

**EXPLANATORY MEMORANDUM TO  
THE MARINE WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT)  
(ENGLAND AND WALES) REGULATIONS 2009**

**2009 No. 2258**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007 closes a regulatory gap and makes provision requiring environmental impact assessments to be carried out prior to the granting of consent for the extraction of minerals by marine dredging within harbours in UK waters and UK controlled waters, where this is required to comply with Council Directive 85/337/EC (the “Environmental Impact Assessment Directive” or “EIA Directive”).

2.2 Annex I contains:

- a transposition note for the Amendment Regulations, setting out the provisions of the Environmental Impact Assessment Directive in respect of which those Regulations make changes to the transposition of the Directive effected by the Marine Works Regulations.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 The original Regulations were made under section 2(2) of the European Communities Act 1972 and section 56 of the Finance Act 1973 and came into force on 24 June 2007. They transpose the EIA Directive in relation to the following types of regulated activities in the marine area-

- activities which are regulated under Part II of the Food and Environment Protection Act 1985 (“FEPA”), i.e. deposits in the sea;
- works to ensure navigational safety which are regulated under section 34 of the Coast Protection Act 1949; and
- except for in Northern Ireland, harbour works (i.e. works involved in the construction of a harbour or in the making of modifications to an existing harbour) which require approval or consent pursuant to a local Act or such an Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862 or an order made under section 14 or 16 of the Harbours Act 1964.

4.2 The EIA Directive requires the assessment of the environmental effects of certain projects which are likely to have significant effects on the environment. Annex I to the Directive lists the projects for which an environmental impact assessment is mandatory before a decision is made by a regulator whether or not to grant consent for the project. Annex II to the Directive lists the projects for which an environmental impact assessment will be required if it is determined that

such a project is likely to have significant effects on the environment. An environmental impact assessment must identify, describe and assess the direct and indirect effects of a project on:

- human beings, fauna and flora;
- soil, water, air, climate and landscape;
- material assets and the cultural heritage;
- the interaction between two or more of the above factors.

4.3 This amendment clarifies that extraction of minerals by marine dredging in harbours is subject to the provisions of the Marine Works Regulations. The amendment also provides that the Welsh Ministers are the appropriate authority as regards harbour works in Wales for the extraction of minerals by marine dredging. The effect of this is that prior to consent being granted by a Harbour Authority for extraction of minerals by marine dredging in a harbour, depending on the possible impact of the works, the application may be considered by the Marine and Fisheries Agency (in relation to England) or the Welsh Ministers (in relation to Wales) as the “appropriate authority” for making an EIA consent decision under the Marine Works Regulations.

## **5. Territorial Extent and Application**

5.1 This amendment applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedures and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 A regulatory gap has emerged with respect of the transposition of the EIA Directive in relation to the extraction of minerals by marine dredging in harbours. This is because the definition of “harbour works” in the Marine Works Regulations is not likely to cover the extraction of minerals by marine dredging in harbours. In addition, such works are not covered by the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (and the equivalent Regulations for Wales and Scotland), which regulate the extraction of minerals by marine dredging, as these Regulations do not apply to dredging in waters within harbours in England, Wales and Scotland. As a result of this, any harbour authority wishing to authorise mineral extraction within its jurisdiction, is not obliged to comply with the requirements of the EIA Directive. This leaves the UK vulnerable to infraction proceedings by the European Commission. The proposed amendment will reduce this risk. The Scottish Executive intends to close this regulatory gap by making amendments to The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007.

7.2 This regulatory gap has been brought to light by an application for extraction of minerals by marine dredging within a harbour. The applicant could conceivably proceed with the extraction of minerals by marine dredging without gaining EIA approval, contrary to the requirements of the EIA Directive thus leaving the UK Government vulnerable to infraction.

Amending the Regulations will mean that such applications can be considered by the Marine and Fisheries Agency (MFA) or Welsh Ministers (as the appropriate authority for granting EIA consent) under the Marine Works Regulations and will reduce this infraction risk.

