

2013 No. 526

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

MARINE POLLUTION

**The Marine Licensing (Exempted Activities) (Amendment)
Order 2013**

Made - - - - *6th March 2013*

Laid before Parliament *11th March 2013*

Coming into force - - *6th April 2013*

The Secretary of State, as the appropriate licensing authority under section 113(2)(a), (4)(a), (6)(a) and (8) of the Marine and Coastal Access Act 2009(a), makes the following Order in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1) of that Act.

In deciding to make this Order, the Secretary of State has had regard to the matters mentioned in section 74(4) of that Act.

The Secretary of State has carried out consultation in accordance with section 74(5) of that Act.

Citation, commencement and application

1.—(1) This Order may be cited as the Marine Licensing (Exempted Activities) (Amendment) Order 2013 and comes into force on 6th April 2013.

(2) This Order applies in relation to any area, and any licensable marine activity carried on in that area, for which the Secretary of State is the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009(b).

Amendment of the Marine Licensing (Exempted Activities) Order 2011

2. The Marine Licensing (Exempted Activities) Order 2011(c) is amended in accordance with articles 3 to 13.

(a) 2009 c. 23.

(b) By virtue of section 113(2)(a), (4)(a), (6)(a) and (8) of the Marine and Coastal Access Act 2009, the Secretary of State is the appropriate licensing authority as respects anything done in the course of carrying on certain activities in the Scottish offshore region, Wales and the Welsh inshore region, Northern Ireland and the Northern Ireland inshore region, and in relation to any other area not mentioned in subsections (2), (4) or (6). See section 322(1) for definitions of those regions.

(c) S.I. 2011/409.

Amendment of article 3

3. In article 3 (interpretation)—

- (a) after the definition of “exempt activity” insert—

““the Habitats Directive” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(a);”;
- (b) in the definition of “plan or project”, for “Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora” substitute “the Habitats Directive”.

Amendment of article 13

4. In article 13 (shellfish propagation and cultivation)—

- (a) in paragraph (1)(a), after “rope” insert “, marker”;
- (b) after paragraph (1) insert—

“(1A) Paragraph (1) is subject to the condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.”.

Amendment of article 15

5. In article 15 (deposit of marine chemical and marine oil treatment substances etc)—

- (a) in paragraph (2), for “4” substitute “3”;
- (b) for paragraph (5) substitute—

“(5) Condition 3 is that the deposit may only be made in accordance with an approval granted by the licensing authority for that purpose.”;
- (c) omit paragraph (6).

Amendment of article 17

6. In article 17 (scientific instruments etc)—

- (a) for paragraph (2) substitute—

“(2) Paragraph (1) is subject to condition 1, and (as that paragraph relates to the deposit of a reagent or tracer) conditions 2 and 3.

(2A) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.”;
- (b) in paragraph (3), for “1” substitute “2”;
- (c) in paragraph (4), for “2” substitute “3”;
- (d) in paragraph (5)(b), after “navigation;” insert “or”;
- (e) in paragraph (7), for “Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora” substitute “the Habitats Directive”.

Insertion of articles 17A and 17B

7. After article 17 (scientific instruments etc) insert—

“Samples for testing or analysis

17A.—(1) Article 4 applies to a removal activity carried on for the purpose of taking a sample of any material for testing or analysis.

(a) OJ No L 206, 22.7.1992, p. 7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p. 368).

(2) Paragraph (1) is subject to the condition that notice of the intention to carry on the removal activity must be given to the licensing authority before the removal activity is carried on.

(3) But article 4 does not apply—

- (a) to any such removal activity where the volume of material removed exceeds 1 cubic metre;
- (b) to any such removal activity that causes, or is likely to cause, obstruction or danger to navigation; or
- (c) to any such removal activity—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (4); and
 - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.

(4) A removal activity falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (b) it is likely to have a significant effect on a Ramsar site; or
- (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(5) In paragraph (4)(a) and (b), “likely” has the same meaning as in the Habitats Directive.

Accidental deposits – removal activity

17B.—(1) Article 4 applies to a removal activity carried on for the purpose of removing any object which has been accidentally deposited on the seabed.

(2) Paragraph (1) is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the removal activity must be given to the licensing authority before the removal activity is carried on.

(4) Condition 2 is that the removal activity must be commenced within the period of 12 months beginning with the day on which the object was accidentally deposited on the seabed.

