STATUTORY RULES OF NORTHERN IRELAND

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(**1**), 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(**2**).

Interpretation

3.—(1) In this Order—

(**1**) 2009 c.23.

(**2**) 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.

"the Act" means the Marine and Coastal Access Act 2009;

"activity" means licensable marine activity(**3**);

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

"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(**4**); and

(b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007(**5**);

"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(**6**);

"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(**7**);

"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(**8**);

"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)(**9**);

"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(**10**).

(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(**11**) applies to this Order as it applies to an Act of the Assembly.

(**3**) See sections 66 and 115(1) of the Marine and Coastal Access Act 2009.
(**4**) SR 1995 No. 380.
(**5**) S.I. 2007/1842, last amended by S.I. 2010/1513.
(**6**) 1970 c.1.
(**7**) 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).
(**8**) 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).
(**9**) These sites are given statutory protection by the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985. No. 170
(**10**) OJ No L 312, 22.11.2008, p 3.
(**11**) 1954 c.33 (N.I.)

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—

(a) it is an activity to which this Article applies(**12**); 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.

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

(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);

(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(**13**) (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(**14**) (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—

(**13**) 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.

(**14**) 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) 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) "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(**15**); or

(b) the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005(**16**).

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.

(**15**) S.I. 2002/1355, amended by S.I. 2005/2055, regulation 20 and Schedule 2, and S.I. 2010/1513, regulation 6.
(**16**) S.I. 2005/2055, amended by S.I. 2010/1513, regulation 9.