

Northern Ireland Guidance Overview and Process, Under Part 4 of the Marine and Coastal Access Act 2009

August 2012



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1.0 Introduction

This document forms part of a series of guidance that explains the Northern Ireland Environment Agency's (NIEA) marine licensing procedures. The documents set out NIEA current policies and supersede previous practice and guidance.

NIEA is responsible for licensing of activities related to construction, deposition or removal of any substance or object in Northern Irish territorial waters. To gain a full view of the policies and procedures applicable, together with the detailed guidance that may apply to the activity or proposal concerned. See below.

The series comprises:

- Licensing overview process (this document);
- Construction (including renewables) and removals;
- Dredging, disposal and aggregate dredging;
- Civil sanctions and enforcement;
- Emergency works;
- Environmental Impact Assessment (EIA)
- Fees and Charges;
- Exemptions.

1.1 What This Document Covers

The pre-application process;

How NIEA assesses and makes decisions regarding applications;

Review and variations to licences;

Post-consent validation.

The purpose of this guidance is to:

- Provide good quality, accessible support for the new licensing system;
- Detail the process of how NIEA identifies whether a project is likely to require assessments to satisfy European obligations protecting the environment and conserving habitats and species;
- Indicate whether the applicant will need to contact NIEA to discuss aspects of the proposal further; and
- Introduce applicants to the online application process, detailing how to apply and track the progress of their application through different stages of the licensing process using our Apply Online service.

1.2 Process Overview

A new licensing service has been introduced that enables applicants to apply, pay for and track the progress of their licence applications online. This is accessible through the NIEA website. The home page provides full details of how to register and use it. NIEA will handle the whole marine licensing process, from the initial queries through the application, licence decision and post-consent monitoring (if applicable) stages.

NIEA strongly encourages early discussions, which should start before any required formal EIA. Such discussions can be triggered through queries and pre-screening consultation.

The general licence process is as follows:

- Pre-screening consultation with NIEA;
- Formal EIA screening and scoping (if applicable);
- Preparation of documentation, e.g. Environmental Statement (ES);
- Formal application;
- Consultation, feedback and mediation;
- Licence determination and issuing of licence(s) (if needed);
- Management of returns, e.g. monitoring reports;
- Decommissioning (if required)

A more detailed description of each stage is recorded following this introduction. For more complex projects where pre-application engagement has occurred early on, it is envisaged that discussions between all parties will allow the majority of issues to be resolved and consequently the application stage will be streamlined.

1.3 Fees and Charges

Details of all application fees are set out in: Marine Licensing Annex A: Fees and Charges.

1.4 Licence Variations

NIEA does not currently have powers to charge for licence variations requested by licence holders. We will therefore:

Consider requests for minor changes (for examples, names or administrative matters) on a free of charge basis. Reserve the right to request a fresh application and the associated fee – requests for variations that are associated with a potential change to the risk or impact of a proposal (that is a material change) will be regarded as requiring a fresh application if the proposed modification warrants the reassessment of risk or impact.

1.5 Enquiries

If you have any queries relating to marine licensing we can be contacted on:

Ann Steele Ann.Steele@doeni.gov.uk 028 9262 3165

Marine Assessment and Licensing Team (MALT)

Northern Ireland Environment Agency (NIEA)

17 Antrim Road

Lisburn

BT28 3AL

Please state the following information when contacting NIEA.

- Name and contact details;
- Type of project;
- Proposed location;
- Scale of project;
- Timeframes of project;

- Any other information that may be applicable.

1.6 Environment Impact Assessment (EIA)

Council Directive No 85/337/EEC as amended on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) seeks to ensure that the authority giving the primary consent, e.g. NIEA (competent authority), for a particular project makes its decision in the knowledge of any likely significant effects on the environment. The EIA Directive sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure, known as EIA, is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

1.7 Habitat Regulation Assessment (HSA)

In order to tackle the continuing deterioration of natural habitats and the threats posed to the wellbeing of certain plant and animal species, the European Community adopted Council Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna and Council Directive 2009/147/EC on the conservation of wild birds. The Conservation of Habitats and Species Regulations 2010 (as amended) and the Offshore Marine Conservation (Natural Habitats & C.) Regulations 2007 (as amended) transpose the Habitats Directive into domestic legislation.