## **8. Consultation outcome**

8.1 A 12 week stakeholder consultation was held between 27<sup>th</sup> November 2008 and 19<sup>th</sup> February 2009. The consultation and a summary of the response can be seen at:

<http://www.defra.gov.uk/corporate/consult/>

## **9. Guidance**

9.1 No new guidance is necessary.

## **10. Impact**

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 A Regulatory Impact Assessment is attached.

## **11. Regulating small business**

11.1 The legislation applies to small business. The impact on small firms is expected to be beneficial in light of additional clarity provided by the amendments and associated guidance.

## **12. Monitoring & review**

12.1 There are no plans to review the policy because it is expected to apply only for a short period until the Marine and Coastal Access Bill is enacted and implemented.

## **13. Contact**

13.1 Vivien Wilson at the Department for Environment, Food and Rural affairs Tel: 0207 238 6812, or e-mail: [vivien.wilson@defra.gsi.gov.uk](mailto:vivien.wilson@defra.gsi.gov.uk) can answer any queries regarding this amendment.

**Transposition Note**

**The Marine Works (Environmental Impact Assessment)(Amendment)  
(England and Wales) Regulations 2009**

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”), as amended, provides a framework for the assessment of the environmental effects of certain projects which are likely to have significant effects on the environment. An environmental impact assessment (“EIA”) is required for a project listed in Annex I of the EIA Directive. An EIA is required for a project listed in Annex II of the EIA Directive, if it is determined that it is likely to have significant effects on the environment.

In the United Kingdom, the EIA Directive is implemented through a number of different statutory instruments.

The Marine Works (Environmental Impact Assessment) Regulations 2007 (“the Marine Works Regulations”) implement the EIA Directive in relation to certain marine works. The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 implement the EIA Directive in relation to the extraction of minerals by marine dredging, and there are similar implementing regulations in Scotland<sup>1</sup> and Wales<sup>2</sup> (collectively, “the Marine Minerals Regulations”). In relation to England, Wales and Scotland, it has come to light that the Marine Minerals Regulations do not clearly apply to the extraction of minerals by marine dredging in harbours.

The Marine Works (Environmental Impact Assessment)(Amendment)(England and Wales) Regulations 2009 (“the 2009 Amendment Regulations”) amend the Marine Works Regulations for England and Wales in order to better transpose the EIA Directive in relation to the extraction of minerals by marine dredging in harbours. Regulation 2(b) of the 2009 Amendment Regulations clarify that “harbour works” include works involving the making of modifications to an existing harbour, such as the extraction of minerals by marine dredging in harbours, where the making of modifications to the harbour is not the purpose of the works. Scottish Ministers are separately making amendments to the Marine Minerals Regulations which apply in Scotland, to better transpose the EIA Directive in relation to the extraction of minerals by marine dredging in harbours in Scotland.

These Regulations do not go beyond what is necessary to implement the Directive

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<sup>1</sup> The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007

<sup>2</sup> The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007

## Summary: Intervention & Options

<b>Department /Agency:</b> Defra	<b>Title:</b> Impact Assessment of amendment to the Marine Works (Environmental Impact assessment) Regulations 2007	
<b>Stage:</b> Final	<b>Version:</b> Final	<b>Date:</b> August 2009
<b>Related Publications:</b> Consultation on an amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007		

### Available to view or download at:

<http://www.defra.gov.uk/corporate/consult/marine-works/index.htm>

**Contact for enquiries:** Vivien Wilson

**Telephone:** 0207 238 6812

### What is the problem under consideration? Why is government intervention necessary?

Since the Marine Works (EIA) Regulations 2007 were implemented, a regulatory gap has become apparent with respect to their application to the extraction of minerals by marine dredging in harbours. The effect of this gap is that any harbour authority wishing to authorise such extraction would not need to comply with the European Council Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) ("the Environmental Impact Assessment Directive"). This would leave the UK vulnerable to infraction proceedings by the European Commission.

### What are the policy objectives and the intended effects?

The policy objective is to ensure that certain activities in England and Wales to which the Regulations apply i.e. harbour works for which a consent or approval is required under a local Act, a local Act read together with a notice given and published under section 9 of the harbours Transfer Act 1862 or an order made under sections 14 or 16 of the Harbours Act 1964, include the extraction of minerals by marine dredging in harbours. This will provide clarity for harbour authorities and reduce the risk of infraction proceedings.

