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STATUTORY INSTRUMENTS

1999 No. 3445

HARBOURS, DOCKS, PIERS AND FERRIES

**The Harbour Works (Environmental
Impact Assessment) Regulations 1999**

<i>Made</i>	- - - -	<i>21st December 1999</i>
<i>Laid before Parliament</i>		<i>11th January 2000</i>
<i>Coming into force</i>	- -	<i>1st February 2000</i>

The Secretary of State for the Environment, Transport and the Regions and the Minister of Agriculture, Fisheries and Food as regards England, the Secretary of State for Scotland as regards Scotland and the Secretary of State for Wales as regards Wales, being Ministers designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ 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—

- (a) that section, and
- (b) as regards Scotland, that section and section 57 of the Scotland Act 1998⁽³⁾,

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)⁽⁴⁾, as inserted by Council Directive [97/11/EC](#) (amending Council Directive [85/337/EEC](#))⁽⁵⁾, hereby makes the following Regulations:

(1) [S.I. 1988/785](#). See also: The Secretary of State for the Environment, Transport and the Regions Order 1997 ([S.I. 1997/2971](#)).

(2) [1972 c. 68](#); by virtue of section 2(4) and (5) of the European Economic Area Act [1993 \(c. 51\)](#), regulations may be made under section 2(2) of the European Communities Act 1972 to modify Acts made before 1 January 1994 so as to provide for equivalent treatment in relation to EEA States to that which is made in relation to EU States, and to make provision in relation to the EEA which is equivalent to that being made in relation to EU States. Council Directive [97/11/EC](#) was extended to the EEA by Decision No. 20/1999 (26 February 1999) of the EEA Joint Committee.

(3) [1998 c. 46](#).

(4) OJ No. L 175, 5.7.1985, p. 40.

(5) OJ No. L 73, 14.3.1997, p. 5.

PART I

—GENERAL

Citation, commencement, revocations and extent

1.—(1) These Regulations may be cited as the Harbour Works (Environmental Impact Assessment) Regulations 1999, and shall come into force on 1st February 2000.

(2) Part II of these Regulations shall not apply in relation to an application or notice referred to in regulation 4(1) of the Harbour Works (Assessment of Environmental Effects) (No. 2) Regulations 1989⁽⁶⁾ made or given prior to 1st February 2000.

(3) Part III of these Regulations shall not apply to an application for a harbour revision order or harbour empowerment order made prior to 1st February 2000.

(4) Except in relation to an application or notice referred to in paragraph (2) or an application for a harbour revision order or harbour empowerment order referred to in paragraph (3), the following Regulations are hereby revoked—

- (a) the Harbour Works (Assessment of Environmental Effects) Regulation 1988⁽⁷⁾,
- (b) the Harbour Works (Assessment of Environmental Effects) (No. 2) Regulations 1989,
- (c) the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996⁽⁸⁾.

(5) These Regulations shall not extend to Northern Ireland.

PART II

—APPLICATIONS RELATING TO HARBOUR WORKS

Interpretation

2.—(1) In this Part, unless the context otherwise requires—

“the appropriate Authority” means—

- (a) as regards harbour works relating to fishery harbours in England, the Minister of Agriculture, Fisheries and Food;
- (b) as regards harbour works relating to fishery harbours in Wales, the National Assembly for Wales;
- (c) as regards any other harbour works in England or Wales, the Secretary of State for the Environment, Transport and the Regions;
- (d) as regards harbour works in Scotland, the Scottish Ministers;

“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⁽⁹⁾;

⁽⁶⁾ [S.I. 1989/424](#), amended by [S.I. 1996/1946](#).

⁽⁷⁾ [S.I. 1988/1336](#).

⁽⁸⁾ [S.I. 1996/1946](#).

⁽⁹⁾ Cmnd. 2073.

“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 section 21 of the Sea Fish Industry Act 1951⁽¹⁰⁾;

“harbour” has the meaning assigned to it in section 57 of the Harbours Act 1964⁽¹¹⁾;

“harbour authority” means the harbour authority as defined in section 57 of the Harbours Act 1964 in relation to the harbour where the harbour works are proposed to be carried out;

“harbour works” means works involved in the construction of a harbour or in the making of modifications to an existing harbour;

“provisional order” has the meaning assigned to it in section 57 of the Harbours Act 1964;

“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) land notified under section 28(1) of the Wildlife and Countryside Act 1981⁽¹²⁾ (areas of special scientific interest);
- (b) land to which section 29(3) of that Act (nature conservation orders) applies;
- (c) land declared to be a national nature reserve under section 35 of that Act;
- (d) an area to which paragraph (u)(ii) in the table in article 10 of the Town and Country Planning (General Development Procedure) Order 1995⁽¹³⁾ applies;
- (e) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949⁽¹⁴⁾;

⁽¹⁰⁾ 1951 c. 30.

⁽¹¹⁾ 1964 c. 40; the definition of “harbour” has been amended by the Local Government (Scotland) Act 1973 (c. 65), Schedule 29, and by the Merchant Shipping Act 1995 (c. 21), Schedule 13, paragraph 33. The definition of “marine work” in section 57 of the Harbours Act 1964 has been amended by the Local Government (Scotland) Act 1973, Schedule 19, paragraph 16, and by the Companies Act 1989 (c. 40), Schedule 18, paragraph 5.

⁽¹²⁾ 1981 c. 69; section 28 has been amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Services of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act 1988 (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).

⁽¹³⁾ S.I. 1995/419, to which there are amendments not relevant to these Regulations.

⁽¹⁴⁾ 1949 c. 97. See the definition of “National Park” in section 5(3); section 5 has been amended by the Environment Act 1995 (c. 25), section 61(1) and the Environment Protection Act 1990 (c. 43), Schedule 8, paragraph 1(1) and (5). Section 87 has been amended by the Environmental Protection Act 1990, Schedule 8, paragraph 1(12).

- (f) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988⁽¹⁵⁾;
- (g) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage⁽¹⁶⁾;
- (h) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁷⁾;
- (i) an area of outstanding natural beauty designated by order under section 87 of the National Parks and Access to the Countryside Act 1949 (designation of areas of outstanding natural beauty);
- (j) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994⁽¹⁸⁾;
- (k) an area designated as a natural heritage area under section 6(2) of the Natural Heritage (Scotland) Act 1991⁽¹⁹⁾ or as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972⁽²⁰⁾;

and subject thereto, expressions used which are also used in the Directive have the meaning which they bear in the Directive.

(2) For the purposes of this Part 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.

