STATUTORY INSTRUMENTS

2012 No. 698

ENVIRONMENTAL PROTECTION LICENSING (MARINE)

The Marine and Coastal Access Act 2009 (Transitional Provisions) Order 2012

Made - - - -	*3rd March 2012*
Laid before Parliament	*9th March 2012*
Coming into force - -	*6th April 2012*

The Secretary of State makes the following Order in exercise of the powers conferred by section 320 of the Marine and Coastal Access Act 2009(**1**).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Marine and Coastal Access Act 2009 (Transitional Provisions) Order 2012.

(2) This Order comes into force on 6th April 2012.

(3) In this Order—

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"dredging operation" means an operation which falls within item 9 in section 66(1) of the 2009 Act"; and

"an excepted dredging operation" is a dredging operation in respect of which the appropriate licensing authority is—

(i) the Welsh Ministers by virtue of section 113(4) of the 2009 Act; or

(ii) the Department of the Environment in Northern Ireland by virtue of section 113(6) of the 2009 Act.

(**1**) 2009 c. 23.

Transitional provision relating to dredging operations

2. Paragraph 9 of Schedule 9 (licensing: transitional provision relating to Part 4) to the 2009 Act(**2**) has effect, other than in relation to an excepted dredging operation, as if for sub-paragraph (4) there were substituted—

"(4) The "relevant transitional period"—

(a) is, in the case of any person—

(i) i)in the case of any dredging operation falling within sub-paragraph (5), (6) or (8), one year beginning with the commencement date, and

(ii) in the case of any other dredging operation, three years beginning with that date, but

(b) if a marine licence which authorises the carrying on of the dredging operation by the person comes into force (or has come into force) at any time before the end of the period in question, the transitional period ends with the coming into force of that licence.

(5) A dredging operation falls within this sub-paragraph if it is a project—

(a) which—

(i) i)is not directly connected with or necessary to the management of a European site, and

(ii) ii)is likely (either alone or in combination with other plans or projects) to have a significant effect on a European site, and

(b) in respect of which no relevant assessment has been, is being, or is to be undertaken by the appropriate licensing authority or any other authority under any enactment for the purposes of the consideration by that authority of any application for its consent.

(6) A dredging operation falls within this sub-paragraph if—

(a) it is to be carried out—

(i) i)in the course of an Annex I project, or

(ii) in the course of an Annex II project which is likely, because of its size, nature or location, to have significant effects on the environment, and

(b) the project in question is one in respect of which no relevant assessment has been, is being, or is to be undertaken by—

(i) i)the appropriate licensing authority(**3**);

(ii) an authority to whom the functions of the appropriate licensing authority have been delegated(**4**); or

(**2**) Paragraph 9 of Schedule 9 to the 2009 Act makes provision for certain dredging operations. Paragraph 9(1) provides that during the relevant transitional period, section 65 (requirement for licence) does not apply in respect of the carrying on by a person of a dredging operation falling within item 9 of section 66(1) of the Act and which meets certain conditions. Paragraph 9(4) defines the "relevant transitional period" as the period of one year beginning with the commencement date, save where a licence comes into force (or has come into force) before the end of that period. By virtue of paragraph 1 of Schedule 9 to the 2009 Act, "the commencement date" means the date on which section 65 of that Act comes into force. By virtue of article 3(1) and (2)(a) of the Marine and Coastal Access Act 2009 (Commencement No. 5, Consequential and Transitional Provisions) Order 2011 (S.I. 2011/556 (C. 19), section 65 of the 2009 Act came into force on 6th April 2011. So the period referred to in paragraph 9(4)(a) of Schedule 9 to the 2009 Act is the period from 6th April 2011 to 5th April 2012.

(**3**) The expression "the appropriate licensing authority" is defined in section 113 of the 2009 Act.

(**4**) Certain functions exercisable by the Secretary of State as the appropriate licensing authority have been delegated to the Marine Management Organisation by article 4 of the Marine Licensing (Delegation of Functions) Order 2011 (S.I. 2011/627). Certain functions of the Secretary of State have been delegated to the Marine Management Organisation under section 14 of the 2009 Act.

(iii) any other authority under any enactment for the purposes of the consideration by such authority of any application for its consent.

(7) A dredging operation is not to be taken to be an operation of a kind falling within sub-paragraph (6) if a person carrying on that operation has obtained a screening opinion from the appropriate authority under regulation 11 of the Marine Works Regulations and paragraph (5) of that regulation (screening opinion that an environmental impact assessment is not required in relation to the activity) applies.

(8) A dredging operation falls within this sub-paragraph if it is an operation which has or is likely to have the effect, in relation to any body of water, of—

(a) preventing the achievement of any of the environmental objectives listed in the relevant river basin management plan as applicable in relation to that body of water; or

(b) causing environmental damage.

(9) A person who proposes to carry out a dredging operation may request an opinion from the appropriate licensing authority, or (as the case may be) the authority to whom the functions of the appropriate licensing authority have been delegated, as to whether any dredging operation falls within sub-paragraph (5), (6) or (8), and that authority must provide such an opinion as soon as practicable.

