

2011 No. 78

ENVIRONMENTAL PROTECTION

MARINE LICENSING

The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011

Made - - - - - *16th March 2011*

Coming into operation - - - - - *6th April 2011*

The Department of the Environment, as the appropriate licensing authority under section 113(6)(b) of the Marine and Coastal Access Act 2009(a), in exercise of the powers conferred by sections 74(1) and 316(1), having had regard to the matters mentioned in section 74(4) and having carried out consultation in accordance with section 74(5) of that Act, makes the following Order.

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 and comes into operation on 6th April 2011.

Application

2. This Order applies in relation to Northern Ireland and the Northern Ireland inshore region, and any activity carried on in Northern Ireland or the Northern Ireland inshore region, for which the Department of the Environment is the appropriate licensing authority under section 113(6) of the Marine and Coastal Act 2009(b).

Interpretation

3.—(1) In this Order—

“the Act” means the Marine and Coastal Access Act 2009;

“activity” means licensable marine activity(c);

“disposal” has the meaning given by Article 3 of the Waste Framework Directive;

(a) 2009 c.23.

(b) By virtue of section 113(6) of the Marine and Coastal Access Act 2009, the Department of the Environment is the appropriate licensing authority. See section 322(1) for a definition of this region and section 66 for list of licensable marine activities. Functions not licensed under this legislation include fisheries, oil and gas.

(c) See sections 66 and 115(1) of the Marine and Coastal Access Act 2009.

“a European site” means—

- (a) a European site within the meaning of regulation 9(1) of the Conservation (Nature Habitats, etc.) Regulations (Northern Ireland) 1995(a); and
- (b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(b);

“exempt activity” has the meaning given by Article 4;

“fishing operation” includes fishing for or taking shellfish but does not include an activity relating to the propagation or cultivation of shellfish;

“harbour authority” has the meaning given by section 38(1) of the Harbours Act (Northern Ireland) 1970(c);

“licensing authority” means the appropriate licensing authority under section 113(6)(b) of the Act;

“lighthouse authority” means a general lighthouse authority or a local lighthouse authority within the meaning of Part 8 of the Merchant Shipping Act 1995(d);

“plan or project” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(e);

“protected feature” has the meaning given by section 147(1) of the Act;

“Ramsar site” means wetlands designated as internationally important under the Convention of Wetlands (Ramsar 1971)(f);

“shellfish” includes crustaceans and molluscs of any kind and any part of a shellfish;

“waste” means anything that—

- (a) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Article 5(1) of that Directive; and
- (b) is not excluded from the scope of that Directive by Article 2(1), 2(2) or 2(3) of that Directive; and

“the Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste(g).

(2) A reference in this Order to a numbered item is a reference to that numbered item in section 66(1) of the Act (Licensable marine activities).

(3) The Interpretation Act (Northern Ireland) 1954(h) applies to this Order as it applies to an Act of the Assembly.

PART 2

Exempt activities – general provisions

Exemption from need for marine licence

4.—(1) A marine licence is not needed for an activity that is an exempt activity.

(2) An activity is an exempt activity to the extent that—

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- (a) SR 1995 No. 380.
 - (b) S.I. 2007/1842, last amended by S.I. 2010/1513.
 - (c) 1970 c.1.
 - (d) 1995 c. 21. See section 193 of that Act, to which section relevant amendments have been made by paragraph 6 of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997 (c. 28).
 - (e) 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).
 - (f) These sites are given statutory protection by the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. No. 170
 - (g) OJ No L 312, 22.11.2008, p 3.
 - (h) 1954 c.33 (N.I.)

- (a) it is an activity to which this Article applies^(a); and
 - (b) where the application of this Article to an activity is subject to a condition specified in Part 3, that condition is satisfied in relation to that activity.
- (3) But this is subject to paragraph (4) and Article 5.
- (4) Nothing in this Order makes an activity an exempt activity to the extent to which the carrying on of the activity is contrary to international law.

Activities relating to disposal or recovery of waste

5.—(1) An activity carried on by an establishment or undertaking involving the disposal or recovery of waste is not an exempt activity unless conditions 1 to 3 are satisfied.

(2) Condition 1 is that the establishment or undertaking is carrying out—

- (a) disposal of its own non-hazardous waste at the place of production; or
- (b) recovery of waste.

