and (3)(**19**) substitute—

“(2) The written confirmation must include the following—

(a) a statement which includes—

(i) the main reasons and considerations on which the EIA consent decision is based including, if relevant, information about the participation of the public; and

(ii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results (in particular, in circumstances where regulation 20 applies, the comments received from an EEA State pursuant to consultation under that regulation) have been incorporated or otherwise addressed;

(b) if the EIA consent decision is to grant EIA consent—

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(19) Paragraphs (2)(c) and (3) were substituted by [S.I. 2011/735](#).

- (i) the conclusion referred to in regulation 21A(2); and
    - (ii) any conditions attached to the EIA consent decision pursuant to regulation 22(1)(c) to (e), including any mitigating or monitoring measures; and
  - (c) if the EIA consent decision is to refuse EIA consent, the main reasons for the refusal.
- (3) The appropriate authority must, as soon as possible after written confirmation is sent to the applicant pursuant to paragraph (1), ensure that—
  - (a) notice of its EIA consent decision is published—
    - (i) on the appropriate authority’s website;
    - (ii) in those newspapers or other publications where the application was published under regulation 16(1)(b)(i); and
    - (iii) in such other manner (if any) as the appropriate authority considers appropriate; and
  - (b) it promptly makes available for public inspection the information referred to in paragraph (2).”.
- (5) After paragraph (3), insert—
  - “(4) In paragraph (3)(b), “public inspection” means:
    - (a) in the case of an activity requiring regulatory approval under the 1985 Act or the 2009 Act, inspection on the relevant Public Register; and
    - (b) in the case of other regulated activities, inspection at the address nominated under regulation 16(2)(e).
  - (5) The notice in paragraph (3)(a) must state the times at which the relevant Public Register or information may be inspected at the address nominated under regulation 16(2)(e).”.

#### **Amendment of regulation 24**

**24.—**(1) Regulation 24 (effect of EIA consent decision on application and regulatory decision) is amended as follows.

- (2) For paragraph (1) substitute—
  - “(1) Where the appropriate authority has given EIA consent in respect of a regulated activity, the regulator may proceed to deal with the application and take its regulatory decision in accordance with the relevant legislation.”.
- (3) After paragraph (1), insert—
  - “(1A) When the regulator proceeds to deal with the application and take its regulatory decision in accordance with paragraph (1), the regulator must have regard to the written confirmation of the EIA consent decision and in particular to any conditions, including any mitigating or monitoring measures, attached to that decision pursuant to regulation 22(1)(c) to (e).
  - (1B) Where the regulator decides to grant regulatory approval, the regulator must incorporate in the regulatory decision—
    - (a) the conclusion reached by the appropriate authority in accordance with regulation 21A(2);
    - (b) any conditions, including any mitigating or monitoring measures, attached to the regulatory decision; and

- (c) a statement including—
  - (i) the main reasons and considerations on which the regulatory decision is based including, if relevant, information about the participation of the public; and
  - (ii) a summary of the results of the consultations undertaken, and information gathered, in respect of the application and how those results (in particular, in circumstances where regulation 18 applies, the comments received from an EEA State pursuant to consultation under that regulation) have been incorporated or otherwise addressed.

(1C) Where the regulator decides to refuse regulatory approval, the regulator must state the main reasons for the refusal.

(1D) The regulator must be satisfied that the information incorporated in the EIA consent decision, under regulation 23(2), is up to date at the time that the regulatory decision is taken, but that information must be taken to be up to date if, in the opinion of the regulator, it addresses the significant effects that are likely to arise as a result of the project proposed.

(1E) The regulatory decision must be taken within a period of time which—

- (a) is reasonable, taking into account the nature and complexity of the regulated activity; and
- (b) begins with the date on which the EIA consent decision is published.”.

#### **New regulation 24ZA**

**25.** After regulation 24, insert—

##### **“Notification and publication of regulatory decisions**

**24ZA.**—(1) The regulator must, as soon as reasonably possible, send a copy of its regulatory decision to--

- (a) the applicant;
- (b) if the regulator is not also the appropriate authority, the appropriate authority;
- (c) any person from whom the appropriate authority received representations pursuant to the statement referred to in regulation 16(2)(g);
- (d) any consultation body that responded to the consultation pursuant to the letter referred to in regulation 17(1)(a)(iv); and
- (e) the authorities of any EEA State who were consulted in accordance with regulation 20.

(2) The regulator must, as soon as possible after its decision is sent to the applicant pursuant to paragraph (1), ensure that—

- (a) notice of that decision is published—
  - (i) on the regulator’s website;
  - (ii) in any newspapers or other publications where the application was published under regulation 16(1)(b)(i); and
  - (iii) in such other manner as it considers appropriate; and
- (b) it promptly makes a written copy of the regulatory decision available for public inspection.

(3) In paragraph (2)(b), “public inspection” means:

- (a) in the case of an activity requiring regulatory approval under the 1985 Act or the 2009 Act, inspection on the relevant Public Register; and
  - (b) in the case of other regulated activities, inspection at the address nominated under regulation 16(2)(e).
- (4) The notice in paragraph (2)(a) above must state—
- (a) that the regulator has made available for public inspection the written copy of the regulatory decision; and
  - (b) the times at which the relevant Public Register or the information at the address nominated under regulation 16(2)(e) may be inspected.”.

### **Amendment of regulation 24A**

**26.** In regulation 24A(2)(20) (fees in relation to the assessment etc. of the results of monitoring measures), for “23(2)(c)(ii)” substitute “23(2)(b)(ii)”.

