

## 1990 No. 181

## EUROPEAN COMMUNITIES

## HARBOURS, DOCKS, ETC.,

**The Harbour Works (Assessment of Environmental Effects)  
Regulations (Northern Ireland) 1990**

*Made* . . . . . 21st May 1990

*Coming into operation* . . . . . 25th June 1990

The Department of the Environment, and the Department of Agriculture, being departments designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred by that section and of all other powers enabling them in that behalf, make the following Regulations:

*Citation and commencement*

1. These Regulations may be cited as The Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990 and shall come into operation on 25th June 1990.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

(2) In these Regulations—

“the appropriate Department” means—

(a) in respect of harbour works not being works relating to fishery harbours, the Department of the Environment; and

(b) in respect of harbour works relating to fishery harbours, the Department of Agriculture;

“the Directive” means Council Directive No. 85/337/EEC(d) on the assessment of the effect of certain public and private projects on the environment;

“environmental assessment” means an assessment in accordance with the Directive;

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(a) S.I. 1988/785

(b) 1972 c. 68

(c) 1954 c. 33 (N.I.)

(d) O.J. No. L175, 5.7.85 p. 40

- “fishery harbour” has the meaning assigned to it by Article 1(2) of the Ministries (Transfer of Functions) Order (Northern Ireland) 1973(a);
- “harbour” and “harbour authority” have the meanings assigned to them in section 38(1) of the Act of 1970;
- “harbour works” means works involved in the construction of a harbour or in the making of modifications to an existing harbour;
- “the Act of 1970” means the Harbours Act (Northern Ireland) 1970(b);
- “the Order of 1972” means the Planning (Northern Ireland) Order 1972(c).

(3) For the purposes of these Regulations a harbour authority carries out harbour works if it carries out the whole or any part of such works or any operation in connection with or for the purposes of such works.

#### *Application*

3. These Regulations apply to harbour works below the low water mark of medium tides, being works which are not subject to planning control pursuant to the Order of 1972.

#### *Procedure for decision on whether environmental assessment is required*

4.—(1) Where a harbour authority proposes to carry out harbour works to which these Regulations apply it shall not commence those works unless the appropriate Department decides as mentioned in paragraph (4) or consents thereto under regulation 8(3).

(2) Where a harbour authority proposes to carry out harbour works to which these Regulations apply the appropriate Department shall consider whether—

- (a) the works constitute a project which falls within Annex I of the Directive; or
- (b) the works constitute a project which falls within Annex II of the Directive and, if so, whether their characteristics require that the works should be made subject to an environmental assessment.

(3) The appropriate Department may require the harbour authority to supply it with such of the following information as it deems necessary to enable it to consider whether the proposed harbour works constitute a project falling within paragraph (2)—

- (a) a brief description of the nature and purpose of the proposed harbour works;
- (b) a plan sufficient to identify the location of the proposed harbour works;
- (c) plans and sections showing the lines, situation and levels of the proposed harbour works; and

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(a) S.R. & O. (N.I.) 1973 No. 128

(b) 1970 c. 1 (N.I.)

(c) S.I. 1972/1634 (N.I. 17) as amended by S.I. 1978/1048 (N.I. 18) and S.I. 1982/1537 (N.I. 20)

(d) such further information as it may specify in a particular case.

(4) If the appropriate Department decides that proposed harbour works do not constitute a project falling within Annex I or Annex II to the Directive or that they constitute a project falling within Annex II the characteristics of which do not require that the works should be made subject to an environmental assessment, it shall take no further action and shall notify the harbour authority of its decision forthwith.

*Information to be supplied by a harbour authority where an environmental assessment is required*

5.—(1) If the appropriate Department decides that proposed harbour works constitute a project falling within Annex I of the Directive, or a project falling within Annex II and considers that their characteristics require that the works should be made subject to an environmental assessment, it shall notify the harbour authority of its decision forthwith and direct the harbour authority to supply it in such form as it may specify with the information referred to in Annex III to the Directive to the extent that it considers—

- (a) that such information is relevant to the specific characteristics of the proposed harbour works and to the environmental features likely to be affected; and
- (b) that having regard in particular to current knowledge and methods of assessment the harbour authority may reasonably be required to compile that information.

(2) The information to be supplied to the appropriate Department under paragraph (1) shall include at least—

- (a) a description of the proposed harbour works comprising information on the site, design and size of the proposed harbour works;
- (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- (c) the data required to identify and assess the main effects which the proposed harbour works are likely to have on the environment; and
- (d) a non-technical summary of the information mentioned in sub-paragraphs (a) to (c).