(3) Harbour works constituting a project which is of a description mentioned in Annex II to the Directive shall be treated for the purposes of this Part as not falling within that Annex unless—

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

Scope

3. This Part applies to harbour works below the low water mark of medium tides, being works which are—

- (a) not subject to planning control pursuant to the Town and Country Planning Act 1990⁽²¹⁾ or the Town and Country Planning (Scotland) Act 1997⁽²²⁾ or pursuant to orders made in exercise of powers conferred by the said Acts;
- (b) not specifically described in or authorised to be carried out by a harbour revision order made pursuant to section 14 of the Harbours Act 1964, a harbour empowerment order made pursuant to section 16 of the Harbours Act 1964 or by a provisional order;
- (c) not specifically described in or authorised to be carried out by any enactment conferring powers to carry out works at a harbour;
- (d) not authorised by an order under section 3 of the Transport and Works Act 1992⁽²³⁾;

⁽¹⁵⁾ 1988 c. 4; see the definition of “the Broads” in section 2(3).

⁽¹⁶⁾ Command Paper 9424.

⁽¹⁷⁾ 1979 c. 46. See the definition of “scheduled monument” in section 1(11).

⁽¹⁸⁾ S.I. 1994/2716.

⁽¹⁹⁾ 1991 c. 28.

⁽²⁰⁾ 1972 c. 52. Section 6(9) of the Natural Heritage (Scotland) Act 1991 contains a saving provision for any area which was designated as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972 as at the date of repeal of that section by section 27 of, and Schedule 11 to, the 1991 Act.

⁽²¹⁾ 1990 c. 8.

⁽²²⁾ 1997 c. 8.

⁽²³⁾ 1992 c. 42.

- (e) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Assessment (Salmon Farming in Marine Waters) Regulations 1988(24); and
- (f) not the subject of a consent granted by the Crown Estate Commissioners under the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999(25).

Procedure for obtaining a prior opinion

4.—(1) A person who is minded to make an application or give a notice of a description referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) may ask the appropriate Authority to state in writing its opinion—

- (a) as to whether the application or notice would or would not relate in whole or in part to harbour works to which this Part applies; and
- (b) if the appropriate Authority 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 Authority 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 Authority 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 Authority shall give the opinion requested under paragraph (1) as soon as reasonably practicable.

(6) The appropriate Authority 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 Authority 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 Authority shall take into account the extent to which it considers—

- (a) information to be relevant to its decision under regulation 10 and to the specific characteristics of the particular proposed harbour works and of the environmental features likely to be affected by the works, and

(24) S.I. 1988/1218.

(25) S.I. 1999/367.

- (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 or notices relating to harbour works where a prior opinion has been given

5.—(1) This regulation shall apply where an application or notice of one of the following descriptions is made or given in relation to harbour works to which this Part applies—

- (a) an application for consent to the carrying out of operations pursuant to section 34 of the Coast Protection Act 1949⁽²⁶⁾;
- (b) notice from a harbour authority pursuant to regulations made under section 37 of the Merchant Shipping Act 1988⁽²⁷⁾ that application has been made for a licence to carry out operations;
- (c) an application for the approval of any such work as is referred to in section 35(1)(g) of the Coast Protection Act 1949; or
- (d) an application for approval required to be obtained in relation to any work (other than work specifically described or authorised as mentioned in regulation 3(b) or (c)) under any provision of—
 - (i) a local Act;
 - (ii) a harbour revision order made pursuant to section 14 of the Harbours Act 1964; or
 - (iii) a harbour empowerment order made pursuant to section 16 of that Act, not requiring consent under section 34 of the Coast Protection Act 1949;

and an opinion has been given to the developer under regulation 4(1) that the appropriate Authority would consider that such an application or notice relating to the same, or substantially the same proposed works, would relate in whole or in part to harbour works to which this Part applies.

- (a) (2) (a) Where an application of a description referred to in paragraph (1)(d)(i) is made and the approval required to be obtained is not the approval of the appropriate Authority—
 - (i) the developer shall notify the appropriate Authority of the application, and
 - (ii) the approval shall not be granted and the developer shall not commence the proposed harbour works, unless paragraph (3) or (7) applies or the appropriate Authority consents to the carrying out of the proposed harbour works under regulation 10(2).
- (b) In any other case to which this regulation applies, the developer shall not commence the proposed harbour works unless paragraph (3) or (7) applies or the appropriate Authority consents thereto under regulation 10(2).

(3) Where it appears to the appropriate Authority that the proposed harbour works do not constitute a project falling within Annex I or II to the Directive, it shall in writing notify its decision to the developer and, in a case where a notice referred to in paragraph (1)(b) has been given, to the harbour authority, and subject to paragraph (6) it shall take no further action on the application or notice pursuant to this Part.

(4) Where it appears to the appropriate Authority 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, in a case where a notice has been given under paragraph (1)(b), the harbour authority, and
- (b) paragraphs (9) and (10) shall apply.

⁽²⁶⁾ 1949 c. 74; section 34 has been amended by the Merchant Shipping Act 1988 (c. 12), section 36(1)–(4), and the Statute Law Revision Act 1953 (c. 5).

⁽²⁷⁾ 1988 c. 12.

(5) Where it appears to the appropriate Authority 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, in a case where a notice referred to in paragraph (1)(b) has been given, to the harbour authority, 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—
 - (i) the developer, and
 - (ii) in a case where a notice referred to in paragraph (1)(b) has been given, the harbour authority.

(6) The appropriate Authority 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 Authority 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 or notice pursuant to this Part.

(8) Where the appropriate Authority 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 Authority 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 Authority 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 or notice.

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

- (a) it is relevant to its decision under regulation 10 and to the specific characteristics of the proposed harbour works to which the application or notice 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 or notices relating to harbour works where a prior opinion has not been given

6.—(1) This regulation shall apply where an application or notice of a description referred to in sub-paragraph (a), (b), (c) or (d) of regulation 5(1) is made or given and an opinion has not been given to the developer under regulation 4(1) in relation to the application or notice.