Article 6(3) of the Habitats Directive requires that any plan or project, which is not directly connected with or necessary to the management of a European site, but would be likely to have a significant effect on such a site, whether individually or in combination with other plans or projects, shall be subject to an 'appropriate assessment' of its implications for the European site in view of the site's conservation objectives.

NIEA are required to meet European obligations to conserve habitats and species. Under the Conservation of Habitats and Species Regulations 2010 (as amended) NIEA are required to assess whether a proposed project is likely to have a significant effect on a European site, either individually or in combination with other plans or projects.

1.8 Water Framework Directive

The Water Framework Directive (WFD) applies to water out to one nautical mile from the baseline from which territorial waters are drawn (see Figure 1).

Conservation sites identified under the Habitats Directive and Birds Directive (with water-related interest features) are designated as 'protected areas' under the WFD.

1.8.1 What does the WFD aim to achieve?

By taking an inclusive approach to managing water as it flows through catchments from lakes, rivers and groundwater to estuaries and the sea, the

WFD aims to:

- Get all water bodies meeting good status by 2015 unless the criteria for an exemption are met;
- Encourage sustainable use of water as a natural resource;
- Create better habitats for wildlife that lives in and around water, for example by improving the chemical quality of water;
- Reduce or phase out discharges, emissions and losses of priority substances and priority hazardous substances;
- Reduce the pollution of groundwater;
- Contribute to mitigating the effects of floods and droughts.

2.0 The pre-application stage

The pre-application stage in the licensing process is to be used for applications that are large scale and/or could have significant environmental impacts that require substantial assessment. The intention is that applicants will engage with NIEA at the pre-application stage in order to facilitate early engagement with stakeholders and consultees. The pre-application stage could be considered to be a comprehensive representation of the application stage with applicant, stakeholders and consultees fully inputting into the process. The better the preparatory work during this stage, the less chance the application will highlight new, not previously considered issues.

The key stages during pre-application include:

- Pre-application engagement;
- EIA & HRA screening;
- EIA scoping and assessment of likely significant effect;
- Draft environmental statement review.

Pre-application engagement is on a voluntary basis but would be expected for complex projects that are likely to:

- Require an Environmental Statement (ES)¹;
- Require a HRA and subsequently an Appropriate Assessment (AA)²;
- Require a Water Framework Assessment; or
- Where a proposed project may have specific environmental issues, such as contaminated sediment.

An EIA is an assessment of the possible positive or negative impact that a proposed project may have on the environment, assessing natural, social and economic aspects. The purpose of the assessment is to ensure that decision makers consider the environmental impacts when deciding whether to licence a project.

An AA is the process and documentation associated with the statutory requirement under the EU Habitats and Species Directive, to avoid adverse effects of plans, programmes and projects European sites and thereby maintain the integrity of the sites features and conservation objectives.

¹ The Marine Works (Environment Impact Assessment) Regulations 2007 (as amended);

² The Conservation of Habitats and Species Regulation 2010 (as amended).

The following processes can be requested during the pre-application stage:

- Request a pre-application meeting with NIEA, and any other primary advisors and consultees (where applicable);
- Request a screening opinion, both EIA and HRA;
- Request a scoping opinion and assessment of likely significant effect;
- Request a draft ES review; and
- Request a review of the information/data collated to inform a HRA.

The main focus of pre-application engagement is to front-load the licensing process so that consultation with primary advisors and consultees on a detailed proposal takes place before an application for a marine licence is formally submitted to NIEA.

2.1 Screening under the Marine Works Regulations

Applicants may (but are not required to) apply for a screening opinion, under the Marine Works (Environment Impact Assessment) Regulations 2007 (as amended) (MWRs). Screening is the process by which a project is assessed to determine whether or not the production of a statutory ES is required. It is the first formal consultation stage in the EIA process.

