

EXECUTIVE NOTE

THE ENVIRONMENTAL IMPACT ASSESSMENT AND NATURAL HABITATS (EXTRACTION OF MINERALS BY MARINE DREDGING) (SCOTLAND) AMENDMENT REGULATIONS 2009

SCOTTISH STATUTORY INSTRUMENT (SSI) 2009 No. 333

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. The SSI is subject to a negative resolution procedure.

Introduction

The SSI extends the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007 (“the 2007 MDRs”) to the extraction of minerals in any waters that fall within the jurisdiction of a harbour authority. Such action is needed to ensure that commercial minerals extraction undertaken by the extractive industry in harbour areas is covered by the requirements of the following European Community (EC) Directives:

- Directive 85/337/EEC on the assessment of the effects on certain public and private projects on the environment (the “EIA Directive”);
- Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the “Habitats Directive”);
- Directive 2003/35/EC on Public Participation (the Public Participation Directive”).

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. Current interest in Scotland presently appears to be restricted to the Firth of Forth although only limited extraction has taken place. 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.

The 2007 MDRs, which came into force on 23 November 2007, introduced statutory procedures for regulating minerals dredging in Scottish waters. The definition of “dredging” in regulation 2(1) of the 2007 MDRs exempts from the scope of the Regulations “dredging in any waters within the jurisdiction of a harbour authority, as defined by section 57 of the Harbours Act 1964”. This exclusion was included because the original intention was for mineral extraction in harbour areas to be covered by the UK wide Marine Works (Environmental Impact Assessment) Regulations 2007 (the “MWRs”). However, the

definitions used in the MWRs are now not considered wide enough to cover commercial minerals extraction undertaken by the extractive industry.

Policy Objectives

The SSI closes this regulatory gap and is needed too ensure full compliance with EC Directives ahead of wider work on any new consenting regime arising from the Marine Bill. In addition to ensuring compliance with EC Directives, the SSI will ensure that mineral dredging in harbour areas 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 although the Scottish Ministers will be the competent authority for considering proposals.

The definition of dredging in regulation 2 of the 2007 MDRs also currently exempts activities which are specifically authorised to be carried out by any enactment (including any enactment contained in a local Act or subordinate legislation). The SSI amends this definition to make explicit that dredging authorised by Acts of the Scottish Parliament and subordinate legislation made under such Acts is also exempted from the definition of “dredging”. This will ensure that, for example, where minerals extraction is authorised by an Order made under the Transport and Work (Scotland) Act 2007 then the MDRs will not apply.

Consultation

Consultation took place on these proposals in August 2009. The consultation paper was issued to a wide range of stakeholders. Seven 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), Scottish Natural Heritage, Scottish Environment Protection Agency, Royal Society for the Protection of Birds (Scotland) Built Environment Forum Scotland and two planning authorities. All respondents were content with the proposals in the SSI.

Financial effects

A Regulatory Impact Assessment was prepared in relation to the 2007 MDRs which remains relevant to this SSI.

Planning Directorate
29 September 2009