(3) Condition 2 is that the type and quantity of waste involved, and the method of disposal or recovery, are consistent with the need to attain the objectives mentioned in Article 13 of the Waste Framework Directive.

(4) Condition 3 is that the establishment or undertaking must be registered with the licensing authority.

(5) The licensing authority must maintain a register containing the name and address of any establishment or undertaking carrying on an exempt activity involving the disposal or recovery of waste in the licensing authority’s area.

(6) The register may be kept in any form.

(7) In this Article—

- (a) “establishment” and “undertaking” have the same meaning as in Articles 23 and 24 of the Waste Framework Directive;
- (b) “recovery” has the meaning given by Article 3 of the Waste Framework Directive; and
- (c) “non-hazardous waste” has the same meaning as in the Waste Framework Directive.

PART 3

Activities to which Article 4 applies and conditions

Interpretation of this Part

6.—(1) In this Part, a reference to a numbered item is a reference to that numbered item in section 66(1) of the Act.

(2) In this Part—

- (a) a reference to a “deposit” is a reference to a deposit falling within item 1 (deposits within UK marine licensing area etc), 2 (deposits from British vessels etc anywhere at sea etc), 3 (deposit from vehicle, vessel etc loaded in United Kingdom except Scotland or UK marine licensing area), or except as otherwise provided, 10 (deposit of explosives within UK marine licensing area etc);
- (b) a reference to a “dredging activity” is a reference to an activity falling within item 9 (dredging within UK marine licensing area);

(a) Part 3 sets out the activities to which this article applies.

- (c) a reference to a “removal activity” is a reference to an activity falling within item 8 (use of vehicle, vessel etc to remove substance or object from sea bed within UK marine licensing area); and
- (d) a reference to a “works activity” is a reference to an activity falling within item 7 (construction, alteration or improvement of works within UK marine licensing area etc).

Activities falling within Part 6 of the Merchant Shipping Act 1995

7. Article 4 applies to an activity falling within the subject matter of Part 6 of the Merchant Shipping Act 1995(a) (pollution etc).

Safety directions under the Merchant Shipping Act 1995

8. Article 4 applies to an activity carried on—
- (a) by or on behalf of the Secretary of State in exercise of a power under Schedule 3A to the Merchant Shipping Act 1995(b) (safety directions);
 - (b) by any person for the purpose of complying with a direction under that Schedule; or
 - (c) by any person for the purpose of avoiding interference with action taken by virtue of that Schedule.

Salvage activities

9. Article 4 applies to an activity carried on, in the course of a salvage operation, for the purpose of ensuring the safety of a vessel or preventing pollution.

Fire fighting etc

10. Article 4 applies to an activity carried on for the purpose of fighting, or preventing the spread of, any fire.

Air accident investigation

11. Article 4 applies to a deposit or removal activity carried on for the purpose of recovering any substance or object as part of an investigation into any accident involving any aircraft.

Fishing operations

12.—(1) Article 4 applies to any of the following activities if carried on in the course of a fishing operation—

- (a) the deposit of fishing gear, other than a deposit made for the purpose of disposal;
- (b) a removal activity or dredging activity carried on for the purpose of—
 - (i) fishing for or taking fish; or
 - (ii) removing fishing gear; or
- (c) the deposit by way of return to the sea of any fish or other object.

(2) Article 4 also applies to the deposit by way of return to the sea of any fish during the course of fish processing at sea.

(3) In this Article—

(a) 1995 c. 21. Relevant amendments and repeals to provisions in Part 6 were made by the Merchant Shipping (Pollution) Act 2006 (c. 8); the Merchant Shipping and Maritime Security Act 1997 (c. 28); the Pollution Prevention and Control Act 1999 (c. 24); the Marine Safety Act 2003 (c. 16), and S.I. 2006/1244.

(b) 1995. c 21. Section 108A of the Merchant Shipping Act 1995, which gives effect to Schedule 3A, was inserted by section 1(1) of the Marine Safety Act 2003, c. 16

- (a) “fish” includes shellfish and any part of a fish; and
- (b) “fishing gear” includes gear used to fish for or take shellfish, but does not otherwise include anything used in connection with the propagation or cultivation of shellfish.