Screening will determine if the project features within Annex I or Annex II of the European Council (EC) Directive on EIA (85/337/EEC as amended by 97/11/EC). Annex I of this directive provides a list of projects for which an EIA is mandatory and a statutory ES is required. Projects listed under Annex II of the EC directive 97/11/EC may require an EIA if it is concluded that the project will exceed certain limits or thresholds.

There are two forms of EIA:

- **Mandatory EIA:** all projects listed in Annex I are considered as having significant effects on the environment and require an EIA (e.g. extraction of petroleum and natural gas for commercial purposes, pipelines with a diameter of more than 800mm and a length of more than 40km, geological storage of carbon dioxide); and
- **Discretion of member states (screening):** for projects listed in Annex II, NIEA must decide if the proposed project requires an EIA (e.g. intensive fish farming, extraction of minerals by marine or fluvial dredging, wind farms, coastal works or projects capable of altering the coast).

NIEA must consult as it considers appropriate before giving a screening opinion. When carrying out this consultation we must allow the consultee a period of no less than 28 calendar days.

Once responses have been received the screening opinion will be issued. This will be sent to the applicant, all primary advisors and consultees and will be placed on NIEA's public register.

2.2 Habitat Regulation Assessment (HRA) 'Screening'

During EIA screening we also ask primary advisors and consultees whether they think a project is likely to have a significant effect on a European site(s)

or any other European protected areas, and then give an opinion on whether the Habitats Regulations apply to that project, e.g. whether the project is in, or has the potential to affect, a designated site.

The applicant should note that although we carry out EIA and HRA screening at the same time, these are two separate processes under different regulations.

During the screening process NIEA will determine whether the project has the potential to have a Likely Significant Effect (LSE) on the interest features (and their conservation objectives) of European site(s) and therefore whether the Habitats Regulations apply.

2.3 Water Framework Directive ‘Screening’

Applicants are encouraged to assess the proposed project against all relevant WFD objectives as early in the process as possible. If possible, these can be incorporated into the EIA process and included in any environmental statement produced.

Information on the status of a water body and the corresponding river basin management plans can be found at <http://www.doeni.gov.uk/niea/water-home/wfd.htm>.

Within WFD water bodies, licensable activities may be ‘screened’ based on the significance of the predicted environmental impact. Any assessment should be appropriate to the risk posed by the activity and include:

- Duration of the activity;
- Location;
- Physical footprint with respect to the water body size;
- Sensitive habitats.

2.4 The Screening Consultation Process

A formal screening opinion request (under the MWRs) must be accompanied by the following:

- A brief description of the project;
- A statement of the working methods to be used in the course of the project;
- Information on the size/scale/nature of the project;
- Area(s) under consideration for development and the wider development (offshore and onshore requirements/terrestrial and marine footprints);
- Relevant maps, plans, charts, or site drawings;
- A summary of all discussions already held with primary advisors and consultees;
- A statement of any navigational issues envisaged;
- Any other information as the applicant may wish to provide.

The applicant must supply a list of people/organisations that they have consulted with prior to submission of an application. In addition to statutory

primary advisors and consultees, NIEA may consult with those organisations the applicant has consulted with.

If documentation cannot be supplied electronically, NIEA will require either an electronic copy of each document or hard copy of each document (please contact NIEA for information on the number of hard copies required).

2.5 Scoping under the Marine Works Regulations

Scoping is the process carried out after screening to determine the content and extent of the issues which should be covered in the ES for projects which are subject to an EIA.

Scoping is an important early stage within the EIA process. It highlights the issues that will require assessment and focuses the content of the ES. Under the MWRs an applicant can request a formal scoping opinion from the regulator.

Scoping determines what information should be submitted to the regulator within the ES. It identifies what actions need to be taken to compile the required information and the level of detail needed.

The request for a formal scoping opinion should be accompanied by a scoping report. A scoping report is a document that contains information on the proposed project and its likely impacts. Elements of this document may have been prescribed if a screening opinion was given by NIEA.

