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STATUTORY INSTRUMENTS

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**2011 No. 409**

**The Marine Licensing (Exempted Activities) Order 2011**

**PART 3**

**Activities to which article 4 applies and conditions**

**Interpretation of this Part**

**6.**—(1) In this Part, a reference to a numbered item is a reference to that numbered item in section 66(1) of the Act.

(2) In this Part—

- (a) a reference to a “deposit” is a reference to a deposit falling within item 1 (deposits within the UK marine licensing area etc), 2 (deposits from British vessels etc anywhere at sea etc), 3 (deposit from vehicle, vessel etc loaded in United Kingdom except Scotland or the UK marine licensing area), or, except as otherwise provided, 10 (deposit of explosives within the UK marine licensing area etc);
- (b) a reference to a “dredging activity” is a reference to an activity falling within item 9 (dredging within the UK marine licensing area);
- (c) a reference to a “removal activity” is a reference to an activity falling within item 8 (use of vehicle, vessel etc to remove substance or object from sea bed within the UK marine licensing area);
- (d) a reference to a “works activity” is a reference to an activity falling within item 7 (construction, alteration or improvement of works within the UK marine licensing area etc).

**Activities falling within Part 6 of the Merchant Shipping Act 1995**

**7.** Article 4 applies to an activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995(1) (prevention of pollution).

**Safety directions under the Merchant Shipping Act 1995**

**8.** Article 4 applies to an activity carried on—

- (a) by or on behalf of the Secretary of State in exercise of a power under Schedule 3A to the Merchant Shipping Act 1995(2) (safety directions);
- (b) by any person for the purpose of complying with a direction under that Schedule; or
- (c) by any person for the purpose of avoiding interference with action taken by virtue of that Schedule.

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(1) 1995 c. 21. Relevant amendments and repeals to provisions in Part 6 were made by the Merchant Shipping and Maritime Security Act 1997 (c. 28); the Pollution Prevention and Control Act 1999 (c. 24); the Marine Safety Act 2003 (c. 16); section 2 of the Merchant Shipping (Pollution) Act 2006 (c. 8), and S.I. 2006/1244.

(2) Schedule 3A and section 108A (which gives effect to that Schedule) were inserted by section 1 of the Marine Safety Act 2003.

**Salvage activities**

9. Article 4 applies to an activity carried on, in the course of a salvage operation, for the purpose of ensuring the safety of a vessel or preventing pollution.

**Fire fighting**

10. Article 4 applies to an activity carried on for the purpose of fighting, or preventing the spread of, any fire.

**Air accident investigation**

11. Article 4 applies to a deposit or removal activity carried on for the purpose of recovering any substance or object as part of an investigation into any accident involving any aircraft.

**Fishing operations**

12.—(1) Article 4 applies to any of the following activities if carried on in the course of a fishing operation—

- (a) the deposit of fishing gear, other than a deposit made for the purpose of disposal;
- (b) a removal activity or dredging activity carried on for the purpose of—
  - (i) fishing for or taking fish; or
  - (ii) removing fishing gear;
- (c) the deposit by way of return to the sea of any fish or other object.

(2) Article 4 also applies to the deposit by way of return to the sea of any fish during the course of fish processing at sea.

(3) In this article—

- (a) “fish” includes shellfish and any part of a fish;
- (b) “fishing gear” includes gear used to fish for or take shellfish, but does not otherwise include anything used in connection with the propagation or cultivation of shellfish.

**Shellfish propagation and cultivation**

13.—(1) Article 4 applies—

- (a) to the deposit of any shellfish, trestle, raft, cage, pole, rope or line in the course of the propagation or cultivation of shellfish;
- (b) to a removal activity or dredging activity carried on for the purpose of moving shellfish within the sea in the course of its propagation or cultivation.

(2) But article 4 does not apply—

- (a) to any such deposit made for the purpose of disposal;
- (b) to any such deposit made for the purpose of creating, altering or maintaining an artificial reef; or
- (c) to any such deposit that causes or is likely to cause obstruction or danger to navigation.

**Discharge etc of offshore chemicals and oil**

14. Article 4 applies to any activity in relation to which a permit is required under—

- (a) the Offshore Chemicals Regulations 2002(3); or
- (b) the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(4).