### What policy options have been considered? Please justify any preferred option.

The options considered were:

- a) do nothing and await the Marine and Coastal Access Bill (and coming into force of its secondary legislation),
  - b) amend the Marine Works Regulations to include minerals extraction in harbours ,
- Option b was the favoured option to ensure that the activities to which the Regulations apply more clearly include the dredging of minerals in harbours.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

There are no plans to review the policy since it will apply only for a short period of time.

### **Ministerial Sign-off** For final Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the chosen option.

Signed by the responsible Minister:

Huw Irranca-Davies

.....Date:10th August 2009

## Summary: Analysis & Evidence

<b>Policy Option: b</b>	<b>Description: Commence the amendments to the Marine Works (Environmental Impact Assessment) Regulations 2007</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' There are no monetised costs
	<b>One-off</b> (Transition) <b>Yrs</b>	
	£ 0      20	
	<b>Average Annual Cost</b> (excluding one-off)	
	£ 0	<b>Total Cost (PV)</b> <b>£ 0</b>
Other <b>key non-monetised costs</b> by 'main affected groups' analysis has not identified any costs from this measure except the minimal cost to the very few affected businesses of familiarising themselves with the amendment.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' All benefits are currently non-monetised.
	<b>One-off</b> <b>Yrs</b>	
	£ 0      20	
	<b>Average Annual Benefit</b> (excluding one-off)	
	£ 0	<b>Total Benefit (PV)</b> <b>£ N/A</b>
Other <b>key non-monetised benefits</b> by 'main affected groups'. The intended outcome of this change is that business will now, with reduced legal uncertainty, be able to apply to extract minerals by marine dredging in harbours. The benefits, therefore, are any profits (net of costs for e.g. Environmental Impact Assessment, application etc) arising from those activities. These have not been estimated. Additionally option b will result in the removal of the infraction risk for non-compliance with the regulations. The public will also benefit by being able to participate through an EIA in the decision making process.		

### Key Assumptions/Sensitivities/Risks

We have assumed that the key stakeholders affected by the amendment are dredging companies, harbour authorities and regulators. There has been only one application over the past ten years and we anticipate that there will be at most one more over the twenty year time horizon covered by the Impact Assessment. This is mainly due to the unsuitability of harbours for minerals extraction and the lack of minerals therein. The fees charged will be at a similar level as for non-harbour extraction of marine minerals by dredging and will represent a transfer from industry to government.

Price Base Year	Time Period Years	<b>Net Benefit Range</b> (NPV) £ 0	<b>NET BENEFIT</b> (NPV Best estimate) £ 0
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What is the geographic coverage of the policy/option?	England and Wales
On what date will the policy be implemented?	October 2009
Which organisation(s) will enforce the policy?	MFA/WAG
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A

Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)			(Increase - Decrease)	
Increase of £ N/A	Decrease of £ N/A	<b>Net Impact</b>	£ N/A	
			<b>There will be minimal cost to business in familiarising themselves with the amendment to the regulations</b>	

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

### Title of proposal

Amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007 (“Marine Works Regulations”).

### Purpose and intended effect of measures

#### Objective

1. The objective of the amendment to the Marine Works Regulations is to make the extraction of minerals by marine dredging in harbours in England and Wales subject to the requirements of the Council Directive on the assessment of the effects of certain public and private projects on the environment (“Environmental Impact Assessment (EIA) Directive”). The amendment is to close a regulatory gap and as a result reduce the infraction risk that existed through the EIA Directive not being adequately transposed. Infraction proceedings might have resulted in a fixed lump sum penalty and/or a daily fine being imposed by the European Court of Justice. It is not possible to calculate the daily penalty rate as this is set by the European Court of Justice based on the seriousness of the infringement and its duration.
2. The amendment provides that the extraction of minerals by marine dredging in harbours in England and Wales is subject to Marine Works Regulations. The amendment also provides that the Welsh Ministers are the appropriate authority as regards harbour works in Wales for the extraction of minerals by marine dredging. The effect of this is that prior to consent being granted by a Harbour Authority for the extraction of minerals by marine dredging in a harbour, depending on the impact of the works, the application may be considered by the Marine and Fisheries Agency (in relation to England) or the Welsh Ministers (in relation to Wales) as the “appropriate authorities” for granting “EIA consent” under the Marine Works Regulations. The amendment will mean that in England and Wales the EIA Directive is transposed for harbour works under a single regime, regardless of whether such works consist of the extraction of minerals by marine dredging or not. Overall this approach represents the most effective way of closing the regulatory gap until any secondary legislation under the Marine Bill is in place.

