

*Status: Point in time view as at 16/08/2012.*

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## SCHEDULES

### SCHEDULE 9

Section 112(2)

#### LICENSING: TRANSITIONAL PROVISION RELATING TO PART 4

#### PART 1

##### INTERPRETATION

- 1 In this Schedule—
- “the commencement date” means the date on which section 65 comes into force;
  - “the CPA” means the Coast Protection Act 1949 (c. 74);
  - “FEPA” means the Food and Environment Protection Act 1985 (c. 48).

#### Commencement Information

- II** Sch. 9 para. 1 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

#### PART 2

##### COAST PROTECTION ACT 1949

##### *Consents previously given and outstanding applications*

- 2 (1) Any consent given under subsection (1) of section 34 of the CPA which—
- (a) is in effect immediately before the commencement date, and
  - (b) relates to an operation which—
    - (i) falls within that subsection, and
    - (ii) is a licensable marine activity,
- has effect on and after that date as if it were a marine licence granted by the appropriate licensing authority in relation to that activity (a “deemed licence”).
- (2) In accordance with sub-paragraph (1)—
- (a) a consent given for a specified period remains in force (subject to the provisions of this Part of this Act) for so much of that period as falls after the commencement date;
  - (b) any condition subject to which a consent under subsection (1) of section 34 of the CPA has been given has effect as if it were a condition attached to the deemed licence;
  - (c) any provision made under subsection (4) of that section in respect of a consent has effect as if it were provision made under section 71(4)(a) of this Act in respect of the deemed licence;

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- (d) any condition having effect under section 34(4A)(b) of the CPA has effect as if it were such a condition as is mentioned in section 71(5) of this Act.
- (3) Any reference in sub-paragraph (1) or (2) to a consent given under section 34(1) of the CPA, or to a condition subject to which such a consent is given, includes a reference to a consent deemed to have been given, or a condition deemed to have been imposed, by virtue of provision included in an order granting development consent (see paragraphs 27 and 28 of Schedule 5 to the Planning Act 2008 (c. 29)).
- (4) Any application for consent under subsection (1) of section 34 of the CPA which—
- (a) is made before the commencement date, and
  - (b) relates to an operation which—
    - (i) falls within that subsection, and
    - (ii) is a licensable marine activity,
- has effect on and after that date as if it were an application for a marine licence made to the appropriate licensing authority in relation to that activity.

**Modifications etc. (not altering text)**

- C1** Sch. 9 para. 2(1)-(3) excluded (6.4.2011) by [The Marine and Coastal Access Act 2009 \(Commencement No.5, Consequential and Transitional Provisions\) Order 2011 \(S.I. 2011/556\)](#), arts. 1(3), 4

**Commencement Information**

- I2** Sch. 9 para. 2 in force at 6.4.2011 by [S.I. 2011/556](#), **art. 3(2)(a)** (with art. 4)

*Safety requirements*

- 3 The repeal of section 36A of the CPA does not affect the operation of that provision in relation to anything occurring before the date on which that repeal takes effect.

**Commencement Information**

- I3** Sch. 9 para. 3 in force at 6.4.2011 by [S.I. 2011/556](#), **art. 3(2)(a)** (with art. 4)

**PART 3**

**FOOD AND ENVIRONMENT PROTECTION ACT 1985**

*Licences previously issued and outstanding applications*

- 4 (1) Any licence having effect under Part 2 of FEPA (a “FEPA licence”) which—
- (a) is in effect immediately before the commencement date, and
  - (b) relates to the doing of anything which—
    - (i) falls within section 5 or 6 of that Act, and
    - (ii) is an activity which, on or after that date, must not be carried on except in accordance with a marine licence granted by the appropriate licensing authority,
- has effect on and after that date as if it were a marine licence granted by the appropriate licensing authority in relation to that activity (a “deemed licence”).

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- (2) In accordance with sub-paragraph (1)—
- (a) a licence issued for a specified period remains in force (subject to the provisions of this Part of this Act) for so much of that period as falls after the commencement date;
  - (b) any provision included in a FEPA licence by virtue of section 8(3) or (4) of that Act has effect as if it were a condition attached to the deemed licence.
- (3) Any reference in sub-paragraph (1) or (2) to a FEPA licence, or to a provision included in such a licence, includes a reference to a licence deemed to have been issued, or a provision deemed to have been included, by virtue of provision included in an order granting development consent (see paragraphs 29 and 30 of Schedule 5 to the Planning Act 2008 (c. 29)).
- (4) Any application for a FEPA licence which—
- (a) was made before the commencement date, and
  - (b) relates to an activity which—
    - (i) falls within section 5 or 6 of FEPA, and
    - (ii) on or after that date, must not be carried on except in accordance with a marine licence granted by the appropriate licensing authority,has effect on and after that date as if it were an application for a marine licence made to the appropriate licensing authority in relation to that activity.
- (5) An applicant who has paid a fee under section 8(7) or (8) of FEPA must not be charged a fee under section 67(1)(b) of this Act in respect of the deemed licence.