As a minimum, the applicant should submit the following within their scoping report, with their scoping request:

- Description of the project, providing further detail to that provided at screening;
- Summary of the installation and decommissioning methods;
- Project location, including location map, for all aspects of the project;
- List of the receptors likely to be affected by different stages or activities of the project;
- Identification of the potential environmental impacts with an estimation of their likelihood and potential degree of impact; and
- Details/plans for conducting technical studies, methodologies and resources to be used.

If documentation cannot be supplied electronically, NIEA will require either an electronic copy of each document or hard copies of each document (please contact NIEA for information on the number of hard copies required).

Please refer to the 'Northern Ireland Guidance: Environmental Impact Assessment' for more information.

2.6 The scoping process

NIEA must consult as it considers appropriate before giving a scoping opinion. When carrying out this consultation we must allow the consultee a period of no less than 28 calendar days.

Once responses have been received the scoping opinion will be issued. This will be sent to the applicant, all primary advisors and consultees and will be placed on NIEA's public register.

When reaching a scoping opinion, the case officer will consider the following:

- Specific characteristics of the project;
- The nature and purpose of regulated activities of the type concerned in the project;
- The environment features likely to be affected by the project;
- The extent to which the applicant may reasonably be required to compile the information, having regard to current knowledge and methods of assessment.

2.7 Habitat Regulations Assessment: Assessment of Significant Effect

If a plan or project was identified to have the potential to have a LSE during screening then the applicant should submit the following information to inform the HRA:

- Information about the project;
- Information about the European and Ramsar sites; and
- Information to inform the assessment of LSE.

NIEA will assess the information provided. If the assessment concludes LSE then an Appropriate Assessment will be required. If the result of this assessment is inconclusive, under the precautionary principle, the application will be treated as through it is likely to have a significant effect.

In most licence applications which are primarily a marine development, as opposed to primarily a terrestrial development, the lead authority will be NIEA and therefore NIEA will be responsible for producing any Appropriate Assessment relating to the application. This does not preclude other competent organisations producing an Appropriate Assessment in support of an application.

2.8 Environmental Statement Review Request

An applicant can request that NIEA review an ES before they formally submit their marine licence application.

The applicant must supply the following with their request:

- A cover letter detailing the project and the ES;
- The draft ES;
- Any associated documents;
- Any other information the applicant deems applicable.

If documentation cannot be supplied electronically, NIEA will require either an electronic copy of each document or hard copies of each document (please contact NIEA for information on the number of hard copies required).

NIEA must consult as it considers appropriate before giving a scoping opinion. When carrying out this consultation we will allow the consultee a period of no less than 28 calendar days.

Once responses have been received the scoping opinion will be issued. This will be sent to the applicant, all primary advisors and consultees and will be placed on the NIEA's public register.

2.9 Sampling to Inform an Application

Section 66(8) of the MCAA states that a removal from the sea bed is a licensable activity:

- To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the sea bed within the UK marine licensing area.

Taking samples is a form of removal however, when samples are required by NIEA as part of an application this will not be a licensable activity as NIEA would be requesting the samples to inform the licensing decision.

This would also apply to dredging and disposal and construction activities, e.g. to ensure material is suitable for sea disposal or that mobilisation of material would not release any contamination.

Samples to inform an application must be received no more than two months before the application is submitted to NIEA.

3.0 The Application Stage

Applications for a marine licence can be submitted electronically through NIEA's website.

The online application form will guide the applicant through the process, detailing what information and supporting documentation is required. There are help icons provided throughout the process.

The key stages once an application has been received are:

- Publication;
- Consultation;
- EIA consent decision (if applicable);
- Habitat Regulation Assessment & Appropriate Assessment (if appropriate);
- Analysis and decision making;
- Decision notification & public register.

Most smaller or less complex marine projects will not require pre-application advice and will simply go through the main application process. However, NIEA advises applicants to engage at an early stage to ensure the project is thoroughly assessed prior to application submission.

There are no statutory timeframes placed on NIEA for processing an application in the Marine and Coastal Access Act 2009 (MCAA) because of the need for flexibility; however NIEA will endeavour to have the application processed within 4 months of having received all necessary information.

If documentation cannot be supplied electronically, NIEA will require either an electronic copy of each document or hard copies of each document (please contact NIEA for information on the number of hard copies required).

