STATUTORY INSTRUMENTS

2011 No. 735

ENVIRONMENTAL PROTECTION LICENSING (MARINE) MARINE MANAGEMENT

The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011

Made - - - -	*9th March 2011*
Laid before Parliament	*15th March 2011*
Coming into force - -	*6th April 2011*

The Secretary of State is designated(**1**) for the purpose of making Regulations under section 2(2) of the European Communities Act 1972(**2**) ("the Act") in relation to the environment.

In accordance with section 56(1) of the Finance Act 1973(**3**), the Treasury consents to the making of these Regulations.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the Act and section 56 of the Finance Act 1973.

PART 1

Introductory provision

Title and commencement

1. These Regulations may be cited as the Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011 and come into force on 6th April 2011.

(**1**) S.I. 2008/301. As regards functions transferred to the Scottish Ministers by the Scotland Act 1998 (c. 46), these Regulations extend to Scotland by virtue of section 57(1) of that Act.
(**2**) 1972 c. 68.
(**3**) 1973 c. 51.

PART 2

Amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007

Amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007

2. The Marine Works (Environmental Impact Assessment) Regulations 2007(**4**) are amended as follows.

Amendments to regulation 2

3.—(1) In paragraph (1) of regulation 2 (interpretation)—

(a) after the definition of "the 1985 Act", insert—

""the 2009 Act" means the Marine and Coastal Access Act 2009(**5**);

"the 2010 Act" means the Marine (Scotland) Act 2010(**6**);";

(b) for the definition of "appropriate authority", substitute—

""appropriate authority" means—

(a) where the regulator is the Secretary of State, the Marine Management Organisation or a devolved authority, the regulator;

(b) where the regulator is any other person—

(i) as regards any regulated activity in Northern Ireland, the Department of the Environment;

(ii) as regards any regulated activity in Scotland or the Scottish offshore region (or both), the Scottish Ministers;

(iii) as regards harbour works in Wales relating to fishery harbours or carried out for the purposes of extracting minerals by dredging, the Welsh Ministers; and

(iv) in any other case, the Secretary of State;

and for the purpose of sub-paragraph (a), "a devolved authority" means any Northern Ireland Department, the Scottish Ministers or the Welsh Ministers;;";

(c) for the definition of "consenting authority", substitute—

""consenting authority", in relation to a project, means any authority—

(a) whose consent to any activity to be undertaken in the course of the project is required under any enactment, or

(b) whose determination was required under any of the Government View documents, and for this purpose, "the Government View documents" means—

(i) the document entitled "Offshore Dredging for Sand, Gravel and Other Minerals", dated April 1989, and published by the Department of the Environment and the Welsh Office;

(ii) the document entitled "Government View: New Arrangements for the Licensing of Minerals Dredging", dated May 1998, and published by

(**4**) S.I. 2007/1518, amended in relation to England and Wales by S.I. 2009/2258 (revoked by these Regulations).
(**5**) 2009 c. 23.
(**6**) 2010 asp 5.

the Department of the Environment, Transport and the Regions and the Welsh Office; and

(iii) the document entitled "Government View: Interim Arrangements for the Licensing of Marine Minerals Dredging in Northern Ireland", dated May 2006, and published by the Department of the Environment;";

(d) for the definition of "England", substitute—

""England" includes any part of the territorial sea that is not part of Scotland, Wales or Northern Ireland;";

(e) after the definition of "harbour" insert—

""harbour authority" has the same meaning as in section 57(1) of the Harbours Act 1964(**7**)

(f) for the definition of "harbour works", substitute—

""harbour works" means—

(a) works involved in the construction of a harbour;

(b) works involving the making of modifications to an existing harbour;

(c) any dredging operation undertaken by or on behalf of a harbour authority and carried out for the purpose of extracting minerals; and

(d) works involving the deposit of spoil from any such dredging operation;";

(g) for the definition of "regulatory approval", substitute—

""regulatory approval" means—

(a) a licence under Part 2 of the 1985 Act(**8**);

(b) a marine licence, or variation of a marine licence, under Part 4 of the 2009 Act;

(c) a marine licence, or variation of a marine licence, under Part 4 of the 2010 Act; or

(d) except in relation to Northern Ireland, an approval or consent for harbour works under—

(i) any local Act;

(ii) such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862(**9**); or

(iii) any order under section 14 or 16 of the Harbours Act 1964(**10**);";

(h) for the definition of "relevant authority", substitute—

""relevant authority" means—

(a) where a regulated activity is likely to have a significant effect on the environment of Northern Ireland and the appropriate authority is not a

(**7**) 1964 c. 40.

(**8**) Regulation 2(1) of the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) defines "the 1985 Act" as the Food and Environment Protection Act 1985 (c. 48). Part 2 of the 1985 Act is amended by the Marine and Coastal Access Act 2009 (c. 23) ("the 2009 Act"), s.112(1) and paragraph 2 of Schedule 8, which amendments are to be commenced from a date to be appointed by an order made under s.324(3) of the 2009 Act. The effect of those amendments is to limit the application of Part 2 of the 1985 Act to the Scottish inshore region. See section 322(1) of the 2009 Act, and regulation 3(1)(k) of these Regulations for the meaning of "the Scottish inshore region".

(**9**) 1862 c. 69. Section 9 was amended by SR & O 1921/1804.