(2) Where an application of a description referred to in sub-paragraph (d)(i) of regulation 5(1) is made and the approval required to be obtained is not the approval of the appropriate Authority—

- (a) the developer shall notify the appropriate Authority of the application,
- (b) the appropriate Authority shall consider whether the application relates in whole or in part to harbour works to which this Part applies and shall reach a decision thereon as soon as reasonably practicable, and

- (c) if the appropriate Authority determines that the application relates in whole or in part to harbour works to which this Part applies—
 - (i) the approval shall not be granted, and
 - (ii) the developer shall not commence the proposed harbour works, unless paragraph (5) or (9) applies or the appropriate Authority consents to the carrying out of the proposed harbour works under regulation 10(2).
- (3) In any other case to which this regulation applies—
 - (a) the appropriate Authority shall consider whether the application or notice relates in whole or in part to harbour works to which this Part applies and shall reach a decision thereon as soon as reasonably practicable, and
 - (b) if the appropriate Authority determines that the application or notice relates in whole or in part to harbour works to which this Part applies, the developer shall not commence the proposed works unless paragraph (5) or (9) applies or the appropriate Authority consents thereto under regulation 10(2).
- (4) The appropriate Authority 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 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.
- (5) Where it appears to the appropriate Authority that the proposed harbour works do not constitute a project falling within Annex I or II to the Directive, it shall in writing notify its decision to the developer and, in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority, and subject to paragraph (8) it shall take no further action on the application or notice pursuant to this Part.
- (6) Where it appears to the appropriate Authority 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, in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority, and
 - (b) paragraph (11) shall apply.
- (7) Where it appears to the appropriate Authority 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, in a case where a notice referred to in regulation 5(1)(b) has been given, to the harbour authority, 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—
 - (i) the developer, and
 - (ii) in a case where a notice referred to in regulation 5(1)(b) has been given, the harbour authority.

(8) The appropriate Authority 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 (5), (6) or (7)(a), and
- (b) any accompanying statement of reasons under paragraph (6) or (7)(c).

(9) Where the appropriate Authority decides pursuant to paragraph (7)(a) that the works do not constitute a relevant project, then subject to the provisions of paragraphs (7) and (8) it shall take no further action on the application or notice pursuant to this Part.

(10) Where the appropriate Authority decides pursuant to paragraph (7)(a) that the works constitute a relevant project, paragraph (11) shall apply.

(11) Where this paragraph applies, the appropriate Authority 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 Authority considers—

- (a) is relevant to its decision under regulation 10 and to the specific characteristics of the proposed harbour works to which the application or notice 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.

Publication of notice by developer

7.—(1) Not less than 14 days before the developer provides the information to be supplied under regulation 5(9) or 6(11) to the appropriate Authority, he shall 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) his name and the location and nature of the proposed harbour works;
- (b) that he 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 he has been directed to supply an environmental statement which includes the information referred to in regulation 5(9) or 6(11);
- (d) that a copy of any information supplied under regulation 4(3) or 6(4) together with the environmental statement to be supplied under regulation 5(9) or 6(11) 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 environmental statement to be supplied under regulation 5(9) or 6(11) 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 Authority.

(2) On the date of publication of the notice under paragraph (1) the developer shall also 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 position for a period of 42 days 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 environmental statement supplied to the appropriate Authority under regulation 5(9) or 6(11) shall be accompanied by—
- (a) a copy of the notice referred to in paragraph (1) certified by or on behalf of the developer 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 developer which states—
 - (i) 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
 - (ii) 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 Great Britain,
 - (b) it appears to the appropriate Authority that the harbour works constitute a project falling within Annex I or 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 Authority that the project is likely to have significant effects on the environment in another EEA State; or
 - (ii) another EEA State so requests.
- (2) The appropriate Authority shall—
- (a) publish in the 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 this Part.
- (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 or notice referred to in regulation 5(1) which has been made or given respectively;

- (b) a copy of the environmental statement in respect of the works to which that application or notice relates; and
 - (c) information regarding the procedure under this Part;
- but only to the extent that such information has not already been provided to the EEA State in accordance with paragraph (2)(a).
- (5) The appropriate Authority 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 Authority, their opinion on the information supplied.
 - (6) The appropriate Authority 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 Authority 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 10(3) in reaching the decision.

Consultation on and holding of inquiry into proposed harbour works

9.—(1) The appropriate Authority 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(11).

(2) Where the developer is not the harbour authority, the appropriate Authority shall direct the developer to supply the harbour authority with copies of the information supplied to it under regulation 5(9) or 6(11).

(3) Where it has given a direction under paragraph (1) or (2) the appropriate Authority 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 Authority 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) Subsections (2) to (5) of section 250 of the Local Government Act 1972⁽²⁸⁾ or subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽²⁹⁾ (which relate to the giving of evidence at, and defraying the cost of, local inquiries) shall apply to an inquiry held under paragraph (4) as they apply in relation to a local inquiry under subsection (1) of that section; but, in its application by virtue of this sub-paragraph, subsection (4) of section 250 of the Local Government Act 1972 shall have effect with the omission of the words “and any amount” onwards.

Decisions on applications

10.—(1) Where the appropriate Authority is satisfied that the developer has complied with its direction under regulation 5(9) or 6(11), with regulation 7 and with any direction under regulation 9(1) or (2), and it has received the report of any inquiry held under regulation 9(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 Authority 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 Authority 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(11), 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 9(3), and the report of any inquiry held under regulation 9(4); and it shall state in its decision that it has done so.

(4) The appropriate Authority 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 Authority 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;

⁽²⁸⁾ 1972 c. 70.

⁽²⁹⁾ 1973 c. 65; section 210(5) was amended by the Criminal Procedure (Scotland) Act 1975 (c. 21), sections 289(F) and 289(G) (as inserted by the Criminal Justice Act 1982 (c. 48), section 54).

(c) may, if the appropriate Authority 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

11.—(1) If a developer carries out harbour works to which it appears to the appropriate Authority that this Part applies and which have not been the subject of a decision under regulation 5(3) or (7), 6(5) or (9), 10(2) or this regulation—

- (a) the appropriate Authority 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 Authority with such of the information referred to in regulation 6(4) as it may specify and within such period as it may specify; and
- (b) the provisions of regulations 6(5) to (11), 7 to 10, and 12 to 14 shall apply subject to the modifications set out in paragraph (2), whether or not an application or notice referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) is made or given.

(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 or notice referred to in paragraph (a), (b), (c) or (d) of regulation 5(1) is not made or given, regulation 7(1)(b) and 8(4)(a) shall be omitted; and
- (d) in regulation 6(11), 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 Authority 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 Authority with such of the information referred to in regulation 6(4) as is specified in a notice served under paragraph (1) within the period specified therein, the appropriate Authority 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 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(11) applies as modified by paragraph (2)(d), and the developer fails to comply with the appropriate Authority’s direction, the appropriate Authority shall refuse consent in respect of the harbour works.

Variation of consent

12.—(1) Where a developer proposes to change or extend any harbour works which are the subject of a consent under regulation 10(2), or regulation 10(2) as modified by regulation 11, he may make an application to the appropriate Authority to vary that consent.

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

(3) Where the appropriate Authority determines that, taking into account the selection criteria, the proposed change or extension constitutes a relevant project, regulations 6(7), (8), (10), (11), 7 to 10 and 13 and 14 shall apply in relation to the application as they apply in relation to an application or notice referred to in regulation 6(1).

