

EXECUTIVE NOTE

THE ENVIRONMENTAL IMPACT ASSESSMENT AND NATURAL HABITATS (EXTRACTION OF MINERALS BY MARINE DREDGING) (SCOTLAND) REGULATIONS 2007

SCOTTISH STATUTORY INSTRUMENT (SSI) 2007/485

The above SSI was made by the Scottish Ministers in exercise of the powers conferred by Section 2(2) of the European Communities Act 1972 and Section 56 of the Finance Act 1973. The SSI is subject to a negative resolution procedure.

POLICY OBJECTIVES

Introduction

The purpose of this SSI is to establish statutory procedures for regulating the marine dredging of minerals in Scottish waters. The SSI formally transposes European Council Directives 85/337/EC (the “Environmental Impact Assessment (EIA) Directive”); 92/43/EEC (the “Habitats Directive”); and 2003/35/EC (the “Public Participation Directive”), in Scotland

Background

Marine minerals dredging usually involves the extraction of sand and gravel from the seabed for use as construction aggregate for onshore developments or for flood and coastal defence purposes. There are limiting factors restricting activity in Scotland such as the depth of the seabed and adequate resources generally available from quarries. There are currently only two extant licenses, one in the Firth of Forth and the other in the Tay Estuary (both were approved in 2000) and only minor activity has taken place at both locations. This is unlike other parts of Great Britain where in England and Wales marine sources account for 17% and 40% of total sales of sand and gravel, respectively.

Dredging is outwith the scope of town and country planning legislation since it takes place beyond the low water mark. It is currently licensed on a commercial basis by the owner of the seabed, in most cases the Crown Estate. In Scotland, the issuing of a Crown Estate licence is dependant on a favourable “Government View” being given by the Scottish Ministers. This involves voluntary arrangements which informally incorporate the various requirements of the EIA and Habitats Directives as well as consultation with stakeholders and the public. However, the Directives have not been formally transposed into Scots law so the Regulations are required to avoid infringement. Regulations covering dredging in other parts of the UK came into force earlier this year. Those Regulations contain similar provisions to those in this SSI.

Policy objectives

In addition to complying with EC Directives, the SSI introduces a number of requirements that are intended to ensure that dredging applications are processed efficiently and in an open and accessible way. The provisions are intended, as far as

possible, to reflect the procedures and principles applicable to planning applications under land use planning legislation. The main requirements are:

- establishing a regulatory regime for mineral dredging in marine waters within Scotland and the Scottish zone;
- identifying the Scottish Ministers as the competent authority for considering proposals to dredge for minerals in Scottish water;
- introducing statutory mechanisms to ensure that dredging applications are compliant with EIA requirements;
- providing appropriate consultation and publicity arrangements;
- providing that a dredging permission may not be granted unless an appropriate assessment indicates that it will not adversely affect the integrity of a European site;
- establishing mechanisms to ensure compliance with the Habitats Directive, including providing for the review of existing licences which may affect European sites;
- establishing mechanisms for the revocation, suspension, variation and transfer of dredging permissions;
- creating offences relating to dredging without permission; false statements made during the application process, and failure to comply with conditions of a permission;
- making various associated provisions, including procedures enabling dredging proposals to be considered by an independent person prior to the Scottish Ministers making a decision and the maintenance of a register of dredging applications.

Consultation

A draft SSI was included in the consultation paper *Extraction of Minerals by Marine Dredging* which was published in July 2006. The consultation paper was issued to a wide range of stakeholders. Eleven responses were received, reflecting the limited interest in the issue in Scotland. These included responses from the British Marine Aggregates Association (the industry representative body), the Crown Estate, Fisheries Research Services, Historic Scotland, Royal Society for the Protection of Birds (Scotland) and Scottish Natural Heritage. The comments made by respondents, and further discussions with the UK Government, have helped inform the contents of the finalised SSI. Both the UK Government and the Northern Ireland Office has consented to powers for the Scottish Ministers to require them to provide information to applicants in relation to Regulation 8.

Financial effects

A draft Regulatory Impact Assessment (RIA) was included as part of the consultation paper. This confirmed the intention to introduce a fee to cover the Scottish Government's costs for processing applications and that this would be the main impact on business. Comments made by consultees have been reflected in the RIA.

Planning Directorate
29 October 2007

THE ENVIRONMENTAL IMPACT ASSESSMENT AND NATURAL HABITATS (EXTRACTION OF MINERALS BY MARINE DREDGING) (SCOTLAND) REGULATIONS 2007

REGULATORY IMPACT ASSESSMENT (RIA)

Introduction

1. This RIA is based on the Partial RIA which formed part of the consultation paper “Extraction of Minerals by Marine Dredging” published by the Scottish Government in July 2006. As there is very little dredging activity in Scottish waters, the content of this RIA also takes account of the experiences of processing proposals in other parts of the UK.

Title of proposal

2. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (“the Regulations”).

Purpose and Intended Effect of Measure

(i) Objectives

3. To introduce a statutory control regime for marine dredging in Scottish waters that is intended, with the minimum burden on business, to:

(a) transpose and implement European Commission Directives 85/337/EC (the “Environmental Impact Assessment (EIA) Directive”); 92/43/EEC (the “Habitats Directive”); and 2003/35/EC (the “Public Participation Directive”), into Scottish law insofar as they relate to marine minerals dredging in Scottish waters;

(b) define the Scottish Ministers as Regulator with responsibility for the statutory control of marine minerals dredging within Scottish waters; and

(c) specify the scheme of regulation for marine minerals dredging in such waters.

(ii) Background

4. There has been very little interest in marine dredging in Scotland to date. There are currently only two extant dredging licenses in Scotland, one in the Firth of Forth and the other in the Tay Estuary. Only minor activity has taken place at both locations. This position is unlike the rest of Great Britain, where marine minerals dredging is a significant source of construction aggregates, especially in London and the South East and East of England, and as a source of materials for beach replenishment.

