
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Marine Works (Environmental Impact Assessment) Regulations 2007 (“the principal Regulations”)(1), which implement, in relation to certain marine works, Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”)(2). The principal Regulations as amended by these Regulations are referred to as “the Marine Works Regulations”.

Part 2 of these Regulations makes amendments to the principal Regulations consequential on the enactment of the Marine and Coastal Access Act 2009 (“the 2009 Act”)(3) and the Marine Scotland Act 2010 (“the 2010 Act”)(4), which largely replace the marine licensing and consent controls previously exercised under Part 2 of the Food and Environment Act 1985 (“the 1985 Act”)(5) and (in relation to England, Scotland and Wales) the Coast Protection Act 1949(6). As the 2009 Act regulates dredging activity, Part 3 of these Regulations revoke (with consequential savings and transitional provisions) certain regulations implementing the EIA Directive in relation to certain marine minerals dredging.

The marine works in relation to which the principal Regulations implement the EIA Directive are those for which a regulatory approval (as defined) is required.

In Part 2, regulation 3 provides that the categories of regulatory approval in respect of which an EIA consent decision may be required include a marine licence or variation of a marine licence under Part 4 of the 2009 Act and Part 4 of the 2010 Act. It provides that the Marine Management Organisation is the appropriate authority where it is also the regulator, and further clarifies the definition of harbour works. It provides that a consenting authority includes an authority whose determination was required under the procedures set out in the Government View Documents. (These documents set out certain procedures introduced in April 1989, May 1998, and May 2006 in relation to government approvals for marine minerals dredging, which, subject to transitional provisions, were replaced by procedures set out in the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (“the Marine Minerals Regulations”)(7) and the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 (“the Welsh Marine Minerals Regulations”)(8)).

Regulation 4 provides that certain provisions apply to a proposal to carry out an activity which (if it were to be carried out by another person) would need an application for regulatory approval, where that activity is to be carried out by a person who would be the regulator in relation to that activity.

Regulation 5 provides for the setting of reasonable fees which can be charged. These are fees in respect of expenses incurred in scoping, screening, the exercise of functions as the appropriate authority and interpreting the results of monitoring measures.

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- (1) [S.I. 2007/1518](#), amended in relation to England and Wales by [S.I. 2009/2258](#).
 - (2) OJNo. L 175, 5.7.1985, p. 40; relevant amendments have been made by Council Directive [97/11/EC](#) (OJ No. L 73, 14.3.1997, p. 5), and Directive [2003/35/EC](#) of the European Parliament and of the Council (OJ No. L 156, 25.6.2003, p. 17).
 - (3) [2009 c. 23](#).
 - (4) [2010 asp 5](#).
 - (5) [1985 c 48](#).
 - (6) [1949 c. 74](#).
 - (7) [S.I. 2007/1067](#).
 - (8) [S.I. 2007/2610 \(W. 221\)](#).

Changes to legislation: There are currently no known outstanding effects for the The Marine Works (Environmental Impact Assessment) (Amendment) Regulations 2011. (See end of Document for details)

Regulation 6 enables the appropriate authority to decide that no environmental impact assessment (“EIA”) is needed where an assessment of a project sufficient to meet the requirements of the EIA Directive has been, is being or is to be conducted by the appropriate authority or another consenting authority.

Regulation 8 clarifies the circumstances in which the regulator must direct an applicant to seek a screening opinion.

Regulation 9 provides that the EIA consent decision may describe monitoring measures to be taken in respect of the principal adverse effects of the regulated activity. It provides for the appropriate authority to publicise the EIA consent decision and its regulatory decision.

Regulation 10 provides that a regulatory decision may include a condition for payment of a reasonable fee in respect of the expenses of interpreting the results of a monitoring measure.

Part 3 of these Regulations revokes the Marine Minerals Regulations and the Welsh Marine Minerals Regulations which, until 6th April 2011, made provision for implementing the EIA Directive and Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”)(9) in relation to certain marine minerals dredging.

Regulation 16 provides that a dredging permission issued under the Marine Minerals Regulations has effect as a “deemed” marine licence under the 2009 Act. It provides for deemed marine licences to be temporarily varied and suspended, and for the provisions of those Regulations relating to temporary variation and suspension to continue to apply to such licences. Once a notice of a decision to revoke or permanently vary such a licence is issued by virtue of the application of those Regulations, that notice has effect as a notice to revoke or vary the deemed licence under section 72 of the 2009 Act.

Regulation 17 provides that a fee payable under a condition of the dredging permission (pursuant to the Marine Minerals Regulations) is to be treated as a fee payable under a fee condition of the deemed marine licence.

Regulation 18 provides that an application made (or being treated as made) under the Marine Minerals Regulations will have effect as an application for a marine licence under the 2009 Act.

Regulations 20, 21 and 23 make transitional provisions so that steps taken under the Marine Minerals Regulations (in relation to screening, scoping, publicity and consultation) can be treated as steps taken under the corresponding requirements of the Marine Works Regulations.

Regulation 22 makes transitional provisions to avoid duplication of fees charged.

Regulations 24 to 31 make transitional provisions for the Welsh Marine Minerals Regulations which are similar to those made for the Marine Minerals Regulations, save that they do not make provision in relation to the suspension or temporary variation of dredging permissions.

Regulations 32 and 33 make savings provisions in relation to the Marine Minerals Regulations and the Welsh Marine Minerals Regulations. These relate to savings provisions in those Regulations, the maintenance of a register, and any request for a preliminary determination already made under provisions implementing the Habitats Directive.

A full impact assessment of the effect that secondary legislation made pursuant to Part 4 of the 2009 Act will have on the costs of business and the voluntary sector has been produced. No separate impact assessment has been produced for this instrument. The impact assessment referred to and a transposition note are available from the Marine Licensing Policy Team, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR, and are annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.

Copies of the Government View documents referred to in sub-paragraph (b) of the definition of “consenting authority” substituted in regulation 2(1) of the principal Regulations by regulation 3(1) (c) are also available from the same Marine Licensing Policy team at the address mentioned above.

(9) OJ No L206, 22.7.1992, p.7, last amended by Council Directive [2006/105/EC](#) (OJ No L 363, 20.12.2006, p.368).

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