**Commencement Information**

**I4** Sch. 9 para. 4 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

- 5 (1) Despite the amendments made by paragraph 2 of Schedule 8, paragraphs 5 to 17 of Schedule 3 to FEPA continue to apply in any case where a person—
- (a) makes written representations (in accordance with paragraph 5 of that Schedule) before the commencement date, or
  - (b) within the period of 28 days ending with that date, is issued with a FEPA licence or receives notice under paragraph 1, 3 or 4 of that Schedule.
- (2) Sub-paragraph (1) has effect in place of any provision made under section 73 of this Act for appeals against any decision of an appropriate licensing authority on an application for a licence.

**Commencement Information**

**I5** Sch. 9 para. 5 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

*Remedial action*

- 6 The amendments made by paragraph 2 of Schedule 8 do not affect the operation of section 10 of FEPA in relation to anything carried out otherwise than under and in accordance with a FEPA licence before the commencement date.

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**Commencement Information**

**I6** Sch. 9 para. 6 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

*Register*

- 7 (1) This paragraph applies in any case where—
- (a) immediately before the commencement date, an authority was required to maintain under section 14 of FEPA a register (the “FEPA register”) containing information of any particular description in respect of any particular area,
  - (b) on that date the authority ceased to be required to maintain a register under that section containing information of that description in respect of that area, and
  - (c) as from that date the authority is required to maintain a register under section 101 of this Act (the “new register”) containing information in respect of that area.
- (2) In any such case, the authority must include in the new register any information falling within sub-paragraph (1)(a) that was contained (or was required to have been contained) in the FEPA register immediately before the commencement date.
- (3) For the purpose of giving effect to this paragraph—
- (a) references in section 101 to marine licences are to be read as including references to FEPA licences, and
  - (b) references in that section to this Part of this Act or to any provision of this Part are to be read as including references to Part 2 of FEPA or to the corresponding provision of that Part.

**Commencement Information**

**I7** Sch. 9 para. 7 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

*Channel Islands and British overseas territories*

- 8 (1) In this paragraph “relevant territory” means any of the following—
- (a) any of the Channel Islands;
  - (b) any British overseas territory.
- (2) An Order in Council under section 26 of FEPA which is in force immediately before the commencement date remains in force, and may be revoked, amended or re-enacted, as if that section had not been repealed.
- (3) If it appears to Her Majesty—
- (a) that provision with respect to the licensing of marine activities has been made in the law of any relevant territory, and
  - (b) that that provision was made otherwise than by virtue of an Order in Council under section 323 extending provisions of this Act,
- Her Majesty may by Order in Council repeal any provisions of Part 2 or 4 of FEPA as they have effect as part of the law of that territory.

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#### Commencement Information

**I8** Sch. 9 para. 8 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

## PART 4

### MISCELLANEOUS

#### *Dredging*

- 9 (1) During the relevant transitional period, section 65 does not apply in respect of the carrying on by a person of a dredging operation—
- (a) which falls within item 9 in section 66(1) of this Act, but
  - (b) which meets the conditions in sub-paragraph (2).
- (2) The conditions are that the dredging operation—
- (a) does not fall within section 34 of the CPA,
  - (b) is not an activity for which a licence is required under Part 2 of FEPA, and
  - (c) is not excluded from this paragraph by virtue of an order under section 320.
- (3) The references in sub-paragraph (2) to section 34 of the CPA and Part 2 of FEPA are references to those provisions as they would apply but for this Act.
- (4) The “relevant transitional period”, in the case of any person and any dredging operation,—
- (a) is the period of one year beginning with the commencement 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 that period, the transitional period ends with the coming into force of that licence.

#### Modifications etc. (not altering text)

**C2** Sch. 9 para. 9 modified (6.4.2012) by The Marine and Coastal Access Act 2009 (Transitional Provisions) Order 2012 (S.I. 2012/698), arts. 1(2), 2

#### Commencement Information

**I9** Sch. 9 para. 9 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

#### *Water Resources Act 1991*

- 10 The amendment made by section 82 of this Act applies to any application for consent under section 109 of the Water Resources Act 1991 (c. 57) which is submitted, but not determined or withdrawn, before the date on which that section comes into force (as well as to any application submitted after that date).