#### **Deposit of marine chemical and marine oil treatment substances etc**

15.—(1) Article 4 applies—

- (a) to the deposit of any marine chemical treatment substance;
- (b) to the deposit of any marine oil treatment substance;
- (c) to the deposit of any substance used or intended to be used for removing surface fouling matter from the surface of the sea or of the sea bed.

(2) Paragraph (1) is subject to conditions 1 to 4.

(3) Condition 1 is that the substance must be one the use of which is for the time being approved for the purposes of this Order by the licensing authority.

(4) Condition 2 is that the substance must be used in accordance with any conditions to which the approval is subject.

(5) Condition 3 is that no deposit may be made in an area of the sea of a depth of less than 20 metres or within one nautical mile of any such area except with the approval of the licensing authority.

(6) Condition 4 is that no deposit of any marine chemical treatment substance or marine oil treatment substance may be made below the surface of the sea except with the approval of the licensing authority.

(7) In this article, “marine chemical treatment substance” and “marine oil treatment substance” have the same meaning as in section 107(2) of the Act.

#### **Deposit of equipment to control, contain or recover oil etc**

16.—(1) Article 4 applies to the deposit of any equipment for the purpose of controlling, containing or recovering any—

- (a) oil;
- (b) mixture containing oil;
- (c) chemical;
- (d) flotsam; or
- (e) algal bloom.

(2) But article 4 does not apply to any such deposit to the extent that it falls within item 10.

#### **Scientific instruments etc**

17.—(1) Article 4 applies—

- (a) to the deposit of any scientific instrument or associated equipment in connection with any scientific experiment or survey;
- (b) to the deposit of any reagent;
- (c) to the deposit of any tracer;

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(3) [S.I. 2002/1355](#), amended by [S.I. 2005/2055](#), regulation 20 and Schedule 2, and [S.I. 2010/1513](#), regulation 6.

(4) [S.I. 2005/2055](#), amended by [S.I. 2010/1513](#), regulation 9.

- (d) to a removal activity carried on for the purpose of removing any scientific instrument or associated equipment referred to in sub-paragraph (a).
- (2) Sub-paragraphs (b) and (c) of paragraph (1) are subject to conditions 1 and 2.
- (3) Condition 1 is that the reagent or tracer must be one the use of which is for the time being approved for the purposes of this Order by the licensing authority.
- (4) Condition 2 is that the reagent or tracer must be used in accordance with any conditions to which the approval is subject.
- (5) But article 4 does not apply—
  - (a) to any such deposit made for the purpose of disposal;
  - (b) to any such deposit that causes or is likely to cause obstruction or danger to navigation;
  - (c) to any such deposit or removal activity—
    - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (6); and
    - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.
- (6) A deposit or removal activity falls within this paragraph if—
  - (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
  - (b) it is likely to have a significant effect on a Ramsar site; or
  - (c) it is capable of affecting (other than insignificantly)—
    - (i) the protected features of an MCZ;
    - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (7) In paragraph (6)(a) and (b), “likely” has the same meaning as in Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora<sup>(5)</sup>.

### **Deposits in the course of aggregates or mineral dredging**

#### **18. Article 4 applies—**

- (a) to the deposit, on the site of dredging for aggregates or other minerals, of any substance or object taken from the sea in the course of such dredging (other than any of the aggregates or minerals being dredged);
- (b) to the deposit of waters (whether by overflow or pumped discharge) from the hold of a vessel—
  - (i) in the normal course of dredging for aggregates or other minerals, or
  - (ii) at the site of such dredging following its completion or during the return journey of the vessel.

### **Maintenance of coast protection, drainage and flood defence works**

#### **19.—(1) Article 4 applies—**

- (a) to an activity carried on by or on behalf of the Environment Agency for the purpose of maintaining any—
  - (i) coast protection works;
  - (ii) drainage works; or

(5) OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive [2006/105/EC](#) (OJ No L 363, 20.12.2006, p. 368).

- (iii) flood defence works;
  - (b) to an activity carried on by or on behalf of a coast protection authority (within the meaning of Part 1 of the Coast Protection Act 1949<sup>(6)</sup>) for the purpose of maintaining any coast protection works.
- (2) Paragraph (1) is subject to the condition that the activity is carried on within the existing boundaries of the works being maintained.
- (3) But article 4 does not apply in relation to any such activity which consists of beach replenishment.

