STATUTORY RULES OF NORTHERN IRELAND

2003 No. 136

EUROPEAN COMMUNITIES
HARBOURS, DOCKS, ETC.

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

Made - - - -	*6th March 2003*
Coming into operation	*14th April 2003*

The Department for Regional Development(**1**) and the Department of Agriculture and Rural Development(**2**), being Departments designated(**3**) for the purposes of section 2(2) of the European Communities Act 1972(**4**) 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, acting jointly in exercise of the powers conferred by that section and having taken into account the selection criteria (reproduced in Schedule 2 to these Regulations) specified in Annex III to Council Directive 85/337/EEC (on the assessment of the effects of certain public and private projects on the environment)(**5**), as inserted by Council Directive 97/11/EC (amending Council Directive 85/337/EEC)(**6**), and all other powers enabling them in that behalf, makes the following Regulations:

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(**7**) 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;

(**1**) S.I.1999/283 (N.I.1) Article 3(1)
(**2**) S.I. 1999/283 (N.I.1) Article 3(4)
(**3**) S.I. 1988/785
(**4**) 1972 c. 68
(**5**) O.J. No. L175, 5.7.85, p. 40
(**6**) O.J. No. L73, 14.3.97, p. 5
(**7**) S.R. 1990 No. 181

(b) the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations (Northern Ireland) 1996(**8**).

Interpretation

2.—(1) In these Regulations –

"the Act of 1970" means the Harbours Act (Northern Ireland) 1970(**9**);

"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(**10**);

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

"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(**11**);

"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;

(**8**) S.R. 1996 No. 369
(**9**) 1970 c. 1 (N.I.)
(**10**) Cmmd. 2073
(**11**) S.R. & O. (N.I.) 1973 No. 128

"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(**12**);

(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(**13**);

(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(**14**);

(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(**15**);

(h) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995(**16**);

(i) a European site within the meaning of Regulation 9 of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995(**17**);

(j) Ramsar sites listed under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat(**18**);

(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(**19**);

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(**20**) 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,

(**12**) S.I. 1985/170 (N.I. 1)
(**13**) Article 20 was amended by Section 3 of, and Schedule 1 to, the Territorial Sea Act 1987 (1987 c. 49)
(**14**) Article 24 was amended by Article 10(1) of S.I. 1989/492 (N.I. 3)
(**15**) 1985/171 (N.I. 2); Article 16 was amended by Article 4(1)(d) of S.I. 1995/761 (N.I. 6)
(**16**) S.I. 1995/1625 (N.I. 9)
(**17**) S.R. 1995 No. 380
(**18**) *See* Command Paper 6464
(**19**) *See* Command paper 9424
(**20**) 1954 c. 33 (N.I.)

(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(**21**) 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(**22**) and as provided for by Regulation 3 of the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations (Northern Ireland) 1999(**23**);

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

(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.

(**21**) S.I. 1991/1220 (N.I. 11)
(**22**) 1966 c. 17 (N.I.); Section 11 was substituted by Article 6 of S.I. 1991/1466 (N.I. 13)
(**23**) S.R. 1999 No. 415

(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.