

**2017 No. 115**

**ENVIRONMENTAL PROTECTION**

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

<i>Made</i> - - - -	<i>11th April 2017</i>
<i>Laid before the Scottish Parliament</i>	<i>13th April 2017</i>
<i>Coming into force</i> - -	<i>16th May 2017</i>

**CONTENTS**

**PART 1**

**INTRODUCTORY**

1. Citation, commencement, application and extent
2. Interpretation
3. Fees
4. Prohibition on granting a regulatory approval without an environmental impact assessment
5. Environmental impact assessment
6. Environmental impact assessment report

**PART 2**

**DETERMINING WHETHER ENVIRONMENTAL IMPACT ASSESSMENT IS  
REQUIRED**

7. EIA projects
8. Exemptions
9. General provisions relating to screening
10. Requests for a screening opinion
11. Screening opinions – time period for decision

**PART 3**

**PROCEDURES CONCERNING APPLICATIONS FOR REGULATORY APPROVALS**

12. Application without prior screening
13. EIA application made without an EIA report

PART 4  
PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

14. Request for scoping opinions
15. Procedure to facilitate preparation of EIA reports

PART 5  
PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT  
ASSESSMENT REPORTS

16. Publication of EIA report
17. Publicity of determinations and provision of information
18. Consultation
19. Copies of EIA report for the Scottish Ministers
20. Copies of EIA report for the public

PART 6  
ADDITIONAL INFORMATION

21. Additional information and evidence relating to EIA reports
22. Publication of additional information

PART 7  
NOTIFICATION OF DECISIONS

23. Decision notice
24. Monitoring measures
25. Notification of decision

PART 8  
MULTI-STAGE REGULATORY APPROVALS

26. Prohibition on granting a multi-stage regulatory approval without an environmental impact assessment
27. Application for a multi-stage regulatory approval where EIA report previously provided
28. Application for a multi-stage regulatory approval without EIA report
29. Modification of Regulations relating to an application for multi-stage regulatory approval

PART 9  
PROJECTS WITH SIGNIFICANT TRANSBOUNDARY EFFECTS

30. Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom
31. Projects in another EEA State likely to have significant transboundary effects

PART 10  
OFFENCES

32. Provision of false etc. information

33. Offences by bodies corporate etc.

**PART 11  
MISCELLANEOUS**

34. Electronic communications – general  
35. Electronic communications – deemed agreement  
36. Withdrawal of consent to use of electronic communications  
37. Access to review procedure before a court  
38. Co-ordination of assessments  
39. Competent authority – avoidance of conflict of interest

**PART 12  
TRANSITIONAL PROVISIONS AND REVOCATIONS**

40. Transitional provisions – general  
41. Transitional provisions – requests for screening opinions  
42. Revocations

- 
- SCHEDULE 1 — DESCRIPTIONS OF PROJECTS FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 1 WORKS”  
SCHEDULE 2 — DESCRIPTIONS OF PROJECTS AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 WORKS”  
SCHEDULE 3 — SELECTION CRITERIA FOR SCREENING SCHEDULE 2 WORKS  
SCHEDULE 4 — INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), section 56(1) of the Finance Act 1973(b), and all other powers enabling them to do so.

They have taken into account the selection criteria in Annex III to Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(c).

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- (a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.  
(b) 1973 c.51. Section 56(1) was amended by S.S.I. 2011/1043. The reference to a Government department in section 56(1) is to be read as a reference to the Scottish Administration by virtue of S.I. 1999/1820 and the functions conferred upon the Minister of the Crown under section 56 insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The requirement to obtain Treasury consent was removed by section 55 of the 1998 Act.  
(c) OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU (OJ L 124, 25.4.2014, p.1).

# PART 1

## INTRODUCTORY

### Citation, commencement, application and extent

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

(2) Subject to Part 12, these Regulations apply in the case of an application for a regulatory approval made to the Scottish Ministers.

(3) These Regulations extend to Scotland only.

### Interpretation

2.—(1) In these Regulations—

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

“additional information” means—

- (a) supplementary information required in accordance with regulation 21(2); or
- (b) any other information provided by the applicant which, in the opinion of the Scottish Ministers, is substantive information about a matter to be included in the EIA report in accordance with regulation 6(2);

“applicant”—

- (a) means in relation to an application for a regulatory approval, the applicant; and
- (b) for the purposes of regulations 10, 11, 14 and 15, includes a person who is minded to make an application for a regulatory approval;

“application for multi-stage regulatory approval” means an application for approval, consent or agreement required by a condition included in a regulatory approval where (in terms of the condition) that approval, consent or agreement must be obtained from the Scottish Ministers before all or part of the works permitted by the regulatory approval may be begun;

“application website” means a website maintained by the applicant for the purpose of making publicly available information relating to applications to which these Regulations apply;

“consenting authority” means, in relation to a project, any authority whose consent to any activity to be undertaken in the course of the project is required under any enactment;

“the consultation bodies” means—

- (a) any relevant local planning authority;
- (b) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991(b);
- (c) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995(c);
- (d) Historic Environment Scotland, established by section 1 of the Historic Environment (Scotland) Act 2014(d); and
- (e) any relevant authority;

“decision notice” has the meaning given in regulation 23;

“the Directive” means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(e);

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(a) 2010 asp 5.

(b) 1991 c.28.

(c) 1995 c.25.

(d) 2014 asp 19.

(e) OJ L 26, 28.1.2012, p.1 as amended by Directive 2014/52/EU.

“EIA application” means an application for a regulatory approval for an EIA project;

“EIA project” means works which are either—

- (a) schedule 1 works; or
- (b) schedule 2 works likely to have significant effects on the environment by virtue of factors such as their nature, size or location;

“EIA report” has the meaning given in regulation 6;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a);

“environmental impact assessment” has the meaning given in regulation 5;

“environmental information” means—

- (a) the EIA report submitted in respect of the proposed works;
- (b) any additional information submitted in respect of the works;
- (c) any representations made by any consultation body, or other public body, consulted in respect of the works in accordance with these Regulations; and
- (d) any representations duly made by any other person about the environmental effects of the works;

“environmental statement” has the meaning given in the Marine Works (Environmental Impact Assessment) Regulations 2007(b) as those Regulations had effect immediately prior to the date on which these Regulations came into force;

“exempt works” means works in respect of which either—

- (a) the Scottish Ministers have made a direction under regulation 8; or
- (b) the Scottish Ministers have, under regulation 9, determined that an environmental impact assessment is not required;

“marine licence” means a marine licence granted under Part 4 of the 2010 Act;

“marine protected area” means an area designated as—

- (a) a nature conservation marine protected area;
- (b) a demonstration and research marine protected area; or
- (c) a historic marine protected area,

by a designation order made by the Scottish Ministers under section 67 of the 2010 Act;

“multi-stage regulatory approval” means an approval, consent or agreement given pursuant to an application for multi-stage regulatory approval;

“regulated activity” means an activity for which a regulatory approval is required;

“regulatory approval” means—

- (a) a marine licence granted under Part 4 of the 2010 Act; or
- (b) a variation under said Part 4 of such a marine licence;

“relevant assessment” means, in relation to proposed works, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the proposed works;

“relevant authority” means—

- (a) where a regulated activity is likely to have a significant effect on the environment of Northern Ireland, or the Northern Ireland inshore region (within the meaning of section 322 of the Marine and Coastal Access Act 2009(c)), the Department of Agriculture, Environment and Rural Affairs in Northern Ireland; or

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(a) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

(b) S.I. 2007/1518 as amended by S.I. 2011/735, S.I. 2011/1043, and S.I. 2015/446.

(c) 2009 c.23.

