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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 136**

**The Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003**

**Citation, commencement, revocations and extent**

1.—(1) These Regulations may be cited as the Harbour Works (Environmental Impact Assessment) Regulations (Northern Ireland) 2003, and shall come into operation on 14th April 2003.

(2) These Regulations shall not apply in relation to a proposal to carry out harbour works referred to in regulation 4(1) of the Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990(1) and notified to the appropriate Department prior to 14th April 2003.

(3) Except in relation to a proposal to carry out harbour works referred to in paragraph (2), the following Regulations are hereby revoked –

- (a) the Harbour Works (Assessment of Environmental Effects) Regulations (Northern Ireland) 1990;
- (b) the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations (Northern Ireland) 1996(2).

**Interpretation**

2.—(1) In these Regulations –

“the Act of 1970” means the Harbours Act (Northern Ireland) 1970(3);

“the appropriate Department” means –

- (a) as regards harbour works relating to any fishery harbour, the Department of Agriculture and Rural Development; and
- (b) as regards any other harbour works, the Department for Regional Development;

“Annex I” means Annex I to the Directive and comprises development of a description referred to in Schedule 3;

“Annex II” means Annex II to the Directive and comprises development of a description referred to in Schedule 4;

“developer” means any person who proposes to carry out or who carries out harbour works;

“the Directive” means Council Directive [85/337/EEC](#) on the assessment of the effect of certain public and private projects on the environment, as amended by Council Directive [97/11/EC](#);

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(4);

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

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(1) S.R. 1990 No. 181  
(2) S.R. 1996 No. 369  
(3) 1970 c. 1 (N.I.)  
(4) Cmmd. 2073

“environmental statement” means a statement that includes such information of the descriptions referred to in Schedule 1 as is considered, in accordance with these Regulations, to be relevant to the proposed harbour works, but which includes at least the essential environmental information;

“essential environmental information” means –

- (a) a description of the proposed harbour works comprising information on its site, design and size;
- (b) a description of the measures which the applicant proposes to take in order to prevent, reduce or remedy significant adverse effects;
- (c) data required to identify and assess the main effects which the proposed harbour works are likely to have on the environment;
- (d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; and
- (e) a non-technical summary of the information mentioned in sub-paragraphs (a) to (d);

“fishery harbour” has the meaning assigned to it in Article 1(2) of the Ministries (Transfer of Functions) Order (Northern Ireland) 1973<sup>(5)</sup>;

“harbour” and “harbour authority” have the meanings assigned to them in section 38(1) of the Act of 1970;

“harbour order” means an order made under section 1(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;

“relevant project” means a project which would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location;

“selection criteria” means the criteria set out in Schedule 2;

“sensitive area” means any of the following –

- (a) an area designated by order as a National Park under Article 12 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(6)</sup>;
- (b) an area of outstanding natural beauty designated as such by an order made under Article 14 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (c) an area of land declared to be a national nature reserve under Article 18 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (d) an area designated by order as a marine nature reserve under Article 20 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(7)</sup>;
- (e) a nature reserve provided by a district council under Article 22(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (f) an area of special scientific interest, that is to say, an area of land declared to be an area of special scientific interest under Article 24 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985<sup>(8)</sup>;
- (g) a wildlife refuge, that is to say, an area specified in an order made under Article 16 of the Wildlife (Northern Ireland) Order 1985<sup>(9)</sup>;

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

(6) S.I. 1985/170 (N.I. 1)

(7) Article 20 was amended by Section 3 of, and Schedule 1 to, the Territorial Sea Act 1987 (1987 c. 49)

(8) Article 24 was amended by Article 10(1) of S.I. 1989/492 (N.I. 3)

(9) 1985/171 (N.I. 2); Article 16 was amended by Article 4(1)(d) of S.I. 1995/761 (N.I. 6)

- (h) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(10);
  - (i) a European site within the meaning of Regulation 9 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995(11);
  - (j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat(12);
  - (k) a property appearing on the World Heritage list kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of World Cultural and Natural Heritage(13);
- and subject thereto, expressions used which are also used in the Directive have the meaning which they bear in the Directive.

