

2017 No. 588

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

MARINE MANAGEMENT

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

Made - - - - 24th April 2017

Laid before Parliament 25th April 2017

Coming into force - - 16th May 2017

The Secretary of State has been designated for the purpose of making Regulations under section 2(2) of the European Communities Act 1972^(a) in relation to the environment^(b).

The Secretary of State makes these Regulations, with the consent of the Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and by section 56(1) of the Finance Act 1973^(c).

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^(d).

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

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

^(a) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

^(b) S.I. 2008/301.

^(c) 1973 c. 51. Section 56 was amended by the Statute Law (Repeals) Act 1977 (c. 18) and by S.I. 2011/1043.

^(d) 1985 c. 48. See section 6A, inserted by article 10 of S.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.

^(e) 2009 c. 23.

^(f) S.I. 2007/1518, amended by S.I. 2011/735, 2011/1043, 2013/755 and 2015/446.

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

“(ii) as regards any regulated activity in the Scottish offshore region, the Scottish Ministers;”;
- (c) for the definition of “consenting authority”(b), 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”(c), for “adopted” substitute “amended by Directive 2014/52/EU of the European Parliament and of the Council(d)”;
- (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);”;

(a) The definition of “appropriate authority” was substituted by S.I. 2011/735 and was subsequently amended by S.I. 2015/446.

(b) The definition of “consenting authority” was substituted by S.I. 2011/735.

(c) The definition of “the EIA Directive” was substituted by S.I. 2015/446.

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

- ““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(a);”;
- (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”(b), omit paragraph (c);
- (k) in the definition of “relevant authority”(c)—
- (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(d).”.
- (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

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- (a) 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.
- (b) The definition of “regulatory approval” was substituted by S.I. 2011/735.
- (c) The definition of “relevant authority” was substituted by S.I. 2011/735.
- (d) OJ No L 20, 26.1.2010, p. 7. The Wild Birds Directive was amended by Council Directive 2013/17/EU.

5.—(1) Regulation 3(a) (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”.

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) Regulation 3 was substituted by S.I. 2011/735.

- (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
 - (b) any relevant authority.”.

Amendment of regulation 10

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

(2) In paragraph (1)(a)—

- (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)(b), 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)(c) 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—

(a) Paragraph (1) was amended by S.I. 2011/735 and 2015/446.
 (b) Paragraph (3) was amended by S.I. 2015/446. Sub-paragraph (b)(ii) of paragraph (3) was substituted by S.I. 2011/735.
 (c) Paragraph (4) was substituted by S.I. 2011/735.

“(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
- (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^(a) 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—

- (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)(b) (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;

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

^(b) Regulation 10A was inserted by S.I. 2011/735 and subsequently substituted by S.I. 2015/446.

- (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;”;
- (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(a) 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;
 - (b) in relation to projects in the Northern Ireland inshore region or the Northern Ireland offshore region, the Belfast Gazette;
 - (c) 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).

(a) Schedule 1 was amended by S.I. 2011/1043.

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)(a) 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—

(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).”.

(a) Paragraphs (2)(c) and (3) were substituted by S.I. 2011/735.

(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)(a) (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

(a) Regulation 24A was inserted by S.I. 2011/735.

- (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^(a) 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.

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.”

(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

(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)(a), 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.

(a) Paragraph 6(1)(b) of Schedule 2 was substituted by S.I. 2011/735.

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)(a), for “, the 2009 Act or the 2010 Act” substitute “or the 2009 Act”.

Revocation

33. The Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999(b) 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 Symms
Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Paragraph 8(1) of Schedule 4 was substituted by S.I. 2011/735.

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

SCHEDULE 1

Regulation 28

“SCHEDULE A1 Regulations 7, 10 and 10A

Descriptions of projects that are Schedule A1 Projects

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude-oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

3. Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile material, whose maximum power does not exceed 1 kilowatt continuous thermal load).

4. Installations for the reprocessing of irradiated nuclear fuel.

5. Installations designed—

- (a) for the production or enrichment of nuclear fuel;
- (b) for the processing of irradiated nuclear fuel or high-level radioactive waste;
- (c) for the final disposal of irradiated nuclear fuel;
- (d) solely for the final disposal of radioactive waste;
- (e) solely for the storage (planned for more than ten years) of irradiated nuclear fuels or radioactive waste in a different site from the production site.