- (b) where a regulated activity is likely to have a significant effect on the environment of England or the English offshore region (within the meaning of section 322 of the Marine and Coastal Access Act 2009), the Marine Management Organisation or, as the case may be, the Secretary of State;

“relevant local planning authority” means—

- (a) any authority that is a planning authority for the purposes of the Town and Country Planning (Scotland) Act 1997(a) in or adjacent to whose area the regulated activity is prepared to be carried out; and
- (b) where the regulated activity is carried out in or adjacent to a National Park(b), the National Park authority for the National Park;

“Scottish marine protection area” has the meaning given in section 65 of the 2010 Act;

“schedule 1 works” means works, other than exempt works, of a description set out in schedule 1;

“schedule 2 works” means works, other than exempt works, of a description set out in column 1 of schedule 2 where—

- (a) any part of the works is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to the works;

“scoping opinion” means an opinion adopted by the Scottish Ministers as to the scope and level of detail of information to be provided in the EIA report;

“screening opinion” means an opinion adopted by the Scottish Ministers as to whether works are, or are not, an EIA project;

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 of the Nature Conservation (Scotland) Act 2004(c);
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994(d);
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(e);
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(f);
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A(g) of the Town and Country Planning (Scotland) Act 1997;
- (g) an area designated as a National Park; and
- (h) a marine protected area;

“site of special scientific interest” has the meaning given in section 58(1) of the Nature Conservation (Scotland) Act 2004(h);

“Union legislation” means any enactment in the national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties; and

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(a) 1997 c.8.  
(b) National Parks are designated by designation orders made by the Scottish Ministers under section 6(1) (making of designation orders) of the National Parks (Scotland) Act 2000 (asp 5).  
(c) 2004 asp 6.  
(d) S.I. 1994/2716. Regulation 10 is amended by S.S.I. 2004/474 and S.S.I. 2007/80.  
(e) See Command Paper 9424.  
(f) 1979 c.46.  
(g) Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).  
(h) Section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

“works” means the carrying out of activities for which a regulatory approval is required, unless the context otherwise requires;

(2) Expressions used both in these Regulations and in the Directive (whether or not also used in the 2010 Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(3) In these Regulations, unless the context otherwise requires, references to a relevant local planning authority in relation to works in, on, over or under sea, are references to such planning authority or planning authorities as the Scottish Ministers consider appropriate in respect of the proposed works.

(4) In these Regulations, where an applicant submits a revised or a supplementary EIA report (or a report which that person refers to as such) any reference to an EIA report is to be treated as including a reference to that revised or supplementary EIA report.

## **Fees**

**3.—**(1) The Scottish Ministers may require an applicant to pay them reasonable fees in respect of relevant expenses.

(2) In paragraph (1) “relevant expenses” means administrative and other expenses which the Scottish Ministers reasonably incur under these Regulations in their capacity as a consenting authority (including any expenses in respect of any examination or test carried out in that capacity), but does not include any expenses in respect of which a fee may be charged under any other provision of these Regulations.

(3) The determination of the amount of a reasonable fee incurred in the performance of a function under—

- (a) regulation 9, 10 or 11;
- (b) regulation 14; or
- (c) regulation 24,

must be made by the Scottish Ministers.

(4) Before determining the amount of a fee under paragraph (3), the Scottish Ministers must consult such organisations as appear to them to represent persons who are likely to apply for a marine licence.

## **Prohibition on granting a regulatory approval without an environmental impact assessment**

**4.** Subject to regulation 8, the Scottish Ministers must not grant a regulatory approval for an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers must take the environmental information into account.

## **Environmental impact assessment**

**5.—**(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an EIA report by the applicant;
- (b) the carrying out of consultation, publication and notification as required by Parts 5, 6, 7 and, where relevant, Part 9;
- (c) the examination by the Scottish Ministers of the information presented in the EIA report and any other environmental information;
- (d) the reasoned conclusion by the Scottish Ministers on the significant effects of the works on the environment, taking into account the results of the examination referred to in subparagraph (c) and, where appropriate, their own supplementary examination; and
- (e) the integration of the Scottish Ministers’ reasoned conclusion into the decision notice in accordance with regulation 23.

(2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the proposed works, the direct and indirect significant effects of the proposed works on the factors specified in paragraph (3) and the interaction between those factors.

(3) The factors are—

- (a) population and human health;
- (b) biodiversity, and in particular species and habitats protected under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(a)</sup> and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds<sup>(b)</sup>;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape.

(4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the works to risks, so far as relevant to the works, of major accidents and disasters.

(5) Unless paragraph (6) applies, the environmental impact assessment to be carried out in relation to the determination of an application for a regulatory approval for an EIA project must identify the likely significant effects of the proposed works on the environment before a decision to grant a regulatory approval for those works is made.

(6) This paragraph applies where the Scottish Ministers—

- (a) are minded to grant a regulatory approval for an EIA project, subject to a condition that all or part of the proposed works must not commence before certain matters in implementation of that authorisation have been approved by the Scottish Ministers; and
- (b) consider that the likely significant effects of the works on the environment are not fully identifiable at the time of their determination of the application for a regulatory approval.

(7) The Scottish Ministers must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

### **Environmental impact assessment report**

**6.**—(1) An application for a regulatory approval for an EIA project must be accompanied by an environmental impact assessment report (referred to in these Regulations as an “EIA report”).

(2) An EIA report is a report prepared in accordance with this regulation by the applicant which includes (at least)—

- (a) a description of the works comprising information on the site, design, size and other relevant features of the works;
- (b) a description of the likely significant effects of the works on the environment;
- (c) a description of the features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the works and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the works on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 4 relevant to the specific characteristics of the works or of the types of works in question and to the environmental features likely to be affected.

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(a) OJ L 206, 22.7.1992, p.7.

(b) OJ L 20, 26.1.2010, p.7.



(3) Where a scoping opinion is adopted, the EIA report must be based on that scoping opinion and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the works on the environment, taking into account current knowledge and methods of assessment.

(4) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(5) In order to ensure the completeness and quality of the EIA report—

- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of those experts.

## PART 2

### DETERMINING WHETHER ENVIRONMENTAL IMPACT ASSESSMENT IS REQUIRED

#### **EIA projects**

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

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

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

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

#### **Exemptions**

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

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

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

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

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

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

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

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

### **General provisions relating to screening**

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

- (a) in all cases take into account—
  - (i) such of the selection criteria set out in schedule 3 as are relevant to the works; and
  - (ii) the available results of any relevant assessment; and
- (b) where that determination is made following a request for a screening opinion under regulation 10(1), base their determination on the information provided in accordance with regulation 10(2).

(2) Where the Scottish Ministers adopt a screening opinion—

- (a) that screening opinion must be accompanied by a written statement giving, with reference to the selection criteria set out in schedule 3 which are relevant to the works, the main reasons for their conclusions as to whether the works are, or are not, an EIA project; and
- (b) where the screening opinion is to the effect that the works are not an EIA project, the statement referred to in sub-paragraph (a) must state any features of the proposed works or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

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

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

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

### **Requests for a screening opinion**

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

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

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

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

### **Screening opinions – time period for decision**

**11.**—(1) Following a request for a screening opinion under regulation 10(1), the Scottish Ministers must adopt a screening opinion—

- (a) within 3 weeks of the latest of—
  - (i) the date of receipt of the request by the Scottish Ministers;
  - (ii) where the Scottish Ministers have consulted a consultation body or bodies by virtue of regulation 10(5), the date by which the consultation body or bodies must give views under regulation 10(6), (or, if earlier, the date by which the Scottish Ministers have received the views of each body which was consulted); or
  - (iii) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the Scottish Ministers and the applicant; or
- (b) where notice is given under paragraph (2), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to adopt a screening opinion.

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

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

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

## PART 3

### PROCEDURES CONCERNING APPLICATIONS FOR REGULATORY APPROVALS

#### **Application without prior screening**

**12.**—(1) This regulation applies where it appears to the Scottish Ministers that—

- (a) an application for a regulatory approval which is before them for determination is an application to carry out schedule 1 works or an application to carry out schedule 2 works;
- (b) the works in question have not been the subject of a screening opinion; and
- (c) the application is not accompanied by a report referred to by the applicant as an EIA report.

(2) Where this regulation applies the Scottish Ministers must adopt a screening opinion in respect of the proposed works to which the application for a regulatory approval relates.

(3) If it appears to the Scottish Ministers that the application for a regulatory approval is an application to carry out schedule 2 works but the Scottish Ministers do not consider that the information submitted by the applicant in connection with the application includes all the information referred to in regulation 10(2), the Scottish Ministers must seek from the applicant such information as they consider remains to be provided by giving notice to the applicant describing that information.

#### **EIA application made without an EIA report**

**13.**—(1) This regulation applies where an EIA application which is before the Scottish Ministers for determination is not accompanied by a report referred to by the applicant as an EIA report.

(2) Where this regulation applies the Scottish Ministers must notify the applicant, in writing, that the submission of an EIA report is required.

(3) Notice under paragraph (2) must be given—

- (a) within 3 weeks beginning with the date on which the application is made; or
- (b) where the Scottish Ministers adopt a screening opinion after the date on which the application is made under regulation 12(2), within 7 days beginning with the date of making of that screening opinion.

(4) An applicant who receives notice under paragraph (2) may, within the period of 3 weeks beginning with the date of the notice, write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 14 ask the Scottish Ministers to adopt a scoping opinion.

(5) If the applicant does not write by virtue of paragraph (4), the Scottish Ministers are under no duty to deal with the application and, within the period of 3 weeks beginning with the date of the notice under paragraph (2), the Scottish Ministers must inform the applicant, in writing, that no further action is being taken on the application.

