

2011 No. 556 (C. 19)

ENVIRONMENTAL PROTECTION

FISHERIES

LICENSING (MARINE)

MARINE POLLUTION

**The Marine and Coastal Access Act 2009 (Commencement
No.5, Consequential and Transitional Provisions) Order 2011**

Made - - - - *28th February 2011*

Laid before Parliament *3rd March 2011*

Coming into force in accordance with article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 316(1)(b) and (2), 320 and 324(3) and (4) of the Marine and Coastal Access Act 2009(a).

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Marine and Coastal Access Act 2009 (Commencement No.5, Consequential and Transitional Provisions) Order 2011.

(2) This Order, except for articles 3 to 5 and the Schedule, comes into force on 1st April 2011.

(3) Articles 3 to 5 and the Schedule come into force on 6th April 2011.

(4) An amendment made by this Order has the same extent as the provision to which it relates.

(5) In this Order, “the 2009 Act” means the Marine and Coastal Access Act 2009.

Appointed day – 1st April 2011

2.—(1) The day appointed for the coming into force of the provisions of the 2009 Act referred to in paragraph (2) is 1st April 2011.

(2) The provisions are—

(a) section 153 (management of inshore fisheries);

(b) section 154 (protection of marine conservation zones);

(c) sections 155 to 164 (which deal with byelaws including emergency byelaws, procedure, inquiries and offences);

- (d) section 166 (powers of inshore fisheries and conservation officers);
 - (e) sections 167 to 171 (which deal with the power to enter into agreements with eligible bodies);
 - (f) section 172 (development, etc of fisheries);
 - (g) section 173 (provision of services by inshore fisheries and conservation authorities);
 - (h) section 175 (information);
 - (i) sections 176(2) and 178 (which deal with accounts and annual report);
 - (j) section 183 (report by Secretary of State);
 - (k) section 184 (minor and consequential amendments relating to inshore fisheries and conservation authorities) and Schedule 14 (inshore fisheries and conservation authorities: amendments), so far as not already commenced;
 - (l) section 185 (application to the Crown);
 - (m) section 186 (interpretation), so far as not already commenced;
 - (n) section 187 (abolition of local fisheries committees), except so far as relating to sea fisheries districts in Wales, or any part of a sea fisheries district lying in Wales^(a);
 - (o) Part 4 (management of inshore fisheries) of Schedule 22 (repeals) and section 321 (repeals) so far as relating to that Part, except so far as relating to sea fisheries districts in Wales, or any part of a sea fisheries district lying in Wales^(b).
- (3) In paragraph (2)(n) and (o), “Wales” includes the Welsh inshore region.

Appointed day – 6th April 2011

3.—(1) The day appointed for the coming into force of the provisions of the 2009 Act referred to in paragraph (2) is 6th April 2011.

(2) The provisions are—

- (a) Part 4 (sections 65 to 115) (marine licensing), and Schedules 7 (further provision about civil sanctions under Part 4), 8 (licensing: minor and consequential amendments) and 9 (licensing: transitional provisions relating to Part 4), so far as not already commenced;
- (b) in Part 8 (enforcement)—
 - (i) section 236 (enforcement of marine licensing regime);
 - (ii) section 240 (marine licensing: oil and gas and other reserved matters);
 - (iii) section 241 (marine licensing: Northern Ireland);
 - (iv) section 242 (marine licensing: enforcement in Scottish offshore region);
 - (v) Chapter 3 (section 263) (licensing enforcement powers);
- (c) section 314 (works detrimental to navigation);
- (d) Part 2 (marine licensing) of Schedule 22, and section 321 so far as relating to that Part.

Transitional provisions relating to Schedule 9 to the 2009 Act

4.—(1) This article applies to—

- (a) marine waters within the meaning given by regulation 2(1) of the Marine Minerals Regulations; and
- (b) Welsh waters within the meaning given by regulation 2(1) of the Welsh Marine Minerals Regulations.

(a) Section 187 has been commenced in relation to Wales (within the meaning of section 158(1) and (3) of the Government of Wales Act 2006 (c. 32)) by article 3(a) of S.I. 2010/630.