*Publication of notice by harbour authority*

6.—(1) Not less than 14 days before it supplies to the appropriate Department the information referred to in regulation 5 the harbour authority shall publish a notice in a newspaper circulating in the locality of the harbour where the harbour works are proposed to be carried out stating—

- (a) its name and the location and nature of the proposed harbour works;
- (b) that it has applied for consent to the carrying out of the proposed works;
- (c) that it has been directed to supply the information referred to in regulation 5;
- (d) that a copy of any information supplied under regulation 4(3) together with the information to be supplied under regulation 5 may be inspected by members of the public at all reasonable hours;

- (e) an address within the locality of the harbour where the harbour works are proposed to be carried out at which the documents open to inspection may be inspected and the latest date on which they will be available being a date not less than 42 days later than the date on which the notice is published;
- (f) an address (within the locality of the harbour where the harbour works are proposed to be carried out whether or not the same as that named under sub-paragraph (e)) at which copies of the information to be supplied under regulation 5(1) may be obtained, for so long as stocks last, and, if a charge is to be made for a copy, the amount of the charge; and
- (g) that any person who wishes to make representations concerning the proposed harbour works should do so in writing, within 7 days from the date specified in accordance with sub-paragraph (e), to the appropriate Department.

(2) On the date of publication of the notice under paragraph (1) the harbour authority shall also post at or outside the harbour authority offices to which members of the public have access a notice containing the information specified in paragraph (1).

(3) The harbour authority shall ensure that the notice referred to in paragraph (2) is—

- (a) left in position for a period of 42 days from the date of posting;
- (b) posted by affixing it firmly to a building or object on the premises and is sited and displayed in such a way as to be easily visible to and legible by members of the public; and
- (c) replaced if it is at any time removed, damaged or defaced.

(4) The information supplied to the appropriate Department under regulation 5 shall be accompanied by—

- (a) a copy of the notice referred to in paragraph (1) certified by or on behalf of the harbour authority as having been published in a named newspaper on a date specified in the certificate; and
- (b) a certificate by or on behalf of the harbour authority which states—
  - (i) that it has posted a notice in accordance with paragraph (2), at or outside the offices of the harbour authority for the harbour in which the harbour works are proposed to be carried out and when it did so; and
  - (ii) that it has complied with the requirements of paragraph (3)(b) and will comply with the requirements of paragraph (3)(c) should this be necessary.

#### *Consultation on and holding of inquiry into proposed harbour works*

7.—(1) The appropriate Department may direct the harbour authority to supply such bodies as it may specify being bodies appearing to it to have environmental responsibilities, with copies of the information supplied to it under regulation 5.

(2) Where it has given a direction under paragraph (1) the appropriate Department shall consult the bodies specified therein or the harbour authority before reaching a decision on the merits of the proposed harbour works.

(3) The appropriate Department may if it thinks fit cause an inquiry to be held by a person appointed by it into a proposal to carry out harbour works and it shall afford to the harbour authority, to any persons who have made representations to it and to the bodies specified under paragraph (1) the opportunity to appear before the person appointed by it for the purpose.

#### *Decisions on proposed harbour works*

8.—(1) Where the appropriate Department is satisfied that the harbour authority has complied with its direction under regulation 5(1), with regulation 6 and with any direction under regulation 7(1), and it has received the report of any inquiry held under regulation 7(3), it shall reach a decision on the merits of the proposed harbour works.

(2) In reaching its decision concerning proposed harbour works, the appropriate Department shall consider the information supplied to it under regulation 5, any representations received pursuant to regulation 6(1) or (2), any consultations under regulation 7(2), and the report of any inquiry held under regulation 7(3).

(3) The appropriate Department may—

- (a) consent to the carrying out of the proposed harbour works either unconditionally or subject to such conditions as it sees fit; or
- (b) refuse such consent.

(4) The appropriate Department shall—

- (a) notify its decision, and the reasons and considerations upon which it was based to the harbour authority and to all bodies and persons who were consulted on or made representations concerning the proposed harbour works; and
- (b) whether or not an inquiry is held, publish once in one or more newspapers circulating in the area in which the project is initiated a notice—
  - (i) stating whether or not it is intended to proceed with the project;
  - (ii) specifying a place in the area where a statement setting out the reasons and considerations on which its decision is based can be inspected by any person free of charge at all reasonable hours within a period of 30 days from the date of publication of the notice.

(5) Any condition subject to which the appropriate Department has consented to harbour works—

- (a) shall subject to sub-paragraph (c) either remain in force for a specified period or remain in force without limit of time;
- (b) shall in addition to binding the harbour authority to whom the consent is given bind, so far as is appropriate, any other person who for the time being owns, occupies, or enjoys any use of the harbour works; and

(c) may, if the appropriate Department thinks fit, be revoked by it.

(6) A consent under paragraph (3) may be granted so as to continue in force, unless renewed, only if the harbour works for which the consent is granted are begun or completed within such period as may be specified in the consent, and any renewal of a consent may be limited in the same way.