(6) If the applicant writes in accordance with paragraph (4), but does not provide an EIA report to the Scottish Ministers, then the Scottish Ministers are to determine the application only by refusing regulatory approval.

## PART 4

### PREPARATION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

#### **Request for scoping opinions**

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

(2) A request under paragraph (1) must include—

- (a) a description of the location of the works, including a plan sufficient to identify the area in which the works are proposed to be sited;
- (b) a brief description of the nature and purpose of the works and their likely impact on the environment; and
- (c) such other information or representations as the applicant may wish to provide or make.

(3) If the Scottish Ministers consider that they have not been provided with sufficient information to adopt a scoping provision they must, within the period of 3 weeks beginning with the date of the request under paragraph (1), notify the applicant of the points on which they require further information.

(4) The Scottish Ministers must not adopt a scoping opinion in response to a request under paragraph (1) until they have consulted—

- (a) the consultation bodies; and
- (b) any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies.

(5) The consultation period under paragraph (4) is either—

- (a) 30 days beginning with the date on which the Scottish Ministers contact the bodies referred to in paragraph (4) by virtue of that paragraph; or
- (b) where the Scottish Ministers and any such body have agreed a longer period, such longer period.

(6) The Scottish Ministers, when adopting a scoping opinion, must take into account—

- (a) the information provided by the applicant, in particular information in respect of the specific characteristics of the works, including their location and technical capacity, and their likely impact on the environment; and
- (b) any representations made to them in response to consultation undertaken in accordance with paragraph (4).

(7) The Scottish Ministers must, within the period of 5 weeks beginning with the date by which any body consulted under paragraph (4) is required to make representations, or within such longer period as the Scottish Ministers require, adopt a scoping opinion and send a copy to the applicant.

(8) The adoption of a scoping opinion by the Scottish Ministers does not preclude the Scottish Ministers from requiring of the applicant information in connection with any report that may be submitted by that person as an EIA report in connection with an application for a regulatory approval for the same works as referred to in the scoping opinion.

(9) Where the applicant has, at the same time as making a request for a screening opinion under regulation 10(1), made a request under paragraph (1), and the Scottish Ministers have adopted a screening opinion to the effect that the works are an EIA project, the Scottish Ministers must begin the procedures relating to scoping on the date on which they give the screening opinion.

(10) The Scottish Ministers may at their own volition adopt a scoping opinion and paragraphs (4), (5), (6), (7) and (8) apply in relation to the adoption of such a scoping opinion as they apply where a request is made under paragraph (1).

## Procedure to facilitate preparation of EIA reports

**15.**—(1) An applicant who intends to submit an EIA report to the Scottish Ministers under these Regulations may give notice of that intention, in writing, to the Scottish Ministers under this paragraph.

(2) A notice under paragraph (1) must include the information necessary to identify the location, nature and purpose of the works, and must indicate the main environmental consequences to which the applicant proposes to refer in the EIA report.

(3) Where the Scottish Ministers receive notice under paragraph (1), or a written statement made by virtue of regulation 13(4), they must—

- (a) notify the consultation bodies and any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body's specific environmental responsibilities or local and regional competencies, in writing, of—
  - (i) the name and address of the applicant; and
  - (ii) the duty imposed on those bodies by paragraph (4) to make information available to that person; and
- (b) inform the applicant, in writing, of the names and addresses of the bodies so notified.

(4) Subject to paragraphs (5) and (6), any body notified in accordance with paragraph (3) must, if requested by the applicant—

- (a) enter into consultation with the applicant to determine whether the body has in its possession any information which that body or the applicant considers to be relevant to the preparation of the EIA report; and
- (b) if the body has any such information, the body must make that information available to the applicant.

(5) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 10(1) of the Environmental Information (Scotland) Regulations 2004(a); or
- (b) are prevented from disclosing by regulation 11(2) of those Regulations.

(6) Paragraph (4) does not require disclosure of information which the Scottish Ministers or any body notified in accordance with paragraph (3)—

- (a) may refuse to disclose under regulation 12(1) of the Environmental Information Regulations 2004(b); or
- (b) are prevented from disclosing by regulation 13(1) of those Regulations.

(7) A reasonable charge reflecting the cost of making the relevant information available may be made by the Scottish Ministers or any body notified in accordance with paragraph (3) when making information available in accordance with paragraph (4).

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(a) S.S.I. 2004/520, as amended by S.S.I. 2013/127.

(b) S.I. 2004/3391, as relevantly amended by S.I. 2015/1897.

## PART 5

### PUBLICITY AND PROCEDURES ON SUBMISSION OF ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

#### **Publication of EIA report**

**16.**—(1) Where, in relation to an EIA application, the applicant submits to the Scottish Ministers a report which the applicant refers to as an EIA report, the Scottish Ministers must, as soon as possible after the submission of that report, either—

- (a) publicise the EIA report; or
- (b) direct the applicant to publicise the EIA report,

by notice, in accordance with this regulation or in such other manner as they consider appropriate.

(2) A notice referred to in paragraph (1) must—

- (a) describe the application and the proposed works to which the EIA report relates;
- (b) state that the proposed works are subject to environmental impact assessment and, where relevant, state that they are likely to have significant effects on the environment in another EEA State;
- (c) state that the EIA report is available for inspection free of charge and the times and places at which, and the means by which, the EIA report is available for inspection;
- (d) state how copies of the EIA report may be obtained;
- (e) state the cost of a copy of the EIA report;
- (f) state how, and by what date, representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
- (g) provide details of the arrangements for public participation in the decision making procedure including a description of how notice will be given of the subsequent submission by the applicant of any additional information and how representations in relation to that additional information may be made;
- (h) state the nature of possible decisions to be taken in relation to the application and provide details of the consenting authority by whom such decisions are to be taken; and
- (i) state an address for the consenting authority.

(3) Notice under paragraph (1) must be published—

- (a) on a website;
- (b) in The Edinburgh Gazette; and
- (c) in a newspaper circulating in the locality in which the works to which the EIA report relates are situated (or, in relation to proposed works in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed works).

(4) A notice under paragraph (1) may be combined with any other notice which the applicant may be required to publish in respect of the application.

(5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of an EIA report to any person except that the copies sent pursuant to regulation 18 are to be supplied free of charge.

#### **Publicity of determinations and provision of information**

**17.**—(1) The Scottish Ministers must take steps to secure that the following documents are made available for public inspection at all reasonable hours at the address notified under regulation 16(2):—

- (a) any screening opinion;

- (b) any scoping opinion;
- (c) a copy of the EIA report;
- (d) additional information; and
- (e) in accordance with national legislation, the main reports or advice issued to the Scottish Ministers at the time when the documents specified in sub-paragraphs (a), (b), (c) and (d) are first made available to the public.

(2) The Scottish Ministers must ensure that the documents listed in paragraph (1) are electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

### **Consultation**

**18.**—(1) The Scottish Ministers must, as soon as reasonably possible, either—

- (a) supply the consultation bodies, and any other public body which the Scottish Ministers consider is likely to have an interest in the proposed works by reason of that body’s specific environmental responsibilities or local and regional competencies, with the following material:—
  - (i) a copy of the EIA application;
  - (ii) a copy of the EIA report;
  - (iii) a copy of any additional information supplied by the applicant to the Scottish Ministers; and
  - (iv) a letter stating that any representations in response to consultation regarding the application must be made, in writing, to the Scottish Ministers, at an address specified by the Scottish Ministers, within the period of 30 days beginning with the date of the letter (or such longer period as may be agreed between any consultation body or other public body which was consulted, and the Scottish Ministers in accordance with paragraph (2)); or
- (b) direct the applicant to do so.

(2) The Scottish Ministers may agree a longer consultation period with a consultation body, or such other public body consulted under paragraph (1), where, in the opinion of the Scottish Ministers, it is reasonable to do so.

### **Copies of EIA report for the Scottish Ministers**

**19.**—(1) Where an EIA report is submitted in relation to an EIA application by means of electronic communication, the applicant must also send two hard copies of the EIA report to the Scottish Ministers.

(2) Where an EIA report is submitted in relation to an EIA application by hard copy, the applicant must also—

- (a) send an additional hard copy of the EIA report to the Scottish Ministers; and
- (b) send a copy of the EIA report to the Scottish Ministers by means of electronic communication.

(3) If requested to do so by the Scottish Ministers, the applicant must send to the Scottish Ministers such further hard copies of the EIA report as the Scottish Ministers request.

(4) In this regulation references to “hard copy” or “hard copies” are references to copies of an EIA report sent other than by means of electronic communication.