(**10**) 1964 c. 40; sections 14 and 16 were amended by the Transport Act 1981 (c. 56), paragraphs 3 and 14 of Schedule 6 and Schedule 12; the Criminal Justice Act 1982 (c. 48), sections 37 and 46; the Transport and Works Act 1992 (c. 42), paragraphs 1 and 2 of Schedule 3; S.I. 2006/1177; the Planning Act 2008 (c. 29), paragraphs 8, 9 and 10 of Schedule 2; and S.I. 2006/1177. Section 14 was additionally amended by S.I. 2009/1941. Section 16 was additionally amended by the Marine and Coastal Access Act 2009 (c. 23), paragraphs 1 and 2 of Schedule 21.

Northern Ireland Department, such of the Northern Ireland Departments as the appropriate authority considers likely to have an interest in the activity by reason of their environmental responsibilities;

(b) where a regulated activity is likely to have a significant effect on the environment of Scotland, or the Scottish offshore region (or both) and the appropriate authority is not the Scottish Ministers, the Scottish Ministers;

(c) where the regulated activity is likely to have a significant effect on the environment of the Scottish offshore region and the appropriate authority is not the Secretary of State, the Secretary of State;

(d) where a regulated activity is likely to have a significant effect on the environment of Wales and the appropriate authority is not the Welsh Ministers, the Welsh Ministers;

(e) where a regulated activity is likely to have a significant effect on the environment of England or a relevant offshore region and the appropriate authority is the Marine Management Organisation, the Secretary of State; and

(f) where a regulated activity is likely to have a significant effect on the environment of England or a relevant offshore region and the appropriate authority is the Secretary of State, the Marine Management Organisation;";

(i) after the definition of "relevant legislation", insert—

""relevant offshore region" means—

(a) the English offshore region;

(b) the Welsh offshore region; or

(c) the Northern Ireland offshore region;

within the meaning of those expressions given by section 322(1) of the 2009 Act;

"the relevant Public Register" means the register on which information must be recorded in accordance with (as the case may be)—

(a) section 14 of the 1985 Act(**11**);

(b) section 101 of the 2009 Act; or

(c) section 54 of the 2010 Act;";

(j) for the definition of "Scotland", substitute—

""Scotland" (other than in the definition of "the Scottish offshore region") includes the Scottish inshore region;";

(k) after the definition of "Scotland", insert—

""the Scottish inshore region" means the area of sea within the seaward limits of the territorial sea adjacent to Scotland;

"the Scottish offshore region" means so much of the UK marine area as lies outside the Scottish inshore region and consists of—

(a) areas of sea which lie within the Scottish zone, and

(b) areas of sea which lie outside the Scottish zone but which are nearer to any point on the baselines from which the breadth of the territorial sea adjacent to Scotland is measured than to any point on the baselines in any other part of the United Kingdom;

(**11**) Section 14 of the 1985 Act was amended by section 147 of the Environment Protection Act 1990 (c. 43), which came into force on 31st May 1991 pursuant to article 2 of S.I. 1991/1319. Section 14 of the 1985 Act places a duty on the licensing authority to maintain a register of certain information relating to licensing under Part 2 of that Act.

and for this purpose "the Scottish zone" has the meaning given by section 126(1) of the Scotland Act 1998(**12**);;";

(l) for the definition of "sea", substitute—

""sea" includes—

(a) any area submerged at mean high water spring tide, and

(b) the waters of every estuary, arm of the sea, river or channel, so far as the tide flows at mean high water spring tide,

and any reference to an area of sea includes the bed and subsoil of the sea within that area;;";

(m) for the definition of "Wales", substitute—

""Wales" has the meaning given by section 158(1) of the Government of Wales Act 2006(**13**);";

(n) after the definition of "sea", insert—

""UK marine area" has the same meaning as in section 42 of the 2009 Act;";

(o) omit the definitions of—

(i) "deposit";

(ii) "devolved authority";

(iii) "outlying waters";

(iv) "the Public Register";

(v) "the Scottish zone";

(vi) "United Kingdom controlled waters";

(vii) "United Kingdom waters";

(viii) "waters adjacent to England";

(ix) "waters adjacent to Northern Ireland";

(x) "waters adjacent to Scotland"; and

(xi) "waters adjacent to Wales".

(2) After regulation 2(1), insert—

"(1A) The area of sea referred to in sub-paragraph (a) of the definition of "sea" in paragraph (1) includes waters in any area—

(a) which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but

(b) into and from which seawater is caused or permitted to flow, whether continuously or from time to time.".

Proposed activity which would otherwise be a regulated activity

4. After regulation 2 (interpretation), insert—

"**Proposed activity which would otherwise be a regulated activity**

2A.—(1) Paragraph (2) applies where—

(**12**) 1998 c. 46.
(**13**) 2006 c. 32.

(a) an activity is proposed to be carried out which would be a regulated activity if carried out by a person other than the person who would be the regulator in relation to that activity; and

(b) the person by whom the activity is proposed to be carried out ("the relevant person") is the person who would be the regulator in relation to that activity if it were carried out by any other person.

(2) Where this paragraph applies, these Regulations apply in relation to that proposal as if—

(a) the activity were a regulated activity, the relevant person had made an application for regulatory approval in respect of that activity and, in relation to the carrying out of that activity by that person, that person were also the regulator; and

(b) accordingly—

(i) references to the regulator's dealing with the application or to a regulatory decision were references to determining whether to carry out the proposal;

(ii) references to granting a regulatory approval were references to a decision to proceed to carry out the proposal; and

(iii) references to treating the application as withdrawn were references to treating the proposal as abandoned.".

Fees

5. For regulation 3, substitute—

"**Fees**

3.—(1) An appropriate authority may require an applicant for a regulatory approval to pay to it reasonable fees in respect of relevant expenses.