There is a fee applicable for a marine licence application. Please refer to the 'Northern Ireland Guidance: Fees and Charges' for more information.

If the applicant did not apply for a screening opinion and NIEA considers the activity to be one which should be screened, the case officer will direct the applicant to apply for a formal screening opinion.

If any information is missing or appears incorrect the case officer will contact the applicant and inform them that they are required to submit information/or corrected information to NIEA. The application will not be classed as fully submitted³ to NIEA until it has received all requested information to an adequate standard and the correct fee or deposit has been paid and payment cleared.

3.1 Application Consultation

NIEA may consult any person or body it deems fit, in cases involving any matter in which that person or body has particular interest or expertise. The MCAA does not specify statutory consultees that must be consulted before an application. This is to enable all potential consultees to be on an equal footing (none are more or less important than others), to ensure that organisations or individuals consulted are relevant to the project.

NIEA will lead the consultation process, managing the responses from primary advisors and consultees and ensuring that concerns are adequately addressed by the applicant. NIEA will provide a response due date for consultation responses and ensure that responses are returned within the appropriate timeframe.

3.2 The Application Consultation Process

The application will not be classed as formally submitted until all supporting documentation has been received and is adequate.

The case officer will then send the case out to consultation. The application consultation period is 28 calendar days from the date of the consultation request. The case officer will keep the applicant up-to-date during the consultation process.

³ 'fully submitted' means that all supporting documentation has been received and is adequate, and that the correct fee/deposit has been received and cleared.

3.3 Dealing with Objections

NIEA makes decisions that are open, transparent and based on the best available evidence. Each licence application is considered on its own merits and it is the consultation process which forms the primary mechanism by which NIEA interacts with stakeholders. This engagement is critical in ensuring that all relevant issues are highlighted and considered in relation to each application.

NIEA, as the decision-maker, must consider each objection in full, to assess the objection as valid the objector must satisfy the following:

- The objection must have sufficient detail and be presented in a way that facilitates proper consideration by NIEA;
- The objection must have been received within the objection period;
- The objection must be supported by substantiating evidence submitted at the same time as the objection;
- NIEA must consider whether the objection, and its supporting evidence, is relevant to the application.

If NIEA deem that the objection is valid then one of the following must result:

- The applicant makes changes to the proposal in line with the objection to the satisfaction of NIEA;
- The applicants provides evidence that the objection is not relevant;
- The application is withdrawn;
- The objection is withdrawn for whatever reason.

The process of resolving issues raised by consultees and the public is often an iterative process. That is why we expect that an applicant proposing more complex projects will engage with NIEA through pre-application before submitting a formal application in order to resolve issues early.

If during the consultation process it is found that the project may require an EIA the applicant will be asked to apply for a screening opinion. The application will not be progressed until the screening process is completed.

If an application is withdrawn and the applicant wishes to pursue an alternative project, a new application must be submitted to NIEA and the application process followed from the start, including publishing the project and the consultation process.

3.4 EIA Consent Decision Notice

For projects that require EIA consent decision the applicant will be issued the consent decision in parallel with the associated Marine Licence.

Where applicable, written confirmation of the EIA consent decision will be sent to:

- The applicant;
 - Any person from whom representations were received;
 - Any primary advisor/consultee body that responded to the consultation;
- and

- The authorities of any European Economic Area (EEA) State who were consulted.
- The written confirmation will include the following:
- A reference to the environmental information that has been taken into consideration;
- The main reasons and considerations on which the EIA consent decision was based; and
- If the EIA consent decision involves giving EIA consent, a description of the measures that must be taken in consequence of the EIA consent decision to avoid, reduce and, if possible, offset the principal adverse effects of the regulated activity.

The information will be made available on NIEA's public register, which is available through NIEA's website.

3.5 Licence Decision

A licence will not be issued until the following are complete:

- Payment must have been received and cleared;
- All supporting documents have been received and are adequate;
- The primary advisors and consultees have been consulted and any issues resolved or answered;
- Representations from the public have been resolved or answered;
- An EIA consent decision must have been publicised (if applicable);
- The HRA process has been followed and an Appropriate Assessment determined no adverse effect (if applicable);

The licence decision will be sent to the applicant, all primary advisors and consultees, members of the public who made representation and it will be placed on the NIEA's public register.

