
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 115

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

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⁽¹⁾;

“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;

(1) 2010 asp 5.

- (b) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991⁽²⁾;
- (c) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995⁽³⁾;
- (d) Historic Environment Scotland, established by section 1 of the Historic Environment (Scotland) Act 2014⁽⁴⁾; 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⁽⁵⁾;

“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⁽⁶⁾;

“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⁽⁷⁾ 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,

(2) 1991 c.28.

(3) 1995 c.25.

(4) 2014 asp 19.

(5) OJ L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#).

(6) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), schedule 17, paragraph 158.

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

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⁽⁸⁾), the Department of Agriculture, Environment and Rural Affairs in Northern Ireland; or
- (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⁽⁹⁾ 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⁽¹⁰⁾, 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;

⁽⁸⁾ 2009 c.23.

⁽⁹⁾ 1997 c.8.

⁽¹⁰⁾ 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).

- (b) land in respect of which an order has been made under section 23 of the Nature Conservation (Scotland) Act 2004⁽¹¹⁾;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹²⁾;
- (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⁽¹³⁾;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁴⁾;
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A⁽¹⁵⁾ 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⁽¹⁶⁾;

“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

“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—

⁽¹¹⁾ 2004 asp 6.

⁽¹²⁾ S.I. 1994/2716. Regulation 10 is amended by S.S.I. 2004/474 and S.S.I. 2007/80.

⁽¹³⁾ See Command Paper 9424.

⁽¹⁴⁾ 1979 c.46.

⁽¹⁵⁾ Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).

⁽¹⁶⁾ Section 58(1) was relevantly amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

- (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⁽¹⁷⁾ and [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds⁽¹⁸⁾;
- (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

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

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

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.

(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.