(2) In paragraph (1) "relevant expenses" means administrative and other expenses which the authority reasonably incurs under these Regulations in its capacity as an appropriate authority (including any expenses in respect of examinations and tests carried out for that purpose), but does not include any expenses in respect of which a fee may be charged under any other provision of these Regulations.

(3) Paragraph (4) applies to any requirement imposed under—

(a) paragraph (1);

(b) paragraph 2 of Schedule 2;

(c) paragraph 3 of Schedule 4; or

(d) regulation 24A.

(4) The determination of the amount of a reasonable fee in accordance with any requirement to which this paragraph applies must be made—

(a) where the appropriate authority is the Secretary of State, by the Secretary of State with the consent of the Treasury;

(b) where the appropriate authority is the Marine Management Organisation, by the Marine Management Organisation, with the consent of—

(i) the Secretary of State; and

(ii) the Treasury;

(c) where the appropriate authority is the Department of the Environment, by the Department of the Environment with the consent of the Department of Finance and Personnel;

(d) where the appropriate authority is the Welsh Ministers, by the Welsh Ministers with the consent of the Treasury; and

(e) where the appropriate authority is the Scottish Ministers, by the Scottish Ministers.

(5) Before determining the amount of a fee which is imposed under any requirement referred to in paragraph (3), the authority must consult such organisations as appear to it to represent persons who are likely to apply for regulatory approval.".

Amendments to regulation 10

6. In regulation 10 (exceptions)—

(a) in paragraph (1)(b)(i), after "to be carried out by", insert "the appropriate authority or by";

(b) in paragraph (3)(b), for paragraph (ii), substitute—

"(ii) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.";

(c) for paragraph (4), substitute—

"(4) Where the appropriate authority determines in accordance with paragraph (1)(b) that an environmental impact assessment is not required in relation to a regulated activity—

(a) the regulator—

(i) must not grant regulatory approval unless it has determined that to do so would be compatible with the other consenting authority's measures to comply with the EIA Directive(**14**); and

(ii) for the purpose of so determining must consider whether it is appropriate to seek the views of the other consenting authority; and

(b) any decision to grant a regulatory approval must take into account any comments of the other consenting authority relating to the regulated activity."; and

(d) after paragraph (4), add—

"(5) Paragraph (1) is subject to regulation 10A.".

Further provisions in relation to Article 2(3) of the EIA Directive

7. After regulation 10 (exceptions), insert—

"**Further provisions in relation to Article 2(3) of the EIA Directive**

10A.—(1) The Marine Management Organisation may not make a determination under regulation 10(1)(a)(i) unless the Secretary of State has given a direction under paragraph (2).

(2) The Secretary of State may direct that an environmental impact assessment is not required in relation to any regulated activity that is to be carried out in the course of an Annex I project or an Annex II project, if the Secretary of State is satisfied that—

(**14**) Regulation 2(1) of the Marine Works (Environmental Impact Assessment) Regulations 2007 (S.I. 2007/1518) defines "the EIA Directive" as Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJNo. L 175, 5.7.1985, p. 40); relevant amendments have been made by Council Directive 97/11/EC (OJ No. L 73, 14.3.1997, p. 5), and Directive 2003/35/EC of the European Parliament and of the Council (OJ No. L 156, 25.6.2003, p. 17).

(a) the Marine Management Organisation is the appropriate authority having the function of determining whether an environmental impact assessment is required in relation to the regulated activity;

(b) a direction that an environmental impact assessment is not required for the regulated activity can be justified in accordance with Article 2(3) of the EIA Directive (exemption for exceptional cases); and

(c) the regulated activity would not be likely to have significant effects on the environment of another EEA State.

(3) As soon as practicable after making any such direction, the Secretary of State must send a copy of the direction to—

(a) the Marine Management Organisation;

(b) where the Marine Management Organisation is not also the regulator, the regulator; and

(c) any relevant authority.".

Amendments to regulation 11

8. In regulation 11 (screening opinions), in paragraph (3), for "the regulator considers that the regulated activity is one in relation to which it must be determined in accordance with regulation 7 or 8 that an environmental impact assessment is required" substitute—

"the regulator considers that the regulated activity is or may be one in relation to which an environmental impact assessment is required under regulation 7 or 8".

Amendments to regulation 23

9. In regulation 23 (notification and publication of decisions)—

(a) for paragraph (2)(c), substitute—

"(c) if the EIA consent decision involves giving EIA consent, a description of any measures that must be taken in consequence of the EIA consent decision—

(i) to avoid, reduce and, if possible, offset the principal adverse effects of the regulated activity; and

(ii) to monitor the risk of the regulated activity having any such effects, the extent of any such effects, or the effectiveness of any measures for the purposes in paragraph (i).."; and

(b) for paragraph (3), substitute—

"(3) The appropriate authority must, as soon as possible after written confirmation is sent to the applicant pursuant to paragraph (1), ensure that—

(a) its EIA consent decision is publicised in such manner as it considers appropriate; and

(b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act—

(i) its EIA consent decision and the information set out in paragraph (2) are made available on the relevant Public Register; and

(ii) a notice of that decision, stating that the information referred to in paragraph (2) is available in the relevant Public Register and giving details of the times at which the relevant Public Register may be inspected, is

published in the newspapers or other publications in which notice of the application was published in accordance with regulation 16(1).".

Fees in relation to monitoring measures

10. After regulation 24 (effect of EIA consent decision on application and regulatory decision), insert—

"**Fees in relation to the assessment etc. of the results of monitoring measures**

24A.—(1) A decision to grant regulatory approval which includes a monitoring condition may include a fee condition of the kind described in paragraph (3).

(2) For the purposes of this regulation, a monitoring condition is a condition requiring any measure to be taken relating to monitoring of a kind referred to in regulation 23(2)(c)(ii).

