

Northern Ireland Guidance Exemptions to marine licensing, under Part 4 of the Marine and Coastal Access Act 2009

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Contents Page

1.0 Exemptions General Guidance	3
1.1 Dredging and associated disposal permitted under local Acts or Harbour Orders	3
1.2 Dredging by anyone other than a harbour authority	3
1.3 Oil and gas activities etc	3
1.4 Pipelines	3
1.5 Cables	4
1.6 Exemptions from licensing in secondary legislation	4
2.0 Fishing	4
3.0 Shellfish	5
4.0 Shipping	5
5.0 Oil and gas-related activities	5
6.0 Defence	6
7.0 Aggregate Dredging	6
8.0 Oil dispersants, chemical treatments and tracers	7
9.0 Harbour maintenance	7
10.0 Navigation	7
11.0 Coast protection, drainage and flood defence	8
12.0 Scientific equipment	8
13.0 Miscellaneous	9
14.0 Bored Tunnels	9
15.0 Rights of foreign vessels under international law	9
16.0 Further Information Contact	10

1.0 Exemptions General Guidance

Exemptions from licensing in the Marine and Coastal Access Act 2009 relevant in Northern Ireland Coastal Waters.

The Act specifies some activities that are outside its licensing provisions. However, other permissions/consents may still apply under other Regulatory controls.

1.1 Dredging and associated disposal permitted under local Acts or Harbour Orders

Section 75 of the Marine and Coastal Access Act includes an exemption from licensing for dredging or the associated disposal of dredged material carried out by or on behalf of a harbour authority. The exemption only applies if the dredging or disposal is carried out in accordance with a Harbour Order or Local Act.

1.2 Dredging by anyone other than a harbour authority

Dredging is a licensable activity under the Act. This means that marina operators, harbour authorities without dredging powers and others will need a licence to dredge. This includes forms of dredging such as plough dredging, agitation dredging and water injection dredging.

1.3 Oil and gas activities etc

The Act exempts from marine licensing anything done:-

- while carrying out an activity for which a licence to search and get petroleum is needed under Section 3 of the Petroleum Act 1998 or Section 2 of the Petroleum (Production) Act 1934. This applies whether or not such a licence has been granted;
- in order to build or maintain an offshore installation (as defined in Part 4 of the Petroleum Act 1998)
- in relation to gas loading, unloading and storage (which needs a licence under Section 4 of the Energy Act 2008) or carbon dioxide storage (which needs a licence under Section 18 of the Energy Act 2008). Again the exemption applies whether or not the relevant licence has yet been granted.

1.4 Pipelines

A marine licence is needed for pipelines apart from those used in relation to:-

- exploring for, or exploiting, petroleum;
- unloading or storing offshore oil or related hydrocarbons, natural gas (including such gas as a liquid) or carbon dioxide; or
- exporting from or importing into the United Kingdom oil or related hydrocarbons, natural gas (including such gas as a liquid) or carbon dioxide; or transfer of any of these substances between any of Northern Ireland, England, Wales and Scotland.

1.5 Cables

International maritime law encourages the laying of telecommunications cables between countries. In accordance with those rules, you will not need a marine licence to lay or maintain such cables outside the Northern Ireland or other UK territorial sea. Where a cable runs through the Northern Ireland territorial sea you will need a licence from NIEA, MALT.

1.6 Exemptions from licensing in secondary legislation

As well as the exemptions from licensing in the Act itself, a number of activities are exempt from the need for a marine licence under the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011.

If you think that your project may be exempt under the Order, you should check that the exemption applies to all the different types of licensable activities that your project involves. Some of the exemptions apply to all licensable activities but some do not. For example, as explained below, the exemption for defence operations does not apply to construction or dredging.

Box 1: Special rules for exemptions involving waste

Special rules apply when an activity involves waste. Where waste is concerned, an activity is only exempt if it involves waste recovery or the disposal of non-hazardous waste at the place of production. For example, we consider the discarding of fish by a fishing vessel to be disposal at the place of production. The exemption described under fishing below would apply. However, if a land-based fish processor seeks to dispose of fish waste at sea we would not consider this to be disposal at the place of production and the exemption would not apply.

Under EU waste law, a record of businesses carrying out exempt activities must be kept. The NIEA has the power to request information from businesses carrying out exempt activities but we expect that it will use this power sparingly.

2.0 Fishing

A marine licence will not be needed under the new Marine and Coastal Access Act for normal fishing activities.

The new licensing system covers deposits in the sea and on the seabed, removals from the seabed and dredging. Most forms of fishing such as demersal trawling, potting, scallop or mussel dredging, involves such activities. However, it is not the intention to regulate these normal activities of fishing vessels through marine licensing. Deposits and removals and dredging as part of a fishing operation are therefore exempt from the need for a marine licence.

Fishing vessels may accidentally dredge or trawl large bulky items that affect the stability of vessels, old munitions and litter etc. Fishing vessels will not need a licence to return such items to the sea. However, we would encourage fishing vessels to return litter to the shore for recycling where it is safe for them to do so.