### **New regulation 31**

**27.** After regulation 30, insert—

#### **“Review**

- 31.—**(1) The Secretary of State must, from time to time—
- (a) carry out a review of the regulatory provision contained in these Regulations; and
  - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 16th May 2022.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(21) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the EIA Directive is implemented in other member States.
- (5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—
- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
  - (b) assess the extent to which those objectives are achieved;
  - (c) assess whether those objectives remain appropriate; and
  - (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).”.

### **New Schedules A1 and A2**

**28.** Before Schedule 1, insert Schedules A1 and A2, as set out in Schedule 1.

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(20) Regulation 24A was inserted by [S.I. 2011/735](#).

(21) [2015 c. 26](#). Section 30(3) was amended by section 19 of the Enterprise Act [2016 \(c. 12\)](#).

### **Substitution of Schedule 1**

**29.** For Schedule 1 (matters relevant to consideration of whether or not an Annex II project is likely to have significant effects on the environment) substitute the Schedule in Schedule 2.

### **Amendment of Schedule 2**

**30.**—(1) Schedule 2 (screening opinions) is amended as follows.

(2) For paragraph 1(1)(b) to (d) substitute—

“(b) a description of the project, including in particular—

(i) a description of the physical characteristics of the whole project and, where relevant, of demolition works; and

(ii) a description of the location of the project, 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 project; and

(d) a description of any likely significant effects of the project on the environment, to the extent of the information available on such effects resulting from—

(i) the expected residues and emission and the production of waste, where relevant,

(ii) the use of natural resources, in particular soil, land, water and biodiversity; and”.

(3) After paragraph 1(1)(d), insert—

“(e) such further information or representations as the applicant may wish to provide or make, including a description of any features of the project or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”.

(4) After paragraph 1(1), insert—

“(1A) The selection criteria set out in Schedule 1 must be taken into account, where relevant, when compiling the information required by paragraph (1)(b) to (d) above.

(1B) The applicant must take into account any other relevant and reasonably obtainable assessment carried out in accordance with an EU obligation under the law of any part of the United Kingdom other than under the EIA Directive.”.

(5) After paragraph 3(4), insert—

“(5) Where the appropriate authority must give a screening opinion under these Regulations, the authority must take into account in making that decision—

(a) any information provided by the applicant in accordance with paragraph 1(1);

(b) the results of any relevant EU environmental assessment which are reasonably available to the authority; and

(c) such of the selection criteria set out in Schedule 1 as are relevant to the project.”.

(6) After paragraph 4, insert—

#### **“Giving a screening opinion**

**4A.** Where the appropriate authority gives a screening opinion, the screening opinion must—

(a) state the main reasons for the conclusion with reference to the relevant criteria listed in Schedule 1; and

- (b) if it is determined that the regulated activity does not require an environmental impact assessment, state any features of the project or measures envisaged to avoid, or prevent what might otherwise have been, significant adverse effects on the environment.”.

(7) For paragraph 5 substitute—

**“Notification of a screening opinion**

5.—(1) Where the applicant requests a screening opinion under regulation 11(1) in accordance with paragraph 1(1), the appropriate authority must provide its screening opinion to—

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

(2) The appropriate authority must provide the opinion as soon as possible within a period of 90 days beginning with the day on which the request is made.

(3) In exceptional cases, where the nature, complexity, location or size of the project demands a longer period for determination, the appropriate authority may extend the period specified in sub-paragraph (2), informing the applicant in writing of the reasons justifying the extension and of the date on which its screening opinion is expected.”.

(8) In paragraph 6(1)(b)(22), for “, the 2009 Act or the 2010 Act” substitute “or the 2009 Act”.

**Substitution of Schedule 3**

31. For Schedule 3 (information to be included in an environmental statement) substitute the Schedule in Schedule 3.

**Amendment of Schedule 4**

32.—(1) Schedule 4 (request for a scoping opinion) is amended as follows.

(2) For paragraph 1(b) substitute—

“(b) a brief description of the specific characteristics of the regulated activity and the project, including their nature, purpose, location and technical capacity;”.

(3) After paragraph 1(b), insert—

“(ba) an explanation of the likely significant effects of the regulated activity and the project on the environment;”.

(4) In the opening words of paragraph 5, for “consider” substitute “take into account”.

(5) At the end of paragraph 5(a), insert “, including its location and technical capacity”.

(6) For paragraph 5(d) substitute—

“(d) any information provided by the applicant about the project and the regulated activity.”.

(7) In paragraph 8(1)(b)(23), for “, the 2009 Act or the 2010 Act” substitute “or the 2009 Act”.

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(22) Paragraph 6(1)(b) of Schedule 2 was substituted by [S.I. 2011/735](#).

(23) Paragraph 8(1) of Schedule 4 was substituted by [S.I. 2011/735](#).

### **Revocation**

**33.** The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999<sup>(24)</sup> are revoked.

### **Transitional provisions**

**34.**—(1) The amendments made by these Regulations to the 2007 Regulations do not apply in respect of—

- (a) a screening opinion under regulation 11 of the 2007 Regulations, where the applicant in question has requested such an opinion under that regulation before 16th May 2017;
- (b) an EIA consent decision, where the applicant in question has applied for such consent pursuant to regulation 12(1) of the 2007 Regulations before 16th May 2017; and
- (c) an EIA consent decision, where the applicant in question has requested a scoping opinion under regulation 13 of the 2007 Regulations before 16th May 2017.

(2) In this regulation, “EIA consent decision” has the meaning given by regulation 2(1) of the 2007 Regulations.

24th April 2017

*Thérèse Coffey*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

We concur,

24th April 2017

*Andrew Griffiths*  
*Robert Syms*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(24) S.I. 1999/367, amended by S.I. 2001/1149, 2006/614, 2007/268, 2011/1043 and 2013/755.