6. Integrated works for the initial smelting of cast-iron and steel.

7. Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

8. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

- (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;
- (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
- (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

9. Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

- (a) for the production of basic organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;

- (e) for the production of basic pharmaceutical products using a chemical or biological process;
 - (f) for the production of explosives.
- 10.** Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.
- 11.** Construction of motorways and express roads.
- 12.** Construction of a new road of four or more lanes, or realignment or widening of an existing road of two lanes or less, so as to provide four or more lanes, where such new road, or realigned or widened section of road, would be 10 kilometres or more in a continuous length.
- 13.** Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.
- 14.** Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.
- 15.** Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council on waste^(a) under heading D9), or landfill of hazardous waste as defined in Article 3(2) of that Directive.
- 16.** Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.
- 17.** Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
- 18.** Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year.
- 19.** In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.
- 20.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2(6) of Council Directive 91/271/EEC of the European Parliament and of the Council concerning urban waste-water treatment^(b).
- 21.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.
- 22.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
- 23.** Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres for the transport of—
- (a) gas, oil or chemicals;

(a) O.J. No. L 312, 22.11.2008, p. 3.

(b) O.J. No. L 135, 30.5.1991, p. 40, last amended by Regulation (EC) No. 1137/2008 (O.J. No. L 311, 21.11.2008, p. 1).

- (b) carbon dioxide streams for the purposes of geological storage, including associated booster stations.
- 24.** Installations for the intensive rearing of poultry or pigs with more than—
- (a) 85,000 places for broilers or 60,000 places for hens;
 - (b) 3,000 places for production pigs (over 30 kg); or
 - (c) 900 places for sows.
- 25.** Industrial plants for—
- (a) the production of pulp from timber or similar fibrous materials;
 - (b) the production of paper and board with a production capacity exceeding 200 tonnes per day.
- 26.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.
- 27.** Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.
- 28.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.
- 29.** Storage sites pursuant to Directive 2009/31/EC(a) of the European Parliament and of the Council on the geological storage of carbon dioxide.
- 30.** Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations referred to in this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more
- 31.** Any change to or extension of project specified in this Schedule where such a change or extension in itself meets the thresholds, if any, or description of development set out in this Schedule.
- 32.** In this Schedule—
- “airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)(b);
 - “express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15th November 1975(c); and
 - “nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is to be treated as development of the description mentioned in paragraph 3 of this Schedule.

SCHEDULE A2 Regulations 8, 10 and 10A

Descriptions of projects that are Schedule A2 projects

Agriculture, silviculture and aquaculture

- 1.** Projects for the restructuring of rural land holdings.

(a) OJ L 140, 5.6.2009, p. 114.
 (b) Command Paper 6614.
 (c) Command Paper 6993.

2. Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes.

3. Water management projects for agriculture, including irrigation and land drainage projects.

4. Initial afforestation and deforestation for the purposes of conversion to another type of land use.

5. Intensive livestock installations (unless included in Schedule A1).

6. Intensive fish farming.

7. Reclamation of land from the sea.

Extractive industry

8. Quarries, open cast mining and peat extraction (unless included in Schedule A1).

9. Underground mining.

10. Extraction of minerals by fluvial or marine dredging;

11. Deep drillings, in particular—

- (a) geothermal drilling;
- (b) drilling for the storage of nuclear waste material;
- (c) drilling for water supplies,

with the exception of drillings for investigating the stability of the soil.

12. Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

Energy

13. Industrial installations for the production of electricity, steam and hot water (unless included in Schedule A1).

14. Industrial installations for carrying gas, steam and hot water and transmission of electrical energy by overhead cables (unless included in Schedule A1).

15. Surface storage of natural gas.

16. Underground storage of combustible gases.

17. Surface storage of fossil fuels.

18. Industrial briquetting of coal and lignite.

19. Installations for the processing and storage of radioactive waste (unless included in Schedule A1).

20. Installations for hydroelectric energy production.

21. Installations for the harnessing of wind power for energy production (wind farms).

22. Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not included in Schedule A1.

Production and processing of metals

23. Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting.

24. Installations for the processing of ferrous metals—

- (a) hot-rolling mills;
- (b) smithies with hammers;
- (c) application of protective metal coats.

25. Ferrous metal foundries.

26. Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.).

27. Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process.

28. Manufacture and assembly of motor vehicles and manufacture of motor vehicle engines.

29. Shipyards.

30. Installations for the construction and repair of aircraft.

31. Manufacture of railway equipment.

32. Swaging by explosives.

33. Installations for the roasting and sintering of metallic ores.

Mineral industry

34. Coke ovens (dry coal distillation).

35. Installations for the manufacture of cement.

36. Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule A1).

37. Installations for the manufacture of glass including glass fibre.

38. Installations for smelting mineral substances including the production of mineral fibres.

39. Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stonewear or porcelain.

Chemical industry (unless included in Schedule A1)

40. Treatment of intermediate products and production of chemicals.

41. Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides.

42. Storage facilities for petroleum, petrochemical and chemical products.

Food industry

43. Manufacture of vegetable and animal oils and fats.

44. Packing and canning of animal vegetable products.

45. Manufacture of dairy products.

46. Brewing and malting.

47. Confectionery and syrup manufacture.

- 48. Installations for the slaughter of animals.
- 49. Industrial starch manufacturing installations.
- 50. Fish-meal and fish-oil factories.
- 51. Sugar factories.