(b) Part 4 of Schedule 22, and section 321 so far as relating to that Part, has been commenced in relation to Wales (within the meaning of section 158(1) and (3) of the Government of Wales Act 2006) by article 3(b) of S.I. 2010/630.

(2) Sub-paragraphs (1) to (3) of paragraph 2 of Schedule 9 to the 2009 Act (certain CPA consents to be deemed marine licences) do not apply in relation to a CPA consent for any activity to be carried out in the course of relevant dredging where, before 6th April 2011, no environmental impact assessment has been carried out in relation to the activity proposed or the dredging in the course of which it is to be carried out.

(3) But paragraph (2) does not apply where, before 6th April 2011—

- (a) the Secretary of State has made a determination under regulation 5(2) of the Marine Minerals Regulations or the regulator has made a preliminary determination under regulation 6 of those Regulations that the relevant dredging is not a relevant project;
- (b) the Welsh Ministers have received a determination from the Secretary of State under regulation 5(2) of the Welsh Marine Minerals Regulations or have made a preliminary determination under regulation 6 of those Regulations that the relevant dredging is not a relevant project; or
- (c) a decision has been made under the Marine Works Regulations that an environmental impact assessment is not required in relation to such part of the activity being carried out in the course of the relevant dredging as required CPA consent.

(4) For the purposes of paragraph (2), an environmental impact assessment includes—

- (a) an assessment of any effects of the relevant dredging on the environment in accordance with—
 - (i) the Marine Minerals Regulations; or
 - (ii) the Welsh Marine Minerals Regulations;
- (b) an assessment of any effects on the environment of the activity being carried out in the course of the relevant dredging and requiring CPA consent, in accordance with the Marine Works Regulations;
- (c) an assessment of any effects of the relevant dredging on the environment, being an assessment which—
 - (i) has been carried out by a consenting authority other than the appropriate authority;
 - (ii) is sufficient to meet, in relation to the relevant dredging, the requirements of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment^(a).

(5) For the purposes of paragraph (3)(c) a decision made under the Marine Works Regulations that an environmental impact assessment is not required includes—

- (a) a determination to that effect made by the appropriate authority under regulation 8 or 10 of the Marine Works Regulations;
- (b) a direction made by the Secretary of State under regulation 9 of those Regulations; and
- (c) a screening opinion to that effect given by the appropriate authority under regulation 11 of those Regulations.

(6) In this article—

- (a) “appropriate authority” has the same meaning as in regulation 2(1) of the Marine Works Regulations;
- (b) “consenting authority”, in relation to relevant dredging, means any authority whose determination was required under any of the Government View documents, and for this purpose, “the Government View documents” means—
 - (i) the document entitled “Offshore Dredging for Sand, Gravel and Other Minerals”, dated April 1989, and published by the Department of the Environment and the Welsh Office; and

(a) OJ No. L 175, 5.7.1985, p. 40, as last amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009, OJ No. L 140, 5.6.2009, p. 114.

- (ii) the document entitled “Government View: New Arrangements for the Licensing of Minerals Dredging”, dated May 1998, and published by the Department of the Environment, Transport and the Regions and the Welsh Office;
- (c) “CPA consent” means consent under section 34(1) of the Coast Protection Act 1949(a);
- (d) “the Marine Minerals Regulations” means the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007(b), as those Regulations had effect immediately before 6th April 2011;
- (e) “the Marine Works Regulations” means the Marine Works (Environmental Impact Assessment) Regulations 2007(c);
- (f) “relevant dredging” means dredging within the meaning given by—
 - (i) regulation 2 of the Marine Minerals Regulations; or
 - (ii) regulation 2 of the Welsh Marine Minerals Regulations;
- (g) “the Welsh Marine Minerals Regulations” means the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007(d), as those Regulations had effect immediately before 6th April 2011.

Consequential amendments

5. The Schedule (consequential amendments (marine licensing)) has effect.

28th February 2011

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

SCHEDULE

Article 5

Consequential amendments (marine licensing)

The Urban Waste Water Treatment (England and Wales) Regulations 1994

1.—(1) The Urban Waste Water Treatment (England and Wales) Regulations 1994(e) are amended as follows.

