WELSH STATUTORY INSTRUMENTS

2011 No. 559 (W.81)

ENVIRONMENTAL PROTECTION, WALES
LICENSING (MARINE), WALES
MARINE POLLUTION, WALES

The Marine Licensing (Exempted Activities) (Wales) Order 2011

Made - - - -	*25 February 2011*
Laid before the National Assembly for Wales - -	*1 March 2011*
Coming into force - -	*6 April 2011*

The Welsh Ministers, as the appropriate licensing authority under section 113(4)(b) of the Marine and Coastal Access Act 2009(**1**), make the following Order in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1) of that Act, and by section 2(2) of the European Communities Act 1972(**2**).

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the prevention, reduction and management of waste(**3**).

In deciding to make this Order, the Welsh Ministers have had regard to the matters mentioned in section 74(4) of the Marine and Coastal Access Act 2009.

The Welsh Ministers have carried out a consultation in accordance with section 74(5) of that Act.

PART 1

Introductory provisions

Title and commencement

1.—(1) The title of this Order is the Marine Licensing (Exempted Activities) (Wales) Order 2011.

(2) This Order comes into force on 6 April 2011.

(**1**) 2009 c. 23.
(**2**) 1972 c. 68.
(**3**) Article 3 of the European Communities (Designation) (No.2) Order 2010 [S.I.2010/1552].

Application

2. This Order applies in relation to any licensable marine activity for which the Welsh Ministers are the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009(**4**).

Interpretation

3. In this Order—

"the Act" ("*y Ddeddf*") means the Marine and Coastal Access Act 2009;

"activity" ("*gweithgaredd*") means licensable marine activity(**5**);

"disposal" ("*gwaredu*") has the meaning given by Article 3 of the Waste Framework Directive;

"European site" ("*safle Ewropeaidd*") means—

(a) a European site within the meaning of regulation 8(1) of the Conservation of Habitats and Species Regulations 2010(**6**); and

(b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats & c) Regulations 2007(**7**);

"exempt activity" ("*gweithgaredd esempt*") has the meaning given by article 4;

"fishing operation" ("*gweithred bysgota*") includes fishing for or taking shellfish but does not include an activity relating to the propagation or cultivation of shellfish;

"harbour authority" ("*awdurdod harbwr*") has the meaning given by section 57(1) of the Harbours Act 1964(**8**);

"licensing authority" ("*awdurdod trwyddedu*") means the Welsh Ministers as the appropriate licensing authority under section 113(4)(b) of the Act;

"lighthouse authority" ("*awdurdod goleudy*") means a general lighthouse authority or a local lighthouse authority within the meaning of Part 8 of the Merchant Shipping Act 1995(**9**);

"plan or project" ("*cynllun neu brosiect*") has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(**10**);

"Ramsar site" ("*safle Ramsar*") has the same meaning as in section 37A of the Wildlife and Countryside Act 1981(**11**);

"shellfish" ("*pysgod cregyn*") includes crustaceans and molluscs of any kind and any part of a shellfish;

"waste" ("*gwastraff*") 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) or (3) of that Directive;

(**4**) By virtue of section 113(4)(b) of the Marine and Coastal Access Act 2009, the Welsh Ministers are the appropriate licensing authority as respects anything done in the course of carrying on licensable marine activities in relation to Wales and the Welsh inshore region other than activities for which the Secretary of State is the appropriate licensing authority under section 113(4)(a) and (5) of that Act. *See* section 322(1) for a definition of the Welsh inshore region.

(**5**) *See* sections 66 and 115(1) of the Act.

(**6**) S.I. 2010/490.

(**7**) S.I. 2007/1842, amended by S.I. 2010/1513.

(**8**) 1964 c. 40 to which there are amendments not relevant to this Order.

(**9**) 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).

(**10**) 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).

(**11**) 1981 c. 69. Section 37A was inserted, in relation to England and Wales, by section 77 of the Countryside and Rights of Way Act 2000 (c. 37), and amended by section 105(1) of, and paragraph 86 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16).

"the Waste Framework Directive" ("*y Gyfarwyddeb Fframwaith Gwastraff*") means Directive 2008/98/EC of the European Parliament and of the Council on waste(**12**).

PART 2

Exempt activities – general provisions

Exemption from need for marine licence

4.—(1) A marine licence is not needed for an activity carried on in Wales or the Welsh inshore region that is an exempt activity.

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

(a) it is an activity to which this article applies (**13**); 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 the conditions in this article 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, for the purposes of paragraph (4), 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) "non-hazardous waste" has the same meaning as in the Waste Framework Directive;

(c) "recovery" has the meaning given by Article 3 of the Waste Framework Directive.

(**12**) OJ No L 312, 22.11.2008, p.3.
(**13**) Part 3 sets out the activities to which this article applies.

PART 3

Activities to which article 4 (exemption from need for marine licence) 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 the UK marine licensing area etc), item 2 (deposits from British vessels etc anywhere in the sea etc), item 3 (deposit from vehicle, vessel etc loaded in the United Kingdom except Scotland or the UK marine licensing area) or, except as otherwise provided, item 10 (deposit of explosives within the UK marine licensing area etc);

(b) a reference to a "dredging activity" is a reference to an activity falling within item 9 (to carry out any form of dredging within the UK marine licensing area etc);

(c) a reference to a "removal activity" is a reference to an activity falling within item 8 (use of a vehicle, vessel etc to remove a substance or object from the sea bed within the UK marine licensing area);

(d) a reference to a "works activity" is a reference to an activity falling within item 7 (construction, alteration or improvement of works within the 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(**14**) (prevention of pollution).

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(**15**) (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.

(**14**) 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.

(**15**) 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.

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 an 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;

(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) "fish" includes shellfish and any part of a fish;

(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 to—

(a) the deposit of any shellfish, trestle, raft, cage, pole, rope or line in the course of the propagation or cultivation of shellfish;

(b) 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 to any such deposit–

(a) made for the purpose of disposal;

(b) made for the purpose of creating, altering or maintaining an artificial reef; or

(c) that causes or is likely to cause obstruction or danger to navigation.

Deposit of marine chemical and marine oil treatment substances etc

14.—(1) Article 4 applies to the deposit of any–

(a) marine chemical treatment substance;

(b) marine oil treatment substance;

(c) 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.