3.0 Shellfish

Deposits and removals directly connected with shellfish propagation and cultivation will not need a marine licence. For example, you will not need a marine licence to lay trestles to cultivate mussels or oyster seed. This exemption only applies if the deposit does not pose a navigational risk. However, the exemption does not apply to construction activities related to shellfish propagation – e. g. digging a trench or building a jetty to access shellfish beds. The exemption also does not apply to the use of artificial reefs in shellfish propagation and cultivation. These developments can be significant; the NIEA will consider their effect on the marine environment as part of the licensing process.

Other fish farming activities can be significant, so new fish farms will need marine licences.

4.0 Shipping

The regulation of shipping pollution will not change as a result of marine licensing. Reflecting the global nature of the shipping industry, the International Maritime Organisation (IMO) will continue to regulate pollution from shipping. The measures that IMO adopt are implemented in the UK under Part VI of the Merchant Shipping Act 1995. Activities that are regulated under Part VI of the Act are exempted from marine licensing. This includes-

- a. Deposit of oil or mixtures containing oil
- b. Deposit or incineration of garbage originating in or on the vessel
- c. Deposit of cooling water or ballast water

Also exempted, from the need for a marine licence is action taken in exercise of the National Government's powers to give directions to the owner, master and others in control of a ship when an accident had occurred and there is a risk to safety or of pollution. The UK Secretary of State has appointed a representative who will, in practice, normally issue these directions. In addition any activities carried on during a salvage operation to ensure the safety of a ship or prevent pollution will not need a licence.

5.0 Oil and gas-related activities

As previously explained, the Act exempts from marine licensing most activities relating to exploring for, or producing, oil and gas. Such activities are regulated under the Petroleum Act 1998 or the Petroleum (Production) Act 1934.

Any activity within the UK marine licensing area that requires a permit under (a) the Offshore Chemicals Regulations 2002 and (b) the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 is also exempt.

This exemption will apply to the disposal of drilling muds, which is now regulated under the Offshore Chemicals Regulations 2002.

6.0 Defence

The new licensing system applies to the Crown. However, there are some defence-related activities where the licensing process could undermine the operational effectiveness of UK forces. This includes licensable activities that are carried out by contractors in support of defence operations.

We have, therefore, exempted the types of licensable activity that the Ministry of Defence or their contractors carry out during operations i.e. deposits, removals from the seabed, deposit and use of explosives and incineration. The types of activity that are covered by the exemption include operational activities by naval ships, weapons firings from land-based equipment and systems; activities in direct support of training by UK armed forces of Royal Fleet artillery; tests and trials of defence equipment and systems; and recovery of defence assets.

The exemption will not apply to commercial activities carried out by MOD contractors for customers other than the Ministry of Defence. The exemption does not apply to licensable activities that do not form part of normal defence operations for example, constructing, altering and improving works and dredging. The Ministry of Defence or contractor will seek approval for such projects like any other developer from NIEA, MALT.

The Royal Navy occasionally sinks a redundant vessel in what is known as a "SINKEX" exercise. Since this involves disposal of waste and is not at the place of production (see Box 1), this activity is not exempt from licensing.

7.0 Aggregate Dredging

All marine aggregate dredging will need a marine licence.

However, some activities that take place during a dredging activity are exempted. Firstly, a dredger may bring up other objects - as well as aggregates - from the seabed, e.g. old munitions. A vessel will not need a licence to return these objects to the sea. Secondly an aggregate dredger may discharge water either by discharging from its scuppers or by pumping from the hold of a vessel. Dredgers will not need a marine licence for such discharges during the dredging operation, on completion of dredging or on the return trip to port.

8.0 Oil dispersants, chemical treatments and tracers

There are some products that are used at sea where it is possible to assess risks in advance and the NIEA can give prior approval to the use of some of these products. The groups are:

- Products used to disperse oil spills
- Products used to treat chemical pollution
- Products used to tackle fouling of the sea or seabed (e.g. excessive algal growth or problems caused by invasive species such as the sea squirt)
- Tracers used to assess the movement of currents etc.

The NIEA has the powers to agree a list of approved products in each category. It can also apply conditions to the use of the products. It is anticipated that the NIEA MALT will use the UK MMO website approved products lists and the conditions that apply to their use.

If you plan to use oil dispersants in depths of less than 20 metres or within one nautical mile of such an area, the exemption only applies if you first get the Licensing Authorities agreement to the use of the dispersant.

9.0 Harbour maintenance

Harbour authorities often need to do small-scale works to maintain their facilities. These works may need a marine licence. To avoid harbours having to get a licence every time they carry out minor works, deposits, construction works and removals from the seabed can be exempted from the need for a marine licence provided they are carried out in accordance with a programme of harbour maintenance that has been agreed with the NIEA. The works may be done by the harbour authority itself or on its behalf.

A harbour authority is free to apply for marine licences for individual works if they prefer. They may also apply for a licence for additional works not covered by the programme they have agreed with the NIEA.