5. The extraction of minerals by marine dredging has the potential to cause adverse impacts on the marine environment and in particular, habitats, species, fisheries and marine archaeological sites if it were to be undertaken without due precautions. The EC EIA and Habitats Directives require Member States to legislate to make environmental impact assessment and the assessment of the effects on specified habitats and species a statutory requirement in considering the environmental acceptability of certain development proposals, including marine minerals dredging.

6. The Crown Estate (CE) owns most of the seabed out to the 12-mile territorial limit and has rights to all the non-energy minerals within the rest of the UK share of the European Continental Shelf. Under existing arrangements, the CE licences marine minerals dredging on a commercial basis to dredging companies but only if a favourable 'Government View (GV) is issued on the environmental acceptability of each proposal. Under the GV procedures, applicants produce an Environmental Statement (ES), undertake extensive publicity and consultation and produce a Report on Consultation for all applications. The Scottish Ministers consider the application and, if necessary, would convene either a hearing or inquiry into contentious cases that informs the decision on the GV. The Scottish Ministers notify the CE, the applicant and other interested parties of the decision that is made.

7. When the GV is favourable, it is issued subject to conditions which are intended to overcome any potential adverse environmental effects of the proposed dredging and to protect the marine environment. CE then issues a dredging licence that includes the GV conditions. CE also benefits commercially from royalties under the same licence. When the GV is unfavourable, CE will not issue a licence to dredge.

8. The GV procedure is a voluntary, informal process. Although it incorporates the various requirements of the EC Habitats and EIA Directives, the Directives have not been formally transposed into Scottish legislation in respect of marine minerals dredging. In addition, it is generally acknowledged that the existing GV procedure is cumbersome, slow and could be more open and accessible.

9. The proposed Regulations have been prepared to transpose the EIA and Habitats Directives and introduce a more efficient, effective and open regulatory process. Under the proposed Regulations, the Scottish Ministers will undertake all required public consultation and manage the decision-making process. There will be formal provision for disputed cases to be considered by the Directorate of Planning and Environmental Appeals and for the decisions on those cases to take account of the Reporter's recommendations.

Rationale for government intervention

10. Failure to transpose EC Directives into legislation is likely to lead to further action by the European Court of Justice. In addition, all future dredging activity would be subjected to an increased risk of challenge within the UK courts.

Consultation

(i) Within Government

11. The Scottish Government has prepared this RIA in consultation with other UK Administrations who are also implementing similar statutory control regimes.

(ii) Public consultation

12. The Scottish Office carried out a full public consultation on an earlier draft of the Regulations in October 1998. These earlier draft Regulation proposed implementation of one statutory scheme throughout Great Britain. Since then, the draft has been extensively revised to take account of the devolution settlement, implications of Human Rights legislation and amendments to the EIA Directive.

13. In view of these changes and the length of time since previous consultation, further consultation on revised draft Scottish Regulations was carried out between July and October 2006 with a wide range of stakeholders, including the British Marine Aggregates Producers Association (BMAPA) which is the industry representative body. The consultation paper, at www.scotland.gov.uk/Publications/2006/07/28132716/0, invited comments on all aspects of the proposed Regulations and guidance and specifically sought comments on a draft RIA. 11 responses were received (available at www.scotland.gov.uk/Topics/Planning/Consultations). There were relatively few comments made on the draft RIA although the finalised version takes account of issues that were raised by the industry, and others, through discussions with the UK Government on practices and experiences of processing cases in England whilst recognising the need for an approach in Scotland tailored towards Scottish circumstances.

Sectors and groups affected

15. The following organisations and individuals may be affected by a dredging proposal:

- The marine minerals dredging industry
- The fishing industry
- The shipping industry
- Environmental and amenity organisations
- Scottish Government Directorates and Agencies
- Local Authorities
- Local interest groups and the general public

Implementation Options

Option 1 – ‘Do nothing’

16. Further work may take place in the future on wider marine spatial planning and there may be opportunities to integrate marine minerals dredging into this work. However, in the shorter term, continued non-transposition of EC Directives in relation to marine mineral dredging is likely to result in the European Court imposing substantial daily fines on the UK Government until the Directives are fully transposed by statutory means. Additionally, non-transposition may provoke challenges in the courts in relation to specific dredging permissions thereby creating uncertainty for the industry.

Option 2 – Transpose by primary legislation

17. Given the little interest in Scotland, marine dredging is not considered a priority for the Scottish Parliament to implement through primary legislation particularly since EC Directives can be transposed by Regulation.

Option 3 – Transpose by Regulations

18. The implementation of legislation in the form of the proposed Regulations will fully transpose the EC Directives, provide for a more efficient, effective and straightforward control system and is intended to be Human Rights Act-compliant. The new Regulations will formalise the essential procedures of the existing informal GV system that is currently in place. While not introducing any significant new burden on the marine minerals dredging industry, the proposed Regulations should make for speedier decision-making. Through the UK Government and Scottish consultation, the industry has been fully consulted on the provisions in the Regulations.

Preferred option

19. The only practical option is to implement the new Regulations as soon as possible by option 3. Pursuing option 1, ‘do nothing’, or option 2, transposition by primary legislation, will result in, respectively, the non-transposition of EC Directives or a further long delay before the Directives are transposed. Either of these options will result in the continued use of the existing voluntary GV procedures for controlling marine minerals dredging which will undoubtedly result in further action by the EC, the potential imposition of substantial daily fines and the possibility of legal challenges.

20. Options 1 and 2 cannot, therefore, be contemplated.

Assessment of costs and benefits of Options 1 and 2

(i) Economic benefits

21. The only benefit would be for the dredging industry which would not have to pay dredging application fees if Option 1 were implemented and Option 2 would delay the introduction of the fee proposed by Option 3.