(10) In this paragraph—

"appropriate authority" has the meaning given by regulation 2(1) of the Marine Works Regulations(**5**);

"Annex I project" means a project of a type specified in Annex I to the EIA Directive;

"Annex II project" means a project of a type specified in Annex II to the EIA Directive;

"the EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment(**6**);

"body of water" means a body of groundwater or surface water, and for this purpose, "groundwater" and "surface water" have the meaning given by Article 2 of the Water Framework Directive;

"environmental damage" means damage of a kind falling within regulation 4(1)(b) of the Environmental Damage (Prevention and Remediation) Regulations 2009(**7**);

"a European site" means—

(a) a European site within the meaning of regulation 8(1) of the Conservation of Habitats and Species Regulations 2010(**8**);

(b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**9**);

"the Marine Works Regulations" means the Marine Works (Environmental Impact Assessment) Regulations 2007(**10**);

"relevant assessment" means—

(**5**) S.I. 2007/1518. Relevant amendments were made by S.I. 2011/735.
(**6**) OJ No. L 26, 28.1.2012, p. 1.
(**7**) S.I. 2009/153, to which there are no relevant amendments. Relevant definitions for the purposes of regulation 4(1)(b) of the Environmental Damage (Prevention and Remediation) Regulations 2009 are contained in regulation 4(3) and (4) of those Regulations.
(**8**) S.I. 2010/490, to which there are no relevant amendments.
(**9**) S.I. 2007/1842; relevant amendments were made by S.I. 2010/491.
(**10**) S.I. 2007/1518; relevant amendments were made by S.I. 2011/735.

(a) in relation to a project falling within sub-paragraph (5), an appropriate assessment within the meaning of Article 6.3 of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**11**);

(b) in relation to a project falling within sub-paragraph (6), an assessment of the effects of that project on the environment in accordance with Article 2 of the EIA Directive;

"the relevant river basin management plan", in relation to a body of water, means the river basin management plan making provision in relation to that body of water;

"river basin management plan" means a river basin management plan within the meaning of Article 13 of the Water Framework Directive which is prepared pursuant to any enactment giving effect to that Article; and

"the Water Framework Directive" means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(**12**).".

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

3rd March 2012

(**11**) OJ No. L 206, 22.7.92, p. 7; last amended by Council Directive 2006/105/EC (OJ No. L 363, 20.12.2006, p. 368).

(**12**) OJ No. L 327, 22.12.2000, p. 1, last amended by Directive 2009/31/EC of the European Council and of the Council (OJ No. L 140, 5.6.2009, p. 114).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends the transitional provisions in paragraph 9 of Schedule 9 to the Marine and Coastal Access Act 2009 ("the 2009 Act")(**13**) for certain dredging operations. This Order applies in relation to dredging operations which are licensable marine activities for the purposes of Part 4 of the 2009 Act, other than those for which the appropriate licensing authority(**14**) is the Welsh Ministers or the Department of the Environment in Northern Ireland, and subject to certain further exceptions.

Article 2 provides that paragraph 9 has effect as if, for sub-paragraph (4)(**15**), there were substituted sub-paragraphs (4) to (10) set out in article 2. New sub-paragraph (4) provides that, save for dredging operations falling within new sub-paragraph (5), (6) or (8), the transitional period is 3 years beginning with the commencement date(**16**), unless a marine licence is issued before the end of that period (in which case that period ends on the date the marine licence is granted).

New sub-paragraph (5), (6) and (8) make provision for dredging operations to which the extension of the transitional period does not apply (and for which a marine licence would be needed). These are cases where it would be inappropriate for the extended transitional period to apply in view of the requirements of the Habitats Directive(**17**), the Environmental Impact Assessment Directive(**18**) or the Water Framework Directive(**19**).

An impact assessment has not been prepared in relation to this Order as no impact on the private, voluntary or public sector is foreseen. The Explanatory Memorandum is available alongside this instrument on www.legislation.gov.uk.

(**13**) 2009 c. 23.

(**14**) The appropriate licensing authority is defined in section 113 of the 2009 Act. Certain functions exercisable by the Secretary of State as the appropriate licensing authority have been delegated to the Marine Management Organisation by article 4 of the Marine Licensing (Delegation of Functions) Order 2011 (S.I. 2011/627).

(**15**) Sub-paragraph (4) defines the relevant transitional period for the purpose of the exclusion of section 65 of the 2009 Act by paragraph 9(1) of Schedule 9 in relation to dredging operations to which that paragraph applies.

(**16**) By virtue of paragraph 1 of Schedule 9 to the 2009 Act, "the commencement date" means the date on which section 65 of that Act comes into force. By virtue of article 3(1) and (2)(a) of the Marine and Coastal Access Act 2009 (Commencement No.5, Consequential and Transitional Provisions) Order 2011 (S.I. 2011/556 (C. 19)), section 65 of the 2009 Act came into force on 6th April 2011. So the 3-year period referred to is the period from 6th April 2011 to 5th April 2014.

(**17**) OJ No. L 206, 22.7.92, p. 7; last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p. 368).

(**18**) OJ No. L 26, 28.1.2012, p. 1.

(**19**) OJ No. L 327, 22.12.2000, p. 1, last amended by Directive 2009/31/EC of the European Parliament and of the Council (OJ No. L 140, 5.6.2009, p. 114).

Changes to legislation:
There are currently no known outstanding effects for the The Marine and Coastal Access Act 2009 (Transitional Provisions) Order 2012.