Shellfish propagation and cultivation

13.—(1) Article 4 applies—

- (a) to the deposit of any shellfish, trestle, raft, cage, pole, rope or line in the course of the propagation or cultivation of shellfish; and
- (b) to a removal activity or dredging activity carried on for the purpose of moving shellfish within the sea in the course of its propagation or cultivation.

(2) But Article 4 does not apply—

- (a) to any such deposit made for the purpose of disposal;
- (b) to any such deposit made for the purpose of creating, altering or maintaining an artificial reef; or
- (c) to any such deposit that causes or is likely to cause obstruction or danger to navigation.

Discharge etc of offshore chemicals and oil

14. Article 4 applies to any activity in relation to which a permit is required under—

- (a) the Offshore Chemicals Regulations 2002(a); or
- (b) the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(b).

Deposits of marine chemical and marine oil treatment substances etc

15.—(1) Article 4 applies—

- (a) to the deposit of any marine chemical treatment substance;
- (b) to the deposit of any marine oil treatment substance; or
- (c) to the deposit of any substance used or intended to be used for removing surface fouling matter from the surface of the sea or of the sea bed.

(2) Paragraph (1) is subject to conditions 1 to 4.

(3) Condition 1 is that the substance must be one the use of which is for the time being approved for the purposes of this Order by the licensing authority.

(4) Condition 2 is that the substance must be used in accordance with any conditions to which the approval is subject.

(5) Condition 3 is that no deposit must be made in an area of the sea of a depth of less than 20 metres or within one nautical mile of any such area except with the approval of the licensing authority.

(6) Condition 4 is that no deposit of any marine chemical treatment substance or marine oil treatment substance may be made below the surface of the sea except with the approval of the licensing authority.

(7) In this Article, “marine chemical treatment substance” and “marine oil treatment substance” have the same meaning given by section 107(2) of the Act.

(a) S.I. 2002/1355, amended by S.I. 2005/2055, regulation 20 and Schedule 2, and S.I. 2010/1513, regulation 6.

(b) S.I. 2005/2055, amended by S.I. 2010/1513, regulation 9.

Deposit of equipment to control, contain or recover oil etc

16.—(1) Article 4 applies to the deposit of any equipment for the purpose of controlling, containing or recovering any—

- (a) oil;
- (b) mixture containing oil;
- (c) chemical;
- (d) flotsam; or
- (e) algal bloom.

(2) But Article 4 does not apply to a deposit to the extent that it falls within item 10.

Scientific instruments etc

17.—(1) Article 4 applies—

- (a) to the deposit of any scientific instrument or associated equipment in connection with any scientific experiment or survey;
- (b) to the deposit of any reagent;
- (c) to the deposit of any tracer; or
- (d) to a removal activity carried on for the purpose of removing any scientific instrument or associated equipment referred to in sub-paragraph (a).

(2) Sub-paragraphs (b) and (c) of paragraph (1) are subject to conditions 1 and 2.

(3) Condition 1 is that the reagent or tracer must be one the use of which is for the time being approved for the purposes of this Order by the licensing authority.

(4) Condition 2 is that the reagent or tracer must be used in accordance with any conditions to which the approval is subject.

(5) But Article 4 does not apply—

- (a) to any such deposit made for the purpose of disposal;
- (b) to any such deposit that causes or is likely to cause obstruction or danger to navigation; or
- (c) to any such deposit or removal activity—
 - (i) that falls within sub-paragraph (a) or (b) of paragraph (6); and
 - (ii) that is not directly connected with or necessary to the management of the site referred to in that sub-paragraph.

(6) A deposit or 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; or
- (b) it is likely to have a significant effect on a Ramsar site.

Deposits in the course of aggregates or mineral dredging

18. Article 4 applies—

- (a) to the deposit, on the site of dredging for aggregates or other minerals, of any substance or object taken from the sea in the course of such dredging (other than any of the aggregates or minerals being dredged); and
- (b) to the deposit of waters (whether by overflow or pumped discharge) from the hold of a vessel—
 - (i) in the normal course of dredging for aggregates or other minerals; or
 - (ii) at the site of such dredging following its completion or during the return journey of the vessel.

Maintenance of coast protection, drainage and flood defence works

19.—(1) Article 4 applies to an activity carried on for the purpose of maintaining any—

- (a) coast protection works;
- (b) drainage works; or
- (c) flood defence works.