(ii) Economic costs

22. The European Court is likely to impose substantial fines on the UK Government for non-transposition of EC Directives and there may be legal challenges to GV decisions because of non-transposition.

(iv) Environmental benefits

23. None have been identified.

(v) Environmental costs

24. Marine minerals dredging can potentially have adverse impacts on the marine environment and there remains the possibility that the slow and cumbersome GV procedures may not deal as comprehensively or as expeditiously as the new Regulations with any marine minerals dredging matters that could harm the environment.

(vi) Social benefits

25. None have been identified.

(vii) Social costs

26. The existing GV procedures lack transparency and the public may as a result feel that they fall short of the scrutiny provisions that are in place for development on land.

Assessment of costs and benefits of Options 3

(i) Economic benefits

27. The main benefits will be to the marine minerals dredging industry since the proposed Regulations will provide clearer, more efficient and effective decision-making processes that will replace the cumbersome and lengthy GV procedures. The Regulations will provide statutory decisions based on procedures which formally transpose the EC Directives and be Human Rights Act compliant. The industry will also be relieved of the existing cost of advertising dredging proposals and carrying out public consultation on them as these operations will, under the Regulations, become the responsibility of the Scottish Ministers.

(ii) Economic costs

28. The main costs associated with the proposed Regulations will fall upon dredging operators. However, the Regulations will, in essence, replicate and formalise the existing informal GV procedures - albeit with timescales to speed up the determination process and formal provision for independent consideration in disputed cases. The GV procedures include voluntary EIA and the industry has willingly complied with this. Therefore, there will be no additional cost to business arising from the preparation of Environmental Statements or the consideration that needs to be given to the protection of European sites. Although GV applications have not so far been referred to a Reporter for consideration through either an exchange of written statements, hearings or local inquiries, the formal provision in the Regulations of procedures for independent consideration of unfavourable representations by a Reporter will not, of itself, be an additional cost to business.

29. There may also be additional costs to other Scottish Government Directorates, agencies, local authorities and organisations either involved with, or consulted on, marine minerals dredging matters if they provide evidence to a Reporter through either the exchange of written statements or attend a hearing or local inquiry. Any additional costs are, however, likely to be offset by the resultant speedier resolution of any disputes between parties.

30. The costs to the Directorate of Planning and Environmental Appeals of putting cases to a Reporter and of arranging hearings and local inquiries into marine minerals dredging matters will be met by the Scottish Government. The precedent for this is that, under the Planning system, there are no fees for planning appeals and the costs of hearings and inquiries into called-in planning applications are met centrally because there is a strong 'public good' argument that an applicant, once having paid an application fee, should be able to expect a fair decision, even if that means taking it to appeal or having it considered by the Scottish Ministers. The number of marine minerals cases needing to be put before a Reporter is expected to be insignificant in relation to overall workload.

31. It is proposed that the new Regulations should include provision for the payment to the Scottish Ministers of a £29,000 dredging application fee for every full dredging application submitted, £15,000 for every application to vary an existing dredging permission which requires EIA under the EIA Directive or appropriate assessment under the Habitats Directive and £4,000 for all other applications by operators to existing dredging permissions. At present, the submission of a GV application is free but applicants are required to carry out their own public consultation and to pay for advertisements which can cost between £5,000 and £10,000 per application.

32. All consultation and publicity on dredging applications and decisions on them will, under the Regulations, become the responsibility of the Scottish Ministers and the cost of doing this is proposed to be recovered within the dredging application fee.

33. The purpose of these fees is, therefore, to cover the administrative costs to the Scottish Government of considering proposals to dredge in Scottish waters. The intention is that these fees will result in total cost recovery. However, the position will be considered further when the next application is received.

34. The range of non-recurring costs for individual operators seeking permission to carry out a marine dredging proposal will, therefore, average no more than between £19,000 to £24,000 per application (£29,000 less savings of £5000 to £10,000 per application in advertising and publicity costs).

35. There are only two marine dredging licenses in Scotland. If this pattern continues, the gross annual cost to the marine minerals dredging industry in Scotland is likely to be minimal.

36. The marine dredging application fee is a relatively modest sum compared to the average cost to applicants of surveying, researching and preparing each marine minerals dredging application which is understood to be in the region of £200,000, including £50,000 for the cost of preparing an Environmental Statement.

(iii) Environmental benefits

37. The proposed Regulations will transpose EC Directives by statutory means as required by the EC but, in practice, each marine minerals dredging proposal will continue to be subject to the same rigorous environmental scrutiny through the EIA process as happens under the existing GV procedures. However, by making the decision-making process more open, transparent and speedier, the environment should benefit because matters of potential harm to the environment will be dealt with more expeditiously.

(iv) Environmental costs

38. Marine minerals dredging can potentially have adverse impacts on the marine environment but any such impacts will be mitigated as far as possible under the proposed Regulations, as they are under the existing GV procedures.

(v) Social benefits

39. The new Regulations will be much more open and transparent than the existing GV procedures and there will be formal provision for disputed cases to be put to a Reporter and possibly considered at a local inquiry. Any party wishing to express any adverse view about a marine minerals dredging proposal will, therefore, have their concerns addressed and may have them considered by a Reporter and be satisfied that their views have been fully addressed in the decision-making process.

(vi) Social costs

40. None have been identified.

Issues of equity and fairness

41. The proposals treat all marine dredging companies the same. The proposed changes do not impact, either positively or negatively, on different sectors of the population in different ways and have no specific consequences for rural areas. Some local environmental groups, however, claim that marine minerals dredging

causes and increases coastal erosion but there is at present no scientific evidence to justify such claims. Nevertheless, the new Regulations will provide a more effective and efficient decision-making process within which such issues can continue to be fully addressed.

Competition assessment

42. There are no competition issues as the Regulations will apply equally to all companies, whether they are based in Scotland, the rest of the United Kingdom or further afield, undertaking marine minerals dredging operations in Scottish waters. Separate and similar legislative provisions are being put in place throughout the United Kingdom.