### **Emergency works in response to flood or flood risk**

- 20.**—(1) Article 4 applies to an activity carried on by or on behalf of the Environment Agency for the purpose of executing emergency works in response to any flood or the imminent risk of any flood.
- (2) Paragraph (1) is subject to the condition that the activity may only be carried on in accordance with an approval granted by the licensing authority for that purpose.

### **Use of vehicles to remove litter or seaweed from beaches**

- 21.**—(1) Article 4 applies to a removal activity using a vehicle carried on by or on behalf of a local authority for the purpose of removing any litter or seaweed from a beach.
- (2) But article 4 does not apply to any such removal activity—
- (a) that falls within sub-paragraph (a), (b) or (c) of paragraph (3); and
  - (b) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.
- (3) An activity falls within this paragraph if—
- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
  - (b) it is likely to have a significant effect on a Ramsar site; or
  - (c) it is capable of affecting (other than insignificantly)—
    - (i) the protected features of an MCZ;
    - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (4) In paragraph (1), “local authority” has the meaning given by section 68(9) of the Act.
- (5) In paragraph (3)(a) and (b), “likely” has the same meaning as in Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora.

### **Deposits in the course of normal navigation or maintenance**

- 22.**—(1) Article 4 applies to a deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance.
- (2) But article 4 does not apply—
- (a) to any such deposit made for the purpose of disposal;
  - (b) to any such deposit to the extent that it falls within item 10.

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<sup>(6)</sup> 1949 c. 74. Part 1 has been amended by Schedule 2 to the Flood and Water Management Act 2010 (c. 29), as from a date to be appointed.

**Maintenance of harbour works**

**23.**—(1) Article 4 applies to a deposit, removal activity or works activity carried on by or on behalf of a harbour authority for the purpose of maintaining any harbour works.

(2) Paragraph (1) is subject to the condition that the activity is carried on within the existing boundaries of the works being maintained.

**Removal of obstruction or danger to navigation**

**24.**—(1) Article 4 applies to a removal activity carried on by a person referred to in paragraph (2) for the purpose of removing anything causing or likely to cause obstruction or danger to navigation.

(2) The persons are—

- (a) a conservancy authority (within the meaning given by section 313(1) of the Merchant Shipping Act 1995<sup>(7)</sup>);
- (b) a harbour authority;
- (c) a lighthouse authority;
- (d) a person having powers under any enactment or statutory order to work or maintain a canal or other inland navigation, including a navigation in tidal water.

**Moorings and aids to navigation**

**25.**—(1) Article 4 applies—

- (a) to a deposit or works activity carried on by a person referred to in paragraph (2) for the purpose of providing a pile mooring, swinging mooring, trot mooring or aid to navigation;
- (b) to a removal activity carried on by any such person for the purpose of removing any such mooring or aid to navigation.

(2) The persons are—

- (a) a harbour authority;
- (b) a lighthouse authority;
- (c) any other person, where the activity is carried on in accordance with a consent required from, and granted by, any such authority.

(3) But article 4 does not apply to any such activity which consists of the deposit or the construction of a pontoon.

**Markers for European marine sites and marine conservation zones**

**26.**—(1) Article 4 applies—

- (a) to a deposit made by Natural England for the purpose of installing a marker for the purposes of regulation 35(1) of the Conservation of Habitats and Species Regulations 2010<sup>(8)</sup> (installation of markers indicating the existence and extent of a European marine site within the meaning of those Regulations);
- (b) to a removal activity carried on by Natural England for the purpose of removing a marker referred to in sub-paragraph (a);
- (c) to a deposit made by a public authority<sup>(9)</sup> for the purpose of installing a marker indicating the existence and extent of an MCZ;

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<sup>(7)</sup> 1995 c. 21.

<sup>(8)</sup> S.I. 2010/490.

<sup>(9)</sup> See section 322(1) for a definition.

(d) to a removal activity carried on by a public authority for the purpose of removing a marker referred to in sub-paragraph (c).

(2) Paragraph (1) is subject to the condition that the activity may only be carried on in accordance with an approval granted by the licensing authority for that purpose.

