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STATUTORY INSTRUMENTS

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**2007 No. 1067**

The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (England and Northern Ireland) Regulations 2007

PART 7

GENERAL

**Fees**

- 25.**—(1) Subject to paragraph (3) the regulator shall determine the fees to be paid—
- (a) by a prospective applicant in respect of the expenses of the regulator of carrying out either or both of the activities described in paragraph (2);
  - (b) by an applicant in respect of the expenses of the regulator of considering, publicising and deciding whether to grant or to refuse any application under regulation 10(1) or regulation 18(1);
  - (c) by the owner or holder of any permission in respect of the expenses of the regulator of interpreting and assessing the results of any monitoring which is provided for by the conditions attached to the permission—
    - (i) of the manner in which the dredging permitted by that permission is being or has been carried out; and
    - (ii) of the effects of that dredging;by, in particular, scrutiny of electronic or written information including surveys.
- (2) The activities mentioned in paragraph (1)(a) are—
- (a) providing an opinion under regulation 7(2); and
  - (b) providing the information relevant to the preparation of the environmental statement in accordance with regulations 8(3) and 8(4).
- (3) Fees under this section shall be determined—
- (a) as regards dredging in British waters, by the regulator with the consent of the Treasury; and
  - (b) as regards dredging in Northern Ireland, by the regulator with the consent of the Department of Finance and Personnel;

after consultation on the principles to be applied in determining the fees and the amounts of the fees with organisations appearing to the regulator to represent persons who are likely to apply for permissions.

**Register**

- 26.**—(1) The regulator shall keep a register containing the information specified in paragraph (2).
- (2) The register shall contain a copy, either in photographic or electronic form or both, of—

- (a) each determination made by the Secretary of State under regulation 5(2);
- (b) each determination made by the regulator under regulation 5(4);
- (c) each application for a preliminary determination under regulation 6(1);
- (d) each preliminary determination made by the regulator in response to an application under regulation 6(1);
- (e) each opinion given by the regulator under regulation 7(2);
- (f) each application for permission to carry out dredging made to the regulator under regulation 10(1), including any environmental statement, and any accompanying plans and drawings;
- (g) any further information supplied in response to a request under regulation 11(2), or any other information supplied by the applicant;
- (h) each notice published under regulation 12(1);
- (i) any reports and advice which are issued to the regulator in relation to any application under these Regulations;
- (j) each determination made by the regulator under regulation 13(1);
- (k) any information supplied by an applicant under regulation 13(2);
- (l) each decision of the regulator in relation to an application under regulation 13(6), including a copy of the report of any person appointed under regulation 13(4) in respect of the application, details of any conditions subject to which permission was granted and the date of the decision;
- (m) each approval of a transfer given under regulation 16(2), including a copy of any conditions subject to which the approval was given;
- (n) each application for a variation of a permission made under regulation 18(1);
- (o) any information provided by the applicant, or decision, determination or opinion of the regulator in relation to an application to vary a permission to carry out dredging, under any regulation which is applied to an application under regulation 18(1) by regulation 19(1)(b) or regulation 19(3);
- (p) each determination made by the regulator under regulation 18(3);
- (q) any information provided by an applicant for a variation under regulation 20(2);
- (r) each decision made by the regulator under regulation 20(8) in relation to a proposed variation, including a copy of the report of any person appointed under regulation 20(6) in respect of the application, details of any conditions subject to which the variation was granted and the date of the decision;
- (s) each notice served by the regulator under regulation 21(3)(a);
- (t) any information provided by the owner or holder of a permission in response to a request under regulation 21(3)(b);
- (u) the report of any person appointed under regulation 21(10);
- (v) each decision made by the regulator under regulation 21(11);
- (w) each notice served by the regulator under regulation 21(12);
- (x) the order of any court in any legal proceedings in respect of an offence under these Regulations;
- (y) any information supplied by an applicant under paragraph 2(2) of Schedule 3;
- (z) any information provided by the owner or holder of a permission under paragraph 3(4) of Schedule 3;