(2) The Interpretation Act (Northern Ireland) 1954(14) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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

(4) Harbour works constituting a project which is of a description mentioned in Annex II to the Directive shall be treated for the purposes of these Regulations as not falling within that Annex unless –

- (a) the area of the harbour works exceed 1 hectare,
- (b) any part of the harbour works is to be carried out in a sensitive area, or
- (c) the appropriate Department determines that the harbour works constituting the project shall be treated for the purposes of these Regulations as falling within that Annex.

### Scope

3. These Regulations apply to harbour works below the low water mark of medium tides, being works which are –

- (a) not subject to planning control pursuant to the Planning (Northern Ireland) Order 1972(15) or pursuant to any statutory provision made in exercise of powers conferred by the said Order; or
- (b) not the subject of a fish culture licence granted by the Department of Agriculture and Rural Development under section 11 of the Fisheries Act (Northern Ireland) 1966(16) and as provided for by Regulation 3 of the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999(17);

### Procedure for obtaining a prior opinion

4.—(1) A developer who is minded to make an application for approval to carry out harbour works may ask the appropriate Department to state in writing its opinion –

- (a) as to whether the application would or would not relate in whole or in part to harbour works to which these Regulations apply; and

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(10) S.I. 1995/1625 (N.I. 9)

(11) S.R. 1995 No. 380

(12) See Command Paper 6464

(13) See Command paper 9424

(14) 1954 c. 33 (N.I.)

(15) S.I. 1991/1220 (N.I. 11)

(16) 1966 c. 17 (N.I.); Section 11 was substituted by Article 6 of S.I. 1991/1466 (N.I. 13)

(17) S.R. 1999 No. 415

- (b) if the appropriate Department considers it would so relate and, assuming the criteria set out in paragraph (2) were satisfied, about the information to be supplied in the environmental statement.

(2) The criteria referred to in paragraph (1)(b) are that the proposed harbour works constitute a project falling within Annex I to the Directive, or within Annex II to the Directive and (taking into account the selection criteria) the appropriate Department determines that they would be likely to constitute a relevant project.

(3) A request under paragraph (1) shall be accompanied by –

- (a) a plan sufficient to identify the location of the proposed harbour works,
- (b) a brief description of the nature and purpose of the proposed harbour works and of their possible effects on the environment,
- (c) plans and sections showing the lines, situation and levels of the proposed harbour works, and
- (d) such other information or representations as the person making the request may wish to provide or make.

(4) The appropriate Department receiving a request under paragraph (1) shall, if it considers that it has not been provided with sufficient information to give an opinion on the questions raised, notify the person making the request of the particular points on which it requires further information.

(5) Subject to paragraph (6), the appropriate Department shall give the opinion requested under paragraph (1) as soon as reasonably practicable.

(6) The appropriate Department shall not give an opinion in response to a request under paragraph (1) until it has consulted the person who made the request and such bodies as appear to it to be likely to have an interest in the project by reason of their environmental responsibilities.

(7) In so far as the request relates to paragraph (1)(b), the appropriate Department shall indicate the extent of the information set out in Schedule 1 which the person who requested the opinion would be required under regulation 5 to supply; in so doing the appropriate Department shall take into account the extent to which it considers –

- (a) information to be relevant to its decision under regulation 11 and to the specific characteristics of the particular proposed harbour works and of the environmental features likely to be affected by the works, and
- (b) that (having regard inter alia to current knowledge and methods of assessment) the person who requested the opinion may reasonably be required to compile the information.

### **Applications relating to harbour works where a prior opinion has been given**

5.—(1) This regulation shall apply where an application is made for approval to undertake harbour works and an opinion has been given to the developer under regulation 4(1) that the appropriate Department would consider that such an application relating to the same, or substantially the same proposed works, would relate in whole or in part to harbour works to which these Regulations apply.

(2) In any case to which this regulation applies, the developer shall not commence the proposed harbour works unless paragraph (3) or (7) applies or the appropriate Department consents thereto under regulation 11(2).

(3) Where it appears to the appropriate Department that the proposed harbour works do not constitute a project falling within Annex I or Annex II to the Directive, it shall in writing notify its decision to the developer and, subject to paragraph (6) it shall take no further action on the application pursuant to these Regulations.

(4) Where it appears to the appropriate Department that the proposed harbour works constitute a project falling within Annex I to the Directive –

- (a) it shall in writing notify its decision and the reasons for its decision to the developer, and
- (b) paragraphs (9) and (10) shall apply.