Textile, leather, wood and paper industries

- 52. Industrial plants for the production of paper and board (unless included in Schedule A1).
- 53. Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles.
- 54. Plants for the tanning of hides and skins.
- 55. Cellulose-processing and production installations.

Rubber industry

- 56. Manufacture and treatment of elastomer-based products.

Infrastructure projects

- 57. Industrial estate development projects.
- 58. Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas.
- 59. Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule A1).
- 60. Construction of railways (unless included in Schedule A1).
- 61. Construction of airfields (unless included in Schedule A1).
- 62. Construction of roads (unless included in Schedule A1).
- 63. Construction of harbours and port installations including fishing harbours (unless included in Schedule A1).
- 64. Inland-waterway construction not included in Schedule A1, canalisation and flood-relief works.
- 65. Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule A1).
- 66. Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.
- 67. Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule A1).
- 68. Installations of long-distance aqueducts.
- 69. Coastal work to combat erosion and maritime works capable of altering the coast through the construction of, for example, dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works.
- 70. Groundwater abstraction and artificial groundwater recharge schemes not included in Schedule A1.

71. Works for the transfer of water resources between river basins not included in Schedule A1.

72. Motorway service areas.

Other projects

73. Permanent racing and test tracks for motorised vehicles.

74. Installations for the disposal of waste (unless included in Schedule A1).

75. Waste-water treatment plants (unless included in Schedule A1).

76. Sludge-deposition sites.

77. Storage of scrap iron, including scrap vehicles.

78. Test benches for engines, turbines or reactors.

79. Installations for the manufacture of artificial mineral fibres.

80. Installations for the recovery or destruction of explosive substances.

81. Knackers' yards.

Tourism and leisure

82. Ski-runs, ski-lifts and cable-cars, and associated developments.

83. Marinas.

84. Holiday villages and hotel complexes outside urban areas and associated developments.

85. Theme parks.

86. Permanent camp sites and caravan sites.

87. Golf courses and associated developments.

Changes and extensions

88. Any change to or extension of development of a description listed in Schedule A1 (other than a change or extension falling within paragraph 31 of that Schedule) where that development is already authorised, executed or in the process of being executed.

89. Any change to or extension of development of a description listed in paragraphs 1 to 87 of this Schedule where that development is already authorised, executed or in the process of being executed.

90. Development of a description mentioned in Schedule A1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years."

“SCHEDULE 1

Regulation 8(2)

Matters relevant to consideration of whether or not a Schedule A2 project is likely to have significant effects on the environment**Characteristics of the project**

- 1.** The characteristics of the project, with particular regard to—
 - (a) the size and design of the whole project;
 - (b) cumulation with other existing or approved projects ;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge; and
 - (g) the risks to human health (for example due to water contamination or air pollution).

Location of the project

- 2.** The environmental sensitivity of geographical areas likely to be affected by the project, with particular regard to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and below ground in that area;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation, Natura 2000 areas designated or classified by member States pursuant to the Habitats Directive or the Wild Birds Directive;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in EU legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas; and
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Types and characteristics of the potential impact

- 3.** The likely significant effects of projects on the environment in relation to the matters set out in paragraphs 1 and 2, with regard to the impact of the project on the factors specified in regulation 21A(2)(a) to (e) and with regard to—

- (a) the magnitude and spatial extent of the impact (for example the geographical area and the size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing or approved projects;
- (h) the possibility of effectively reducing the impact.”

SCHEDULE 3

Regulation 31

“SCHEDULE 3

Regulation 12(2)

Information to be included in an environmental statement

- 1.** A description of the project and of the regulated activity, including in particular:
 - (a) a description of the location of the project and the regulated activity;
 - (b) a description of the physical characteristics of the whole project and regulated activity, including where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the project and the regulated activity (in particular any production process): for instance, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases) resulting from the operation of the proposed project and the regulated activity.

- 2.** A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed project, the regulated activity and their specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

- 3.** A description of the relevant aspects of the current state of the environment (baseline scenario), and an outline of the likely evolution thereof without implementation of the project, as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

- 4.** A description of the factors specified in regulation 21A(2)(a) to (e) likely to be significantly affected by the project and the regulated activity: population, human health, biodiversity (for example, fauna and flora), land (for example, land take), soil (for example, organic matter, erosion, compaction, sealing), water (for example, hydromorphological changes, quantity and quality), air, climate (for example, greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the project and the regulated activity on the environment resulting from, inter alia—

- (a) the construction and existence of the project and the regulated activity, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example, due to accidents or disasters);
- (e) the cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example, the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

6. The description of the likely significant effects on the factors specified in regulation 21A(2)(a) to (e) must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project and the regulated activity. This description must take into account the environmental protection objectives established at Union or member State level which are relevant to the project and the regulated activity.

7. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment including details of difficulties (for example, technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or if possible offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example, the preparation of a post-project analysis). That description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the project and the regulated activity on the environment deriving from the vulnerability of the project and the regulated activity to risks of major accidents or disasters which are relevant to the project and the regulated activity concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC^(a) or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations^(b) or UK environmental assessments may be used for this purpose provided that the requirements of the EIA Directive are met. Where appropriate, this description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

^(a) OJ No L 197, 24.7.2012, p. 1.

^(b) OJ No L 219, 25.7.2014, p. 42.

11. A reference list detailing the sources used for the descriptions and assessments included in the report.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in relation to certain marine works, Directive 2014/52/EU (“Directive 2014/52”) of the European Parliament and of the Council amending Directive 2011/92/EU (“Directive 2011/92”) on the assessment of the effects of certain public and private projects on the environment.

These Regulations extend to England and Wales and Northern Ireland. They extend to Scotland in relation to certain reserved matters in the Scottish inshore region. Accordingly, subject to certain exceptions mentioned in section 7A of the Food and Environment Protection Act 1985 (c. 48), they extend to: any activity relating to a matter which is a reserved matter by virtue of Section D2 (oil and gas) in Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46) and which is an activity outside controlled waters (within the meaning of section 30A(1) of the Control of Pollution Act 1974 (c. 40)); any activity relating to a matter which is a reserved matter by virtue of paragraph 9 (defence) in Part 1 of that Schedule; and any activity falling within the subject matter of Part 6 (pollution) of the Merchant Shipping Act 1995 (c. 21). These Regulations also extend to the Scottish offshore region. The Scottish inshore region and the Scottish offshore region are, in each case, defined in section 322 of the Marine and Coastal Access Act 2009 (c. 23).

Regulations 3 to 32 contain amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518). In summary:

- (a) the amendments to regulations 9 and 10 (in regulations 8 and 10 respectively), and new regulation 9A (inserted by regulation 9), make provision for a determination that an environmental impact assessment is not required in relation to certain regulated activity;
- (b) the amendments to regulation 12 (in regulation 12) set out the contents of an environmental statement and require the appropriate authority to ensure that it has, or has access to, sufficient expertise to examine the statement;
- (c) new regulation 15A (inserted by regulation 14) makes provision for the co-ordination of environmental impact assessments;
- (d) the amendments to regulation 16 (in regulation 15) provide for the manner in which the appropriate authority must publicise an application for regulatory approval and the environmental statement in respect of the project to which it relates;
- (e) regulation 18 is substituted (by regulation 17) to set out the information which must be provided to EEA States where it is likely that they will be significantly affected by projects in the United Kingdom;
- (f) new regulation 20A (inserted by regulation 20) sets out the procedures, including consultation, which must be followed where the appropriate authority receives information that a proposed project in an EEA State is likely to have significant effects on the environment in those areas of the United Kingdom to which the Marine Works (Environmental Impact Assessment) Regulations 2007 extend;
- (g) new regulation 21A (inserted by regulation 21) makes provision requiring the appropriate authority to consider an environmental statement and reach a conclusion about the likely significant effects on the environment of a project;
- (h) regulation 22 is substituted (by regulation 22) to provide for the appropriate authority’s EIA consent decision in respect of a project, for example setting out matters which must be included in the appropriate authority’s consideration of that application;
- (i) regulation 23 is amended (by regulation 23) to provide for the information which must be included in the appropriate authority’s written confirmation of the EIA consent decision and for the manner in which notice of that decision is published and made available for public inspection by the appropriate authority;

- (j) regulation 24 is amended (by regulation 24) to provide for the effect which the EIA consent decision has on the regulator's decision to grant or refuse regulatory approval for the regulated activity and to set out certain procedures in respect of the regulator's decision;
- (k) new regulation 24ZA (inserted by regulation 25) provides for the manner in which regulatory decisions must be notified and published;
- (l) new Schedules A1 and A2 (inserted by regulation 28) reflect the provisions of Annex I and Annex II to Directive 2011/92, respectively;
- (m) the substitution of Schedules 1 and 3 (made by regulations 29 and 31 respectively) and the amendments to Schedule 2 (made by regulation 30) reflect amendments made by Directive 2014/52 to Annexes to Directive 2011/92: amendments to Annexes III and IV, and the insertion of Annex II.A, respectively.

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Marine Planning and Licensing Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3J and is also available alongside these Regulations on www.legislation.gov.uk. An Explanatory Memorandum and a transposition note are also available with these Regulations on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament.

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