Enforcement

13.—(1) If a developer carries out harbour works in respect of which consent has been refused under regulation 10 or 11 or in contravention of a condition subject to which consent was granted, the appropriate Authority 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 Authority urgently necessary to do so, it may itself remove or alter the works and reinstate the site.

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

(3) Where the appropriate Authority 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 developer.

(4) If the developer no longer owns, occupies or enjoys any use of the harbour works when the appropriate Authority 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 Authority under paragraph (2), shall in that case have effect as a reference to the person on whom the notice is served.

Penalties

14.—(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 11(1) or 12(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.

(5) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

PART III

—HARBOURS ACT 1964

Amendment of the Harbours Act 1964

15.—(1) In section 17(1) of the Harbours Act 1964⁽³⁰⁾

(a) for “VII” (in both places where it occurs) there shall be substituted “III”; and

(b) “, except in paragraph 6(2),” shall be omitted.

(2) At the end of section 17(2B) of the Harbours Act 1964 there shall be added—

“(2C) In this section and in Schedule 3 to this Act (except in paragraph 25(6)(c) of Schedule 3), references to “the Secretary of State” are to be construed, in relation to a fishery harbour in Wales, as references to the National Assembly for Wales, and in relation to Scotland, as references to the Scottish Ministers.”

(3) The definition of “environmental assessment” in section 57(1) of the Harbours Act 1964 shall be omitted.

(4) For Schedule 3 to the Harbours Act 1964, there shall be substituted the Schedule contained in Schedule 3.

(5) The enactments specified in Schedule 4 shall have effect subject to the amendments specified in that Schedule.

Signed by authority of the Secretary of State

9th December 1999

Keith Hill
Parliamentary Under-Secretary of State,
Department of the Environment, Transport and
the Regions

13th December 1999

Elliot Morley
Parliamentary Secretary Ministry of Agriculture,
Fisheries and Food

20th December 1999

John Reid
Secretary of State, Scotland Office

21st December 1999

David Hanson
Parliamentary Under-Secretary of State for
Wales

⁽³⁰⁾ 1964 c. 40; section 17 and Schedule 3 were amended by the Transport Act 1981 (c. 56), Schedule 5, paragraph 14(1) to (4), Schedule 6, paragraphs 4 and 12, and Schedule 12, Part II; by the Transport and Works Act 1992 (c. 42), Schedule 3, paragraph 10(1), (7), (8), Schedule 4, Part II; by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 23, Schedule 18; and by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 63; and by S.I. 1988/1336, 1992/1421 and 1996/1946.

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SCHEDULE 1

Regulation 2(1) (definition of “environmental statement”)

INFORMATION REFERRED TO IN ARTICLE 5(1) OF THE DIRECTIVE

1. Description of the proposed project including in particular:
 - a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,
 - a description of the main characteristics of the production processes, for instance, nature and quantity of the material used,
 - an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed project.
2. 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.
3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.
4. A description of the likely significant effects of the proposed project on the environment (which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project), resulting from:
 - the existence of the project,
 - the use of natural resources,
 - the emission of pollutants, the creation of nuisances and the elimination of waste,and the description by the developer of the forecasting methods used to assess the effects on the environment.
5. A description of the measures which the developer proposes to take in order to prevent, reduce, remedy or offset any significant adverse effects on the environment.
6. A non-technical summary of the information provided under paragraphs 1 to 5.
7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

SCHEDULE 2

Regulation 2(1) (definition of “selection criteria”)

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3) OF THE DIRECTIVE

Characteristics of projects

1. The characteristics of projects must be considered having regard, in particular, to:
 - the size of the project,
 - the cumulation with other projects,
 - the use of natural resources,
 - the production of waste,

- pollution and nuisances,
- the risk of accidents, having regard in particular to substances or technologies used.

Location of projects

2. The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- the existing land use,
- the relative abundance, quality and regenerative capacity of natural resources in the area,
- the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (a) wetlands;
 - (b) coastal zones;
 - (c) mountain and forest areas;
 - (d) nature reserves and parks;
 - (e) areas classified or protected under EEA States' legislation; areas designated by member States pursuant to Council Directive [79/409/EEC](#) on the conservation of wild birds⁽³¹⁾ and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora⁽³²⁾;
 - (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - (g) densely populated areas;
 - (h) landscapes of historical, cultural or archaeological significance.

Characteristics of the potential impact

3. The potential significant effects of projects must be considered in relation to criteria set out under paragraphs 1 and 2, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),
- the transfrontier nature of the impact,
- the magnitude and complexity of the impact,
- the probability of the impact,
- the duration, frequency and reversibility of the impact.

(31) OJ No. L 103, 25.4.1979, p. 1.

(32) OJ No. L 206, 22.7.1992, p. 7.

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SCHEDULE 3

Regulation 15(4)

SCHEDULE 3 TO THE HARBOURS ACT 1964 AS SUBSTITUTED

“SCHEDULE 3

Sections 17, 47

PROCEDURE FOR MAKING HARBOUR REVISION AND EMPOWERMENT ORDERS

PART I

ORDERS MADE ON APPLICATION TO THE SECRETARY OF STATE

Introductory

1. In this Part of this Schedule—

“the Directive” means Council Directive [85/337/EEC\(33\)](#) on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive [97/11/EC\(34\)](#);

“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(35);

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

“environmental statement” means a statement which includes the information mentioned in paragraph 8(2) and such additional information as the Secretary of State may require under paragraph 8(3);

“fishery harbour” has the meaning assigned to it in section 21 of the Sea Fish Industry Act 1951(36);

“project” means—

- (a) the execution of construction works or other installations or schemes, and
- (b) other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

“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 Annex III to the Directive;

“sensitive area” means any of the following—

- (a) land notified under section 28(1) of the Wildlife and Countryside Act 1981(37) (areas of special scientific interest);
- (b) land to which section 29(3) of that Act (nature conservation orders) applies;
- (c) land declared to be a national nature reserve under section 35 of that Act;

(33) OJ No. L 175, 5.7.1985, p. 40.

(34) OJ No. L 73, 14.3.1997, p. 5.

(35) Cmnd. 2073.

(36) 1951 c. 30.

(37) 1981 c. 69; section 28 has been amended by the Wildlife and Countryside (Amendment) Act 1985 (c. 31), the Wildlife and Countryside (Services of Notices) Act 1985 (c. 59), the Norfolk and Suffolk Broads Act 1988 (c. 4) and the Planning (Consequential Provisions) Act 1990 (c. 11).

