
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in waters around the United Kingdom (but excluding Welsh territorial waters and most waters around Scotland) referred to in the Regulations as “marine waters”:

Council Directive [85/337/EEC](#) (OJ No L175, 05.07.85, p.40) on the assessment of the effects of certain public and private projects on the environment (as amended by Directive [97/11/EC](#), OJ No L73, 14.03.97, p.5 and by Directive [2003/35/EC](#), OJ No L156, 25.06.03, p.17), and

Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora (OJ No L206, 22.07.92, p.7) to which there are amendments not relevant to these Regulations,

in so far as they relate to the extraction of minerals by marine dredging.

Subject to exceptions for dredging for national defence purposes and for dredging which is carried out under certain agreements in existence prior to the Regulations coming into force, the Directives are implemented by ensuring that permission is required for marine dredging projects which engage either directive (regulation 5) and that any dredging carried out without permission where it is needed is an offence (regulation 4). Applications for dredging permission must be made to the regulator (regulation 10). The regulator is designated as the Secretary of State in respect of waters around England and certain outer areas of the continental shelf around Northern Ireland, Scotland and Wales, and the Department of the Environment in respect of waters in Northern Ireland (regulation 2(1), which also contains other definitions).

Directive 85/337 is implemented by requiring that an environmental statement is provided in relation to an application which relates to a relevant project, i.e. the extraction of minerals by dredging in marine waters which is likely to have significant effects on the environment (regulation 10). That statement must be taken into account in deciding the application (regulation 13). Directive 92/43 is implemented by requiring that an appropriate assessment is carried out of the effects of such dredging, where it is likely, either alone or in combination with other plans or projects, to have a significant effect on a European site (regulation 13(3) and Schedule 3). Such dredging is referred to in the Regulations as a “habitats project”. European sites are sites in the United Kingdom designated under Directive 92/43, and sites designated as special protection areas under Directive [79/409/EEC](#) on the conservation of wild birds which are treated by Directive 92/43 as having been designated under that directive for these purposes. For the purposes of the Regulations sites which have been proposed by the United Kingdom for designation are also included. Where permission is required under regulation 5, it is an offence for persons other than the Crown to extract minerals by dredging in marine waters unless the dredging is carried out in accordance with a permission which has been granted under these Regulations (regulation 4).

The Regulations make provision for certain actions which may be undertaken before any application for permission is made. Regulation 6 enables any person who proposes to carry out dredging to request the regulator to determine whether that dredging would constitute a relevant project, and to determine whether it would constitute a habitats project. Regulation 7 enables a person who intends to make an application for permission which requires an environmental statement to request the regulator to give an opinion as to the information to be provided in that environmental statement. Regulation 8 requires appropriate consultation bodies, as defined in the Regulations, government departments and the regulator to identify and provide information to assist in the preparation of an environmental statement and enables them to charge for it. Regulation 9 provides

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for the payment of fees in respect of requests for opinions under regulation 7 and the provision of information by the regulator under regulation 8.

Regulation 10 requires that any application for permission include an environmental statement (unless the regulator has determined otherwise). Any application for permission must be accompanied by a fee determined in accordance with regulation 25. Regulation 11 allows the regulator to require the applicant to provide further information, if the regulator considers the original environmental statement contains insufficient information to enable the environmental effects of the proposed dredging to be fully considered. Under regulation 12 applications must be subject to publicity and consultation. Regulation 13 sets out the considerations (including the environmental statement and any assessment of the effect on a European site) and procedure which apply to deciding applications. Before deciding an application for permission to carry out dredging, the regulator may give certain parties an opportunity of making representation in person or in writing to a person appointed by the regulator. Regulation 14 creates offences where false information is provided in relation to obtaining a permission.

Under regulation 15 provision is made for consultation with any other EEA state where dredging is likely to have significant effects on the environment in that EEA state.

Provision is made under the Regulations for the transfer (regulation 16) and the variation on application (regulations 17 to 20) of a permission. A permission may also be revoked or varied otherwise than on an application, or suspended (regulations 21 and 22), where necessary in order to protect the environment. Regulation 23 provides for offences related to the transfer or variation of a permission.

Regulation 25 provides for the regulator to determine the fees which must be paid in respect of the regulator's expenses of complying with either regulation 7 or 8 or both, of considering applications under the regulations and of monitoring permissions. Regulation 26 requires the regulator to keep a public register of applications for permission, related approvals, decisions, determinations and opinions and information provided by applicants under the Regulations.

Regulation 27 provides for the penalties which apply to offences under the Regulations, and regulation 28 disapplies section 3 of the Territorial Waters Jurisdiction Act 1878, with the effect that the consent of the Secretary of State will not be needed for prosecutions against foreign nationals under these Regulations. Regulation 29 allows the regulator to hold an inquiry before exercising certain functions under the Regulations. Regulation 30 makes provision for the use of electronic communications in complying with the procedures established by the Regulations.

Transitional arrangements are set out in regulation 31. Necessary consequential amendments, with savings, are made to the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (S.I. 1999/293) and to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) (S.R. 1999 No.73), by regulation 32.

Schedule 1 sets out requirements for what must be included in an environmental statement.

Schedule 2 sets out the criteria which are relevant when the regulator determines whether a dredging project is a relevant project.

Schedule 3 imposes requirements which are similar to those in regulations 48 to 53 (general provisions for the protection of European sites) of the Conservation (Natural Habitats &c) Regulations 1994 (S.I. 1994/2716). Paragraphs 2 to 4 of Schedule 3 deal with the protection of European sites in three different circumstances—

paragraph 2 deals with the process for carrying out an appropriate assessment of the effect of new dredging projects on existing European sites and specifies that permission may only be granted on the terms set out in sub-paragraphs (5) to (9);

paragraph 3 provides for a review of the effect of permissions on sites which become European sites after those permissions are granted; and

paragraph 4 provides for a review of the effect on European sites of dredging agreements which were entered into before the commencement of these Regulations.

For the purposes of paragraphs 3 and 4 of Schedule 3, the definition of European site is extended to include sites in the United Kingdom upon which the European Commission is consulting the United Kingdom as to whether they should be designated.

Where a review of a permission or an agreement is carried out, the regulator must affirm, vary or revoke the permission. The procedure to be followed where the regulator revokes or varies a permission is set out in paragraph 5, and the effect of the regulator's decision whether to proceed with the revocation or variation is set out in paragraph 6.

Where permission is granted or affirmed despite the negative implications for a European site, compensatory measures must be taken to ensure the overall coherence of the European network of such sites.

A regulatory impact assessment has been prepared in relation to these Regulations. It has been placed in the Library of each House of Parliament and copies may be obtained from Jonathan Lartice, Marine Environment Division, Department for Environment Food and Rural Affairs (Telephone: 020 7270 8626. Email: jonathan.lartice@defra.gsi.gov.uk).

Transposition notes are available from the same place.

Copies of the documents referred to in regulation 31(3) may be obtained from the same place, free of charge.