Small and Micro Business Test

43. There are 13 marine dredging companies operating in the United Kingdom, including two with interests in Scottish waters. At least 3 of these companies can be categorised as medium sized business in terms of employees (having between 80 and 180 staff each). The remaining companies are likely to be “small businesses” in terms of employees (having less than 50 staff each). However, identifying businesses as small or medium sized enterprises does not reveal the ability of individual operators to pay the proposed application fees, which are significant amounts of money. Turnover and profit are probably better indicators and for the marine minerals dredging industry are substantial compared to the numbers of staff employed. The turnover of most companies is included within the turnover of their respective parent organisations and cannot be separately disaggregated. However, BMAPA has estimated that turnover of the industry as a whole is in excess of £200 million pa. This gives an estimated value of marine aggregate at the point of landing (i.e. excluding any value subsequently added by processing the product) of £10 per tonne.

"Test Run" of business forms

44. The intention will be to produce guidance to accompany the Regulations. This will introduce a standard application form, based on forms that are already in place for both land development and marine dredging proposals in England. The views of BMAPA will be sought on ease of completion since there are no obvious companies in Scotland that can be asked to do a “test run”.

Enforcement

45. Every dredging vessel will be required by the conditions of the dredging permission to operate an Electronic Monitoring System (EMS) that records the location of the dredger and indicates when it is dredging. Operators will be required to supply EMS data to the Scottish Ministers at specified periods so that any unauthorised dredging can be quickly identified and appropriate action taken. In addition, the Scottish Ministers and their advisors will scrutinise all required monitoring reports in order to enforce conditions attached to dredging permissions.

Sanctions

46. The draft Regulations contain provision for making dredging without permission or the carrying out of dredging operations in breach of conditions attached to a dredging permission, a criminal offence punishable by fines.

Monitoring and review

47. The Regulations have been prepared against a background where there has not been a proposal to dredge in Scottish waters for almost a decade. This position is not expected to change in the foreseeable future. The preparation of the Regulations have therefore relied considerable on the experiences of processing proposals in other parts of the United Kingdom, including significant discussions between the UK Government and industry on an appropriate regulatory framework. In view of this, the effectiveness of the Regulations, including fee levels, will be assessed in relation to the next application received and their fitness for purpose assessed in consultation with BMAPA, the Crown Estate, consultation bodies and others to ensure they satisfactorily meet the objectives for which they were devised.

Contact

48. Any queries relating to the Regulatory Impact Assessment should be addressed to:

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Ministerial Statement

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

**Stewart Stevenson
Minister for Transport, Infrastructure and Climate Change
30 October 2007**

Summary

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
1 - Do nothing	- Substantial fines on the UK Government from the EC. Potential disruption of aggregate supplies and uncertainty in industry. Cost to operators and possibly environment because of continuing cumbersome procedure and lack of transparency in decision making. Consequent public disquiet about the existing GV procedures.	- Operators will not have to pay dredging application fees.
2 Transpose by primary legislation	- Substantial fines on the UK Government from the EC until the Directives can be implemented by primary legislation. Potential disruption of aggregate supplies and uncertainty in industry. Cost to operators and possibly environment because of continuing cumbersome procedure and lack of transparency in decision making. Consequent public disquiet about the existing GV procedures.	- Small benefit to operators in terms of delay before applicants have to pay fees for permissions.
3 Transpose by Regulations.	- Payment of dredging applications fees by industry. No environmental or social costs have been identified.	- More efficient, timely and effective control system will benefit industry and the UK economy. Faster decisions will benefit the environment and more effective public involvement will better inform and justify decisions.

THE ENVIRONMENTAL IMPACT ASSESSMENT AND NATURAL HABITATS (EXTRACTION OF MINERALS BY MARINE DREDGING) (SCOTLAND) REGULATIONS 2007

TRANSPOSITION NOTE

This transposition note has been prepared by the Scottish Ministers to demonstrate how the main elements of European Commission Directives 85/337/EC (the “Environmental Impact Assessment (EIA) Directive”) and 92/43/EEC (the “Habitats Directive”) have been transposed in relation to marine dredging activities in Scottish waters. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (“the Regulations”) do what is necessary to implement the Directives, including making consequential provisions for the fair and smooth operation of the consent process. The Directive has been transposed in respect of other activities via various other legislation.

Part I: Council Directive 85/337/EEC of 27 June 1985 (as amended by Directive 97/11/EC and Directive 2003/35/EC) on the assessment of the effects of certain public and private projects on the environment.

Articles	Objectives	Implementation	Responsibility
Article 1	Assessment of the environmental effects of those public and private projects likely to have significant effects on the environment. Article 1 contains definitions and permits member states to decide on a case by case basis not to apply the directive to projects serving national defence purposes, if they deem that application would have an adverse effect on those purposes.	Regulation 2 of the Regulations contains definitions which are adopted for use in the regulations. The exemption for national defence projects is implemented by regulation 5 which provides that to the extent that they implement this directive, the Regulations shall not apply where the Secretary of State determines that the proposal comprises or forms part of a national defence project and that such application would have an adverse effect on those purposes.	The Scottish Ministers will regulate dredging in marine waters within Scotland and the Scottish Zone as defined in regulation 2. Defence is a reserved matter so the UK Government is responsible for determining whether a proposal forms part of a national defence project and notifying the Scottish Ministers accordingly.
Article 2	<p>Article 2(1) requires member states to adopt measures to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, <i>inter alia</i>, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.</p> <p>Article 2(2) allows member states to integrate environmental impact assessment into existing or yet to be established project consent procedures.</p> <p>Article 2(3) is a discretionary provision enabling member states to, exceptionally, exempt projects (in whole or in part)</p>	In relation to Article 2(1) and 2(2), the Regulations establish procedures for the consideration of, and, where appropriate, consent to, projects for carrying out dredging in marine waters which are likely to have significant effects on the environment, including variations to existing projects. Such projects are defined in regulation 2 as ‘relevant projects’. Regulation 4 provides that it is an offence to carry out marine minerals dredging in the waters to which the Regulations apply (defined in regulation 2) unless it is only subject to minimal application of the Regulations (in terms of providing for the disapplication itself and entry onto a public register) or carried out in accordance with a	The Scottish Ministers and the applicant.