### **Launching of vessels etc**

**27.** Article 4 applies to a deposit in connection with the launching of any vehicle, vessel, aircraft, marine structure or floating container.

### **Dismantling of ships**

**28.—**(1) Article 4 applies to a deposit or removal activity carried on as part of dismantling a ship that is waste.

(2) But article 4 does not apply to any such deposit to the extent that it falls within item 10.

### **Scheduled works under the Crossrail Act 2008**

**29.—**(1) Article 4 applies to an activity carried on within the limits of deviation for the scheduled works in exercise of the powers conferred by the Crossrail Act 2008<sup>(10)</sup> in relation to those works, or any work in connection with them.

(2) In paragraph (1), “limits of deviation” and “scheduled works” have the meanings given by section 56(1) of that Act.

### **Licensed deep sea mining**

**30.** Article 4 applies to an activity carried on in pursuance of—

- (a) an exploration licence or an exploitation licence within the meaning of section 2 of the Deep Sea Mining (Temporary Provisions) Act 1981<sup>(11)</sup>, or
- (b) a reciprocal authorisation within the meaning given by section 3(3) of that Act.

### **Diver trails within restricted areas**

**31.** Article 4 applies to a deposit or removal activity carried on for the purpose of placing, securing or removing signage or other identifying markers relating to a wreck within an area designated as a restricted area within the meaning of section 1 of the Protection of Wrecks Act 1973<sup>(12)</sup>.

### **Coastguard activities – safety purposes and training**

**32.** Article 4 applies to an activity carried by or on behalf of the Secretary of State for Transport, acting through the Maritime and Coastguard Agency, for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure,
- (b) saving life, or
- (c) training for any purpose referred to in paragraph (a) or (b).

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<sup>(10)</sup> 2008 c. 18.

<sup>(11)</sup> 1981 c. 53.

<sup>(12)</sup> 1973 c. 33. Section 1 has been repealed in relation to Scotland, as from a date to be appointed, by paragraph 4 of Schedule 4 to the Marine (Scotland) Act 2010 (asp 5).

**Deposit and use of flares etc – safety purposes and training**

**33.** Article 4 applies to the deposit or use of any distress flare, smoke float or similar pyrotechnic substance or object for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure,
- (b) saving life, or
- (c) training for any purpose referred to in paragraph (a) or (b).

**Cables and pipelines – authorised emergency inspection and repair**

**34.—**(1) Article 4 applies to a deposit, removal activity or dredging activity carried on for the purpose of executing emergency inspection or repair works to any cable or pipeline.

(2) Paragraph (1) is subject to the condition that the activity may only be carried on in accordance with an approval granted by the licensing authority for that purpose.

(3) But article 4 does not apply to any such deposit falling within item 10.

**Bored tunnels**

**35.—**(1) Article 4 applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

(2) Paragraph (1) is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.

(4) Condition 2 is that the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) But article 4 does not apply to any such deposit carried on for the purpose of disposal.

**Defence activities**

**36.—**(1) Article 4 applies to an activity carried on—

- (a) in relation to the defence of the realm, and
- (b) by or on behalf of—
  - (i) the naval, military or air forces of the Crown, including reserve forces and the Royal Fleet Auxiliary; or
  - (ii) a visiting force within the meaning given by section 12 of the Visiting Forces Act 1952<sup>(13)</sup>.

(2) But article 4 does not apply to any such activity which is a works activity or a dredging activity.

**Rights of foreign vessels etc under international law**

**37.—**(1) Article 4 applies to an activity to the extent that it is carried on in exercise of a right under rules of international law, by or in relation to—

- (a) a third country vessel;
- (b) a warship, naval auxiliary, other vessel or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service (whether or not the warship, naval auxiliary or other vessel is a third country vessel).

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(13) 1952 c. 67, to which there are amendments not relevant to this Order.

- (2) In paragraph (1), “third country vessel” means a vessel which—
- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and
  - (b) is not registered in a member State.

**Activities carried on in the Scottish inshore region**

**38.** Article 4 applies—

- (a) to an activity carried on in the Scottish inshore region, or
- (b) to the loading of a vehicle, vessel, aircraft, marine structure or floating container with any substance or object for incineration in the Scottish inshore region.