- (aa) each decision made by the regulator to affirm, revoke or vary a permission under paragraph 3(5) of Schedule 3;
  - (bb) each notice served by the regulator under paragraph 4(1) of Schedule 3;
  - (cc) each notice served by the regulator under paragraph 5(1) or (5) of Schedule 3;
  - (dd) each decision made by the regulator in respect of a review under paragraph 5(4) of Schedule 3, including a copy of the report of any person appointed under paragraph 5(3) of that Schedule in respect of the review, and the date of the decision;
  - (ee) any statement of reasons accompanying any of the above;
  - (ff) any monitoring scheme, report or other information submitted to the regulator under a condition to which permission to carry out dredging, or consent to a transfer of a permission under regulation 16, was made subject;
  - (gg) any representation made or information provided to the regulator by any person or body, and in particular another regulator, an EEA state, the National Assembly for Wales or Scottish Ministers, in connection with any function performed or to be performed by the regulator under these Regulations; and
  - (hh) the order of any court in any legal proceedings in which the validity of any approval, decision, determination, opinion or other action of the regulator under these Regulations was questioned.
- (3) The register shall include an index.
- (4) The register shall be available for inspection by the public at all reasonable hours, by prior appointment.
- (5) Where the register is kept using electronic storage, the regulator may also make the register available for inspection by the public on a website maintained by the regulator for that purpose.
- (6) On request by any member of the public and on payment of a reasonable fee, the regulator shall provide a copy of any document entered on the register.
- (7) Except where paragraph (8) applies, an entry in the register shall be made within 28 days of—
- (a) the receipt by the regulator of any application, representation, information, scheme, report or order;
  - (b) the giving or making of the relevant approval, decision, determination or opinion, or the issuing of the relevant notice.
- (8) Where the regulator is of the view that making an entry in the register in accordance with paragraph (7) may prejudice the fairness or speed of the process of the giving or making of any approval, decision, determination or opinion under these Regulations, the entry shall be made as soon as practicable after the approval, decision, determination or opinion has been made or given.

## **Penalties**

- 27.—(1) A person who commits an offence under these Regulations shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
  - (b) on indictment, to a fine.
- (2) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to, neglect on the part of an officer, that person, as well as the body corporate, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) In this regulation, “officer”, in relation to a body corporate means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body or a person purporting to act in that capacity.

(4) For the purposes of paragraph (3), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) Proceedings for an offence alleged to have been committed under these Regulations by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation.

(6) Proceedings for an offence under this regulation may be taken, and the offence may for all incidental purposes be treated as having been committed—

- (a) in relation to dredging in British waters, in any place in England; and
- (b) in relation to dredging in Northern Ireland, in any place in Northern Ireland.

(7) Proceedings for a declaration under regulation 3(2) may be taken, and the contravention which is complained of may for all incidental purposes be treated as having been committed—

- (a) in relation to dredging in British waters, in any part of England; and
- (b) in relation to dredging in Northern Ireland, in any part of Northern Ireland.

### **Territorial Waters Jurisdiction Act 1878**

**28.** Section 3 of the Territorial Waters Jurisdiction Act 1878(1) (consents to prosecutions of offences committed on the open sea by persons who are not British citizens) does not apply to any proceedings for an offence under these Regulations.

### **Local inquiries**

**29.**—(1) The regulator may cause a local inquiry to be held for the purposes of the exercise of any function of the regulator under these Regulations.

(2) In relation to a local inquiry held under these Regulations in respect of dredging in British waters, subsections (2) to (5) of section 250 (power to direct inquiries) of the Local Government Act 1972(2) shall apply—

- (a) as they apply in relation to local inquiries held under that Act;
- (b) with the deletion of the words “local authority or” from subsection (4) (provisions as to Secretary of State’s costs of holding inquiries); and
- (c) as if references in subsections (4) and (5) (provisions as to orders for the payment of costs of parties to inquiries) to the Minister, were references to the regulator.

(3) As regards dredging in Northern Ireland, Schedule A1 to the Interpretation Act (Northern Ireland) 1954 shall apply in relation to a local inquiry held under these Regulations instead of paragraph (2) of this regulation, as it applies in relation to a local inquiry held under an enactment passed or made as mentioned in section 23 (inquiries and investigations) of that Act(3).

### **Electronic communications**

**30.**—(1) A requirement in these Regulations that any application, approval, decision, determination, notice, opinion or request should be in writing is fulfilled where the recipient consents to receive it electronically and the document meets the criteria in paragraph (4), and “written” is to be construed accordingly.

(1) 1878 c. 73.

(2) 1972 c. 70. Subsection (2) was amended by the Statute Law (Repeals) Act 1989 (c. 43). Subsection (3) was amended by sections 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48). Subsection (4) was amended by the Housing and Planning Act 1986 (c. 63), section 49(2), and Schedule 12, Part III.

(3) 1954 c. 33 (N.I.). Section 23 was amended and Schedule A1 was inserted by section 47 of the Inquiries Act 2005 (c. 12).