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- (d) an area to which paragraph (u)(ii) in the table in article 10 of the Town and Country Planning (General Development Procedure) Order 1995(38) applies;
- (e) a National Park within the meaning of the National Parks and Access to the Countryside Act 1949(39);
- (f) the Broads within the meaning of the Norfolk and Suffolk Broads Act 1988(40);
- (g) a property appearing on the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage(41);
- (h) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979(42);
- (i) an area of outstanding natural beauty designated by order under section 87 of the National Parks and Access to the Countryside Act 1949 (designation of areas of outstanding natural beauty);
- (j) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats etc) Regulations 1994(43);
- (k) an area designated as a natural heritage area under section 6(2) of the Natural Heritage (Scotland) Act 1991(44) or as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972(45).

2. A project shall be treated for the purposes of this Part as not falling within Annex II to the Directive unless—

- (a) the area of the works comprised in the project exceeds 1 hectare,
- (b) any part of the works is to be carried out in a sensitive area, or
- (c) the Secretary of State determines that the project shall be treated for the purposes of this Part as falling within that Annex.

Pre-application procedure

3. A person may not make an application for a harbour revision order which, directly or indirectly, authorises any project unless—

- (a) he has given the Secretary of State notice of his intention to make the application, and
- (b) the Secretary of State has responded under paragraph 5 or 6(3).

4. Where the Secretary of State is notified of a proposed application under paragraph 3(a) he shall decide—

- (a) whether the application relates to a project which falls within Annex I or II to the Directive, and
- (b) if it relates to a project which falls within Annex II, whether, taking into account the selection criteria, the project is a relevant project.

(38) S.I. 1995/419, to which there are amendments not relevant to these Regulations.

(39) 1949 c. 97. See the definition of a “National Park” in section 5(3); section 5 has been amended by the Environment Act 1995 (c. 25), section 61(1) and the Environmental Protection Act 1990 (c. 43), Schedule 8, paragraph 1(1) and (5). Section 87 has been amended by the Environmental Protection Act 1990, Schedule 8, paragraph 1(12).

(40) 1988 c. 4; see the definition of “the Broads” in section 2(3).

(41) Command Paper 9424.

(42) 1979 c. 46. See the definition of “scheduled monument” in section 1(11).

(43) S.I. 1994/2716.

(44) 1991 c. 28.

(45) 1972 c. 52. Section 6(9) of the Natural Heritage (Scotland) Act 1991 contains a saving provision for any area which was designated as a national scenic area under section 262C of the Town and Country Planning (Scotland) Act 1972 as at the date of repeal of that section by section 27 of, and Schedule 11 to, the 1991 Act.

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5. If the Secretary of State decides that the application—
- (a) does not relate to a project which falls within Annex I or II to the Directive, or
 - (b) relates to a project which falls within Annex II but is not a relevant project,
- he shall inform the proposed applicant in writing of his decision.
- 6.—(1) If the Secretary of State decides that the application relates to a project which falls within Annex I or within Annex II to the Directive and is a relevant project—
- (a) he shall in writing inform the proposed applicant of the decision, and give him the reasons for his decision,
 - (b) sub-paragraph (2) shall apply, and
 - (c) if the applicant makes the application, paragraph 8 shall apply.
- (2) Where this sub-paragraph applies the Secretary of State shall give an opinion to the proposed applicant about the extent of the information referred to in Annex IV to the Directive which the proposed applicant would be required under paragraph 8(1) to supply in an environmental statement.
- (3) In giving an opinion under sub-paragraph (2), the Secretary of State shall take into account the extent to which he considers—
- (a) information to be relevant to his decision under paragraph 19 and to the specific characteristics of the project to which the proposed application relates and of the environmental features likely to be affected by it; and
 - (b) that (having regard in particular to current knowledge and methods of assessment) the proposed applicant may reasonably be required to compile the information.
- (4) The Secretary of State shall not give an opinion under sub-paragraph (2) until he has consulted the proposed applicant and such bodies with environmental responsibilities as he thinks appropriate.

The application

7. An application for a harbour revision order must be accompanied by—
- (a) six copies of a draft of the proposed order,
 - (b) six copies of any map which, if the order is made in the form of the draft, will be annexed to it, and
 - (c) such fee as the Secretary of State may determine.
- 8.—(1) Where this paragraph applies pursuant to paragraph 6(1), the Secretary of State shall direct the applicant to supply him with an environmental statement in such form as he may specify.
- (2) The environmental statement shall include the following information—
- (a) a description of the project 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 project is likely to have on the environment;
 - (d) an outline of the main alternatives studied by the applicant 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 paragraphs (a) to (d).
- (3) The Secretary of State may require the applicant to include in the environmental statement specified information in addition to the information listed in sub-paragraph (2) (whether or not specified in the opinion given under paragraph 6(2)).

(4) The Secretary of State may specify information under sub-paragraph (3) only if it is information of a type set out in Annex IV to the Directive and he considers that—

- (a) it is relevant to his decision under paragraph 19 and to the specific characteristics of the project to which the application relates and of the environmental features likely to be affected by it; and
- (b) (having regard in particular to current knowledge and methods of assessment) the applicant may reasonably be required to compile the information.

9. The Secretary of State shall not consider an application for a harbour revision order unless the applicant complies with any direction under paragraph 8(1) and with any relevant requirements of paragraphs 10 to 14.

Notices

10.—(1) An applicant shall arrange for a notice to be published—

- (a) by Gazette and local advertisement, and
- (b) in such other ways as the Secretary of State may direct.

(2) The notice must—

- (a) state that an application has been made for the order,
- (b) state the Secretary of State's decision under paragraph 4 and any reasons given under paragraph 6(1),
- (c) state whether an environmental statement has been supplied under paragraph 8(1),
- (d) contain a concise summary of the draft order,
- (e) give a general description of any land proposed for compulsory acquisition and of the nature of any works proposed to be authorised, and
- (f) state that any person who desires to object to the application should do so in writing to the Secretary of State, specifying the grounds of the objection, before the expiry of the period of 42 days starting with a date specified in the notice.

(3) The date specified in accordance with sub-paragraph (2)(f) must be the date on which the notice first appears in a local newspaper.

(4) The notice must also specify a place where copies of the following documents can be inspected at all reasonable hours—

- (a) the draft order,
- (b) the decision of the Secretary of State referred to in sub-paragraph (2)(b),
- (c) any environmental statement supplied under paragraph 8(1), and
- (d) any map accompanying the application.

(5) The copy of the map referred to in sub-paragraph (4)(d) must be drawn to the same scale as that map.