#### Background

3. The Marine Works Regulations transpose the EIA Directive (see consultation document) in respect of marine works. In particular, the Regulations require certain marine works in certain circumstances to receive an “EIA Consent” from an “appropriate authority” prior to the regulator consenting to such marine works.
4. The marine works subject to the Marine Works Regulations are works requiring:
  - a) a licence under Part 2 of the Food and Environment Protection Act 1985,
  - b) a consent under section 34 of the Coast Protection Act 1949; and
  - c) (except for in Northern Ireland) a consent or approval for harbour works under a local Act, a local Act read together with a notice given and published under section 9 of the Harbours Transfer Act 1862 or under an order under section 14 or 16 of the Harbours Act 1964.



The term “harbour works” is defined in the Regulations as “works involved in the construction of a harbour or in the making of modifications to an existing harbour”.

5. The Regulations came into force on 24 June 2007, following a 12 week stakeholder consultation exercise. These can be found at:  
<http://www.opsi.gov.uk/si/si2007/20071518.htm>.
6. A regulatory gap became apparent with respect to the transposition of the EIA Directive in respect of the extraction of minerals by marine dredging in harbours. This was because it became apparent that such works were not covered by the Marine Works Regulations as our lawyers advised that the definition of “harbour works” in such Regulations was not likely to cover the extraction of minerals by marine dredging in harbours in England and Wales. In addition, such works are not covered by the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (and the equivalent Regulations for Wales and Scotland), which apply to the extraction of minerals by marine dredging, as these Regulations do not apply to dredging in waters within the jurisdiction of a harbour authority.
7. Consequently, any harbour authority wishing to authorise the extraction of minerals by marine dredging within its jurisdiction, was not obliged to comply with the requirements of the EIA Directive. This meant the UK was vulnerable to infraction proceedings by the European Commission. The amendment to the Marine Works Regulations reduces this risk.
8. A 12 week stakeholder consultation has been conducted to obtain views on the two options proposed for dealing with the regulatory gap which are option a) – do nothing and option b) – amend the Marine Works Regulations. The majority of the responses supported option b).

### **Territorial Extent and Application**

9. The Marine Works Regulations apply to all of the UK. However, Scotland wish to exercise their devolved powers to close the regulatory gap by amending The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007.  
([http://www.opsi.gov.uk/legislation/scotland/ssi2007/pdf/ssi\\_20070485\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2007/pdf/ssi_20070485_en.pdf)) . In their view this offers a better local solution reflecting their own circumstances.
10. In Northern Ireland there is no impact for amending these Regulations in the way suggested as they do not extend to harbours, these being the responsibility of the Department of Regional Development. Furthermore, the Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 ([http://www.opsi.gov.uk/si/si2007/pdf/uksi\\_20071067\\_en.pdf](http://www.opsi.gov.uk/si/si2007/pdf/uksi_20071067_en.pdf)) extend to mineral extraction in harbours for Northern Ireland only.
11. Changes to the Marine Works Regulations will therefore only apply in England and Wales. Table 1 summarises the application of the amendment of the Regulations by administration.