### **Copies of EIA report for the public**

**20.**—(1) Where an EIA report is submitted in relation to an EIA application, the applicant must ensure that a reasonable number of copies of the EIA report are available for inspection at any



place named in the notice published under regulation 16(1) as a place at which copies of the EIA report may be inspected.

(2) The applicant must provide copies of the EIA report in accordance with the terms of the notice published under regulation 16(1).

(3) A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a report provided in accordance with paragraph (2).

## PART 6

### ADDITIONAL INFORMATION

#### **Additional information and evidence relating to EIA reports**

**21.**—(1) This regulation applies where the Scottish Ministers are considering an EIA application (including an application for multi-stage regulatory approval).

(2) In order to ensure the completeness and quality of the EIA report, the Scottish Ministers must (having regard in particular to current knowledge and methods of assessment) seek from the applicant supplementary information about any matter mentioned in schedule 4 which in the opinion of the Scottish Ministers is directly relevant to reaching a reasoned conclusion on the significant effects of the works on the environment.

(3) The applicant must provide that supplementary information.

(4) The Scottish Ministers may, in writing, require to be produced to them such evidence, in respect of any EIA report or additional information as they may reasonably call for to verify any information contained in the EIA report or such additional information, as the case may be.

#### **Publication of additional information**

**22.**—(1) Where additional information is provided to the Scottish Ministers, the applicant must publish a notice in accordance with paragraph (2) containing the information required by paragraph (3).

(2) A notice under paragraph (1) must be published—

- (a) in The Edinburgh Gazette;
- (b) in one or more newspapers circulating in the locality in which the works are situated (or, in relation to proposed works in, on, over or under the sea, in such newspapers as are likely to come to the attention of those likely to be affected by the proposed works); and
- (c) on the application website.

(3) A notice under paragraph (1) must—

- (a) describe the EIA application and the proposed works;
- (b) state that the proposed works are subject to environmental impact assessment and, where relevant, state that they are likely to have significant effects on the environment in another EEA State;
- (c) state that the additional information is available for inspection and the times and places at which, and the means by which, the additional information is available for inspection;
- (d) state how copies of the additional information may be obtained;
- (e) state the cost of a copy of the additional information;
- (f) state how and by what date representations may be made (being a date not earlier than 30 days after the last date on which the notice is published);
- (g) provide details of the arrangements for public participation in the decision making procedure, including a description of how notice is to be given of any subsequent submission by the applicant of additional information and how representations in relation to that additional information may be made; and

- (h) state the nature of possible decisions to be taken in relation to the application and provide details of the authority by which such decisions are to be taken.
- (4) The applicant must serve a copy of the additional information on any person to whom a copy of the EIA report was supplied under regulation 18(1) together with a copy of the notice published under paragraph (1).
- (5) A reasonable charge reflecting printing and distribution costs may be made in relation to the supply of a copy of the additional information to any person but the copies served under paragraph (4) are to be supplied free of charge.
- (6) Paragraph (1) does not apply in relation to additional information to the extent that—
  - (a) the information is provided for the purposes of an inquiry held under the 2010 Act;
  - (b) the written requirement for the information states that it is to be provided for such purposes; and
  - (c) the information must be published as part of that inquiry.

## PART 7

### NOTIFICATION OF DECISIONS

#### **Decision notice**

**23.**—(1) Where an EIA application is determined by the Scottish Ministers, the notification of the decision to be given to the applicant (referred to in these Regulations as “the decision notice”) must include the information specified in paragraph (2).

- (2) The information is—
  - (a) a description of the works;
  - (b) the terms of the decision;
  - (c) the main reasons and considerations on which the decision is based;
  - (d) information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
  - (e) a summary of—
    - (i) the environmental information; and
    - (ii) the results of the consultations and information gathered pursuant to Parts 5 and 6 and, where relevant, Part 9 and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 30, have been incorporated or otherwise addressed;
  - (f) if the decision is to grant a regulatory approval—
    - (i) any conditions to which the decision is subject;
    - (ii) the reasoned conclusion referred to in regulation 5(1)(d);
    - (iii) a statement that the Scottish Ministers are satisfied that the reasoned conclusion is still up to date;
    - (iv) a description of any features of any mitigation measures; and
    - (v) a description of any monitoring measures required under regulation 24; and
  - (g) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(3) Where regulation 5(6) applies, the decision notice must describe the matters in respect of which the Scottish Ministers consider that the effects of the works are not fully identifiable at the time of their determination of the EIA application.

(4) For the purposes of paragraph (2)(f)(iii), the reasoned conclusion referred to in regulation 5(1)(d) is still up to date if the Scottish Ministers are satisfied, having regard to current knowledge

and methods of assessment, that the reasoned conclusion addresses the likely significant effects of the works on the environment.

(5) In this regulation and in regulation 24—

“mitigation measures” means any features of the works and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment including any such features or measures required by virtue of a condition imposed on the grant of regulatory approval; and

“monitoring measures” means measures requiring the monitoring of any significant adverse effects on the environment of the proposed works including any such measures required by virtue of a condition imposed on the grant of regulatory approval.

### **Monitoring measures**

**24.**—(1) Where an EIA application is determined by the Scottish Ministers and the decision is to grant a regulatory approval, the Scottish Ministers must consider whether it is appropriate to require monitoring measures to be carried out.

(2) When considering whether to require monitoring measures to be carried out, and the nature of any such monitoring measures, the Scottish Ministers must consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed works and the significance of their effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Scotland are more appropriate; and
- (c) if monitoring measures are to be required, whether provision should be made to require appropriate remedial action.

(3) Where the Scottish Ministers consider that it is appropriate to require monitoring measures they must do so.

(4) Where mitigation measures or monitoring measures are required by a condition imposed on the grant of a regulatory approval the Scottish Ministers must take steps to ensure that those measures are implemented.

### **Notification of decision**

**25.**—(1) Where an EIA application is determined by the Scottish Ministers they must—

- (a) send the decision notice to the applicant;
- (b) notify the consultation bodies, and such other bodies consulted under regulation 18(1), of their decision by sending a copy of the decision notice to such bodies; and
- (c) publish a notice containing the information specified in paragraph (3)(a) to (c) on a website.

(2) The applicant must, as soon as reasonably practicable after receiving the decision notice under paragraph (1)(a), notify the public of the decision, and of where a copy of decision notice may be inspected, by publishing a notice in accordance with paragraph (3)(d).

(3) A notice under paragraphs (1) and (2) must—

- (a) describe the works;
- (b) state the terms of the decision;
- (c) state the times and places at which, and the means by which, a copy of the decision notice is available for inspection; and
- (d) be published—
  - (i) in The Edinburgh Gazette;

- (ii) in one or more newspapers circulating in the locality in which the proposed works are situated (or in relation to the proposed works situated in, on, over or under the sea, such newspapers as are likely to come to the attention of those likely to be affected by the proposed works); and
- (iii) on the application website.

## PART 8

### MULTI-STAGE REGULATORY APPROVALS

#### **Prohibition on granting a multi-stage regulatory approval without an environmental impact assessment**

**26.** The Scottish Ministers must not grant an application for multi-stage regulatory approval in respect of an EIA project unless an environmental impact assessment has been carried out in respect of that project and in carrying out such assessment the Scottish Ministers have taken the environmental information into account.

#### **Application for a multi-stage regulatory approval where EIA report previously provided**

**27.** Where—

- (a) an application for a multi-stage regulatory approval which is before the Scottish Ministers for determination relates to regulatory approval for an EIA project;
- (b) an EIA report has previously been submitted by the applicant in relation to the works;
- (c) it appears to the Scottish Ministers that the works, or the part of the works to which the application for multi-stage regulatory approval relates, as the case may be, may have significant effects on the environment that have not previously been identified; and
- (d) the applicant has not submitted additional information in respect of those effects together with the application for multi-stage regulatory approval,

the Scottish Ministers must seek supplementary information from the applicant in accordance with regulation 21(2) in respect of such effects.

#### **Application for a multi-stage regulatory approval without EIA report**

**28.—(1)** Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage regulatory approval which is before them for determination relates to schedule 1 works;
- (b) the works in question have not been the subject of a screening opinion; and
- (c) an EIA report has not been submitted by the applicant in relation to the works,

the Scottish Ministers must adopt a screening opinion in respect of the works.

**(2)** Where—

- (a) it appears to the Scottish Ministers that an application for multi-stage regulatory approval which is before them for determination relates to schedule 2 works;
- (b) it appears to them that the works in question may have significant effects on the environment that have not previously been identified (whether in an earlier screening opinion or because the works have not been the subject of a screening opinion); and
- (c) an EIA report has not been submitted by the applicant in relation to the works,

the Scottish Ministers must adopt a screening opinion in respect of the works.