11. If the order will authorise the compulsory acquisition of land the applicant shall, in respect to each parcel of land, serve a notice on every owner, lessee and occupier other than a tenant for a month or any period less than a month—

- (a) stating that an application has been made to the Secretary of State for the making of an order which will authorise the compulsory acquisition of the parcel,
- (b) naming a place where a copy of the draft order may be inspected at all reasonable hours,

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- (c) naming a place where a copy of any relevant map accompanying the application, drawn to the same scale and delineating the boundaries of the parcel, may be inspected at all reasonable hours, and
- (d) stating that if the person on whom the notice is served wishes to object to the application so far as regards the compulsory acquisition of the parcel he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.

12.—(1) If the order will result in the extinguishment or diversion of a public right of way over a footpath or bridleway, the applicant shall—

- (a) serve a notice on every local authority for the area in which the footpath or bridleway is situated, and
- (b) cause a copy of the notice to be displayed in a prominent position at each end of the part of the footpath or bridleway which would by virtue of the order cease to be subject to the public right of way.

(2) The notice mentioned in sub-paragraph (1) must—

- (a) state that an application has been made to the Secretary of State for the making of an order which will result in the extinguishment or diversion of the public right of way over the footpath or bridleway,
- (b) name a place where a copy of the draft order may be inspected at all reasonable hours,
- (c) name a place where a copy of any relevant map accompanying the application, drawn to the same scale, may be inspected at all reasonable hours, and
- (d) state that any person who desires to object to the application, so far as regards the extinguishment or diversion of the public right of way, should do so in writing to the Secretary of State, specifying the grounds of the objection, before the expiry of the period of 42 days starting with—
 - (i) in the case of a local authority served with a notice under paragraph 12(1)(a), the date on which the notice is served on them, or
 - (ii) in the case of any other person, the date specified in the notice displayed under paragraph 12(1)(b).

(3) In this paragraph “local authority” means—

- (a) in England, a county council, a district council, a London borough council, the Common Council of the City of London, the Council of the Isles of Scilly, a parish council and a parish meeting of a parish not having a separate parish council,
- (b) in Wales, a county council, a county borough council and a community council, and
- (c) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽⁴⁶⁾.

13.—(1) If the applicant is not the harbour authority, the applicant shall serve on that authority a copy of the draft order and of any map accompanying the application together with a notice stating—

- (a) that the application has been made to the Secretary of State, and
- (b) that if the authority wish to object to the application is should do so in writing to the Secretary of State, specifying the grounds of its objection, before the expiry of the period of 42 days starting with the date on which the notice is served on it.

(46) 1994 c. 39.

(2) The copy of the map referred to in sub-paragraph (1) must be drawn to the same scale as that map.

14. The Secretary of State may require the applicant to serve on any specified person within any specified period of time the documents required to be served under paragraph 13.

Consultation

15. Before the Secretary of State determines an application he shall—

- (a) consult, and
- (b) send any environmental statement supplied to him under paragraph 8(1) to,

such bodies likely to have an interest in the project by reason of their environmental responsibilities as he thinks appropriate.

16.—(1) This paragraph applies where—

- (a) an application for a harbour revision order relates to a project which is proposed to be carried out in Great Britain,
- (b) the Secretary of State decides under paragraph 6(1)—
 - (i) that the application relates to a project which falls within Annex I or II to the Directive, and
 - (ii) in the case of an application relating to a project which falls within Annex II to the Directive, that the project is a relevant project, and
- (c) it comes to the attention of the Secretary of State that the project is likely to have significant effects on the environment in another EEA State, or another EEA State requests particulars of the project.

(2) The Secretary of State shall—

- (a) publish in the Gazette the particulars mentioned in sub-paragraph (3) in a notice with an indication of where further information is available,
- (b) serve on the other EEA State as soon as possible and no later than the date of publication of that notice, the particulars mentioned in sub-paragraph (3) and, if he thinks fit, the information mentioned in sub-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 sub-paragraph (6).

(3) The particulars referred to in sub-paragraph (2)(a) and (b) are—

- (a) a description of the project, together with any available information on its possible significant effects on the environment in the other EEA State; and
- (b) information about the nature of the decision which may be taken under this Part.

(4) The information to be served on an EEA State which indicates, in accordance with sub-paragraph (2)(c), that it wishes to be consulted in accordance with sub-paragraph (6) is—

- (a) a copy of the application,
- (b) the environmental statement supplied to the Secretary of State under paragraph 8(1), and
- (c) information regarding the procedure under this Part,

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

(5) The Secretary of State shall also—

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- (a) arrange for the information referred to in sub-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 he decides whether to make the harbour revision order in relation to the project, to send to the Secretary of State their opinion on the information.
- (6) The Secretary of State 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 the 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 sub-paragraph (6), on the determination of the application the Secretary of State shall inform the EEA State of the decision and send it a statement giving—
- (a) the content of the decision whether or not to make the order and any conditions attached to the decision;
 - (b) the main reasons and considerations 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 opinion sent to the Secretary of State in accordance with sub-paragraph (5)(b) has been taken into consideration in reaching the decision.

Objections

- 17.** — The following paragraphs in this Part have effect where—
- (a) all relevant notices concerning an application for the making of a harbour revision order have been published under paragraph 10(1) or 16(2)(a),
 - (b) all notices and other documents which are required to be served under paragraph 11, 12(1), 13(1), 14 or 16(2)(b) have been served, and
 - (c) every period for the making of objections to the Secretary of State in respect of the application has expired.
- 18.**—(1) If an objection to the application was made to the Secretary of State and has not been withdrawn, then unless the Secretary of State decides that the application shall not proceed further—
- (a) in the case of an objection regarding compulsory acquisition of a parcel of land, he shall either cause an inquiry to be held or allow the objector to appear before and be heard by a person appointed by the Secretary of State, and
 - (b) in the case of any other objection, he shall cause an inquiry to be held unless he considers the objection frivolous or too trivial to warrant the holding of an inquiry.
- (2) Where an objector is heard in accordance with sub-paragraph (1)(a), the Secretary of State shall allow the applicant and such other persons as he thinks appropriate to be heard on the same occasion.
- (3) The Secretary of State may disregard an objection—
- (a) if it does not specify the grounds on which it is made, or

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- (b) in the case of an objection about compulsory acquisition, if he is satisfied that the objection relates exclusively to matters which can be dealt with by the tribunal by whom compensation in respect of the acquisition will fall to be assessed in default of agreement.

The decision

- 19.**—(1) The Secretary of State shall consider—
- (a) any environmental statement supplied under paragraph 8(1);
 - (b) the result of any consultations under paragraph 15;
 - (c) any opinion sent under paragraph 16(5)(b) and the result of any consultations with other EEA States under paragraph 16(6)(a);
 - (d) any objections made and not withdrawn; and
 - (e) the report of any person who held an inquiry and of any person appointed for the purpose of hearing an objector under paragraph 18.
- (2) Following the consideration required by sub-paragraph (1) the Secretary of State shall decide—
- (a) not to make the order applied for,
 - (b) to make it in the form of the draft submitted to him, or
 - (c) to make it with modifications.