(2) For regulation 9 (dumping of sludge from ships), substitute—

“9. In exercising its functions under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009, the appropriate licensing authority (within the meaning of section 113 of that Act) must ensure that the dumping of sludge from ships to surface waters is not permitted.”.

(3) In regulation 11 (monitoring)—

- (a) in sub-paragraphs (b) and (d) of paragraph (1), in each case omit “(other than by means of dumping from ships)”;
- (b) omit paragraph (2);

(a) 1949 c. 74; section 34 was amended by section 36 of the Merchant Shipping Act 1988 (c. 12), and the Statute Law Revision Act 1953 (c. 5), and is repealed in relation to England and Wales by paragraph 1(2) of Schedule 8 to the Marine and Coastal Access Act 2009 (which is commenced by article 3 of this instrument), and in relation to Scotland by paragraph 1(a) of Schedule 4 to the Marine (Scotland) Act 2010 (asp 5) (commenced by article 3(d) of S.S.I. 2011/58 (C. 8)).

(b) S.I. 2007/1067.

(c) S.I. 2007/1518, amended in relation to England and Wales by S.I. 2009/2258.

(d) S.I. 2007/2610 (W.221).

(e) S.I. 1994/2841; regulation 11 was amended by paragraph 233(1) of Schedule 22 to the Environment Act 1995 (c. 25). There are other amendments not relevant to this instrument.

- (c) in paragraph (3)—
 - (i) omit “and the licensing authority”,
 - (ii) for “them” substitute “it”,
 - (iii) omit “or (2)”.

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003

2.—(1) The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(a) are amended as follows.

(2) In Schedule 2 (enactments in relation to which duties in regulation 3 apply)—

- (a) omit paragraph 3;
- (b) after paragraph 7 insert—

“8. Part 4 of the Marine and Coastal Access Act 2009 (marine licensing).”.

The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004

3.—(1) The Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(b) are amended as follows.

(2) In Schedule 2 (relevant functions), after paragraph 7 insert—

“8. The Marine and Coastal Access Act 2009.”

The Scarweather Sands Offshore Wind Farm Order 2004

4.—(1) The Scarweather Sands Offshore Wind Farm Order 2004(c) is amended as follows.

(2) In article 10 (abatement of works abandoned or decayed), in paragraph (3)—

- (a) in the English text after the word “imposed” to the end, substitute—

“in a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009.”;
- (b) in the Welsh text after the word “osodwyd” to the end, substitute—

“mewn trwydded forol a roddwyd o dan Ran 4 o Ddeddf y Môr a Mynediad i’r Arfordir 2009.”.

The Hazardous Waste (England and Wales) Regulations 2005

5.—(1) The Hazardous Waste (England and Wales) Regulations 2005(d) are amended as follows.

(2) In regulation 5(1) (general interpretation), for the definition of “waste permit” substitute—

““waste permit” means a marine licence under Part 4 of the Marine and Coastal Access Act 2009 or an environmental permit.”.

The Hazardous Waste (Wales) Regulations 2005

6.—(1) The Hazardous Waste (Wales) Regulations 2005(e) are amended as follows.

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- (a) S.I. 2003/3242, to which there are amendments not relevant to this instrument.
 - (b) S.I. 2004/99, to which there are amendments not relevant to this instrument.
 - (c) S.I. 2004/3054 (W.263).
 - (d) S.I. 2005/894. A relevant amendment was made by the Environmental Permitting (England and Wales) Regulations (S.I. 2010/675), Schedule 26, paragraph 23(2)(d).
 - (e) S.I. 2005/1806 (W.138); a relevant amendment was made to the English text by paragraph 25 of Schedule 26 to S.I. 2010/675.

(2) In regulation 5(1) (general interpretation), for the definition of “waste permit” (“trwydded gwastraff”)—

(a) in the English text substitute—

““waste permit” (“trwydded gwastraff”) means a marine licence under Part 4 of the Marine and Coastal Access Act 2009 or an environmental permit.”;

(b) in the Welsh text substitute—

“ystyr “trwydded gwastraff” (“waste permit”) yw trwydded forol o dan Ran 4 o Ddeddf y Môr a Mynediad i’r Arfordir 2009 neu drwydded amgylcheddol;”.