**(3)** Where the Scottish Ministers adopt a screening opinion under paragraph (1) or (2) to the effect that the works to which the application for multi-stage regulatory approval relates are an

EIA project, the Scottish Ministers must notify the applicant, in writing, that the submission of an EIA report is required.

(4) The Scottish Ministers must notify the applicant in accordance with paragraph (3) within the period of 3 weeks beginning with the date of the screening opinion.

(5) An applicant who receives a notification under paragraph (3) may, within the period of 3 weeks beginning with the date of the notification, write to the Scottish Ministers stating that an EIA report will be provided and may under regulation 14 request the Scottish Ministers to adopt a scoping opinion.

(6) If the applicant does not write in accordance with paragraph (5), the Scottish Ministers are under no duty to deal with the application and, at the end of the 3 week period, the Scottish Ministers must inform the applicant, in writing, that no further action is being taken on the application.

(7) If the applicant writes by virtue of paragraph (5), but does not provide an EIA report to the Scottish Ministers, then the Scottish Ministers are to determine the application only by refusing regulatory approval.

### **Modification of Regulations relating to an application for multi-stage regulatory approval**

**29.**—(1) These Regulations apply to an application for multi-stage regulatory approval as if—

- (a) references to an application for regulatory approval were references to an application for multi-stage regulatory approval;
- (b) references to an EIA application were references to an application for multi-stage regulatory approval for an EIA project; and
- (c) in regulation 30(5)(b) the reference to “regulatory approval” were a reference to “multi-stage regulatory approval”.

(2) Regulations 23(2)(d), (e) and (g) and 25(1)(b) and (2) apply in respect of the notification of a decision on an application for multi-stage regulatory approval only where an EIA report or additional information has been first submitted or provided by the applicant to the Scottish Ministers in connection with that application.

## **PART 9**

### **PROJECTS WITH SIGNIFICANT TRANSBOUNDARY EFFECTS**

#### **Projects in Scotland likely to have significant effects in an EEA State other than the United Kingdom**

**30.**—(1) This regulation applies where—

- (a) it comes to the attention of the Scottish Ministers that works proposed to be carried out in Scotland are the subject of an EIA application and are likely to have significant effects on the environment in an EEA State other than the United Kingdom; or
- (b) an EEA State other than the United Kingdom likely to be significantly affected by such works makes a request to the Scottish Ministers under Article 7 of the Directive.

(2) Where this regulation applies, the Scottish Ministers must—

- (a) send to the EEA State, as soon as possible and no later than their date of publication in The Edinburgh Gazette referred to in sub-paragraph (b), the particulars mentioned in paragraph (3) and, if they think fit, the information referred to in paragraph (4);
- (b) publish the information referred to in sub-paragraph (a) in a notice placed in The Edinburgh Gazette indicating the address where further information is available; and
- (c) give the EEA State a reasonable period of 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 works, together with any available information on their possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates in accordance with paragraph (2)(c), that it wishes to participate in the procedure for which these Regulations provide, the Scottish Ministers must, as soon as possible, send to that EEA State the following information:—

- (a) a copy of the EIA application concerned;
- (b) a copy of the EIA report in respect of the works to which that application relates; and
- (c) relevant information regarding the procedure under these Regulations,

but only to the extent that such information has not been provided to the EEA State earlier in accordance with paragraph (2)(a).

(5) The Scottish Ministers, insofar as they are concerned, must also—

- (a) arrange for the particulars and information referred to in paragraphs (3) and (4) and any additional information submitted by the applicant to be made available, within a reasonable period of time, to the authorities referred to in Article 6(1) of the Directive and the public concerned in the territory of the EEA State likely to be significantly affected; and
- (b) ensure that those authorities and the public concerned are given an opportunity, before a regulatory approval is given for the works, to forward to the Scottish Ministers, within a reasonable period of time, their opinion on the information supplied.

(6) The Scottish Ministers, in accordance with Article 7(4) of the Directive, must—

- (a) enter into consultations with the EEA State concerned regarding, amongst other things, the potential significant effects of the works on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine in agreement with the other EEA State a reasonable period of time for the duration of the consultation period.

(7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the EIA application concerned, the Scottish Ministers must inform the EEA State of the decision and forward to it a statement of—

- (a) the content of the decision and any conditions attached to it;
- (b) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public; and
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the works.

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

**31.**—(1) Where the Scottish Ministers receive from an EEA State other than the United Kingdom pursuant to Article 7(2) of the Directive information which that EEA State has gathered from the applicant of a proposed project in that EEA State which is likely to have significant effects on the environment in Scotland, the Scottish Ministers must, in accordance with Article 7(4) of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Scotland and the measures envisaged to reduce or eliminate such effects;
- (b) determine in agreement with that EEA State a reasonable period, before a regulatory approval is given for the project, during which members of the public in Scotland may submit to the competent authority in that EEA State representations pursuant to Article 7(3)(b) of the Directive; and

- (c) so far as they have received such information, notify the consultation bodies and the public concerned of the content of any decision of the competent authority of the relevant EEA State and in particular—
  - (i) any conditions attached to it;
  - (ii) the main reasons and considerations on which the decision was based including, if relevant, information about the participation of the public; and
  - (iii) a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects that have been identified.
- (2) The Scottish Ministers must also—
  - (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable period of time, both to the authorities in Scotland which they consider are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Scotland; and
  - (b) ensure that those authorities and the public concerned in Scotland are given an opportunity, before a regulatory approval 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.

## PART 10

### OFFENCES

#### **Provision of false etc. information**

**32.**—(1) A person commits an offence if that person, for the purpose of procuring a particular decision on an application to which these Regulations apply—

- (a) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- (b) with intent to deceive, uses any document which is false or misleading in a material particular; or
- (c) with intent to deceive, withholds any material information.

(2) A person who commits an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(3) No act or omission of the Crown constitutes an offence under this regulation.

(4) The Court of Session may, on the application of the Scottish Ministers, the chief constable or any other public body or office-holder having responsibility for enforcing this regulation, declare unlawful any act or omission of the Crown which would but for paragraph (3) be an offence under this regulation.

(5) Despite paragraph (3), this regulation applies to a person in the public service of the Crown as it applies to other persons.

#### **Offences by bodies corporate etc.**

**33.**—(1) Paragraph (2) applies where—

- (a) an offence under regulation 32(1) has been committed by—
  - (i) a body corporate;
  - (ii) a Scottish partnership; or
  - (iii) an unincorporated association other than a Scottish partnership; and

- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In paragraph (1), “relevant individual” means—
  - (a) in relation to a body corporate (other than a limited liability partnership)—
    - (i) a director, manager, secretary or similar officer of the body;
    - (ii) where the affairs of the body are managed by its members, a member;
  - (b) in relation to a limited liability partnership, a member;
  - (c) in relation to a Scottish partnership, a partner; or
  - (d) in relation to an unincorporated association other than a Scottish partnership, an individual who is concerned in the management or control of the association.

## PART 11

### MISCELLANEOUS

#### **Electronic communications – general**

**34.**—(1) In these Regulations, and in relation to the use of electronic communications for any purpose in these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purposes of such communications, except that where these Regulations impose an obligation on any person to provide a name and address to any other person, the obligation will not be fulfilled unless the person on whom it is imposed provides a postal address; and
- (b) references to applications, reports, statements, notices, opinions, directions or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form.

(2) Paragraphs (3) to (8) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any report, statement, notice or other document to any other person (referred to in these Regulations as “the recipient”).

(3) The requirement is deemed to be fulfilled (except in a case referred to in paragraph (4)) where the notice or other document transmitted by means of the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(4) The cases are—

- (a) the requirement under regulation 19(1), (2)(a) or (3) to provide copies of a report;
- (b) any requirement under regulation 26, including submitting information to an EEA State; and
- (c) any requirement under regulation 30, including submitting representations.

(5) In paragraph (3), “legible in all material respects” means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.



- (6) Where the electronic communication is received by the recipient—
- (a) at any time before the end of a day which is a working day, it is deemed to have been received on that day;
  - (b) at any time during a day which is not a working day, it is deemed to have been received on the next working day,

and for these purposes, “working day” means a day which is not a Saturday, Sunday, Christmas Eve, a bank holiday in Scotland under section 1 and paragraph 2 of schedule 1 of the Banking and Financial Dealings Act 1971<sup>(a)</sup>, a day appointed for public thanksgiving or mourning or any other day which is a local or public holiday in an area in which the electronic communication is received.

(7) A requirement in these Regulations that any document should be in writing is fulfilled where that document meets the criteria in paragraph (3), and “written” and cognate expressions are to be construed accordingly.