#### Commencement Information

**I10** Sch. 9 para. 10 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

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*Electronic Communications Code: England and Wales*

- 11 (1) In this paragraph—
- (a) “the Code” means the Electronic Communications Code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12);
  - (b) “communications approval” means an approval under paragraph 11 of the Code;
  - (c) “transitional date” means the date on which the repeals made in paragraph 11 of the Code by this Act take effect in relation to England and Wales.
- (2) Subsections (3) to (5) apply to any communications approval (a “qualifying approval”)—
- (a) which is in effect immediately before the transitional date, and
  - (b) which relates to any works, falling within sub-paragraph (3) or (4) of paragraph 11 of the Code, the execution of which on or after that date is a licensable marine activity.
- (3) A qualifying approval has effect on and after the transitional date as if it were a marine licence granted by the appropriate licensing authority in relation to the licensable marine activity (a “deemed marine licence”).
- (4) If the qualifying approval was given for a specified period, the deemed marine licence is to remain in force (subject to the provisions of this Part of this Act) for so much of that period as falls after the transitional date.
- (5) If, by virtue of paragraph 11(5) of the Code, the qualifying approval was given subject to a condition, the deemed marine licence has effect as if the condition were a condition attached to the deemed marine licence.
- (6) Any application for a communications approval—
- (a) which was submitted before the transitional date, and
  - (b) which relates to an activity which, on or after that date, is a licensable marine activity,
- has effect on and after that date as if it were an application for a marine licence made to the appropriate licensing authority in relation to that activity.

**Commencement Information**

**I11** Sch. 9 para. 11 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

*Electronic Communications Code: Scotland*

- 12 (1) In this paragraph—
- (a) “the Code” means the Electronic Communications Code set out in Schedule 2 to the Telecommunications Act 1984 (c. 12);
  - (b) “communications approval” means an approval under paragraph 11 of the Code;
  - (c) “Scottish transitional date” means the date on which the repeals made in paragraph 11 of the Code by this Act take effect in relation to Scotland.
- (2) Sub-paragraphs (3) to (5) apply to any communications approval (a “qualifying Scottish approval”)—

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- (a) which is in effect immediately before the Scottish transitional date, and
  - (b) which relates to any works, falling within sub-paragraph (3) or (4) of paragraph 11 of the Code, the execution of which on or after that date needs a licence under section 5 or 6 of FEPA.
- (3) A qualifying Scottish approval has effect on and after the Scottish transitional date as if it were a licence granted under section 5 or 6 (as the case may be) of FEPA by the licensing authority in relation to the activity (a “deemed FEPA licence”).
- (4) If the qualifying Scottish approval was given for a specified period, the deemed FEPA licence is to remain in force (subject to the provisions of FEPA) for so much of that period as falls after the Scottish transitional date.
- (5) If, by virtue of paragraph 11(5) of the Code, the qualifying Scottish approval was given subject to a condition, the deemed FEPA licence has effect as if the condition were a condition attached to the deemed FEPA licence.
- (6) Any application for a communications approval—
- (a) which was submitted before the transitional date, and
  - (b) which relates to an activity which, on or after that date, needs a licence under section 5 or 6 of FEPA,
- has effect on and after that date as if it were an application for a licence under the section in question made to the licensing authority in relation to that activity.

#### Commencement Information

**112** Sch. 9 para. 12 in force at 6.4.2011 by S.I. 2011/556, art. 3(2)(a) (with art. 4)

#### *Direction under section 58(1)(c) of the Government of Wales Act 2006*

- 13 (1) To the extent that they relate to the abandonment of an offshore installation, any functions exercisable under the provisions of this Part of this Act specified in sub-paragraph (2) are exercisable in relation to Welsh controlled waters by a Minister of the Crown only after consultation with the Welsh Ministers.
- (2) The provisions are—
- (a) sections 67(1) to (5), 69(1), (3) and (4), 71(1) to (3) and 72(1) to (3) (marine licences), so far as relating to items 1 to 6 and 11 to 13 in section 66(1) (licensable marine activities);
  - (b) section 106 (power to take remedial action).
- (3) In this paragraph—
- “offshore installation” has the meaning given by section 44 of the Petroleum Act 1998 (c. 17);
  - “Welsh controlled waters” has the same meaning as in paragraph 4 of Schedule 3 to the Government of Wales Act 2006 (c. 32).
- (4) The provision made by the preceding provisions of this paragraph has effect as if it were a direction made by Order in Council under section 58(1)(c) of the Government of Wales Act 2006 made by virtue of paragraph 4(1)(c) of Schedule 3 to that Act and may accordingly be amended, modified or repealed by any such Order in Council.

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#### **Commencement Information**

**I13** Sch. 9 para. 13 in force at 6.4.2011 by S.I. 2011/556, **art. 3(2)(a)** (with art. 4)



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