10.0 Navigation

You will not need a marine licence for deposits of any substance or object in the normal course of navigation. This is to allow routine activities such as the deposit of anchors to be carried out without the need for a licence.

Some activities by bodies entrusted with ensuring safe navigation are exempt from marine licensing. A conservancy authority, harbour authority, lighthouse authority or navigation authority will not need a marine licence to remove anything causing or likely to cause an obstruction or danger to navigation.

Harbour authorities and lighthouse authorities will not need a licence to deposit or remove piled or swing moorings or aids to navigation (such as a marker buoy).

People carrying out such activities with the consent of a harbour authority or lighthouse authority will not need a marine licence.

This exemption does not apply to the deposit, construction, alteration or maintenance of pontoons. You will need a licence for such activities.

11.0 Coast protection, drainage and flood defence

Coastal protection maintenance activities carried out by Northern Ireland Agencies/departments with statutory powers for drainage and flood defence works are exempt. The only qualification being that the activity is carried on within the existing boundaries of the works.

Also exempted are emergency works carried out by the relevant Agencies/Departments in response to any flood or imminent risk of flooding but the Agency will need to inform the NIEA through the agreed emergency response protocols before carrying out such works.

12.0 Scientific equipment

In most cases you will not need a marine licence to deposit scientific equipment at sea (or to remove it). However, this exemption does not apply where the deposit affects - to a specified degree - areas that have been designated under certain conservation legislation. There are different thresholds in different conservation legislation. This is reflected in the exemption from marine licensing for the deposit of scientific equipment. The exemption does not apply if the deposit is:-

- A plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a Special Area of Conservation designated under the EU Habitats Directive or a Special Protection Area designated under the Birds Directive
- Is likely to have a significant effect on a Ramsar site (i.e. Wetlands of International Importance)
- Is capable of affecting (other than insignificantly) the protected features of a Marine Conservation Zone or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

The exemption also does not apply if an obstruction or danger to navigation would occur.

It is up to the applicant to satisfy themselves that their activity will not have such an effect. If you are in any doubt over whether your activity will affect such a site, you should speak to NIEA - Natural Heritage (NIEA) for inshore waters within 12 miles of the coast and the Joint Nature Conservation Committee for offshore waters).

[The Natural Heritage pages of the NIEA website have information and maps of these areas in Northern Ireland territorial waters.]

13.0 Miscellaneous

You will not need a marine licence for:-

- any deposits to launch a vehicle, vessel, aircraft or marine structure.
- any activity to fight a fire or prevent its spread
- deposit any equipment to control, contain or recover oil, mixtures containing oil, chemicals, flotsam or algal blooms

Local authorities will not normally need a licence to use a vehicle to remove litter from a beach. However, the conditions which apply to the deposit of scientific equipments also apply to litter cleaning - if the activity could affect Special Areas of Conservation designated under the EU Habitats Directive, Special Protection Areas designated under the Birds Directive, Ramsar sites and Marine Conservation Zones.

14.0 Bored Tunnels

Licensable activities associated with the construction or operation of bored tunnels that are carried out wholly under the seabed will not need a marine licence. This exemption does not apply to deposits of material for the purpose of disposal nor does the exemption cover activities that take place in the sea or on the sea bed.

The exemption only applies if the NIEA is notified in advance of the intention to carry on the activity. The exemption includes a condition that the construction of the tunnel does not adversely affect the environment of the Northern Ireland marine area or the living resources that it supports.

15.0 Rights of foreign vessels under international law

There is a general exemption to ensure that rights under international maritime law of non-EU countries and sovereign vessels from other countries are not infringed. These rights apply to third country vessels (i.e. not EU or UK vessels) and to Government ships and aircraft while they are being used only on government non-commercial service. For example, Article 236 of the United Nations Convention on the Law of the Sea specifies measures to protect the marine environment in the territorial sea do not apply to vessels etc. engaged on Government non-commercial service.

Another case where the balance of rights and responsibilities within international maritime law applies is in relation to cultural heritage, such as wreck sites, remains of settlements lost to the sea etc. The importance of such heritage is recognised in the Act in the definition of marine environment. The NIEA will consider the effect of all licence applications on our maritime heritage as part of the decision-making process.

Marine licensing applies to removing items of historic interest from the seabed. A marine licence will always be needed to use a vehicle, vessel, aircraft, marine

structure or floating container to remove an object of historic interest within Northern Ireland and UK territorial waters. Government ships remain UK property wherever they are in the world even when they become wrecks. However, if the wreck is not owned by the UK or other sovereign Government a marine licence may not be needed to remove an object from a wreck outside our territorial waters. However, this only applies to the removal of the object itself. The exemption will not apply if a project involves other activities that need a licence e.g. excavation around a wreck. In case of any doubt you should seek advice from the NIEA.

16.0 Further Information Contact

Further information on whether your project may be an exempt activity can be obtained by contacting NIEA at the address below:

NIEA, Marine Assessment and Licensing Team
17 Antrim Road
Lisburn
BT28 3AL

Tel: 028 92623165