(8) Where electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations (other than under regulation 19(1), (2)(a) or (3), 30 or 31) to give or send any report, statement or document, any such requirement may be complied with by sending one copy only of the report, statement or other document in question.

### **Electronic communications – deemed agreement**

**35.**—(1) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(2) Deemed agreement under paragraph (1) subsists until that person gives notice under regulation 36 to revoke the agreement.

### **Withdrawal of consent to use of electronic communications**

**36.** Where a person is no longer willing to accept the use of electronic communications for any purpose which, under these Regulations, is capable of being carried out using such communications, that person must give notice in writing—

- (a) withdrawing any address notified to the Scottish Ministers for that purpose; or
- (b) revoking any agreement entered into or deemed to have been entered into with the Scottish Ministers,

and such withdrawal or revocation will be final, and will take effect on a date specified by the person in the notice, being a date occurring after the period of 7 days, beginning with the date on which the notice is given.

### **Access to review procedure before a court**

**37.** Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of the Directive and rights capable of being impaired for the purposes of Article 11(1)(b) of the Directive.

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(a) 1971 c.80.

### **Co-ordination of assessments**

**38.**—(1) Where, in relation to an EIA project there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a habitats regulation appraisal, the Scottish Ministers must, where appropriate, ensure that the habitats regulation appraisal and the environmental impact assessment are co-ordinated.

(2) In this regulation, a “habitats regulation appraisal” means an assessment under one, or more, of the following regulations—

- (a) regulation 48 of the Conservation (Natural Habitats, &c.) Regulations 1994;
- (b) regulation 25 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(a);
- (c) regulation 61 of the Conservation of Habitats and Species Regulations 2010(b).

### **Competent authority – avoidance of conflict of interest**

**39.**—(1) The Scottish Ministers are to perform their duties arising under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the Scottish Ministers are to consider an application for an EIA project they have made, they are to implement within their organisation of administrative competences an appropriate separation between conflicting functions when performing their duties under these Regulations.

## **PART 12**

### **TRANSITIONAL PROVISIONS AND REVOCATIONS**

#### **Transitional provisions – general**

**40.**—(1) These Regulations, other than regulations 5(4), 6(4) and (5)(b), 8(3), 24 and 38, apply with the modifications specified in paragraph (2) in respect of an application for regulatory approval where the applicant has before 16th May 2017—

- (a) submitted an environmental statement in connection with the application; or
- (b) made a request for a scoping opinion under regulation 13(1) of the 2007 Regulations in respect of the works to which the application relates.

(2) These Regulations apply in accordance with paragraph (1) as if—

- (a) references to an EIA report included references to an environmental statement;
- (b) for the factors specified in regulation 5(3)(a) to (d) there were substituted—
  - “(a) human beings, fauna and flora;
  - (b) soil, water, air, climate and the landscape; and
  - (c) material assets and cultural heritage;”;
- (c) for regulation 6(2) there were substituted—

“(2) An EIA report is a report prepared in accordance with this regulation by the applicant which includes (at least) the information specified in schedule 3 of the 2007 Regulations.”; and

- (d) the reference in regulation 21(2) to matters mentioned in schedule 4 of these Regulations were a reference to the matters mentioned in schedule 3 of the 2007 Regulations.

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(a) S.I. 2007/1842, regulation 25 is amended by S.I. 2010/490, S.I. 2010/1513, S.I. 2013/755 and S.I. 2016/912.

(b) S.I. 2010/490, regulation 61 is amended by S.I. 2012/1927.

(3) Where—

- (a) a request for a scoping opinion under regulation 13(1) of the 2007 Regulations is made before 16th May 2017; and
- (b) the Scottish Ministers have not adopted the scoping opinion before that date,

that request is to be treated as having been made under regulation 14(1) but when adopting the scoping opinion the Scottish Ministers are to assess the scope and level of detail of information to be contained in the EIA report by reference only to the scope and level of detail of information which immediately before 16th May 2017 had to be included in an environmental statement in accordance with regulation 12(2) and schedule 3 of the 2007 Regulations.

(4) References in this regulation and in regulation 41 to provisions of the 2007 Regulations are references to such provisions as they had effect immediately before 16th May 2017.

### **Transitional provisions – requests for screening opinions**

**41.** These Regulations, other than regulations 9(1)(b) and 10(2) to (4), apply in respect of a request for a screening opinion made under regulation 11(1) of the 2007 Regulations before 16th May 2017 as they apply to a request for a screening opinion made under 10(1) of these Regulations on or after that date as if—

- (a) the reference in regulation 11(4) to items or information required to be contained in or accompany a request in accordance with regulation 10(2) of these Regulations were a reference to items or information required to accompany a request for a screening opinion in accordance with sub-paragraphs (a) and (b) of paragraph 1 of schedule 2 of the 2007 Regulations; and
- (b) the reference in regulation 9(1)(a)(i) and (2)(a) to the criteria set out in schedule 3 of these Regulations were a reference to the criteria set out in schedule 1 of the 2007 Regulations.

### **Revocations**

**42.** The following instruments are revoked:—

- (a) the 2007 Regulations;
- (b) the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011(a); and
- (c) the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2015(b).

St Andrew's House,  
Edinburgh  
11th April 2017

*R CUNNINGHAM*  
A member of the Scottish Government

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(a) S.I. 2011/735.  
(b) S.I. 2015/446.

## SCHEDULE 1

Regulation 2(1)

### DESCRIPTIONS OF PROJECTS FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 1 WORKS”

#### Interpretation

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)(a);

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15th November 1975(b); 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 any works for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is to be treated as works of the description mentioned in paragraph 2(2) of this schedule.

#### Descriptions of projects

The carrying out of works to provide any of the following:—

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.—(1) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

(2) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.—(1) Installations for the reprocessing of irradiated nuclear fuel.

(2) 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 than the production site.

4.—(1) Integrated works for the initial smelting of cast-iron and steel.

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

5. 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;

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(a) Command Paper 6614.

(b) Command Paper 6993.

- (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.

**6.** 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.

**7.—(1)** Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2,100 metres or more.

(2) Construction of motorways and express roads.

(3) Construction of a new road of four or more lanes, or realignment and/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 and/or widened section of road, would be 10 kilometres or more in a continuous length.

**8.—(1)** Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes.

(2) 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.

**9.** 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 and repealing certain Directives<sup>(a)</sup> under heading D9), or landfill of hazardous waste (that is to say, waste which is considered to be hazardous in accordance with Articles 3(2) and 7 of that Directive).

**10.** 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.

**11.** 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.

**12.—(1)** 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.

(2) 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.

**13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2(6) of Council Directive 91/271/EEC concerning urban waste-water treatment<sup>(b)</sup>.

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(a) OJ No L 312, 22.11.2008, p.3.

(b) OJ No L 135, 30.5.1991, p.40, last amended by Council Directive 2013/64/EU (OJ L 353, 28.12.2013, p.8).

**14.** 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.

**15.** 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.

**16.** 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;
- (b) carbon dioxide streams for the purposes of geological storage, including associated booster stations.

**17.** 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.

**18.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

**19.** Storage sites pursuant to the CCS Directive.

**20.** Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations referred to in this schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

**21.** Any change to or extension of projects listed in this schedule where such a change or extension in itself meets the thresholds, if any, or description of projects set out in this schedule.

## SCHEDULE 2

Regulation 2(1)

### DESCRIPTIONS OF PROJECTS AND APPLICABLE THRESHOLDS AND CRITERIA FOR THE PURPOSES OF THE DEFINITION OF “SCHEDULE 2 WORKS”

1. In the table in paragraph 2—

“area of the works” means the area where activities which require regulatory approval are carried out; and

“controlled waters” has the same meaning as in section 30A(1) of the Control of Pollution Act 1974(a).

2. The table below sets out the descriptions of projects and applicable thresholds and criteria for the purposes of classifying works as schedule 2 works.

**TABLE**

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
The carrying out of works to provide any of the following:— <b>1. Agriculture and aquaculture</b>	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the works exceeds 0.5 hectare.
(b) Water management projects for agriculture, including drainage projects, but excluding irrigation projects;	The area of the works exceeds 1 hectare.
(c) Intensive livestock installations (unless otherwise included in schedule 1);	The area of the works exceeds 500 square metres.
(d) Intensive fish farming;	(i) the installation resulting from the works is designed to produce more than 10 tonnes of dead fish weight per year;  (ii) where the works are situated in marine waters, the works are designed to hold a biomass of 100 tonnes or greater; or  (iii) the works will extend to 0.1 hectare or more of the surface area of the marine waters, including any proposed structures or excavations.
(e) Reclamation of land from the sea.	All works.