(2) Paragraph (1) is subject to the condition is that the activity is carried on within the existing boundaries of the works being maintained.

(3) But Article 4 does not apply—

- (a) in relation to any such activity which consists of beach replenishment; or
- (b) to an activity that causes or is likely to cause obstruction or danger to navigation.

Emergency works in response to flood or flood risk

20.—(1) Article 4 applies to an activity carried on for the purpose of executing emergency works in response to any flood or the imminent risk of any flood.

(2) Paragraph 1 is subject to the condition that the activity is notified to the licensing authority before it is carried on.

Use of vehicles to remove litter or seaweed from beaches

21.—(1) Article 4 applies to a removal activity using a vehicle carried on by or on behalf of a local authority for the purpose of removing any litter or seaweed from a beach.

(2) But Article 4 does not apply to any such removal activity—

- (a) that falls within sub-paragraph (a) or (b) of paragraph (3); and
- (b) that is not directly connected with or necessary to the management of the site referred to in that sub-paragraph.

(3) Such 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; or
- (b) it is likely to have a significant effect on a Ramsar site.

(4) In paragraph (1), “local authority” has the meaning given by section 68(9) of the Act.

(5) In Paragraph (3)(a) and (b), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^(a).

Deposits in the course of normal navigation or maintenance

22.—(1) Article 4 applies to the deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance.

(2) But Article 4 does not apply—

- (a) to any such deposit made for the purpose of disposal; or
- (b) to any such deposit to the extent that it falls within item 10.

Maintenance of harbour works

23.—(1) Article 4 applies to a deposit, removal activity or works activity carried on by or on behalf of a harbour authority for the purpose of maintaining any harbour works.

(a) OJ No L 206, 22.7.1992

(2) Paragraph (1) is subject to the condition that the activity is carried on within the existing boundaries of the work being maintained.

Removal of obstruction or danger to navigation

24.—(1) Article 4 applies to a removal activity carried on by a person referred to in paragraph (2) for the purpose of removing anything causing or likely to cause obstruction or danger to navigation.

(2) The persons are—

- (a) a conservancy authority;
- (b) a harbour authority;
- (c) a lighthouse authority; or
- (d) a navigation authority.

(3) In paragraph (2)—

“conservancy authority” has the meaning given by section 313(1) of the Merchant Shipping Act 1995(a); and

“navigation authority” means any person having powers under any enactment or statutory provision to work or maintain a canal or other inland navigation, including a navigation in tidal water.

Moorings and aids to navigation – deposits and construction

25.—(1) Article 4 applies—

- (a) to a deposit or works activity carried on by a person referred to in paragraph (2) for the purpose of providing a pile mooring, swinging mooring, trot mooring or aid to navigation; or
- (b) to a removal activity carried on by any such person for the purpose of removing any such mooring or aid to navigation.

(2) The persons are—

- (a) a harbour authority;
- (b) a lighthouse authority; or
- (c) any other person in accordance with a consent required from, and granted by, any such authority,

(3) But Article 4 does not apply to any such activity which consists of the deposit or construction of a pontoon.

Dry Docks

26. Article 4 applies to a deposit or removal activity in a dry dock area within a harbour which is regulated under the Harbours Act (Northern Ireland) 1970.

Launching of vessels etc

27. Article 4 applies to a deposit in connection with the launching of any vehicle, vessel, aircraft, marine structure or floating container.

(a) 1995 c. 21. The definition of ‘harbour authority’ was substituted by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 29(1) and Schedule 6, paragraph 19(2)(a).

Dismantling of ships

28.—(1) Article 4 applies to a deposit or removal activity carried on as part of dismantling a ship that is waste.

(2) But Article 4 does not apply to any such deposit to the extent that it falls within item 10.

Diver trails within restricted areas

29.—(1) Article 4 applies to a deposit or removal activity carried on for the purpose of placing, securing or removing signage or other identifying markers relating to a wreck within an area designated as a restricted area within the meaning of section 1 of the Protection of Wrecks Act 1973(a).

(2) But Article 4 does not apply to a deposit to the extent that it falls within item 10.

Coastguard activities

30. Article 4 applies to an activity carried out by or on behalf of the Maritime and Coastguard Agency(b) for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure;
- (b) saving life; or
- (c) training for any purpose referred to in sub-paragraph (a) or (b).