	<p>from the provisions in the Directive. It requires that member states should decide whether such projects should be subject to another form of assessment. There are requirements for publicity and notification of these projects to the Commission and other member states.</p>	<p>permission granted under them. Regulation 6 makes provision for any person who proposes to carry out dredging to request the Scottish Ministers to determine whether that dredging constitutes a ‘relevant project’. Regulations 9 and 17 require that applications for permission to carry out dredging or vary an existing dredging permission be made to the Scottish Ministers in writing and be accompanied by Environmental Statements (ESs) and relevant fees. An ES, as defined in regulation 7(1) will provide the information required to enable an environmental impact assessment to be carried out. Regulations 9, 10, 11, 12, 14, 17 and 18 contain detailed procedures for considering, publicising and determining such applications. Regulation 12 requires that the ES be taken into account before dredging permission is granted. Regulations 15 to 21 make provision for the transfer and variation of dredging permissions. Regulations 25 to 28 make various consequential matters which arise out of the implementation of the permitting regime.</p> <p>Regulation 5 provides that the Regulations (apart from minimal application in terms of providing for the disapplication itself and entry into a public register) do not apply where the dredging has been the subject of a written agreement prior to the commencement of the Regulations, unless it has been varied after the Regulations come into force and that variation does constitute a relevant project.</p> <p>There are no circumstances in which it is envisaged that the Scottish Ministers will wish to exempt dredging projects from the Regulations and follow the procedure required by Article 2(3) for exceptional projects. This discretionary provision has not therefore been implemented in these Regulations.</p>	
Article 3	Defines the scope of the Environmental Impact Assessment (EIA).	Schedule 1, incorporated by Regulation 7(1), sets out the information required in an ES consistently with the requirements of this Article.	The Scottish Ministers and the applicant.

		Regulation 7 enables the applicant to request the Scottish Ministers to give an opinion on the information to be included in an ES.	
Article 4	<p>Subject to the provisions in Article 2(3) for the exemption of exceptional cases from the requirements of the Directive, Article 4(1) applies EIA in accordance with Articles 5-10 to projects listed in Annex I to the Directive.</p> <p>Article 4(2) and 4(3) enable member states to determine by case by case examination and/or thresholds based on the criteria in Annex III to the Directive whether projects of the type listed in Annex II to the Directive should be subject to assessment in accordance with Articles 5-10.</p> <p>Article 4(4) requires determinations as to whether projects of the type listed in Annex II to the Directive should be subject to an environment assessment to be made available to the public.</p>	<p>Article 4(1) is implemented as indicated below by reference to the implementation of Articles 5-10.</p> <p>Extraction of minerals by marine dredging is a category of project listed in Annex II to the Directive to which Article 4(2) and 4(3) apply. Regulation 6 makes provision for any person who proposes to carry out dredging to request the Scottish Ministers to determine whether it is a relevant project. In making this determination, the Scottish Ministers will take into account such of the selection criteria in Schedule 2 (which matches those in Annex III to the Directive) as is relevant to the proposal. In the absence of such a determination, or of any circumstances resulting in partial application of the Regulations as provided for in regulation 5, environmental impact assessment will be carried out in relation to all dredging applications under Regulation 12. In addition to the provisions in Regulation 5 which implement the exemption for national defence projects and existing dredging agreements, it specifies that the parts of the Regulations which purely implement this directive will not apply where the Scottish Ministers determine that a dredging proposal is not a 'relevant project'.</p> <p>Regulation 6 implements Article 4(4) by including provision for the Scottish Ministers to make determinations available to the public concerned.</p>	The Scottish Ministers and the applicant.
Article 5	<p>Article 5(1) requires member states to adopt measures to ensure that where projects which require an EIA under Article 4 are subject to such an assessment, the applicant provides in an appropriate format the necessary information which may reasonably be required.</p> <p>Article 5(3) specifies the minimum information that an</p>	Regulation 9 provides that all dredging applications which are relevant projects and are not projects to which the Regulations are only partially applied by regulation 5 require EIA. Regulation 13 provides for offences related to false statements made in any information supplied by an applicant for permission.	The Scottish Ministers, responsible authorities and the applicant.