The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006

7.—(1) The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) are amended as follows.

(2) For sub-paragraph (b) of rule 7(8) (requirement for environmental statement and screening decisions) and 8(4) (scoping opinion) in each case substitute—

“(b) where the proposals relate to a project within tidal waters and would require a licence under Part 4 of the Marine and Coastal Access Act 2009, the appropriate licensing authority within the meaning of section 113 of that Act;”.

The London Gateway Port Harbour Empowerment Order 2008

8.—(1) The London Gateway Port Harbour Empowerment Order 2008(b) is amended as follows.

(2) In article 13 (power to dredge), for paragraph (4)(b) substitute—

“(b) in accordance with any marine licence granted under Part 4 of the Marine and Coastal Access Act 2009.”.

The Environmental Damage (Prevention and Remediation) Regulations 2009

9.—(1) The Environmental Damage (Prevention and Remediation) Regulations 2009(c) are amended as follows.

(2) In Schedule 3 (permits, etc), for paragraph 1(b) substitute—

“(b) a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009;”.

The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

10.—(1) The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009(d) are amended as follows—

(2) In Schedule 3 (permits, etc), for paragraph 1(b)—

(a) in the English text substitute—

“(b) a marine licence granted under Part 4 of the Marine and Coastal Access Act 2009;”;

(b) in the Welsh text substitute—

“(b) trwydded forol a roddir o dan Ran 4 o Ddeddf y Môr a Mynediad i’r Arfordir 2009;”.

(a) S.I. 2006/1466.

(b) S.I. 2008/1261.

(c) S.I. 2009/153, to which there are amendments not relevant to this instrument.

(d) S.I. 2009/995 (W.81).

The Harwich Parkeston Quay Harbour Revision Order 2010

11.—(1) The Harwich Parkeston Quay Harbour Revision Order 2010(a) is amended as follows.

(2) In article 6 (power to dredge), for paragraph (3)(b) substitute—

“(b) Part 4 of the Marine and Coastal Access Act 2009.”.

The Infrastructure Planning (Decisions) Regulations 2010

12.—(1) The Infrastructure Planning (Decisions) Regulations 2010(b) are amended as follows.

(2) After regulation 3, insert—

“Deemed consents under the Marine and Coastal Access Act 2009

3A. This regulation applies in relation to an application where the decision-maker is considering whether to include in an order granting development consent a provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009(c), by virtue of section 149A of the Act(d).

(2) When deciding an application to which this regulation applies, the decision-maker must have regard to—

- (a) the need to protect the environment,
- (b) the need to protect human health, and
- (c) the need to prevent interference with legitimate uses of the sea.”.

(3) Omit regulations 4 (deemed consents under section 34 of the Coast Protection Act 1949(e)) and 5 (deemed licences under the Food and Environment Protection Act 1985(f)).

(a) S.I. 2010/626.

(b) S.I. 2010/305.

(c) 2009 c. 23.

(d) Section 149A of the Planning Act 1998 (c. 29) was inserted by paragraph 4(1) and (2) of Schedule 8 to the Marine and Coastal Access Act 2009.

(e) 1949 c. 74.

(f) 1985 c. 48.

EXPLANATORY NOTE

(This note is not part of the Order)

This instrument brings into force, on two different days, provisions of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”).

Article 2 brings into force on 1st April 2011 those provisions of Chapters 1 and 2 of Part 6 of the 2009 Act (and associated schedules) which are not already in force, dealing with the management of inshore fisheries, together with associated repeals.

Article 3 brings into force on 6th April 2011 those provisions of Part 4 of the 2009 Act (and associated schedules) which are not already in force, dealing with marine licensing; together with related enforcement provisions in Part 8; section 314 (which makes amendments to the Energy Act 2008 (c. 32)), and associated repeals.