(2) Where an application is made to the Secretary of State or to the regulator for any approval, decision, determination, or opinion, under these Regulations using electronic communications, the person making the application shall be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application; and
- (c) that the deemed agreement under this paragraph shall subsist until that person gives notice to revoke the agreement.

(3) Where a person is no longer willing to accept the use of electronic communications in relation to any application under these Regulations, that person shall give notice to the regulator and such revocation shall be final and shall take effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(4) The criteria referred to in paragraph (1) are that the document transmitted by the electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(5) In paragraph (4), “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(6) Nothing in this regulation shall prevent the regulator from requiring an applicant for permission under regulation 10 or the applicant in relation to any application under regulations 6(1), 7(2), 16(2), or 18(1) or the owner or holder of a permission in the case of a proposed revocation or variation under regulation 21, to provide such number of printed copies of any document as the regulator shall reasonably require, notwithstanding that the document has already been transmitted to the regulator electronically.

(7) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

(8) In this regulation—

- (a) the expression “address” includes any number or address used for the purpose of such communications or storage; and
- (b) “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(4).

### **Transitional provisions**

**31.**—(1) An application under either of the procedures mentioned in paragraph (3) or (4) which remains undetermined at commencement shall (unless withdrawn) be treated as an application for permission or, as the case may be, variation duly made under these Regulations if—

- (a) it includes an environmental statement; or
- (b) an environmental statement is supplied to the regulator in respect of it within the period of 14 days from commencement.

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(4) 2000 c. 7. Section 15 was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

(2) Steps taken in accordance with those procedures in relation to an application that is treated as mentioned in paragraph (1) shall be treated as steps taken under regulation 12, to the extent that the regulator is satisfied that the steps as taken by the applicant publicise that application to substantially the same extent as an application would have been publicised by the regulator under regulation 12.

(3) The procedures referred to in paragraph (1) in relation to an application for permission to carry out dredging in British waters are those set out in—

- (a) 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
- (b) 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.

(4) The procedures referred to in paragraph (1) in relation to an application for permission to carry out dredging in Northern Ireland are those set out in paragraph (3)(b), as modified in the document entitled “Government View: Interim Arrangements for the Licensing of Marine Minerals Dredging in Northern Ireland”, dated May 2006, and published by the Department of the Environment.

(5) Where a permission is granted or varied as a result of any application to which this regulation applies, these Regulations shall apply to it as they do to permissions granted as a result of an application under regulation 10.

#### **Amendments of Regulations, and savings**

**32.**—(1) In Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>(5)</sup>, in column 1 of the table, in paragraph 2(c), after “fluvial” insert “or marine”.

(2) The amendment made by paragraph (1) shall not have effect in relation to—

- (a) any application for planning permission, or for the amendment of an existing planning permission lodged or received by a local planning authority before commencement;
- (b) any appeal in relation to such an application;
- (c) any matter in relation to which, before commencement, a local planning authority has issued an enforcement notice under section 172 (issue of enforcement notice) of the Town and Country Planning Act 1990<sup>(6)</sup>; or
- (d) any development begun before commencement in reliance on planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995<sup>(7)</sup>.

(3) In Schedule 2 to the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999<sup>(8)</sup> in Schedule 2, in column 1 of the table, in paragraph 2(c), after “fluvial” insert “or marine”.

(4) The amendment made by paragraph (3) shall not have effect in relation to—

- (a) any application for planning permission lodged or received by the Department of the Environment before commencement;
- (b) any appeal in relation to such an application;
- (c) any matter in relation to which, before that date, the Department has issued an enforcement notice under article 68 of the Planning (Northern Ireland) Order 1991<sup>(9)</sup>; or

(5) S.I. 1999/293, amended by S.I. 2000/2867 and S.I. 2006/3295.

(6) 1990 c. 8. Section 172 was substituted by the Planning and Compensation Act 1991 (c. 34), section 5.

(7) S.I. 1995/418; relevant amending instruments are S.I. 1996/528, and 2002/828.

(8) S.R. (NI) 1999 No 73.

(9) S.I. 1991/1220 (N.I. 11).

- (d) any development begun before that date in reliance on planning permission granted by the Planning (General Development) Order (Northern Ireland) 1993<sup>(10)</sup>.

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<sup>(10)</sup> S.R. (NI) 1993 No 278, amended by S.R. (NI) 1998 No 222, S.R. (NI) 1999 No 73, S.R. (NI) 2000 No 113 and S.R. (NI) 2002 No 195.