	<p>applicant must provide.</p> <p>Article 5(2) provides that an opinion may be given to or sought by a developer as to the information required in environmental statement.</p> <p>Article 5(4) requires member states to ensure that authorities holding information relevant to an EIA shall make that information available to the developer.</p>	<p>Regulation 7 specifies that an ES shall include at least the information in Part 1 of Schedule 1, and so much of the information in Part 2 of Schedule 1 as it is reasonable to provide. These requirements are consistent with the requirements of Article 5(3)</p> <p>Regulation 7 enables an applicant to seek an opinion from the Scottish Ministers as to the content of an ES.</p> <p>Regulation 8 requires the Scottish Ministers to notify appropriate consultation bodies who, by reason of their specific environmental responsibilities, are considered to have an interest in a relevant project and, also the UK Government and Department of Environment in cases where projects will impact on these territories. Paragraph 4 of regulation 8 requires those bodies, at the request of the applicant, to provide information necessary for the preparation of the ES in fulfilment of Article 5(4), for which they may make a reasonable charge.</p>	
Article 6	<p>Article 6(1) requires member states to designate bodies who, by reason of their specific environmental responsibilities, should be given an opportunity to comment on requests for development consent including the ES. Detailed arrangements must be made for consulting these bodies.</p> <p>Article 6(2) specifies information about the request for development consent and its handling which must be made available to the public early in the decision making procedure. Article 6(3) specifies further information that must be provided within a reasonable time of the application being submitted. This is to promote early and effective participation by the public who may be affected or have an interest, (“the public concerned”) who should be entitled to express comments and opinions within a reasonable timescale before the decision is taken (Article 6(4)). Articles 6(5) and 6(6) allow member states to determine the detailed arrangements for informing and consulting the public about requests for development consent. Article 6(6) requires that sufficient</p>	<p>The bodies which, by reason of their environmental responsibilities, will be consulted on proposals for marine minerals dredging are defined in regulation 2 as appropriate consultation bodies. They include Scottish Natural Heritage and the Joint Nature Conservation Committee. In order to ensure that any such bodies in England and Northern Ireland are consulted in relation to projects which may affect those countries, the UK Government and the Department of the Environment in Northern Ireland are also defined as consultation bodies. The Scottish Ministers will decide, for each application for a relevant project, which of these bodies and which Government Departments should be consulted on applications on a case by case basis dependent on the location of the project.</p> <p>The Scottish Ministers will, in accordance with regulation 11 and in fulfilment of Article 6(2) -6(6), give the above consultation bodies, the public and any person</p>	The Scottish Ministers, responsible authorities and the applicant.

	<p>time should be allowed for informing the public and enabling the public's participation</p>	<p>(including any non-governmental organisation promoting environmental protection in marine waters) whom the Scottish Ministers consider is likely to have an interest, an opportunity to make representations about relevant projects and also about any further information which may be provided by the applicant in accordance with regulation 10. The Scottish Ministers will do this by copying the application and any further information to the chosen consultation bodies. Regulation 11(2) implements Article 6(2), 6(3) 6(4) and 6(5) by requiring the Scottish Ministers to place an advertisement in a national publication and such local newspaper, as chosen by the Scottish Ministers containing information on the matters which Articles 6(2) and 6(3) require the public to be informed. The advertisement will invite representations from the public on each application and on any further information related to it provided by the applicant.</p> <p>In addition, to implement Article 6(5), regulation 12(4) enables the Scottish Ministers, before deciding an application, to give interested parties, including the public concerned, the opportunity of having unresolved issues considered by a Reporter.</p>	
<p>Article 7</p>	<p>Article 7(1) requires a member state in whose territory a project which is likely to have significant effects on the environment of another member state is intended to be carried out to send to the affected member state (including at that member state's request) a description of the project, information about its possible transboundary impact and information on the nature of the decision which may be taken. Affected member states must be given a reasonable period in which to indicate whether it wishes to participate in decision making procedures.</p> <p>If so, Article 7(2) and 7(3) provides that the affected member state must be sent information as required by Article 6(2) and be given the opportunity, within a reasonable timescale, to give their opinion on the project.</p>	<p>Regulation 14 implements Article 7 by setting out a procedure for the Scottish Ministers to consult another EEA state about a relevant project which is likely to have significant effects on the environment of that state. Regulation 14(2) lists the information about relevant projects which have such transboundary effects which will be sent to the EEA state in fulfilment of Article 7(1), and requires the publication of a notice in the Edinburgh Gazette.</p> <p>Regulations 14(3) and 14(4) implement Article 7(2) and 7(3) by setting out information to be sent to the EEA state if that state wishes to make representations and by requiring that authorities with environmental responsibilities and the public concerned in that state are</p>	<p>The Scottish Ministers</p>

	Article 7(4) requires member states to consult on the transboundary effects of the project and measures to reduce or eliminate them. In accordance with Article 7(5), there must be a reasonable period for consultation with an affected member state so that the public concerned in that state can express its opinion on the project.	given an opportunity to give their opinions on the application. Regulation 15(5) implements Article 7(4) and 7(5) by requiring the Scottish Ministers to enter into consultation with the EEA state, during a reasonable period, about the likely impact of the project and potential mitigation measures.	
Article 8	Requires that in making a decision member states consider all information gathered during the consultation process.	Regulation 12 describes the information and representations to be taken into account in determining relevant projects. Prior to issuing a decision the Scottish Ministers shall consider, in relation to each relevant project, the ES, information supplied by the applicant with the application or subsequently, any representations received from the public, including any non governmental organisation promoting environmental protection in marine waters, and from consultation bodies, any representations from another EEA state and any report from a Reporter.	The Scottish Ministers.
Article 9	Article 9(1) requires that member states inform the public of the main reasons for the decision, information about the public participation process, any conditions attached to the grant of consent and any measures to avoid, reduce or offset the major adverse effects. Member states similarly need, under Article 9(2), to send information to any other state consulted under Article 7. Any such member state shall ensure that this information is made available to the public concerned in that state.	Regulation 12 provides that within 28 days of determining an application, a notice is to be published in the publications which originally advertised the proposal, containing the decision on the application, a description of the proposal and address at which any person may inspect a copy of the decision. The decision will include the reasons on which it was based and, where permission is granted, any conditions and any measures to avoid, reduce or offset the major adverse effects. Under Regulation 14(6), the Scottish Ministers shall inform any other state consulted of the decision, the reason for the decision and if permission is granted, the conditions attached to the permission.	The Scottish Ministers.
Article 10	Ensures that the Directive shall not override the member states' authority in respect of limitations imposed by national regulations, administrative provisions and legal practices concerning commercial/industrial confidentiality and the safeguarding of public interest. When Article 7 applies, Article 10 applies the limitations which apply in the member	Regulation 7 provides for consultation bodies to provide information to applicants to facilitate the preparation of environmental statements. The regulation enables these organisations to withhold from applicants information which could be withheld under the Environmental Information Regulations 2004 or is exempt from	The Scottish Ministers.

	state in which the project is proposed. Article 10a requires member states to ensure that members of the public have access to legal or other independent procedures for challenging decisions, acts or omissions relating to the public participation provisions of the Directive.	disclosure under the Freedom of Information Act 2000. Information included in environmental statements is subject to wide publicity and consultation. All decisions by public authorities may be challenged by action for judicial review.	
Article 11	Requires exchange of information and experience gained in implementing the Directive between member states and the Commission.	Does not require specific implementation in these Regulations.	
Article 12	Requires member states to take measures to comply with this Directive within 3 years of its notification.	These Regulations transpose the Directive fully in respect of marine minerals dredging in Scotland and Scottish waters.	The Scottish Ministers.
Article 13	Specifies the date when the Directive comes into force.	Does not require specific implementation in these Regulations.	
Article 14	Addresses the Directive to the member states.	Does not require specific implementation in these Regulations.	