3.6 Publicising Licence Details (public registers)

NIEA must keep a public register of licensing information. The register must contain the following:

- Applications for licences;
- Licences granted;
- Variations of licences;
- Revocations of licences;
- Information supplied in connection with any licence;
- Convictions for any offence;
- Any other enforcement action taken;
- Occasions on which any remedial action has been taken;
- Such other matters relating to licences or the licensable marine activities as may be prescribed.

The NIEA must make arrangements:

- For its register to be available for inspection at all reasonable times by members of the public free of charge;
- For copies of entries in its register to be supplied, on request, to members of the public on payment of a reasonable charge.

The NIEA public register is available through the NIEA website.

Information must not appear in the register if:

- The secretary of state determines that its disclosure in the register would be contrary to the interests of national security; or
- The NIEA determines that its disclosure in the register would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest.

If it was deemed that something should not appear in the public register for confidentiality of commercial or industrial information this decision must be reviewed and amended where applicable every four years. This requirement does not apply where exclusion for was national security reasons.

4.0 Post-consent Variations/Amendments

A Licence Holder wishing to vary the details of a licence will be able to submit a variation request to NIEA. If acceptable the request will result in an amended version of the licence being issued. The licensees will receive notification in writing via e-mail or hard copy letter.

Request for variations generally require consultation with primary advisors and consultees however in some cases, e.g. adding a vessel to a licence, consultation is not required.

4.1 Licensing over the Full Lifecycle of a Project (construction only)

NIEA will adopt a full life cycle approach to licensing activities. This means that the marine licence will cover not only the construction activities, but also the operating activity for the lifetime of the licence.

Typically for a construction licence NIEA will require a start date and an end date for the project which will form part of the licence. Any deviation to these dates, specifically if there is a substantial delay to the start of construction, or an over run of the construction/commissioning, then a variation or extension would need to be requested from NIEA.

Dredging activities will be issued with a marine licence with a specific duration up to a maximum of three years.

Maximum extraction activities will be issued with a marine licence with a specific duration of a maximum of fifteen years.

4.2 Licence Construction Windows

NIEA may provide within the licence that if the authorised activity has not started within a specified time (up to a maximum of three years) of the commencement of the licence, or completed within a specific period of time (up to a maximum of five years) of the commencement of the licence, the licence will expire.

Within this period NIEA may by notice vary, suspend or revoke a licence it has granted⁴ if:

- There is a change of circumstance relating to the environment or human health;
- There is increased scientific knowledge relating to either the environment or human health;
- In the interests of safety of navigation; or
- For any other reason deemed relevant.

4.3 Enforcement

NIEA will carry out enforcement following key principles that will be applied throughout the regulatory process:

- Transparency;
- Accountability;
- Proportionality;
- Consistency; and
- Helping to target action on cases where action is needed.

The reviews also recommend the use of flexible tools to enable more proportionate responses in cases of regulatory non-compliance. These principles were followed in establishing the Regulatory Enforcement and Sanctions (RES) Act 2008, which contains provisions enabling use of fixed and variable monetary penalties to enforce existing environmental legislation. Provisions in the Marine and Coastal Access Act 2009 were generally adapted from the RES Act in order to apply them to the marine area.

Advice and guidance remain at the core of a fair and proportionate system of enforcement and will in many cases be sufficient to achieve the enforcement authority's objectives. The enforcement authority will use the new enforcement tools where necessary; maintaining its discretion to judge each case on an individual basis, but prosecution will remain the appropriate response for the most serious offences.

If you wish to contact us with any questions or queries you can reach us on:

Email: Ann.Steele@doeni.gov.uk

Tel : 028 9262 3165

Marine Assessment and Licensing Team (MALT)

Water Management Unit

Northern Ireland Environment Agency (NIEA)

17 Antrim Road

Lisburn

County Antrim

BT28 3AL

⁴ Marine and Coastal Access Act 2009 s. 72(3)