(5) Where it appears to the appropriate Department that the proposed harbour works constitute a project falling within Annex II to the Directive –

- (a) it shall determine whether, taking into account the selection criteria, the works constitute a relevant project,
- (b) it shall in writing notify its decision to the developer, and
- (c) where it determines that, taking into account the selection criteria, the works constitute a relevant project, it shall in writing notify the reasons for its decision, to the developer.

(6) The appropriate Department shall make available for public inspection at all reasonable hours at a place within the locality of the harbour where the harbour works are proposed to be carried out, a copy of –

- (a) its decision under paragraph (3), (4) or (5)(a), and
- (b) any accompanying statement of reasons under paragraph (4) or (5)(c);

(7) Where the appropriate Department determines pursuant to paragraph (5)(a) that the works do not constitute a relevant project, then subject to the provisions of paragraphs (5) and (6) it shall take no further action on the application pursuant to these Regulations.

(8) Where the appropriate Department determines pursuant to paragraph (5)(a) that the works constitute a relevant project, paragraphs (9) to (11) shall apply.

(9) Where this paragraph applies, the appropriate Department shall direct the developer to supply it with an environmental statement in such form as it may specify.

(10) Subject to paragraph (11), the appropriate Department may require the developer to supply it with specified information in addition to the information specified in the opinion given to the developer pursuant to regulation 4(1)(b) in relation to the same, or substantially the same, proposed harbour works as are referred to in the application.

(11) The appropriate Department may specify information under paragraph (10) only if it is information of a type set out in Schedule 1 and the appropriate Department considers that –

- (a) it is relevant to its decision under regulation 11 and to the specific characteristics of the proposed harbour works to which the application relates and to the environmental features likely to be affected; and
- (b) (having regard inter alia to current knowledge and methods of assessment) the developer may reasonably be required to compile the information.

#### **Applications relating to harbour works where a prior opinion has not been given**

6.—(1) This regulation shall apply where an application is made for approval to undertake harbour works and an opinion has not been given to the developer under regulation 4(1) in relation to the application.

(2) In any case to which this regulation applies –

- (a) the appropriate Department shall consider whether the application relates in whole or in part to harbour works to which these Regulations apply and shall reach a decision thereon as soon as reasonably practicable, and
- (b) if the appropriate Department determines that the application relates in whole or in part to harbour works to which these Regulations apply, the developer shall not commence the

proposed works unless paragraph (4) or (8) applies or the appropriate Department consents thereto under regulation 11(2).

(3) The appropriate Department may require the developer to provide 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 Annex I or Annex II to the Directive, and if within Annex II, to determine whether (after taking into account the selection criteria) they constitute a relevant project –

- (a) a plan sufficient to identify the location of the proposed harbour works;
- (b) a brief description of the nature and purpose of the proposed harbour works and of their possible effects on the environment;
- (c) plans and sections showing the lines, situation and levels of the proposed harbour works; and
- (d) such further information as it may specify in a particular case.

(4) Where it appears to the appropriate Department that the proposed harbour works do not constitute a project falling within Annex I or Annex II to the Directive, it shall in writing notify its decision to the developer and subject to paragraph (7) it shall take no further action on the application pursuant to these Regulations.

(5) Where it appears to the appropriate Department that the proposed harbour works constitute a project falling within Annex I to the Directive –

- (a) it shall in writing notify its decision and the reason for its decision to the developer, and
- (b) paragraph (10) shall apply.

(6) Where it appears to the appropriate Department that the proposed harbour works constitute a project falling within Annex II to the Directive –

- (a) it shall determine whether, taking into account the selection criteria, the works constitute a relevant project,
- (b) shall in writing notify its decision to the developer, and
- (c) where it determines that, taking into account the selection criteria, the works constitute a relevant project it shall in writing notify the reasons for its decision to the developer.

(7) The appropriate Department shall make available for public inspection at all reasonable hours at a place within the locality of the harbour where the harbour works are proposed to be carried out, a copy of –

- (a) its decision under paragraph (4), (5) or (6)(a), and
- (b) any accompanying statement of reasons under paragraph (5) or (6)(c).

(8) Where the appropriate Department decides pursuant to paragraph (6)(a) that the works do not constitute a relevant project, then subject to the provisions of paragraphs (6) and (7) it shall take no further action on the application pursuant to these Regulations.