(5) But article 4 does not apply—

- (a) to any such removal activity that causes, or is likely to cause, obstruction or danger to navigation; or
- (b) to any such removal activity—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (6); and
 - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.

(6) A removal activity falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (b) it is likely to have a significant effect on a Ramsar site; or
- (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(7) In paragraph (6)(a) and (b), “likely” has the same meaning as in the Habitats Directive.”.

Insertion of article 18A

8. After article 18 (deposits in the course of aggregates or mineral dredging) insert—

“Navigational dredging

18A.—(1) Article 4 applies to a dredging activity carried on for the purpose of conserving or maintaining the navigation of an area of the sea.

(2) Paragraph (1) is subject to conditions 1 to 3.

(3) Condition 1 is that notice of the intention to carry on the dredging activity must be given to the licensing authority before the dredging activity is carried on.

(4) Condition 2 is that the dredging activity may only be carried on at a site and at a depth where, in the 10 years before the dredging activity is commenced, at least one other dredging activity or relevant operation has been carried on for the purpose referred to in paragraph (1).

(5) Condition 3 is that at the site where the dredging activity is to be carried on no more than 1500 cubic metres of material are to be dredged as a result of—

- (a) that dredging activity; and
- (b) any other dredging activities carried on for the purpose referred to in paragraph (1) in the year before that dredging activity is commenced.

(6) But article 4 does not apply—

- (a) to any such dredging activity where the volume of material dredged exceeds 500 cubic metres;
- (b) to any such dredging activity that causes, or is likely to cause, obstruction or danger to navigation;
- (c) to any such dredging activity which has or is likely to have the effect, in relation to any body of water, of—
 - (i) preventing the achievement of any of the environmental objectives listed in the relevant river basin management plan as applicable in relation to that body of water; or
 - (ii) causing environmental damage; or
- (d) to any such dredging activity—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (7); and
 - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.

(7) A dredging activity falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (b) it is likely to have a significant effect on a Ramsar site; or
- (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

(8) In paragraph (4), “relevant operation” means any operation carried on before the commencement of Part 4 of the Act which, if it had been carried on after that commencement, would have been a dredging activity.

(9) In paragraph (6)—

“body of water” means a body of groundwater or body of surface water within the meanings given by Article 2 of the Water Framework Directive;

“environmental damage” means damage of a kind falling within regulation 4(1)(b) of the Environmental Damage (Prevention and Remediation) Regulations 2009^(a);

“river basin management plan” means a river basin management plan within the meaning of, and which is prepared pursuant to any enactment giving effect to, Article 13 of the Water Framework Directive, and “the relevant river basin management plan”, in relation to a body of water, means the river basin management plan applicable in relation to that body of water.

(10) In paragraph (7)(a) and (b), “likely” has the same meaning as in the Habitats Directive.

(11) In paragraph (9), “the Water Framework Directive” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy^(b).”.

Amendment of article 21

9. In article 21 (use of vehicles to remove litter or seaweed from beaches)—

(a) in the heading, for “or seaweed” substitute “, seaweed or dead animals”;

(b) in paragraph (1), for “or seaweed” substitute “, seaweed or dead animal”;

(c) after paragraph (1) insert—

“(1A) Paragraph (1) is subject to the condition that notice of the intention to carry on the removal activity must be given to the licensing authority before the removal activity may be carried on for the purpose of removing a dead animal.”;

(d) in paragraph (5), for “Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora” substitute “the Habitats Directive”.

Amendment of article 22

10. In article 22 (deposits in the course of normal navigation or maintenance), in paragraph (2)(a), after “disposal,” insert “or”.

Amendment of article 25

11. In article 25 (moorings and aids to navigation)—

(a) after paragraph (2) insert—

“(2A) Paragraph (1) is subject to the condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.”;

(b) in paragraph (3), for “But article 4 does not apply to” substitute “In paragraph (1)(a), “deposit or works activity” does not include”.

Insertion of article 25A

12. After article 25 (moorings and aids to navigation) insert—

“Pontoon

25A.—(1) Article 4 applies—

(a) S.I. 2009/153.

(b) OJ No. L 327, 22.12.2000, p.1, last amended by Directive 2009/31/EC of the European Council and of the Council (OJ No. L 140, 5.6.2009, p. 114).