**Table 1: Application of amendment to Regulations**

<b>Country</b>	<b>Amendment to Marine Works Regulations</b>
England	Amendment applies

Wales	Amendment applies
Scotland	Amendment does not apply
Northern Ireland	Amendment does not apply

## Options

### 12. *Option a – Do nothing*

If we had done nothing:

- the UK could have been subject to infraction proceedings and potentially fined for not transposing the EIA Directive adequately, harming the UK's reputation and resulting in an additional burden to the public purse;
- the legality of the extraction of minerals by marine dredging in harbours (if it were allowed to proceed) might have been challenged in the UK courts, at a cost to both industry and regulators (appropriate authorities), and therefore the taxpayer;
- there could have been potentially a cost to industry and the UK economy as a whole if the extraction of minerals by marine dredging in harbours had not been possible within a legal framework, as dredged marine minerals play an important role in the construction and maintenance of the UK infrastructure. In 2000, about 13.4 million tonnes were used by the construction industry in England and Wales;
- industry view of Government could have been soured over a perceived lack of action on this issue.

### 13. *Option b – amend the Marine Works (Environmental Impact Assessment) Regulations 2007*

Together with amendments due to be made to The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Scotland) Regulations 2007, it is expected that this option will enable the UK to satisfy the European Commission that the EIA Directive, as amended, has been fully transposed, mitigating the risk of infraction proceedings. Furthermore:

- industry will be able, subject to approval by the appropriate authority, to undertake minerals extraction by marine dredging within harbour areas with legal certainty; and
- Government retains its reputation with industry.

## Costs and Benefits

### 14. *Sectors and groups affected*

- Regulators:
  - The Secretary of State (Marine and Fisheries Agency)
  - The Welsh Ministers
  - Harbour Authorities
- Industry:
  - The dredging industry;
  - The maritime industry;
  - Private terminal operators.

- Statutory consultees:
  - Appropriate authorities, where a regulated activity in their area is regulated by another appropriate authority;
  - Local planning authorities;
  - Any consenting authority;
  - Nature conservation bodies (Natural England, Countryside Council for Wales, Joint Nature Conservation Committee) and any other bodies that the appropriate authority considers to have an interest, or which are designated by statutory provision as having an interest.

## **Options – Assessment of impacts**

### **Option b - amend the Marine Works (Environmental Impact Assessment) Regulations 2007**

#### ***Economic benefits***

15. The main benefits to come from closing the regulatory gap in the Marine Works Regulations in England and Wales will be:

*To Government/regulators (where they are the appropriate authorities under the regulations):*

- Closing of the regulatory gap and therefore avoidance of the risk of costs associated with infraction proceedings; and
- Legal assurance that licences or other consents for minerals marine dredging in harbours in England and Wales are compliant with the EIA Directive (where they are to be allowed).

*To Industry:*

- There will be reduced uncertainty for industry and, subject to EIA consent by the appropriate authority, companies will be reassured as to how applications they submit for the extraction of minerals by marine dredging in harbours in England and Wales will be processed. Any profits arising from this activity will be benefits of the amendment. We have not attempted to estimate what those profits might be; and
- Any licences for extraction of minerals by marine dredging in harbours in England and Wales are unlikely to be challenged through the courts for not being issued in compliance with the Environmental Impact Assessment Directive, as amended, and there will be associated economic benefits

#### ***Social impact***

16. The amendment to the Marine Works Regulations will ensure that any application for extraction of minerals by marine dredging in harbours in England and Wales which require an EIA, will be subject to the same minimum period of 42 days for representations to be made on an application and its environmental statement as other works currently covered by the regulations. A longer consultation period may be allowed where an appropriate authority agrees with a consultation body that a longer period is reasonable, also in line with other works currently covered by the regulations. This will ensure that all stakeholders have the opportunity to represent their views and influence decision-making.

17. The responses to the consultation contained few comments on the social impact or on the economic costs and benefits of the proposed amendment and these generally expressed the view that an EIA would assess the social and community impact, including any marine heritage assets and navigational issues, of a proposed development and help protect against adverse effects.

### ***Environmental impact***

18. The amendment to the Marine Works Regulations will ensure that the impact assessment and consultation that presently occurs in respect of works covered by the regulations are extended to minerals dredging in harbours in England and Wales.
19. In particular, the amendment to the Regulations will enable public participation in the assessment of the impact the dredging will have on:
  - Human beings, fauna and flora;
  - Soil, water, air, climate and landscape;
  - Material assets and cultural heritage; and
  - The interaction between two or more of these factors.
20. The responses to the consultation welcomed the need for an environmental impact assessment, although there were few comments on this question, and consultees wished to see a robust and consistent approach to EIAs.