(9) Where the appropriate Department decides pursuant to paragraph (6)(a) that the works constitute a relevant project, paragraph (10) shall apply.

(10) Where this paragraph applies, the appropriate Department shall direct the developer to supply it, in such form as it may specify, with an environmental statement which includes so much of the information referred to in Schedule 1 as the appropriate Department considers –

- (a) is relevant to its decision under regulation 11 and to the specific characteristics of the proposed harbour works to which the application relates and to the environmental features likely to be affected; and
- (b) (having regard inter alia to current knowledge and methods of assessment) the developer may reasonably be required to compile.

### **Publicity where an environmental statement is supplied**

7.—(1) Where an environmental statement is to be supplied under regulation 5(9) or 6(10) the developer shall make it available to the public and the appropriate Department shall, when it receives the environmental statement, publish a notice in a local newspaper circulating in the locality of the harbour where the harbour works are proposed to be carried out, stating –

- (a) the name of the developer and the location and nature of the proposed harbour works;
- (b) that the developer has applied for consent or approval to the carrying out of the proposed works and specifying the relevant provision pursuant to which consent or approval was applied for;
- (c) that the developer has been directed to supply an environmental statement which includes the information referred to in regulation 5(9) or 6(10);
- (d) that a copy of any information supplied under regulation 4(3) or 6(3) together with the environmental statement to be supplied under regulation 5(9) or 6(10) 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 4 weeks 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 environmental statement to be supplied under regulation 5(9) or 6(10) 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 a period of 7 days beginning with the day after 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 developer shall post at a place to which members of the public have access at the offices of the harbour authority for the harbour where the harbour works are proposed to be carried out or if there is no such place, shall post outside the offices of the said harbour authority, a notice containing the information specified in paragraph (1).

(3) The developer shall ensure that the notice referred to in paragraph (2) is –

- (a) left in a position for a period of 4 weeks beginning with the date of posting;
- (b) posted by affixing it firmly to some 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 developer shall, as soon as reasonably practicable after publication of the notice referred to in paragraph (1), send to the appropriate Department a Certificate which states –

- (a) that he has posted a notice at or outside the offices of the harbour authority for the harbour where the harbour works are proposed to be carried out in accordance with paragraph (2), and when he did so; and
- (b) that he has complied with the requirements of paragraph (3)(b) and will comply with the requirements of paragraph (3)(c) should this be necessary.

### **Transboundary cases and involvement of other EEA States**

8.—(1) This regulation applies where –

- (a) harbour works are proposed to be carried out in Northern Ireland,
  - (b) it appears to the appropriate Department that the harbour works constitute a project falling within Annex I or Annex II to the Directive, and in the case of a project falling within Annex II it determines that (taking into account the selection criteria) they would constitute a relevant project, and
  - (c) (i) it comes to the attention of the appropriate Department that the project is likely to have significant effects on the environment in another EEA State; or  
(ii) another EEA State likely to be significantly affected by the project so requests.
- (2) The appropriate Department shall –
- (a) publish in the Belfast Gazette the particulars mentioned in paragraph (3) in a notice with an indication of where further information is available;
  - (b) send to the other EEA State as soon as possible, and no later than the date of publication of that notice, the particulars mentioned in paragraph (3) and, if it thinks fit, the information mentioned in paragraph (4); and
  - (c) give the other EEA State a reasonable time in which to indicate whether it wishes to be consulted in accordance with paragraph (6).
- (3) The particulars referred to in paragraph (2)(a) and (b) are –
- (a) a description of the project, together with any available information on its possible significant effect on the environment in another EEA State; and
  - (b) information about the nature of the decision which may be taken under these Regulations.
- (4) The information to be sent to an EEA State which indicates, in accordance with paragraph 2(c), that it wishes to be consulted in accordance with paragraph (6) is –
- (a) a copy of the application referred to in regulation 5(1) or 6(1) which has been made;
  - (b) a copy of the environmental statement in respect of the works to which that application relates; and
  - (c) information regarding the procedure under these Regulations;
- but only to the extent that such information has not already been provided to the EEA State in accordance with paragraph (2)(b).
- (5) The appropriate Department shall also –
- (a) arrange for the information referred to in paragraphs (3) and (4) to be made available, within a reasonable time, to the authorities likely to have an interest in the project by reason of their environmental responsibilities, and the public concerned, in the territory of the EEA State concerned; and
  - (b) ensure that those authorities and the public concerned are given a reasonable opportunity, before consent for the works is granted, to forward to the appropriate Department within a reasonable time, their opinion on the information supplied.
- (6) The appropriate Department shall –
- (a) consult the EEA State concerned about the project generally and, in particular, about the potential significant effects of the project on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
  - (b) endeavour to agree with that 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 application concerned the appropriate Department shall inform the EEA State of the decision and shall forward to it a statement giving –