(3) A fee condition of the kind referred to in paragraph (1) is a condition as to the payment of a reasonable fee, determined in accordance with regulation 3(4) and (5), in respect of expenses incurred in assessing and interpreting the results of any monitoring measure.".

Amendments to Schedule 2

11. In Schedule 2, in paragraph 6 (availability of screening opinions for inspection), for paragraph (1)(b), substitute—

"(b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.".

Amendments to Schedule 4

12. In Schedule 4, in paragraph 8 (availability of scoping opinions for inspection), for sub-paragraph (1), substitute—

"(1) Subject to sub-paragraph (2), the appropriate authority must ensure that, as soon as possible after being sent to the applicant, its scoping opinion is—

(a) publicised in such a manner as it considers appropriate; and

(b) in the case of an activity requiring regulatory approval under the 1985 Act, the 2009 Act or the 2010 Act, made available on the relevant Public Register.".

PART 3

Revocations, transitional provisions, and savings

CHAPTER 1

Interpretation of Part 3

Interpretation

13. In this Part—

(a) "the 2009 Act" means the Marine and Coastal Access Act 2009;

(b) "appropriate authority" has the same meaning as in regulation 2(1) of the Marine Works Regulations(**15**);

(c) "appropriate licensing authority" is to be construed in accordance with section 113 of the 2009 Act(**16**);

(d) "dredging permission" means permission which is granted under and in accordance with—

(i) regulation 13 of the Marine Minerals Regulations; or

(ii) (as the case may be) regulation 13 of the Welsh Marine Minerals Regulations;

(e) "licensable marine activity" has the meaning it has in Part 4 of the 2009 Act(**17**);

(f) "the Marine Minerals Regulations" means the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(**18**);

(g) "the Welsh Marine Minerals Regulations" means the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007(**19**); and

(h) "the Marine Works Regulations" means the Marine Works (Environmental Impact Assessment) Regulations 2007(**20**).

CHAPTER 2

Revocations

Revocation of the Marine Minerals Regulations and the Welsh Marine Minerals Regulations

14.—(1) The Marine Minerals Regulations are revoked.

(2) The Welsh Marine Minerals Regulations are revoked.

Revocation of the Marine Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009

15. The Marine Works (Environmental Impact Assessment) (Amendment) (England and Wales) Regulations 2009(**21**) are revoked.

CHAPTER 3

Transitional provisions in relation to the Marine Minerals Regulations

Dredging permission

16.—(1) Any dredging permission which—

(**15**) S.I. 2007/1518. The definition was amended by S.I. 2009/2258 (revoked by these Regulations), and is replaced by regulation 3(1)(b) of these Regulations.

(**16**) Section 113 of the 2009 Act contains provisions determining which authority is the appropriate licensing authority for an area in which licensable marine activities may take place. Under section 98 of the 2009 Act, the appropriate licensing authority may, by order, delegate any of its delegable marine licensing functions (as defined in section 98(5)) to such other person as is designated in the order. Under section 14(1) of the 2009 Act, the Secretary of State may enter into an agreement with the Marine Management Organisation authorising it to perform any marine function of the Secretary of State in relation to the UK marine area (or specified parts of that area). By virtue of section 14(6), the provision in section 14(1) of the 2009 Act is subject to sections 17 and 18 of that Act, which make provision in relation to non-delegable functions and the maximum duration of such an agreement, respectively.

(**17**) Section 66(1) of the 2009 Act describes the activities which are licensable marine activities for the purposes of Part 4 of that Act.

(**18**) S.I. 2007/1067.

(**19**) S.I. 2007/2610 (W. 221).

(**20**) S.I. 2007/1518, amended in relation to England and Wales by S.I. 2009/2258 (revoked by these Regulations).

(**21**) S.I. 2009/2258.

(a) is in effect immediately before 6th April 2011, and

(b) relates to an operation which is a licensable marine activity for the purposes of Part 4 of the 2009 Act,

has effect as if it were a marine licence granted by the appropriate licensing authority in relation to that activity under Part 4 of the 2009 Act (a "deemed licence").

(2) In accordance with paragraph (1)—

(a) a dredging permission issued for a specified period remains in force as a deemed licence for so much of that period as falls on or after 6th April 2011; and

(b) any condition subject to which a dredging permission has been granted under regulation 13(6)(a) of the Marine Minerals Regulations has effect as if it were a condition of the deemed licence.

(3) Any dredging permission which—

(a) before 6th April 2011 was suspended under regulation 21(2)(b), (7) or (8) of the Marine Minerals Regulations, and

(b) relates to an operation which is a licensable marine activity for the purposes of Part 4 of the 2009 Act,

has effect as if it were a marine licence granted by the appropriate licensing authority in relation to that activity under Part 4 of the 2009 Act (a "deemed licence"), which immediately after 5th April 2011 was suspended.

(4) Where a deemed licence has effect by virtue of paragraph (3) as if it is suspended, the effect of such suspension is to be determined in accordance with paragraph (6) in place of any provision in or under the 2009 Act.

(5) Paragraphs (6) to (10) apply to a dredging permission which has effect by virtue of paragraph (1) as a deemed licence.

(6) In relation to a deemed licence which has effect by virtue of paragraph (3) as if it is suspended, regulation 21(9), and, so far as they relate to a suspended permission or a suspension of a permission, regulations 21(10) to (12) and 22(3) and (4) of the Marine Minerals Regulations apply as they applied to the dredging permission.