- (a) to a deposit or works activity carried on by, or with the consent required from and granted by, a harbour authority for the purpose of providing a pontoon;
 - (b) to a removal activity carried on by, or with the consent required from and granted by, a harbour authority for the purpose of removing a pontoon.
- (2) Paragraph (1) is subject to the condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.
- (3) Sub-paragraph (a) of paragraph (1) is subject to the condition that where—
- (a) the activity is carried on by, or with the consent required from and granted by, a harbour authority, and
 - (b) in the 6 months before the activity is commenced, more than 10 pontoons have been constructed or deposited by, or with the consent required from and granted by, that authority,
- the activity may only be carried on with an approval granted by the licensing authority for that purpose.
- (4) But article 4 does not apply to any such activity which consists of the deposit, construction or removal of a pontoon the deck of which has an area exceeding 30 square metres.”.

Insertion of article 26A

13. After article 26 (markers for European marine sites and marine conservation zones) insert—

“Temporary markers

- 26A.**—(1) Article 4 applies—
- (a) to a deposit made for the purpose of placing a marker;
 - (b) to a removal activity carried on for the purpose of meeting the condition in paragraph (3).
- (2) Paragraph (1) is subject to the condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.
- (3) Sub-paragraph (a) of paragraph (1) is subject to the condition that the marker and its appurtenances must be removed from the sea and, where applicable, the seabed within the period of 28 days beginning with the day on which the deposit is made.
- (4) But article 4 does not apply—
- (a) to any such activity that causes, or is likely to cause, obstruction or danger to navigation; or
 - (b) to any such activity—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (5); and
 - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.
- (5) An activity falls within this paragraph if—
- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
 - (b) it is likely to have a significant effect on a Ramsar site; or
 - (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MCZ; or
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- (6) In paragraph (5)(a) and (b), “likely” has the same meaning as in the Habitats Directive.”.

6th March 2013

Richard Benyon
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409) (“the Principal Order”). The Principal Order specifies activities which are not to need a marine licence, or are not to need a marine licence if conditions specified in the Principal Order are satisfied. This Order (like the Principal Order) applies in relation to any area, and any licensable marine activity carried on in that area, in relation to which the Secretary of State is the appropriate licensing authority by virtue of section 113 of the Marine and Coastal Access Act 2009.

Articles 4, 5 and 6 of this Order make modifications to the conditions subject to which activities are not to need a marine licence under, respectively, articles 13 (relating to shellfish propagation and cultivation), 15 (relating to marine chemical substances, marine oil treatment substances and substances for removing surface fouling matter) and 17 (relating to scientific instruments, reagents and tracers). Article 4 also makes modifications to article 13 of the Principal Order to include the deposit of a marker (in the course of the propagation or cultivation of shellfish) as an activity which is not to need a marine licence by virtue of that provision.

Article 7 of this Order inserts new articles 17A and 17B into the Principal Order to specify additional activities which are not to need a marine licence. Article 17A relates to a removal activity carried on for the purpose of taking a sample for testing or analysis. Article 17B relates to a removal activity carried on for the purpose of removing objects accidentally deposited on the seabed.

Article 8 of the Order inserts a new article 18A into the Principal Order. Article 18A specifies a dredging activity carried on for the purpose of conserving or maintaining the navigation of an area of the sea as an activity which is not to need a marine licence.

Article 9 makes modifications to article 21 of the Principal Order (relating to the use of vehicles by local authorities to remove seaweed or litter from beaches) to specify an additional activity covered by that provision which is not to need a marine licence.

Article 11 makes modifications to article 25 of the Principal Order (relating to activities carried on by or with the consent of a lighthouse authority or harbour authority for the purpose of providing or removing a mooring of a certain description or an aid to navigation) to insert an additional condition subject to which activities are not to need a marine licence by virtue of article 25.

Article 12 inserts a new article 25A into the Principal Order. Article 25A specifies the deposit or removal of a pontoon by or with the consent of a harbour authority as an activity which is not to need a marine licence.

Article 13 inserts a new article 26A into the Principal Order. Article 26A specifies the deposit or removal of a temporary marker as an activity which is not to need a marine licence.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

STATUTORY INSTRUMENTS

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£5.75

E6018 03/2013 136018T 19585

ISBN 978-0-11-153644-5



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