- (a) the content of the decision whether or not to grant consent and any conditions attached to the decision;
- (b) the main reasons and consideration on which the decision is based;
- (c) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects; and
- (d) confirmation that any information, representations, opinions, consultations and report of an inquiry have been taken into consideration in accordance with regulation 11(3) in reaching the decision.

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

**9.**—(1) Where the appropriate Department receives from another EEA State pursuant to Article 7.2 of the Directive information which the EEA State has gathered from the developer of a proposed project in that EEA State which is likely to have significant effects on the environment in Northern Ireland, the appropriate Department shall, in accordance with Article 7.4 of the Directive –

- (a) enter into consultations with that EEA State regarding, inter alia, the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects; and
  - (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Northern Ireland may submit to the competent authority in that EEA State representations pursuant to Article 7.3(b) of the Directive.
- (2) The appropriate Department, insofar as it is concerned, shall also –
- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Northern Ireland which it considers are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in Northern Ireland; and
  - (b) ensure that those authorities and the public concerned in Northern Ireland are given an opportunity before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied.

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

**10.**—(1) The appropriate Department shall direct the developer to supply such bodies as it may specify, being bodies appearing to it to be likely to have an interest in the project by reason of their environmental responsibilities, with copies of the environmental statement supplied to it under regulation 5(9) or 6(10).

(2) Where the developer is not the harbour authority, the appropriate Department shall direct the developer to supply the harbour authority with copies of the information supplied to it under regulation 5(9) or 6(10).

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

(4) 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 developer, to any persons who have made representations to it, and to the bodies specified in any direction under paragraph (1) and to the harbour authority mentioned in any direction given under paragraph (2), the opportunity to appear before the person appointed by it for the purpose.

(5) Paragraphs 3 to 8 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972(18) (which relate to the giving of evidence at, and the expenses incurred in relation to inquiries) shall apply to an inquiry held under paragraph (4) as they apply in relation to an inquiry under that Schedule.

### **Decisions on applications**

**11.**—(1) Where the appropriate Department is satisfied that the developer has complied with its direction under regulation 5(9) or 6(10), with regulation 7 and with any direction under regulation 10(1) or (2), and it has received the report of any inquiry held under regulation 10(4), it shall reach a decision on the proposed harbour works, in accordance with paragraphs (2) and (3).

(2) Subject to paragraph (3), the appropriate Department shall –

- (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.

(3) The appropriate Department shall not consent to the carrying out of the proposed harbour works unless it has taken into consideration the information supplied to it under regulation 5(9) or 6(10), any representations received pursuant to regulation 7(1) or (2), any opinion received pursuant to regulation 8(5), any consultations under regulation 8(6) or 10(3), and the report of any inquiry held under regulation 10(4); and it shall state in its decision that it has done so.

(4) The appropriate Department shall –

- (a) notify its decision and the reasons and considerations upon which it was based to the developer;
- (b) inform the public of the decision, by publishing a notice in a local newspaper circulating in the locality of the harbour where the harbour works are proposed to be carried out, or by such other means as are reasonable in the circumstances; and
- (c) make available for public inspection at all reasonable hours at a place near the location of the proposed works, the following information –
  - (i) the content of its decision whether or not to grant consent and any conditions attached to the decision;
  - (ii) the main reasons and considerations on which the decision is based;
  - (iii) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects; and
  - (iv) where it consents to the carrying out of the proposed works, confirmation that any information, representations, opinions, consultations, or report of an inquiry referred to in paragraph (3) have been taken into consideration in reaching the decision.

(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 developer 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 which have been carried out;
- (c) may, if the appropriate Department thinks fit, be revoked by it.