(a) 1974 c.40. Section 30A was inserted by the Water Act 1989 (c.15), schedule 23, paragraph 4 and amended by the Environment Act 1995 (c.25), schedule 22, paragraph 29(2), and schedule 24.

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<b>2. Extractive industry</b>	
(a) Underground mining;	All works except the construction of works where the area of the works does not exceed 1,000 square metres.
(b) Extraction of minerals by marine or fluvial dredging;	All works.
(c) Deep drillings, in particular—  (i) Geothermal drilling;  (ii) Drilling for the storage of nuclear waste material;  (iii) Drilling for water supplies;  with the exception of drillings for investigating the stability of the soil;	(i) in relation to any type of drilling, the area of the works exceeds 1 hectare; or  (ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waters.
(d) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the works exceeds 0.5 hectare.
<b>3. Energy industry</b>	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in schedule 1);	The area of the works exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(c) Transmission of electrical energy by overhead cables (unless included in schedule 1);	(i) The area of the works exceeds 1 hectare; (ii) the purpose of which installation is to connect the electric line to a generating station the construction or operation of requires consent under section 36 of the Electricity Act 1989; or (iii) an electric line installed above ground with a voltage of 132 kilovolts or more, the installation of which (or the keeping installed of which) requires consent under section 37 of the Electricity Act 1989(a).
(d) Surface storage of natural gas;	(i) the area of any building, deposit or structure exceeds 500 square metres; or

(a) 1989 c.29.



<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(e) Underground storage of combustible gases;	(ii) a building, deposit or structure is to be sited within 100 metres of any controlled waters.
(f) Surface storage of fossil fuels;	
(g) Industrial briquetting of coal and lignite;	The area of the works exceeds 1,000 square metres.
(h) Installations for the processing and storage of radioactive waste (unless included in schedule 1);	(i) the area of the works exceeds 1,000 square metres; or  (ii) the installation resulting from the works will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993(a).
(i) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.
(j) Installations for the harnessing of wind power for energy production (wind farms);	(i) the works involves the installation of more than 2 turbines; or (ii) the hub height of any turbine or height of any other structure exceeds 15 metres.
(k) Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to the CCS Directive from installations not referred to in schedule 1.	All works.
<b>4. Production and processing of metals</b>	
(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;	The area of the works exceeds 1,000 square metres.
(b) Installations for the processing of ferrous metals—  (i) hot-rolling mills;  (ii) smitheries with hammers;  (iii) application of protective fused metal coats;	
(c) Ferrous metal foundries;	

(a) 1993 c.12.

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<p>(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);</p> <p>(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;</p> <p>(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;</p> <p>(g) Shipyards;</p> <p>(h) Installations for the construction and repair of aircraft;</p> <p>(i) Manufacture of railway equipment;</p> <p>(j) Swaging by explosives;</p> <p>(k) Installations for the roasting and sintering of metallic ores.</p>	
<p><b>5. Mineral industry</b></p> <p>(a) Coke ovens (dry coal distillation);</p> <p>(b) Installations for the manufacture of cement;</p> <p>(c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in schedule 1);</p> <p>(d) Installations for the manufacture of glass including glass fibre;</p> <p>(e) Installations for smelting mineral substances including the production of mineral fibres;</p> <p>(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.</p>	<p>The area of the works exceeds 1,000 square metres.</p>
<p><b>6. Chemical industry (unless included in schedule 1)</b></p> <p>(a) Treatment of intermediate products and production of chemicals;</p>	<p>The area of the works exceeds 1,000 square metres.</p>

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;	The area of the works exceeds 1,000 square metres
(c) Storage facilities for petroleum, petrochemical and chemical products.	(i) The area of the works exceeds 0.05 hectare; or  (ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.
<b>7. Food industry</b>	
(a) Manufacture of vegetable and animal oils and fats;	The area of the works exceeds 1,000 square metres.
(b) Packing and canning of animal and vegetable products;	
(c) Manufacture of dairy products;	
(d) Brewing and malting;	
(e) Confectionery and syrup manufacture;	
(f) Installations for the slaughter of animals;	
(g) Industrial starch manufacturing installations;	
(h) Fish-meal and fish-oil factories;	
(i) Sugar factories.	
<b>8. Textile, leather, wood and paper industries</b>	
(a) Industrial plants for the production of paper and board (unless included in schedule 1);	The area of the works exceeds 1,000 square metres.
(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;	
(c) Plants for the tanning of hides and skins;	
(d) Cellulose-processing and production installations.	
<b>9. Rubber industry</b>	
Manufacturing and treatment of elastomer-based products.	The area of the works exceeds 1,000 square metres.

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<b>10. Infrastructure projects</b>	
(a) Industrial estate development projects;	The area of the works exceeds 0.5 hectare.
(b) Urban development projects, including the construction of shopping centres and car parks, sport stadiums, leisure centres and multiplex cinemas;	
(c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in schedule 1);	
(d) Construction of railways (unless included in schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in schedule 1);	(i) The works involves an extension to a runway; or (ii) The area of the works exceeds 1 hectare.
(f) Construction of roads (unless included in schedule 1);	The area of the works exceeds 1 hectare.
(g) Construction of harbours and port installations, including fishing harbours (unless included in schedule 1);	
(h) Inland-waterway construction not included in schedule 1, canalisation and flood-relief works;	
(i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in schedule 1);	
(j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;	
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in schedule 1);	(i) The area of the work exceeds 1 hectare; or (ii) In the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.
(l) Installations of long-distance aqueducts;	

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	All works.
(n) Groundwater abstraction and artificial groundwater recharge schemes not included in schedule 1;  (o) Works for the transfer of water resources between river basins not included in schedule 1;	The area of the works exceeds 1 hectare.
(p) Motorway service areas.	The area of the works exceeds 0.5 hectare.
<b>11. Other projects</b>	
(a) Permanent racing and test tracks for motorized vehicles;	The area of the works exceeds 1 hectare.
(b) Installations for the disposal of waste (unless included in schedule 1);	(i) The disposal is by incineration;  (ii) The area of the works exceeds 0.5 hectare; or  (iii) The installation is to be sited within 100 metres of any controlled waters.
(c) Waste-water treatment plants (unless included in schedule 1);	The area of the works exceeds 1,000 square metres.
(d) Sludge-deposition sites;	(i) The area of deposit or storage exceeds 0.5 hectare; or
(e) Storage of scrap iron, including scrap vehicles;	(ii) A deposit is to be made or scrap stored within 100 metres of any controlled waters.
(f) Test benches for engines, turbines or reactors;	The area of the works exceeds 1,000 square metres.
(g) Installations for the manufacture of artificial mineral fibres;	
(h) Installations for the recovery or destruction of explosive substances;	
(i) Knackers' yards.	
<b>12. Tourism and leisure</b>	
(a) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>																																																
(b) Holiday villages and hotel complexes outside urban areas and associated works;	The area of the works exceeds 0.5 hectare.																																																
(d) Theme parks;	All works.																																																
(d) Permanent camp sites and caravan sites;	The area of the works exceeds 1 hectare.																																																
(e) Golf courses and associated works.	The area of the works exceeds 1 hectare.																																																
<b>13.</b>  Any change to or extension of works of a description mentioned in paragraphs 1 to 12 of Column 1 of this table where those works are already authorised, executed or in the process of being executed.	The thresholds and criteria in the corresponding part of Column 2 of this table applied to the works as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.																																																
<b>14.</b>  Any change to or extension of works of a description mentioned in schedule 1 (other than a change or extension falling within paragraph 21 of schedule 1) where those works are already authorised, executed or in the process of being executed.	<p>The thresholds and criteria in Column 2 of the paragraph of this table indicated below applied to the works as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.</p> <table> <thead> <tr> <th>Paragraph in schedule 1</th> <th>Paragraph of this table</th> </tr> </thead> <tbody> <tr><td>1</td><td>6(a)</td></tr> <tr><td>2(1)</td><td>3(a)</td></tr> <tr><td>2(2)</td><td>3(h)</td></tr> <tr><td>3</td><td>3(h)</td></tr> <tr><td>4</td><td>4</td></tr> <tr><td>5</td><td>5</td></tr> <tr><td>6</td><td>6(a)</td></tr> <tr><td>7(1)</td><td>10(d) (in relation to railways) or 10(e) (in relation to airports)</td></tr> <tr><td>7(2) and (3)</td><td>10(f)</td></tr> <tr><td>8(1)</td><td>10(h)</td></tr> <tr><td>8(2)</td><td>10(g)</td></tr> <tr><td>9</td><td>11(b)</td></tr> <tr><td>10</td><td>11(b)</td></tr> <tr><td>11</td><td>10(n)</td></tr> <tr><td>12</td><td>10(o)</td></tr> <tr><td>13</td><td>11(c)</td></tr> <tr><td>14</td><td>2(e)</td></tr> <tr><td>15</td><td>10(i)</td></tr> <tr><td>16</td><td>10(k)</td></tr> <tr><td>17</td><td>8(a)</td></tr> <tr><td>18</td><td>6(c)</td></tr> <tr><td>19</td><td>3(k)</td></tr> <tr><td>20</td><td>3(k)</td></tr> </tbody> </table>	Paragraph in schedule 1	Paragraph of this table	1	6(a)	2(1)	3(a)	2(2)	3(h)	3	3(h)	4	4	5	5	6	6(a)	7(1)	10(d) (in relation to railways) or 10(e) (in relation to airports)	7(2) and (3)	10(f)	8(1)	10(h)	8(2)	10(g)	9	11(b)	10	11(b)	11	10(n)	12	10(o)	13	11(c)	14	2(e)	15	10(i)	16	10(k)	17	8(a)	18	6(c)	19	3(k)	20	3(k)
Paragraph in schedule 1	Paragraph of this table																																																
1	6(a)																																																
2(1)	3(a)																																																
2(2)	3(h)																																																
3	3(h)																																																
4	4																																																
5	5																																																
6	6(a)																																																
7(1)	10(d) (in relation to railways) or 10(e) (in relation to airports)																																																
7(2) and (3)	10(f)																																																
8(1)	10(h)																																																
8(2)	10(g)																																																
9	11(b)																																																
10	11(b)																																																
11	10(n)																																																
12	10(o)																																																
13	11(c)																																																
14	2(e)																																																
15	10(i)																																																
16	10(k)																																																
17	8(a)																																																
18	6(c)																																																
19	3(k)																																																
20	3(k)																																																