Article 4 makes transitional provisions consequential on the operation of Schedule 9 to the 2009 Act, in relation to certain marine mineral dredging in waters covered by the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007 (S.I. 2007/1067) or the Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007 (S.I. 2007/2610 (W.221)). It provides that certain consents granted prior to 6th April 2011 under section 34 of the Coast Protection Act 1949 (c. 74) will not (by virtue of paragraph 2 of Schedule 9 to the 2009 Act), have effect from that date as if they were marine licences granted by the appropriate licensing authority, unless an environmental impact assessment has been carried out which meets the requirements of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ No. L 175, 5.7.1985, p. 40).

Article 5 and the Schedule make amendments to subordinate legislation which are consequential on the coming into force of amendments and repeals contained in the 2009 Act relating to the Coast Protection Act 1949 and the Food and Environment Protection Act 1985 (c. 48).

A full impact assessment of the effect that the 2009 Act will have on the costs of business and the voluntary sector has been produced, and copies are available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk. No separate impact assessment has been produced for this instrument. Copies of the Government View documents referred to in article 4(6)(b) can be obtained from the Marine Licensing Policy Team, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3JR.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2009 Act have been brought into force on the date of commencement by commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>SI No</i>
ss. 1 to 3, Schs. 1 and 2	12.1.2010	2009/3345 (C. 153)
ss. 4 to 8	1.04.2010	2010/907 (C. 61)
ss. 9 to 13	1.04.2010	2010/298 (C. 23)
ss. 14 to 22	12.1.2010	2009/3345
s. 23	1.04.2010	2010/298
s. 24	12.1.2010	2009/3345
s. 25	1.04.2010	2010/298
s. 26 to 28	12.1.2010	2009/3345
ss. 29 to 30	1.04.2010	2010/298
ss. 31 to 40, Sch. 3	12.1.2010	2009/3345
ss. 42 to 43, Sch. 4 (partially)	12.1.2010	2009/3345
s. 112 and Sch. 8 (partially)	1.04.2010	2010/298

<i>Provision</i>	<i>Date of Commencement</i>	<i>SI No</i>
s. 150	1.10.2010	2010/2195 (C. 110)
s. 151	1.10.2010	2010/2195
s. 165	1.10.2010	2010/2195
s. 174	1.10.2010	2010/2195
s. 176 (partially)	1.10.2010	2010/2195
s. 177	1.10.2010	2010/2195
s. 179	1.10.2010	2010/2195
s. 180	1.10.2010	2010/2195
s. 181	1.10.2010	2010/2195
s. 182	1.10.2010	2010/2195
s. 184 and Sch. 14 (partially)	1.10.2010	2010/2195
s. 186 (partially)	1.10.2010	2010/2195
s. 187 in relation to Wales	1.04.2010	2010/630 (C. 42)
ss. 194 to 216	12.1.2010	2009/3345
s. 217 (partially)	12.1.2010	2009/3345
(for remaining purposes)	1.1.2011	2010/298
ss. 218 to 219	1.1.2011	2010/298
ss. 220 to 222	12.1.2010	2009/3345
s. 223 (partially)	12.1.2010	2009/3345
(for remaining purposes)	1.1.2011	2010/298
ss. 224 to 232	12.1.2010	2009/3345
s. 233 and Sch. 16 (partially)	12.1.2010	2009/3345
(for remaining purposes)	1.1.2011	2010/298
s. 234	1.04.2010	2010/298
s. 235	12.1.2010	2009/3345
ss. 237 to 239	12.1.2010	2009/3345
ss. 243 to 262, Sch. 17	12.1.2010	2009/3345
ss. 264 to 295, Sch. 18	12.1.2010	2009/3345
ss. 311 to 313	12.1.2010	2009/3345
s. 315, Sch. 21	12.1.2010	2009/3345
s. 321 and Sch. 22 (partially)	12.1.2010	2009/3345
(partially)	1.04.2010 and 1.1.2011	2010/298
(partially in relation to Wales)	1.04.2010	2010/630

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FISHERIES

LICENSING (MARINE)

MARINE POLLUTION

The Marine and Coastal Access Act 2009 (Commencement
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£5.75