(7) In relation to a dredging permission which has been varied temporarily under regulation 21(2)(c) or (7) of the Marine Minerals Regulations, regulations 21(10) to (12) and 22(3) and (5) of those Regulations (so far as they relate to temporary variations of a dredging permission or a dredging permission that has been temporarily varied) apply—

(a) in relation to the deemed licence as they applied to the dredging permission; and

(b) in place of any provision in or under the 2009 Act which relates to the variation of a marine licence.

(8) Where a notice of a proposed revocation or permanent variation of the dredging permission has been served under regulation 21(3)(a) of the Marine Minerals Regulations, but no decision has been taken under regulation 21(11) before 6th April 2011 to revoke or permanently vary the dredging permission, regulations 21(10) to (12) and 22(1), (2) and (4) of those Regulations apply in relation to the deemed licence as they applied in relation to the dredging permission.

(9) Any notice of a decision to revoke or permanently vary a deemed licence served pursuant to regulation 21(12) of the Marine Minerals Regulations has effect as a notice to revoke or vary that deemed licence in accordance with section 72(1) or (3) of the 2009 Act.

Fee payable under condition of dredging permission

17. Any fee that before 6th April 2011 was payable under regulation 25(1)(c) of the Marine Minerals Regulations by the owner or holder of the dredging permission, on certain occasions or at certain intervals, is to be treated as a fee payable under a fee condition of the deemed licence by virtue of section 24A of the Marine Works Regulations, on the same occasions or at the same intervals, in respect of expenses incurred in assessing and interpreting the results of monitoring of a kind referred to in regulation 23(2)(c)(ii) of those Regulations.

Applications made under the Marine Minerals Regulations

18.—(1) Any application for dredging permission under regulation 10 of the Marine Minerals Regulations which—

(a) was made before 6th April 2011, and

(b) relates to a dredging operation—

(i) for which immediately before 6th April 2011 a permission was required under Part 4 of the Marine Minerals Regulations, and

(ii) which is a licensable marine activity,

has effect as if it were an application for a marine licence made under Part 4 of the 2009 Act to the appropriate licensing authority in relation to that activity.

(2) Any application which—

(a) immediately before 6th April 2011 is being treated in accordance with regulation 31(1) of the Marine Minerals Regulations (transitional provisions) as an application for permission duly made under those Regulations, and

(b) relates to a dredging operation which is a licensable marine activity,

has effect as if it were an application for a marine licence made under Part 4 of the 2009 Act to the appropriate licensing authority in relation to that activity.

Application which has an effect as application for a marine licence

19.—(1) Regulations 20 to 22 and 23(1) and (2) apply where, under regulation 18(1), an application under the Marine Minerals Regulations has effect as if it were an application for a marine licence.

(2) Regulation 23(3) applies where—

(a) by virtue of regulation 18(2), an application has effect as an application for a marine licence under Part 4 of the 2009 Act; and

(b) the appropriate authority has agreed or determined that before that application can be determined an environmental impact assessment is required under the Marine Works Regulations.

Screening

20.—(1) A request for a preliminary determination under regulation 6(1)(a) of the Marine Minerals Regulations which has not been determined before 6th April 2011 must be treated as a request for a screening opinion under regulation 11 of the Marine Works Regulations.

(2) If it is satisfied that any step which is required to be taken by the regulator under regulation 6(2), (5) or (6) of the Marine Minerals Regulations has been taken, the appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 11 of or Schedule 2 to the Marine Works Regulations.

(3) A determination under regulation 6 of the Marine Minerals Regulations that the dredging is not a relevant project has effect as a screening opinion under regulation 11(5) of the Marine Works Regulations that an environmental impact assessment is not required for the regulated activity.

(4) A determination under regulation 6 of the Marine Minerals Regulations that the dredging is a relevant project has effect as a screening opinion under regulation 11(6) of the Marine Works Regulations that an environmental impact assessment is required for the regulated activity.

Opinion as to the content of an environmental statement

21.—(1) A request for an opinion under regulation 7(2) of the Marine Minerals Regulations(**22**) which has not been determined before 6th April 2011 must be treated as a request for a scoping opinion under regulation 13(1) of the Marine Works Regulations.

(2) If it is satisfied that any step which is required to be taken by the regulator under regulation 7(3) or (4) of the Marine Minerals Regulations has been taken, the appropriate authority may treat that step as taken in accordance with any corresponding requirement in paragraph 6 or 7 of Schedule 4 to the Marine Works Regulations.

(3) A scoping opinion given under regulation 7(2) of the Marine Minerals Regulations has effect as a scoping opinion given under regulation 13(2) of and paragraph 7 of Schedule 4 to the Marine Works Regulations.

Fees charged in relation to an application for dredging permission

22.—(1) An applicant who has paid a fee pursuant to a determination under regulation 25(1)(a) of the Marine Minerals Regulations in respect of the regulator's expenses of providing an opinion under regulation 7(2) of those Regulations may not be charged a fee under paragraph 3(1) of Schedule 4 to the Marine Works Regulations.

(2) An applicant who has paid a fee pursuant to a determination under regulation 25(1)(a) of the Marine Minerals Regulations in respect of the regulator's expenses of providing information relevant to the preparation of an environmental statement in accordance with regulation 8(3) and (4) of those Regulations may not be required to pay a charge under regulation 15(4) of the Marine Works Regulations.

(3) An applicant who pursuant to a determination under regulation 25(1)(b) of the Marine Minerals Regulations has paid a fee in respect of a relevant application may not be charged a fee under section 67(1)(b) of the 2009 Act.

(4) A person who, pursuant to a determination under regulation 25(1)(c) of the Marine Minerals Regulations, has paid a fee in respect of the expenses of the regulator in interpreting and assessing the results of any monitoring may not be charged a fee under regulation 24A(1) of the Marine Works Regulations in respect of the same expenses.