### **Costs**

#### ***Economic cost***

*To Government/regulators (where they are the appropriate authorities):*

21. The Environmental Impact Assessment Directive has already been transposed for numerous authorisations including those under section 34 of the Coast Protection Act 1949 (CPA) and section 5 of the Food and Environmental Protection Act 1984 (FEPA). So, any new burden created by the closing of this regulatory gap for the Marine Works Regulations is expected to be minimal and will be absorbed under 'business as usual' costs. Also, costs due to requiring extra publicity will be minimal, given that the closing of the regulatory gap is relatively minor.
22. Where mineral marine dredging outside harbours is concerned, an appraisal of environmental effects and consultation already occurs under the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 and The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 (the Marine Minerals Regulations). The closing of the regulatory gap will clarify that such assessments for mineral marine dredging are similarly required in harbours in England and Wales under the Marine Works Regulations. The costs to Government will be recovered through the fees charged to applicants.
23. In England and Wales, Government/the regulator (the appropriate authority for the purpose of the Marine Works Regulations) has not been charging for the cost of processing the EIA consent element of applications, under the Marine Works Regulations. However, new applications for extraction of minerals by marine dredging in harbours in England and Wales will be subject to fees. As the activity of extracting minerals by dredging in harbours in England and Wales, which will be subject to EIA consent under the Marine Works Regulations, is a similar activity to that consented

under the Marine Minerals Regulations, fees will be charged at a similar level. The decision has been taken to align the fees for both activities so as not to skew behaviour in the mineral dredging industry between harbour and non-harbour locations.

*To industry:*

24. Any new burdens to industry under the revised Marine Works Regulations will be minimal. As mentioned above, impacts on the environment are already assessed under the Marine Works Regulations. Any developer wanting to extract marine minerals by dredging in harbours in England and Wales will be charged fees at a similar level to those currently charged under the Marine Minerals Regulations regime. An appraisal of environmental effects and consultation already occurs under the Marine Minerals Regulations. The closing of the regulatory gap will clarify that such assessments for extraction of minerals by marine dredging in harbours in England and Wales are similarly required under the Marine Works Regulations.
25. Respondents to *Consultation on an amendment to the Marine Works (Environmental Impact Assessment) Regulations 2007*, on the whole, considered there would be little or no impact on port costs and operations.

*Conclusion:*

26. The regulatory gap meant that any harbour authority wishing to authorise extraction of minerals by marine dredging within its jurisdiction, was not obliged to comply with the requirements of the EIA Directive. This left the UK vulnerable to infraction proceedings by the European Commission. Therefore option a (do nothing) was not considered viable.
27. Option b was the preferred option due to the reduced likelihood of infraction proceedings from the Commission, along with the ability for industry to undertake extraction of marine minerals by dredging in harbours in England and Wales (with EIA consent from the appropriate authority) and the associated economic benefits this might bring.

*Social impact:*

28. No social costs have been identified under option b.

*Environmental impact:*

29. No environmental costs have been identified under option b.

*Competition assessment:*

30. The closing of the regulatory gap in the Marine Works Regulations will merely enable marine minerals dredging to take place within harbour areas. Therefore, no change is expected in the investment behaviour into England and Wales compared to EU Member States.
31. The amendment will not affect competition within sectors carrying out marine works. Impact on consumers, where it occurs, is likely to be minimal.

*Third Sector Impact*

32. No impact on charities or voluntary bodies is foreseen

*Small firms impact test:*

33. Since there is no change to the requirements of the Marine Works Regulations and provision of environmental information is already required from small firms undertaking projects within the scope of the Regulations, the impact of the change is expected to be low. The change will be equitable and will not place unfair burdens on small firms.

*Legal aid:*

34. We do not anticipate any increased burden on the courts as a result of this change.

*Health impact assessment:*

35. We do not consider there will be any adverse affects on health as a result of this change.

*Race quality assessment:*

36. There are no race equality impacts associated with this measure.

*Disability equality assessment:*

37. No disability equality impacts have been identified.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No