<i>Column 1</i> <i>Descriptions of projects</i>	<i>Column 2</i> <i>Applicable thresholds and criteria</i>
<p><b>15.</b></p> <p>Works of a description mentioned in schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.</p>	<p>All works.</p>

## SELECTION CRITERIA FOR SCREENING SCHEDULE 2 WORKS

### **Characteristics of works**

1. The characteristics of works must be considered having regard, in particular, to—
  - (a) the size and design of the works;
  - (b) cumulation with other existing works and/or approved works;
  - (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 and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
  - (g) the risks to human health (for example due to water contamination or air pollution).

### **Location of works**

2. The environmental sensitivity of geographical areas likely to be affected by works must be considered having regard, in particular, 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 its underground;
  - (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) European sites and other areas classified or protected under national legislation;
    - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;
    - (vii) densely populated areas;
    - (viii) landscapes and sites of historical, cultural or archaeological significance.

### **Characteristics of the potential impact**

3. The likely significant effects of the works on the environment must be considered in relation to criteria set out in paragraphs 1 and 2 above, with regard to the impact of the works on the factors specified in regulation 5(3), taking into account—
  - (a) the magnitude and spatial extent of the impact (for example geographical area and 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 and/or approved works;
- (h) the possibility of effectively reducing the impact.

## INFORMATION FOR INCLUSION IN ENVIRONMENTAL IMPACT ASSESSMENT REPORTS

**1.** A description of the works, including in particular:

- (a) a description of the location of the works;
- (b) a description of the physical characteristics of the whole works, 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 works (in particular any production process), for instance, energy demand and energy used, 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.

**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 works and its 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 (the “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 5(3) likely to be significantly affected by the works: 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 works on the environment resulting from, inter alia:

- (a) the construction and existence of the works, 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 and/or approved works, 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 works on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the works to climate change;
- (g) the technologies and the substances used.

**6.** The description of the likely significant effects on the factors specified in regulation 5(3) should 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 works. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the works including in particular those established under Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(a) and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(b).

**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 should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

**9.** A description of the expected significant adverse effects of the works on the environment deriving from the vulnerability of the works to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation of the European Union 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(c) or Council Directive 2009/71/Euratom establishing a community framework for the nuclear safety of nuclear installations(d) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should 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.

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

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(a) OJ L 206, 22.7.1992, p.7.

(b) OJ L 20, 26.1.2010, p.7.

(c) OJ L 197, 24.7.2012, p.1.

(d) OJ L 172, 2.7.2009, p.18.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke, re-enact and update, the Marine Works (Environmental Impact Assessment) Regulations 2007 (“the 2007 Regulations”). These Regulations apply in relation to Scotland only.

The Regulations implement Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (OJ L 124, 25.04.2014, p.1), in relation to regulatory approvals required before certain projects may be taken forward in Scotland’s marine environment.

The Regulations impose procedural requirements in relation to the consideration of applications for such regulatory approvals by the Scottish Ministers. All projects in schedule 1 require an environmental impact assessment (EIA). Projects in schedule 2 require an EIA if they are likely to have significant effects on the environment. Projects which require an EIA are referred to in the Regulations as “EIA projects”.

Regulation 4 prohibits the grant of a regulatory approval for an EIA project unless an environmental impact assessment has been carried out and the Scottish Ministers have first taken account of the environmental information (defined in regulation 2(1)) which is before them. Regulation 26 makes equivalent provision in relation to the determination of an application for multi-stage regulatory approval. Regulation 5 sets out what the environmental assessment process comprises and regulation 6 sets out the content of an EIA report.

Part 2 sets out procedures for determining whether environmental impact assessment is required. Regulation 7 sets out which events will establish whether proposed works would be an EIA project. Regulation 8 enables the Scottish Ministers to direct, in certain specified cases, that these Regulations do not apply. Regulation 10 enables a request to be made to the Scottish Ministers for a “screening opinion”. Regulation 9 makes general provision in relation to such an opinion, including that any opinion must be made by reference to the criteria in schedule 3.

Part 3 sets out procedures to be followed where the Scottish Ministers are considering an application for regulatory approval for an EIA project without an EIA report.

Regulation 14 enables an applicant for a regulatory approval to seek an opinion from the Scottish Ministers (“a scoping opinion”) on the information to be included in an EIA report. The types of information which may be required are set out in schedule 4. The Scottish Ministers must consult bodies with environmental responsibilities before adopting a scoping opinion. Regulation 15 requires consultation bodies, if requested, to assist the preparation of an EIA report by making information available to the developer.

Regulation 16 requires publication of notice of the lodging of an EIA report to be given. Regulation 17 requires the EIA report and other relevant information to be publicised. Regulation 18 provides for consultation where an EIA report is received by the Scottish Ministers. Regulations 19 and 20 are concerned with the provision of copies of an EIA report.

Regulation 21 contains procedures for requiring the provision by the applicant of supplementary information over and above that contained in the EIA report. The applicant may also submit information relating to the EIA report voluntarily. Such information is together referred to as “additional information” (regulation 2(1)). Regulation 22 provides that notice of the receipt and availability of additional information provided by the applicant after the initial gathering of information for an EIA report has taken place will require to be publicised.

Regulation 23 sets out what information is to be contained in the decision notice following determination of an application for regulatory approval. Regulation 24 requires consideration to be given to the inclusion of monitoring measures. Regulation 25 requires the Scottish Ministers to notify the applicant, the consultation bodies and the public of their decision.

Part 8 makes provision relating to applications for multi-stage regulatory approvals which essentially mirror the provisions in the Regulations relating to applications for regulatory approval. Regulation 27 requires the Scottish Ministers to seek supplementary information if they identify that the environmental assessment has yet to consider certain significant environmental impacts of the works. Regulation 28 requires the Scottish Ministers to undertake screening in certain circumstances where considering an application for multi-stage regulatory approval. Regulation 29 modifies the application of the Regulations as they apply to applications for multi-stage regulatory approvals.

Part 9 makes provision for consultation between EEA States where EIA projects are likely to have significant effects on the environment in another EEA State.

Part 10 makes provision for offences. Regulation 32 provides that a person commits an offence if that person knowingly or recklessly provides a false or misleading statement in order to procure a decision or, with intent to deceive, to use a document which is false or misleading or to withhold material information. Regulation 33 provides for how this applies in the context of offences committed by bodies corporate, Scottish partnerships and other unincorporated associations. Part 11 makes miscellaneous provision. Regulations 34, 35 and 36 make provision for the use of electronic communication. Regulation 37 makes provision to facilitate the access to legal challenge procedures for non-governmental organisations promoting environmental protection. Regulation 38 provides for co-ordination of assessments. Regulation 39 makes provision for the avoidance of conflicts of interest.

Part 12 makes transitional provisions and revokes the 2007 Regulations and relevant amending Regulations.

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