Deposit and use of flares etc - safety purposes and training

31. Article 4 applies to the deposit or use of any distress flare, smoke float or similar pyrotechnic substance or object for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure;
- (b) saving life; or
- (c) training for any purpose referred to in sub-paragraph (a) or (b).

Cables and pipelines – authorised emergency inspection and repair

32.—(1) Article 4 applies to a deposit, removal activity or dredging activity carried on for the purpose of executing emergency inspection or repair works to any cable or pipeline.

(2) Paragraph (1) is subject to the condition that the activity may only be carried on in accordance with an approval granted by the licensing authority for that purpose.

(3) But Article 4 does not apply to a deposit falling within item 10.

Bored tunnels

33.—(1) Article 4 applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

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

(3) 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.

(4) Condition 2 is that the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) But Article 4 does not apply to any such deposit carried on for the purpose of disposal.

(a) 1973 c. 33.

(b) The Maritime and Coastguard Agency (MCA) was created by the merger of the Coastguard Agency and the Marine Safety Agency. The MCA's statutory powers and responsibilities derive primarily from the Coastguard Act 1925 (c.88), the Merchant Shipping Act 1995 (c 21) and the Merchant Shipping and Maritime Security Act 1997 (c. 28)

Rights of foreign vessels etc under international law

34.—(1) Article 4 applies to an activity to the extent that it is carried on in exercise of a right under rules of international law, by or in relation to—

- (a) a third country vessel; or
- (b) a warship, naval auxiliary, other vessel or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service (whether or not the warship, naval auxiliary or other vessel is a third country vessel).

(2) In paragraph (1), “third country vessel” means a vessel which—

- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a Member State; and
- (b) is not registered in a Member State.

(3) Article 4 only applies to an activity to the extent that it falls within item 1, 2, 3 or 8.

(4) Paragraph 1 is subject to the condition that the approval of a lighthouse authority or a harbour authority is given prior to the deposit or removal activity.

PART 4

Amendment and revocations

Amendment

35.—(1) The Waste Management Licensing Regulations (Northern Ireland) 2003^(a) are amended as follows.

(2) In regulation 22(2)(b)(ii), for “Article 3 of the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995”^(b) substitute “Article 4 of the Marine Licensing (Exempted Activities) Order 2011”^(c).

Revocations

36. The following are revoked—

- (a) the Deposits in the Sea (Exemptions) Order (Northern Ireland) 1995^(d);
- (b) regulation 23 of the Waste Management Licensing Regulations (Northern Ireland) 2003^(e);
- (c) regulation 20 of the Offshore Chemicals Regulations 2002^(f); and
- (d) regulation 18(2) of the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005^(g)

(a) SR 2003 No. 493.

(b) SR 1995 380.

(c) Regulation 20(2) was substituted in relation to England and Wales by S.I. 2007/3538, regulation 73 and paragraph 34(1) and (4) of Schedule 21.

(d) 1995/234 (N.I.)

(e) 2003/493.

(f) S.I. 2002/1355.

(g) S.I. 2005/2055.

Sealed with the Official Seal of the Department of the Environment on 16th March 2011.



Maggie Smith
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies activities which do not need a marine licence, or do not need a marine licence if conditions specified in the Order are satisfied. It applies in relation to any area, and any licensable marine activity taking place in that area, in relation to which the Department of the Environment is the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009 (Article 2).

Part 1 (Articles 1 to 3) contains introductory provisions.

Part 2 (Articles 4 to 5) contains provisions setting out when a marine licence is not needed for a licensable marine activity, and provisions relating to waste (which implement in part Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3).

Part 3 (Articles 6 to 34) contains provisions setting out the licensable marine activities which do not need a marine licence (including any conditions that must be satisfied as part of that exemption).

Part 4 (Articles 35 and 36) contains an amendment and revocations.

Guidance on the use of these Regulations can be obtained from the Marine Assessment and Licensing Team, Northern Ireland Environment Agency, Department of the Environment, 17 Antrim Road, Lisburn, Co. Antrim, BT28 3AL and from the Agency's website at www.ni-environment.gov.uk.

A full regulatory impact assessment of the effects that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Marine Policy Team, 3rd Floor, Millennium House, 17-25 Great Victoria Street, Belfast, BT2 7AD and from the Department of the Environment website, www.doeni.gov.uk.

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