- 20.**—(1) This paragraph applies where the Secretary of State decides under paragraph 6(1)—
- (a) that the application relates to a project which falls within Annex I or II to the Directive, and
 - (b) in the case of an application relating to a project which falls within Annex II to the Directive, that the project is a relevant project.
- (2) The Secretary of State shall publish the following information—
- (a) the content of the decision whether or not to make the order and any conditions attached to the decision,
 - (b) the main reasons and considerations on which his decision is based,
 - (c) a description, where necessary, of the main measures to prevent, reduce or offset the major adverse effects, and
 - (d) a statement that the matters referred to in paragraph 19(1) have been taken into consideration.

The order

- 21.**—(1) Where the Secretary of State proposes to make the order applied for with modifications which appear to him substantially to affect the character of the order he—
- (a) shall take such steps as appear to him to be sufficient and reasonably practicable for informing the applicant and other persons likely to be concerned, and
 - (b) shall not make the order until such period for consideration of, and comment upon, the proposed modifications by the applicant and those other persons as he thinks reasonable has expired.
- (2) The Secretary of State shall not make the order with a modification authorising the compulsory acquisition of land that was not described in the draft submitted to him as land subject to be acquired compulsorily, unless all persons interested consent.

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22.—(1) This paragraph applies where the Secretary of State makes an order which authorises the compulsory purchase of land and is—

- (a) a harbour revision order relating to a harbour in England or Wales, or
- (b) a harbour empowerment order relating to a harbour or to works to be carried out in England or Wales.

(2) The order shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 18 or 19 of the Acquisition of Land Act 1981⁽⁴⁷⁾ or paragraph 5 or 6 of Schedule 3 to that Act (National Trust land, commons etc), if it were an order under section 2(1) of that Act.

23.—(1) This paragraph applies to—

- (a) a harbour revision order relating to a harbour in Scotland, or
- (b) a harbour empowerment order relating to a harbour or to works to be carried out in Scotland,

where the order authorises the compulsory purchase of land.

(2) The order shall be subject to special parliamentary procedure to the same extent as it would be, by virtue of section 1(2)(b) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947⁽⁴⁸⁾ (land forming part of a common or open space or held inalienably by the National Trust for Scotland) if it were an order under section 1(1) of that Act.

24.—(1) As soon as possible after a harbour revision order has been made, the applicant shall—

- (a) publish a notice by Gazette and local advertisement,
- (b) serve on the harbour authority (unless the applicant is the harbour authority) a copy of the order and a copy of any map annexed to it,
- (c) serve a copy of the order and of any map annexed to it on each local authority on whom, in compliance with a requirement imposed by virtue of paragraph 12, a notice was served, and
- (d) serve a copy of the order and of any map annexed to it on each person on whom, in compliance with a requirement imposed by virtue of paragraph 14, a copy of the draft order was served.

(2) The notice mentioned in sub-paragraph (1)(a) must—

- (a) state that the order has been made,
- (b) name a place where a copy of the order and any map annexed to it may be inspected at all reasonable hours, and
- (c) state, in the case of an order which is not subject to special parliamentary procedure, the date on which it comes into operation.

Statutory undertakers' land

25.—(1) This paragraph applies where application is made to the Secretary of State for a harbour revision order which will authorise the compulsory acquisition of land which includes land which has been acquired by statutory undertakers for the purposes of their undertaking.

(2) If on a representation made to it the appropriate authority is satisfied—

⁽⁴⁷⁾ 1981 c. 67.

⁽⁴⁸⁾ 1947 c. 42.

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(a) that any of the said land is used for the purposes of the carrying on of the statutory undertakers' undertaking, or
(b) that an interest in any of the said land is held for those purposes,
the order shall not be so made as to authorise the acquisition of any such land unless sub-paragraph (3) applies.

(3) This sub-paragraph applies where that authority certifies that the nature and situation of the land are such—

- (a) that, without serious detriment to the carrying on of the undertaking, it can be acquired and not replaced, or
- (b) that, if acquired, it can, without such detriment as aforesaid, be replaced by other land belonging to, or available for acquisition by, the undertakers.

(4) The representation mentioned in sub-paragraph (2) must be made before the expiry of the period of 42 days starting with the date on which the notice that the application has been made for the order first appears in a local newspaper.

(5) In this paragraph “statutory undertakers” means any person authorised by an Act (whether public general or local) or by any order or scheme made under or confirmed by an Act to carry on any of the following undertakings—

- (a) a railway, light railway, tramway or road transport undertaking;
 - (b) an undertaking the activities of which consist in—
 - (i) the maintenance of a canal;
 - (ii) the conservation or improvement of a river or other inland navigation;
 - (iii) the improvement, maintenance or management of a harbour (whether natural or artificial), port, haven or estuary, a dock (whether used by sea-going ships or not) or a wharf, quay, pier, jetty or other place at which ships (whether sea-going or not) can ship or unship goods or embark or disembark passengers; or
 - (iv) the provision and maintenance of a lighthouse; or
 - (c) an undertaking for the supply of hydraulic power.
- (6) In this paragraph, “the appropriate authority” means—
- (a) in relation to a statutory undertaker authorised to carry on an undertaking whose activities consist in the improvement, maintenance or management of—
 - (i) a fishery harbour in England, the Minister of Agriculture, Fisheries and Food; or
 - (ii) a fishery harbour in Wales, the National Assembly for Wales;
 - (b) in relation to a statutory undertaker authorised to carry on an undertaking in Scotland, and in relation to whom the relevant Ministerial function has been transferred to the Scottish Ministers under the Scotland Act 1998, the Scottish Ministers; and
 - (c) in relation to any other statutory undertaker, the Secretary of State.

PART II

ORDERS MADE BY THE SECRETARY OF STATE OF HIS OWN MOTION

Notices

26.—(1) Where the Secretary of State proposes to make a harbour revision order of his own motion, he shall first—

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- (a) publish a notice by Gazette and local advertisement and in such other ways as he thinks appropriate, and
 - (b) serve on the harbour authority, and on any other person who he thinks ought to have notice of the proposal, a copy of the draft order and a notice.
- (2) The notice mentioned in sub-paragraph (1)(a) must—
- (a) state that the Secretary of State proposes to make the order,
 - (b) contain a concise summary of the draft order,
 - (c) name a place where a copy of the draft order may be inspected at all reasonable hours, and
 - (d) state that any person who desires to object to the proposal should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date specified in the notice.
- (3) The date specified in accordance with sub-paragraph (2)(d) must be the date on which the notice first appears in a local newspaper.
- (4) The notice mentioned in sub-paragraph (1)(b) must—
- (a) state that the Secretary of State proposes to make the order, and
 - (b) state that if the harbour authority or other person served desires to object to the proposal he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.