(5) In paragraph (3), "a relevant application" means an application under regulation 10(1) of the Marine Minerals Regulations which by virtue of regulation 18(1) of these Regulations has effect as an application for a marine licence.

Publicity and consultation

23.—(1) If it is satisfied that any step has been taken by the regulator to publicise the application in accordance with regulation 12 of the Marine Minerals Regulations, the appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 16(1) and (2) or 17(1) of the Marine Works Regulations.

(**22**) Regulation 7(2) of the Marine Minerals Regulations provides for the regulator to give an opinion (otherwise known as a "scoping opinion") as to the information to be provided by an environmental statement.

(2) If it is satisfied that any step has been taken by the regulator to provide information to or to consult another EEA State in accordance with regulation 15 of the Marine Minerals Regulations, the appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 18, 19 or 20 of the Marine Works Regulations.

(3) Where the appropriate authority is satisfied that any step taken by an applicant—

(a) is by virtue of regulation 31(2) of the Marine Minerals Regulations to be treated by the regulator immediately before 6th April 2011 as a step taken under regulation 12 of those Regulations, or

(b) is sufficient to publicise that application, related documents, and information to substantially the same extent as required by regulation 16(1) and (2) or 17(1) of the Marine Works Regulations,

the appropriate authority may treat that step as taken under regulation 16(1) and (2) or 17(1) (as the case may be) of the Marine Works Regulations.

CHAPTER 4

Transitional provisions in relation to the Welsh Marine Minerals Regulations

Dredging permission

24.—(1) Any dredging permission which—

(a) is in effect immediately before 6th April 2011, and

(b) relates to an operation which is a licensable marine activity for the purposes of Part 4 of the 2009 Act,

has effect as if it were a marine licence granted by the appropriate licensing authority in relation to that activity under Part 4 of the 2009 Act (a "deemed licence").

(2) In accordance with paragraph (1)—

(a) a dredging permission issued for a specified period remains in force as a deemed licence for so much of that period as falls on or after 6th April 2011; and

(b) any condition subject to which a dredging permission has been granted under regulation 13(7)(a) of the Welsh Marine Minerals Regulations has effect as if it were a condition of the deemed licence.

(3) Paragraphs (4) to (6) apply to a dredging permission which has effect by virtue of paragraph (1) as a deemed licence.

(4) Where a notice of a proposed revocation or permanent variation of the dredging permission has been served under regulation 21(3)(a) of the Welsh Marine Minerals Regulations, but no decision has been taken under regulation 21(11) before 6th April 2011 to revoke or permanently vary the dredging permission, regulations 21(10) to (12) of those Regulations apply in relation to the deemed licence as they applied in relation to the dredging permission.

(5) Any notice of a decision to revoke or permanently vary a deemed licence served pursuant to regulation 21(12) of the Welsh Marine Minerals Regulations has effect as a notice to revoke or vary that deemed licence in accordance with section 72(1) or (3) of the 2009 Act.

(6) Where a notice of a kind mentioned in paragraph (5) has been served, paragraphs (1) and (2) of regulation 22 of the Welsh Marine Minerals Regulations apply in relation to the deemed licence as they applied in relation to the dredging permission.

Fee payable under condition of dredging permission

25. Any fee that before 6th April 2011 was payable under regulation 25(1)(c) of the Welsh Marine Minerals Regulations by the owner or holder of the dredging permission, on certain occasions or at certain intervals, is to be treated as a fee payable under a fee condition of the deemed licence by virtue of section 24A of the Marine Works Regulations, on the same occasions or at the same intervals, in respect of expenses incurred in assessing and interpreting the results of monitoring of a kind referred to in regulation 23(2)(c)(ii) of those Regulations.

Applications made under the Welsh Marine Minerals Regulations

26.—(1) Any application for dredging permission under regulation 10 of the Welsh Marine Minerals Regulations which—

(a) was made before 6th April 2011, and

(b) relates to a dredging operation—

(i) for which immediately before 6th April 2011 a permission was required under Part 4 of the Welsh Marine Minerals Regulations, and

(ii) which is a licensable marine activity,

has effect as if it were an application for a marine licence made under Part 4 of the 2009 Act to the appropriate licensing authority in relation to that activity.

(2) Any application which—

(a) immediately before 6th April 2011 is being treated in accordance with regulation 31(1) of the Welsh Marine Minerals Regulations as an application for dredging permission duly made under those Regulations, and

(b) relates to a dredging operation which is a licensable marine activity,

has effect as if it were an application for a marine licence made under Part 4 of the 2009 Act to the appropriate licensing authority in relation to that activity.

Application which has effect as an application for a marine licence

27.—(1) Regulations 28 to 30 and 31(1) and (2) apply where, under regulation 26(1), an application under the Welsh Marine Minerals Regulations has effect as if it were an application for a marine licence.

(2) Regulation 31(3) applies where—

(a) by virtue of regulation 26(2), an application has effect as an application for a marine licence under Part 4 of the 2009 Act; and

(b) the appropriate authority has agreed or determined that before that application can be determined an environmental impact assessment is required under the Marine Works Regulations.

Screening

28.—(1) A request for a preliminary determination under regulation 6(1)(a) of the Welsh Marine Minerals Regulations which has not been determined before 6th April 2011 must be treated as a request for a screening opinion under regulation 11 of the Marine Works Regulations.

(2) If it is satisfied that any step which is required to be taken by the Welsh Ministers under regulation 6(2), (5) or (6) of the Welsh Marine Minerals Regulations has been taken, the appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 11 of or Schedule 2 to the Marine Works Regulations.