*Harbour works carried out without a decision under regulation 4(4) or a consent under regulation 8(3)*

9.—(1) If a harbour authority carries out harbour works to which it appears to the appropriate Department that these Regulations apply and in respect of which the Department has not decided as mentioned in regulation 4(4), or consented to under regulation 8(3) or this regulation the appropriate Department shall serve notice in writing on the harbour authority requiring it, where the works have not been completed, to cease the works forthwith and to supply the appropriate Department with such of the information referred to in regulation 4(3) as it may specify within such period as it may specify.

(2) If a harbour authority fails to supply the appropriate Department with such of the information referred to in regulation 4(3) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Department shall make such investigations as it considers necessary to enable it to decide whether the harbour works constitute a project the characteristics of which require that they should be made subject to an environmental assessment and shall notify its decision to the harbour authority.

(3) If a harbour authority fails to supply the appropriate Department with such of the information referred to in regulation 5(1) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Department shall make such investigations, invite such representations and hold such consultations with bodies referred to in regulation 7 as it considers necessary to enable it to reach a decision on the merits of the harbour works.

(4) The provisions of regulation 8(3) to (6) shall apply in relation to a decision reached under paragraph (3) to the extent that they are appropriate.

*Enforcement*

10.—(1) If a harbour authority carries out harbour works in respect of which consent has been refused under regulation 8 or regulation 9 or in contravention of a condition subject to which consent was granted, the appropriate Department may serve notice in writing on the harbour authority requiring it, within such period (not being less than thirty days) as may be specified in the notice, to remove the works and reinstate the site or to make such alterations thereto as may be so specified, or, if it appears to the appropriate Department urgently necessary to do so, it may remove or alter the works and reinstate the site.

(2) If a harbour authority fails to comply with the notice within the period specified in the notice, the appropriate Department may remove or alter the works and reinstate the site as specified in the notice.

(3) Where the appropriate Department removes or alters works and reinstates a site under paragraph (1) or (2) it shall be entitled to recover the expense, as certified by it, from the harbour authority.

Sealed with the Official Seal of the Department of the Environment on  
21st May 1990.

(L.S.)

*Trevor Pearson*

Assistant Secretary

Sealed with the Official Seal of the Department of Agriculture on 21st  
May 1990.

(L.S.)

*Larry Sinclair*

Assistant Secretary

#### EXPLANATORY NOTE

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

These Regulations implement in Northern Ireland the Directive of the Council of the European Communities on the assessment of the effects of certain public and private projects on the environment (85/337/EEC — O.J. No. L175, 5.7.1985 p. 40) in respect of proposals by a harbour authority to construct new harbours and to improve harbours to which the Directive applies.

Regulation 3 specifies the harbour works to which these Regulations apply.

Regulation 4 requires the appropriate Department as defined in regulation 2(2) to consider whether the proposed works fall within Annex I or Annex II to the Directive and, in the latter case, whether their characteristics require that the works be made subject to an environmental assessment in accordance with the Directive. The works are not to be carried out unless the consent of the appropriate Department is obtained or it has decided that an environmental assessment is not required.

Regulation 5 provides that where the appropriate Department decides that an environmental assessment is required it shall direct the harbour authority to supply such of the information specified in Annex III to the Directive as may be relevant and obtainable.

Regulation 6 provides that the harbour authority must publish a notice in a newspaper, and at or outside the offices of the harbour authority post a notice indicating the nature of the proposed works, that it has been directed to supply the information specified in said Annex III and stating where copies of the

information may be inspected and obtained and how representations may be made. The harbour authority must furnish the appropriate Department with a certificate to the effect that the requirements in regard to the notices have been carried out.

Regulation 7 provides for consultation with bodies having environmental responsibilities and for the holding of an inquiry into proposed works.

Regulation 8 requires the appropriate Department in reaching its decision to consider the information supplied to it under regulation 5, any representations, consultations, and the report of any inquiry. It is required to notify its decision and the reasons and considerations upon which it is based to the harbour authority and to all bodies or persons who were consulted or made representations and to publish its decision.

Regulation 9 empowers the appropriate Department to serve notice on a harbour authority which carries out harbour works which may require to be subject to an environmental assessment, directing the harbour authority to cease the works, where such works have not been completed, and to provide the appropriate Department with specified information concerning the works. If the harbour authority fails to provide the specified information, the appropriate Department shall make such investigations as it considers necessary and shall proceed to reach a decision either on whether an assessment is required or, if appropriate, on the merits of the harbour works.

Regulation 10 deals with the enforcement of decisions pursuant to the Regulations by providing for the service of notice on the harbour authority requiring it to remove the works and reinstate the site. Where such a notice is not complied with the appropriate Department is empowered to carry out the works and reinstate the site. Provision is made for the appropriate Department to recover the expense of such works from the harbour authority.

Copies of Council Directive 85/337/EEC are available from the Commission of the European Communities, Windsor House, 9-15 Bedford Street, Belfast BT2 7EG.