(6) A consent under paragraph (2) 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**

**12.—**(1) If a developer carries out harbour works to which it appears to the appropriate Department that these Regulations apply and which have not been the subject of a decision or consent under regulation 5(3) or (7), 6(4) or (8), 11(2) or this regulation –

- (a) the appropriate Department shall serve notice in writing on the developer requiring him –
  - (i) if appropriate, to cease carrying out the harbour works forthwith; and
  - (ii) to supply the appropriate Department with such of the information referred to in regulation 6(3) as it may specify and within such period as it may specify; and
- (b) the provisions of regulations 6(4) to (10), 7, 8, 10, 11 and 13 to 15 shall apply subject to the modifications set out in paragraph (2), whether or not an application referred to in regulation 5(1) or 6(1) is made.

(2) The modifications referred to in paragraph (1)(b) are –

- (a) for “proposed harbour works”, wherever these words occur, there shall be substituted “harbour works”;
- (b) for “are proposed to be”, wherever these words occur, there shall be substituted “have been”;
- (c) where an application referred to in regulation 5(1) or 6(1) is not made, regulation 7(1)(b) and 8(4)(a) shall be omitted; and
- (d) in regulation 6(10), after “in such form” there shall be inserted “and within such period”.

(3) If the developer no longer owns, occupies or enjoys any use of the harbour works which have been carried out when the appropriate Department decides to serve a notice under paragraph (1) the notice may be served on any other person who for the time being owns, occupies or enjoys any use of the harbour works, and the references to the developer in paragraphs (1), (4) and (5) shall have effect as a reference to the person on whom the notice is served.

(4) If a developer fails to supply the appropriate Department with such of the information referred to in regulation 6(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 determine whether the harbour works constitute a project falling within Annex I or Annex II to the Directive, and in the case of a project falling within Annex II to the Directive whether (taking into account the selection criteria) the harbour works constitute a relevant project.

(5) Where regulation 6(10) applies as modified by paragraph (2)(d), and the developer fails to comply with the appropriate Department’s direction, the appropriate Department shall refuse consent in respect of the harbour works.

### **Variation of consent**

**13.—**(1) Where a developer proposes to change or extend any harbour works which are the subject of a consent under regulation 11(2), or regulation 11(2) as modified by regulation 12, he shall make an application to the appropriate Department to vary that consent.

(2) The appropriate Department shall determine whether, taking into account the selection criteria, the proposed change or extension constitutes a relevant project.

(3) Where the appropriate Department determines that, taking into account the selection criteria, the proposed change or extension constitutes a relevant project, regulations 6(6), (7), (9), (10), 7, 8,

10, 11, 14 and 15 shall apply in relation to the application as they apply in relation to an application referred to in regulation 6(1).

### **Enforcement**

**14.**—(1) If a developer carries out harbour works in respect of which consent has been refused under regulation 11 or 12 or in contravention of a condition subject to which consent was granted, the appropriate Department may serve notice in writing on the developer requiring him, within such period (not being less than 30 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 itself remove the works and reinstate the site or make alterations to the works.

(2) If within the period specified in any notice under paragraph (1) the developer fails to comply with it, the appropriate Department may itself remove the works and reinstate the site or make alterations to the works as specified in the notice.

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

(4) If the developer no longer owns, occupies or enjoys any use of the harbour works when the appropriate Department decides to serve a notice under paragraph (1), the notice may be served on any other person who for the time being owns, occupies or enjoys any use of the harbour works, and the references to the developer in paragraph (2), and in paragraph (3) in relation to any action taken by the appropriate Department under paragraph (2), shall in that case have effect as a reference to the person on whom the notice is served.

### **Penalties**

**15.**—(1) A person who issues a certificate purporting to comply with regulation 7(4) which contains a statement which he knows to be false or misleading in a material particular, or who recklessly issues a certificate purporting to comply with regulation 7(4) which contains a statement which is false or misleading in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person who fails without reasonable excuse to comply with a notice served upon him under regulation 12(1) or 14(1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where a body corporate is guilty of an offence under paragraph (1) or (2), and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) For the purposes of paragraph (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Sealed with the Official Seal of the Department for Regional Development on 6th March 2003.

L.S.

*R. McMinnis*  
A senior officer of the  
Department for Regional Development

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 6th March 2003.

L.S.

*Noel Cornick*  
A senior officer of the  
Department of Agriculture and Rural  
Development