Part II: Council Directive 92/43/EEC of 21 May 1992 (as amended by Directive 97/62/EC) on the conservation of natural habitats and of wild fauna and flora.

Article	Objective	Implementation	Responsibility
Article 1	Contains definitions, including: natural habitats (terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural); natural habitat types of Community interest (those within the territory in danger of disappearance in their natural range or having a small natural range or presenting outstanding examples of one or more of five biogeographical regions); priority natural habitat types (natural habitat types in danger of disappearance the conservation of which is a particular responsibility-marked by an asterisk in Annex I); conservation status of natural habitats and species (the sum of influences acting on a natural habitat or species that may affect its long term distribution, including 'favourable' status which is that the habitat or species is stable or increasing and is generally maintaining itself); species of Community interest	Special areas of conservation and sites proposed in accordance with Article 4 of the Directive are defined in regulation 2 as "European sites".	The Scottish Ministers.

	(endangered, vulnerable, rare or endemic species as listed in Annexes II, IV or V); and special area of conservation (site of Community importance designated by member states (in accordance with procedures set out in Article 4) where necessary conservation measures are applied to maintain or restore natural habitats or species at favourable conservation status).		
Article 2	Specifies that the aim of the Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in member states. Measures taken pursuant to the Directive are to be designed to maintain or restore natural habitats and species of wild fauna and flora of Community interest at favourable conservation status taking account of the economic, social and cultural requirements and regional and local characteristics.	The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007.	The Scottish Ministers.
Article 3	Requires member states to designate special areas of conservation (as part of the Natura 2000 network) composed of sites hosting the habitat types listed in Annex I and habitats of the species listed in Annex II to the Directive. Special areas of conservation shall include special protection areas as classified by member states in accordance with Directive 79/409/EEC (the Wild Birds Directive).	Does not require specific implementation in these Regulations	
Article 4	Requires that member states propose to the Commission, within 3 years of the notification of the Directive a list of sites proposed for inclusion in a list of sites of Community importance, indicating which habitats types in Annex I and which species in Annex II that are native to the member state the sites host, based on the criteria set out in Annex III to the Directive. The Commission, in agreement with member states, shall establish a draft list of sites of Community importance within 6 years of notification of the Directive and member states shall designate these sites as special areas of conservation within a period of 6 years.	Does not require specific implementation in these Regulations	
Article 5	Enables the Commission to initiate consultation with member states on sites not included in a national list and the Council, if necessary, to decide on designation.	Article 5 does not require specific implementation in these Regulations.	

	Article 5(4) applies Article 6(2) to sites which are the subject of Article 5.	Implementation of Article 6(2) is described below.	
Article 6	<p>Article 6(1) requires that member states shall establish conservation measures for special areas of conservation, including appropriate management plans if necessary.</p> <p>Article 6(2) requires member states to take appropriate steps to avoid deterioration and disturbance of natural habitats and natural species within them in special areas of conservation and sites subject, by virtue of Article 5, to consultation with the Commission and possible Council decision.</p> <p>Article 6(3) requires that any plan or project not directly connected with, or necessary to, the management of the site but which is likely to have a significant impact on a special area of conservation shall be subject to appropriate assessment and only agreed to providing the integrity of the site is preserved and, if appropriate, after having obtained the opinion of the general public.</p> <p>Article 6(4) specifies that if a negative assessment of the site is given, but there are no suitable alternatives, consent may be given to a plan/project only for imperative reasons of overriding public interest and the member state must take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and inform the Commission of the measures adopted. Where the site concerned hosts a priority natural habitat type or a priority species, the only imperative reasons which may justify consent are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other reasons of overriding public interest.</p>	<p>Article 6(1) does not require specific implementation in these Regulations in relation to Articles 6(2) and 6(3):</p> <p>Regulation 4 provides that it is an offence to carry out marine minerals dredging in the waters to which the Regulations apply (defined in regulation 2) less it is only subject to minimal application of the Regulations (in terms of providing for its exemption and entry onto a public register) or carried out in accordance with a permission granted under them. The Regulations establish procedures for the consideration of applications for, and where appropriate, grant of permission for, projects for carrying out dredging in marine waters which are not directly connected with or necessary to the management of a European site and which are likely to have a significant effect (alone or in combination with other plans or projects) on a European site. Such projects, which include both proposals for new dredging activity and proposed variations to existing authorised dredging projects, are defined in regulation 2 as ‘habitats projects’. Under regulation 12, the Scottish Ministers will consider an Environmental Statement (ES), any further information and any representations received in relation to an application for dredging permission.</p> <p>Regulation 12 also provides for the imposition of conditions on permissions which will be used to provide for monitoring of the effects of dredging, and will enable the identification of any deterioration it may cause.</p> <p>Regulation 12 and the specific provisions for appropriate assessment of habitats projects in Schedule 3 to the Regulations (see below) are applied to proposals to vary dredging permissions by regulation 18.</p>	The Scottish Ministers.

