

EXPLANATORY MEMORANDUM TO
THE MARINE AND COASTAL ACCESS ACT 2009 (TRANSITIONAL PROVISIONS)
ORDER 2012

2012 No. 698

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 Order extends the one year transitional period for navigational dredging granted under the Marine and Coastal Access Act 2009¹ (“The 2009 Act”) by a further two years to 6 April 2014. It applies in relation to dredging operations which are licensable marine activities for the purposes of Part 4 of the 2009 Act (but see paragraph 5 below). The Order also excludes from the transitional period certain dredging activities which require some form of assessment to ensure compliance with the Water Framework Directive², the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007³ and the Environmental Impact Assessment Directive on the assessment of the effects of certain public and private projects on the environment⁴.

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

3.1 None

4. Legislative Context

4.1 Paragraph 9(4) of Schedule 9 of the 2009 Act sets out the existing “relevant transitional period” for dredging. This Order modifies paragraph 9(4) so that it has effect as set out in the Order.

4.2 This Order is made under powers in section 320(1) of the 2009 Act (power to make transitional provision and savings) which provides that the Secretary of State may “by order make such transitional provision or savings as the Secretary of State considers necessary or expedient in consequence of any provisions of this Act”. Section 320(2) provides that “the power conferred by subsection (1) includes power to make provision in addition to, or different from, that made by this Act.”

¹ 2009, c 23

² Directive 2000/60/EC (OJ No. L 327, 22.12.2000, p. 1)

³ S.I. 2007/1842, as last amended by S.I. 2010/491.

⁴ Directive 85/337/EEC (OJ No. 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).

5. Territorial Extent and Application

5.1 This Order applies to England, the Scottish offshore region (but not the Scottish inshore region as it is covered by the Marine (Scotland) Act 2010). It does not apply in relation dredging operations in respect of which the appropriate licensing authority is-

- the Welsh Ministers by virtue of section 113(4) of the 2009 Act; or
- the Department of the Environment in Northern Ireland by virtue of section 113(6) of the 2009 Act

5.2 Under the 2009 Act, the Secretary of State has delegated the licensing authority function for England to the Marine Management Organisation (MMO). As a result of this Order, where marine licenses would be required, the MMO will be responsible for issuing those licenses and providing Guidance to operators.

6. European Convention on Human Rights

6.1 Richard Benyon, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Marine and Coastal Access Act 2009 (Transitional Provisions) Order 2012 are compatible with the Convention rights.

7. Policy background

7.1 The 2009 Act introduced a new streamlined marine licensing system integrating several previous consenting regimes, strengthening enforcement and creating an appeals system. The Act also included new provisions making dredging a licensable activity in its own right. Since this was a new licensable activity the Act included a one year transition period, so that licenses for previously unlicensed activity would only be required from April 2012.

7.2 Most marine dredging is carried out for the purposes of navigation and is essential to the functioning of ports and marinas. However there are a number of risks from dredging activity including effects on coastal processes, water quality, habitats and fisheries as well as interference with other marine users. This Order will continue to exempt certain navigational dredging activities from the licence requirement. However licenses will be required to ensure dredging activities meet the requirements of existing legislation, namely the Conservation of Habitats and Species Regulations 2010, the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, the Environmental Impact Assessment (EIA) Directive and the Water Framework Directive.

Conservation of Habitats and Species Regulations 2010/ the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007,

7.3 Article 2(5) has been introduced to protect ‘European sites’ from damage that could be caused by dredging activities. European sites are defined in regulation 8(1) of the Conservation of Habitats and Species Regulations 2010 and European offshore marine sites are defined within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007. This Order introduces a requirement, in certain circumstances, for a relevant assessment to be conducted to assess the impact of the activity and identify mitigating measures that could be carried out.

Environmental Impact Assessment (EIA) Directive

7.4 Article 2(6) has been introduced to protect sites which are undergoing projects listed in Annex I or Annex II of the EIA Directive. In specified circumstances, a relevant assessment of the impact of the activity and mitigating measures may be made.

Water Framework Directive

7.5 Article 2(8) has been introduced to prevent dredging activities which have or could cause damage to a body of water. In particular where the activity could prevent the achievement of certain environmental objectives listed in the river basin management plan or could cause environmental damage of a kind falling within regulation 4(1)(b) of the Environmental Damage (Prevention and Remediation) Regulations 2009 (damage to surface water or ground water).

Next steps

7.6 During the transitional period, Defra, the Devolved Administrations, the Marine Management Organisation, the Centre for Environment Fisheries and Aquaculture Science (CEFAS), Natural England and the Environment Agency will be working closely together to :

- review the scope and effect of the dredging provision and carry out further development of the licensing system, consistent with the objectives of the Red Tape Challenge and any relevant conclusions from our review of the Habitats Directive;
- consider the scope for exempting certain low risk dredging activities or activities that are adequately assessed under local harbour Acts;
- consider further improvements to the licence application process, and
- ensure that operators are aware of their obligations and that the regulators are geared up to implement effectively.

8. Consultation outcome

8.1 Given that this is an extension to a transitional period for introducing marine licensing and no impact on business, charities or the public sector is foreseen, no formal consultation has been carried out.

9. Guidance

9.1 Operators will shortly be notified of the extension of the transitional period and will be provided with Guidance on its practical and legal implementation.

10. Impact

10.1 An impact assessment has not been prepared in relation to this Order as no impact on business, charities or the public sector is foreseen.

11. Regulating small business

11.1 The extension of the transitional period will mean that small businesses will not need to apply for marine licenses unless they are necessary to meet the requirements of existing EU legislation as set out in paragraph 7.2.

12. Monitoring & review

12.1 This Order will expire on 6 April 2014. A review of the scope and effect of the dredging provision has begun including consideration for exempting certain low risk dredging activities or activities adequately assessed under local harbour Acts.

12.2 Further work is planned on the development of the licensing system which will take into account the objectives of the Red Tape Challenge and the relevant conclusions from the recent review of the Habitats Directive.

12.3 These activities will be subject to stakeholder consultation and Impact Assessment.

13. Contact

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