Objections

- 27.**—(1) The following paragraphs in this Part have effect where—
- (a) all notices concerning a proposal of the Secretary of State to make a harbour revision order have been published under paragraph 26(1)(a),
 - (b) all notices and other documents which are required to be served under paragraph 26(1)(b) have been served, and
 - (c) every period for the making of objections to the Secretary of State in respect of the proposal has expired.
- 28.** If an objection to the proposal was made to the Secretary of State and has not been withdrawn he shall cause an inquiry to be held, unless—
- (a) he decides that the proposal shall not proceed further,
 - (b) he considers the objection is frivolous or too trivial to warrant the holding of an inquiry, or
 - (c) the objection does not specify the grounds on which it is made.

The decision

- 29.**—(1) The Secretary of State shall consider—
- (a) any objections made and not withdrawn, and
 - (b) the report of any person who held an inquiry under paragraph 28.
- (2) Following the consideration required by sub-paragraph (1) the Secretary of State shall decide—
- (a) not to make the order proposed,
 - (b) to make the order in the form of the draft, or

- (c) to make it with modifications.

The order

30. Where the Secretary of State proposes to make the order with modifications which appear to him substantially to affect the character of the order as originally proposed to be made, he—

- (a) shall take such steps as appear to him to be sufficient and reasonably practicable for informing persons likely to be concerned, and
- (b) shall not make the order until a reasonable period for consideration of, and comment upon, the proposed modifications by those persons has expired.

31.—(1) As soon as possible after a harbour revision order has been made by the Secretary of State of his own motion he shall—

- (a) publish a notice by Gazette and local advertisement, and
 - (b) serve a copy of the order on each person on whom notice was served under paragraph 26(1)(b).
- (2) The notice mentioned in sub-paragraph (1)(a) must—
- (a) state that the order has been made, and
 - (b) name a place where a copy of the order may be inspected at all reasonable hours.

PART III

HARBOUR EMPOWERMENT ORDERS: MODIFICATIONS OF PART I

32.—(1) The modifications subject to which Part I of this Schedule is, by virtue of section 17(1)(g) of this Act, to have effect with respect to the procedure for the making of harbour empowerment orders by the Secretary of State are those set out in this paragraph.

(2) For references to a harbour revision order there shall be substituted references to a harbour empowerment order.

(3) For paragraphs 13 and 14 there shall be substituted—

“(13) —

(1) The Secretary of State may require the applicant to serve on any specified person within any specified period of time a copy of the draft order and of any map accompanying the application together with a notice stating—

- (a) that the application has been made to the Secretary of State, and
- (b) that, if the person wishes to object to the application he should do so in writing to the Secretary of State, specifying the grounds of his objection, before the expiry of the period of 42 days starting with the date on which the notice is served on him.

(2) The copy of the map referred to in sub-paragraph (1) must be drawn to the same scale as that map.”

(4) Paragraph 24(1)(b) shall be omitted, and for the reference, in paragraph 24(1)(d), to paragraph 14, there shall be substituted a reference to paragraph 13(1).”

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SCHEDULE 4

Regulation 15(5)

CONSEQUENTIAL AMENDMENTS

The Docks and Harbours Act 1966

1. In section 42(2)(b) of the Docks and Harbours Act 1966(49), for “paragraph 6” there shall be substituted “paragraph 25”.

The Transfer of Functions (Shipping and Construction of Ships) Order 1965

2. In Schedule 1 to the Transfer of Functions (Shipping and Construction of Ships) Order 1965(50), in the entry relating to the Harbours Act 1964, for “paragraph 6” there shall be substituted “paragraph 25”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, for Great Britain, Council Directive [85/337/EEC](#) (as amended by Council Directive [97/11/EC](#)) in the assessment of the effects of certain public and private projects on the environment, in respect of certain harbour works.

Except for applications relating to harbour works made prior to 1st February 2000, Part II of these Regulations replaces the Harbour Works (Assessment of Environmental Effects) (No. 2) Regulations 1989 and amendments to them made by the Harbour Works (Assessment of Environmental Effects) (Amendment) Regulations 1996. Similarly, except for applications for harbour revision orders or harbour empowerment orders made prior to 1st February 2000, Part III introduces Schedule 3 which replaces Schedule 3 to the Harbours Act 1964 as amended.

In Part II, regulation 4 provides for a developer who is minded to make an application relating to harbour works to be able to obtain a prior opinion on the information to be supplied in an environmental statement. Regulations 5 and 6 provide for two different procedures on such an application, depending on whether or not a prior opinion has been obtained. Regulation 7 provides for publication of notices by the developer, and regulation 8 provides for the involvement of other EEA States in transboundary cases.

There is provision for consultations and inquiries (regulation 9), the making of decisions on applications (regulation 10), the procedure where harbour works are carried out without a decision having been made (regulation 11), variation of consents (regulation 12), enforcement (regulation 13) and penalties (regulation 14).

In Part III, sections 17 and 57 of the Harbours Act 1964 are amended and Schedule 3 is introduced to replace Schedule 3 to that Act (regulation 15(4)). The following are the main amendments necessitated by the amending Directive which have been made to the existing Schedule 3.

Paragraph 4 of the new Schedule 3 provides for the Secretary of State to take into account the selection criteria (which are defined as the criteria set out in Annex III to the Directive) when

(49) [1966 c. 28](#).

(50) [S.I. 1965/145](#).

deciding whether a project which appears to him to fall within Annex II to the Directive constitutes a “relevant project” as defined and an environmental assessment is therefore required. Paragraph 6(2) provides for the Secretary of State to give an opinion on the extent of the information which he considers would be required in an environmental statement.

The environmental statement to be supplied on an application for a harbour revision order must contain an outline of the main alternatives studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects (paragraph 8(2)). The notice to be published in the Gazette by the applicant must state the Secretary of State’s decision on whether the application relates to a project which falls within Annex I to the Directive or within Annex II and is a relevant project, and state his reasons if he decides it does constitute such a project (paragraph 10(2)(b)). Paragraph 16 provides for the involvement of other EEA States in transboundary cases. Paragraph 20 expands the requirements for publicity of the Secretary of State’s decision on an application.

Regulation 15(5) introduces Schedule 4, which sets out amendments consequent upon the replacement of Schedule 3 to the Harbours Act 1964 by the Schedule set out in Schedule 3 to these Regulations.

A regulatory impact assessment is not required as the changes introduced by these Regulations will not impose any additional costs or savings and will have a negligible impact on business.