		<p>Schedule 3: Natural Habitats. Paragraph 2 requires that before deciding whether to grant permission for a habitats project, the Scottish Ministers will make an appropriate assessment of the site in view of its conservation objectives. Unless there are imperative reasons of overriding public interest and no alternatives, permission shall only be given where the dredging will not adversely affect the integrity of the site. If the Scottish Ministers consider that any adverse effects on the integrity of a European site would be avoided if the permission were subject to conditions, permission may only be granted subject to those conditions.</p> <p>Paragraph 3 requires the review of permissions granted under the Regulations where the dredging is likely to have a significant effect on a site which has subsequently become a European site.</p> <p>Paragraph 4 requires the review of dredging pursuant to agreements which exist when the Regulations come into force where they are likely to have a significant effect on a European site. Such dredging is then to be treated as though it were being carried out pursuant to a permission granted under the Regulations which is required to be reviewed under paragraph 3 of this Schedule.</p> <p>Where a review takes place under paragraphs 3 and 4, the permission may be affirmed on grounds which reflect the grounds on which a permission could be granted for dredging at such a location under paragraph 2 of the Schedule. The permission may be varied if any adverse effects can be avoided by such variation. In all other cases, the permission must be revoked. The procedure for variation or revocation of a permission as a result of reviews under paragraphs 3 and 4 is set out in paragraphs 5 and 6 of Schedule 3 and includes, respectively, temporary variation or suspension, in certain cases pending the Scottish Ministers final decision.</p>	
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Article 7	Applies the obligations under Article 6 (2), 6(3) and 6(4) to the special protection areas designated under Wild Birds Directive.	European site is defined in regulation 2 to include special protection areas designated under the Wild Birds Directive.	The Scottish Ministers.
Article 8	Requires member states and the Commission to consider co-financing of measures needed to meet the obligations under Article 6(1) to establish and maintain special areas of conservation.	Does not require specific implementation in these Regulations.	
Article 9	The Commission shall regularly review the contribution of Natura 2000 in respect of the objectives in Articles 2 and 3. In this context, a special area of conservation may be declassified where this is justified by natural developments noted as a result of the surveillance provided for Article 11.	Does not require specific implementation in these Regulations.	
Article 10	Member states shall endeavour, where necessary, in their land-use planning and development policies, to encourage the management of features of the landscape, which are of major importance for wild fauna and flora.	Does not require specific implementation in these Regulations.	
Article 11	Member states shall undertake surveillance of the conservation status of the natural habitats/species referred to	Does not require specific implementation in these Regulations	

	in Article 2, with particular regard to priority natural habitats and priority species.		
Article 12	<p>Article 12 requires member states to establish a system for protecting the animal species listed in Annex IV (a) to the Directive (species of Community interest in need of special protection) including prohibiting the deterioration or destruction of breeding sites or resting places. Article 12(4) requires member states to monitor the incidental capture and killing of these species, and prohibit the keeping, transport and sale/exchange, offering for sale/exchange of any specimens of these species taken from the wild.</p> <p>Article 12(2) and (3) specifies that member states shall prohibit, during all stages of their lives, the keeping, transport and sale or exchange and offering for sale or exchange of animals in Annex IV(a) taken from the wild except for those taken legally before the Directive was implemented.</p>	Does not require specific implementation in these Regulations.	
Article 13	Requires member states to take necessary measures to establish a system of protection for particular plant species listed in Annex IV to the Directive and prohibit the deliberate picking, collecting, cutting or destruction of these plants in their natural range in the wild and the keeping, transport and sale of such species taken in the wild.	Does not require specific implementation in these Regulations.	
Article 14	Provides for member states to take measures to ensure that the taking in the wild of particular specimens of wild fauna/species listed in Annex V to the Directive is compatible with their being maintained at a favourable conservation status.	Does not require specific implementation in these Regulations.	
Article 15	Member states shall prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to populations of particular species of wild fauna listed in Annex V to the Directive.	This Article is only implemented in these Regulations to the extent that the procedures in Schedule 3: Natural Habitats for the protection of European sites in respect of new and existing dredging projects will contribute to the prohibition of disturbance to any of the species listed in Annex V to the Directive.	The Scottish Ministers.
Article 16	Member states may derogate from the provisions of Articles 12, 13, 14 and 15, if there is no satisfactory alternative and the position is not harmful to the maintenance of the populations of the species concerned at a favourable conservation status in	Does not require specific implementation in these Regulations	

	their natural range. Member states shall report to the Commission every two years on any derogations		
Article 17	Member states shall draw up a report on the implementation of the measures taken under Directive, every 6 years from date of notification. A composite report shall be sent by the Commission to the Committee made up of representatives of member states and the Commission and shall be made available to the general public not later than 2 years from receipt of the returns from each member state.	Does not require specific implementation in these Regulations	
Article 18	Member states and the Commission shall encourage the necessary research and scientific work to support the objectives of the Directive.	Does not require specific implementation in these Regulations	
Article 19	Provides for amendments to the Annexes to the Directive in the light of technical and scientific progress.	Does not require specific implementation in these Regulations.	
Article 20	Sets out the composition of the Committee referred to in Article 17.	Does not require specific implementation in these Regulations	
Article 21	Sets out a procedure for the Committee or the Council to approve the conservation measures established under the Directive.	Does not require specific implementation in these Regulations	
Article 22	Requires member states to: (a) consider re-introducing species that are native to their territory where this might contribute to their conservation; (b) ensure that planned introduction into the wild of any species not native to their territory is regulated so as not to harm natural habitats within their natural range or the wild fauna/flora; and (c) promote education and general information on the need to protect species of wild fauna/flora and to conserve their habitats and natural habitats.	Does not require specific implementation in these Regulations	
Article 23	Requires member states to take measures to comply with the Directive within 2 years of its notification and notify the Commission when measures are adopted.	These Regulations transpose the Directive fully in respect of marine minerals dredging in Scotland and the Scottish Zone.	The Scottish Ministers.
Article 24	Addresses the Directive to the member states	Does not require specific implementation in these Regulations	