(3) A determination under regulation 6 of the Welsh Marine Minerals Regulations that the dredging is not a relevant project has effect as a screening opinion under regulation 11(5) of the Marine Works Regulations that an environmental impact assessment is not required for the regulated activity.

(4) A determination under regulation 6 of the Welsh Marine Minerals Regulations that the dredging is a relevant project has effect as a screening opinion under regulation 11(6) of the Marine Works Regulations that an environmental impact assessment is required for the regulated activity.

Opinion as to the content of an environmental statement

29.—(1) A request for an opinion under regulation 7(2) of the Welsh Marine Minerals Regulations(**23**) which has not been determined before 6th April 2011 must be treated as a request for a scoping opinion under regulation 13(1) of the Marine Works Regulations.

(2) If it is satisfied that any step which is required to be taken by the Welsh Ministers under regulation 7(3) or (4) of the Welsh Marine Minerals Regulations has been taken, the appropriate authority may treat that step as taken in accordance with any corresponding requirement in paragraph 6 or 7 of Schedule 4 to the Marine Works Regulations.

(3) An opinion given under regulation 7(2) of the Welsh Marine Minerals Regulations has effect as a scoping opinion given under regulation 13(2) of and paragraph 7 of Schedule 4 to the Marine Works Regulations.

Fees charged in relation to an application under the Welsh Marine Minerals Regulations

30.—(1) An applicant who has paid a fee pursuant to a determination under regulation 25(1)(a) of the Welsh Marine Minerals Regulations in respect of the Welsh Ministers' expenses of providing an opinion under regulation 7(2) of those Regulations may not be charged a fee under paragraph 3(1) of Schedule 4 to the Marine Works Regulations.

(2) An applicant who has paid a fee pursuant to a determination under regulation 25(1)(a) of the Welsh Marine Minerals Regulations in respect of the Welsh Ministers' expenses of providing information relevant to the preparation of an environmental statement in accordance with regulation 8(3) and (4) of those Regulations may not be required to pay a charge under regulation 15(4) of the Marine Works Regulations.

(3) An applicant who pursuant to a determination under regulation 25(1)(b) of the Welsh Marine Minerals Regulations has paid a fee in respect of a relevant application may not be charged a fee under section 67(1)(b) of the 2009 Act.

(4) A person who, pursuant to a determination under regulation 25(1)(c) of the Welsh Marine Minerals Regulations, has paid a fee in respect of the expenses of the Welsh Ministers in interpreting and assessing the results of any monitoring may not be charged a fee under regulation 24A(1) of the Marine Works Regulations in respect of the same expenses.

(5) In paragraph (3), "a relevant application" means an application under regulation 10(1) of the Welsh Marine Minerals Regulations which by virtue of regulation 26(1) of these Regulations has effect as an application for a marine licence.

Publicity and consultation

31.—(1) If it is satisfied that any step has been taken by the Welsh Ministers to publicise the application in accordance with regulation 12 of the Welsh Marine Minerals Regulations, the

(**23**) Regulation 7(2) of the Welsh Marine Minerals Regulations provides for the Welsh Ministers to give an opinion (otherwise known as a "scoping opinion") as to the information to be provided by an environmental statement.

appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 16(1) and (2) or 17(1) of the Marine Works Regulations.

(2) If it is satisfied that any step has been taken by the Welsh Ministers to provide information to or to consult another EEA State in accordance with regulation 15 of the Welsh Marine Minerals Regulations, the appropriate authority may treat that step as taken in accordance with any corresponding requirement of regulation 18, 19 or 20 of the Marine Works Regulations.

(3) Where the appropriate authority is satisfied that any step taken by an applicant—

(a) is by virtue of regulation 31(2) of the Welsh Marine Minerals Regulations to be treated by the Welsh Ministers immediately before 6th April 2011 as a step taken under regulation 12 of those Regulations, or

(b) is sufficient to publicise that application, related documents, and information to substantially the same extent as required by regulation 16(1) and (2) or 17(1) of the Marine Works Regulations,

the appropriate authority may treat such a step as taken under regulation 16(1) and (2) or 17(1) (as the case may be) of the Marine Works Regulations.

CHAPTER 5

Savings

Savings in relation to the Marine Minerals Regulations

32.—(1) Notwithstanding the revocation of the Marine Minerals Regulations, regulation 6 (preliminary determinations of the regulator) continues to have effect in relation to any request for a preliminary determination made before 6th April 2011 under regulation 6(1)(b) of those Regulations.

(2) Notwithstanding the revocation of the Marine Minerals Regulations, regulation 26 (register) and regulation 32 (amendments to regulations and savings) of those Regulations continue to have effect.

Savings in relation to the Welsh Marine Minerals Regulations

33.—(1) Notwithstanding the revocation of the Welsh Marine Minerals Regulations regulation 6 (preliminary determinations of the Welsh Ministers) continues to have effect in relation to any request for a preliminary determination made before 6th April 2011 under regulation 6(1)(b) of those Regulations.

(2) Notwithstanding the revocation of the Welsh Marine Minerals Regulations, regulation 26 (register) and regulation 32 (amendments to regulations and savings) of those Regulations continue to have effect.

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

2nd March 2011

We consent

Michael Fabricant
Angela Watkinson
Two of the Lords Commissioners of Her Majesty's Treasury

9th March 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Marine Works (Environmental Impact Assessment) Regulations 2007 ("the principal Regulations")(**24**), which implement, in relation to certain marine works, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive")(**25**). The principal Regulations as amended by these Regulations are referred to as "the Marine Works Regulations".

Part 2 of these Regulations makes amendments to the principal Regulations consequential on the enactment of the Marine and Coastal Access Act 2009 ("the 2009 Act")(**26**) and the Marine Scotland Act 2010 ("the 2010 Act")(**27**), which largely replace the marine licensing and consent controls previously exercised under Part 2 of the Food and Environment Act 1985 ("the 1985 Act")(**28**) and (in relation to England, Scotland and Wales) the Coast Protection Act 1949(**29**). As the 2009 Act regulates dredging activity, Part 3 of these Regulations revoke (with consequential savings and transitional provisions) certain regulations implementing the EIA Directive in relation to certain marine minerals dredging.

The marine works in relation to which the principal Regulations implement the EIA Directive are those for which a regulatory approval (as defined) is required.

In Part 2, regulation 3 provides that the categories of regulatory approval in respect of which an EIA consent decision may be required include a marine licence or variation of a marine licence under Part 4 of the 2009 Act and Part 4 of the 2010 Act. It provides that the Marine Management Organisation is the appropriate authority where it is also the regulator, and further clarifies the definition of harbour works. It provides that a consenting authority includes an authority whose determination was required under the procedures set out in the Government View Documents. (These documents set out certain procedures introduced in April 1989, May 1998, and May 2006 in relation to government approvals for marine minerals dredging, which, subject to transitional provisions, were replaced by procedures set out in the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 ("the Marine Minerals Regulations")(**30**) and the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 ("the Welsh Marine Minerals Regulations")(**31**)).

Regulation 4 provides that certain provisions apply to a proposal to carry out an activity which (if it were to be carried out by another person) would need an application for regulatory approval, where that activity is to be carried out by a person who would be the regulator in relation to that activity.

Regulation 5 provides for the setting of reasonable fees which can be charged. These are fees in respect of expenses incurred in scoping, screening, the exercise of functions as the appropriate authority and interpreting the results of monitoring measures.

(**24**) S.I. 2007/1518, amended in relation to England and Wales by S.I. 2009/2258.
(**25**) OJ No. L 175, 5.7.1985, p. 40; relevant amendments have been made by Council Directive 97/11/EC (OJ No. L 73, 14.3.1997, p. 5), and Directive 2003/35/EC of the European Parliament and of the Council (OJ No. L 156, 25.6.2003, p. 17).
(**26**) 2009 c. 23.
(**27**) 2010 asp 5.
(**28**) 1985 c 48.
(**29**) 1949 c. 74.
(**30**) S.I. 2007/1067.
(**31**) S.I. 2007/2610 (W. 221).

Regulation 6 enables the appropriate authority to decide that no environmental impact assessment ("EIA") is needed where an assessment of a project sufficient to meet the requirements of the EIA Directive has been, is being or is to be conducted by the appropriate authority or another consenting authority.

Regulation 8 clarifies the circumstances in which the regulator must direct an applicant to seek a screening opinion.

Regulation 9 provides that the EIA consent decision may describe monitoring measures to be taken in respect of the principal adverse effects of the regulated activity. It provides for the appropriate authority to publicise the EIA consent decision and its regulatory decision.

Regulation 10 provides that a regulatory decision may include a condition for payment of a reasonable fee in respect of the expenses of interpreting the results of a monitoring measure.

Part 3 of these Regulations revokes the Marine Minerals Regulations and the Welsh Marine Minerals Regulations which, until 6th April 2011, made provision for implementing the EIA Directive and Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna ("the Habitats Directive")(**32**) in relation to certain marine minerals dredging.

Regulation 16 provides that a dredging permission issued under the Marine Minerals Regulations has effect as a "deemed" marine licence under the 2009 Act. It provides for deemed marine licences to be temporarily varied and suspended, and for the provisions of those Regulations relating to temporary variation and suspension to continue to apply to such licences. Once a notice of a decision to revoke or permanently vary such a licence is issued by virtue of the application of those Regulations, that notice has effect as a notice to revoke or vary the deemed licence under section 72 of the 2009 Act.

Regulation 17 provides that a fee payable under a condition of the dredging permission (pursuant to the Marine Minerals Regulations) is to be treated as a fee payable under a fee condition of the deemed marine licence.

Regulation 18 provides that an application made (or being treated as made) under the Marine Minerals Regulations will have effect as an application for a marine licence under the 2009 Act.

Regulations 20, 21 and 23 make transitional provisions so that steps taken under the Marine Minerals Regulations (in relation to screening, scoping, publicity and consultation) can be treated as steps taken under the corresponding requirements of the Marine Works Regulations.

Regulation 22 makes transitional provisions to avoid duplication of fees charged.

Regulations 24 to 31 make transitional provisions for the Welsh Marine Minerals Regulations which are similar to those made for the Marine Minerals Regulations, save that they do not make provision in relation to the suspension or temporary variation of dredging permissions.

Regulations 32 and 33 make savings provisions in relation to the Marine Minerals Regulations and the Welsh Marine Minerals Regulations. These relate to savings provisions in those Regulations, the maintenance of a register, and any request for a preliminary determination already made under provisions implementing the Habitats Directive.

A full impact assessment of the effect that secondary legislation made pursuant to Part 4 of the 2009 Act will have on the costs of business and the voluntary sector has been produced. No separate impact assessment has been produced for this instrument. The impact assessment referred to and a transposition note are available from the Marine Licensing Policy Team, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR, and are annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.

Copies of the Government View documents referred to in sub-paragraph (b) of the definition of "consenting authority" substituted in regulation 2(1) of the principal Regulations by regulation 3(1)(c) are also available from the same Marine Licensing Policy team at the address mentioned above.

(**32**) OJ No L206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p.368).