

EXPLANATORY MEMORANDUM TO

The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011

Introduction

1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule detailed above which is laid before the Northern Ireland Assembly.
2. The Statutory Rule has been made under sections 74 and 316(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”) and is subject to the negative resolution procedure.

Purpose

3. This Statutory Rule exempts certain activities from the need to have a marine licence under Part 4 of the 2009 Act. It applies in relation to any area, and any licensable marine activity taking place in that area, in relation to which the Department of the Environment is the appropriate licensing authority under section 113(6)(b) of the 2009 Act.

Background

4. Part 4 of the 2009 Act provides a framework for a new marine licensing system for activities carried out in the marine environment. These activities are defined in section 66 of the 2009 Act and include construction on the sea bed, off-shore renewable energy installations and dredging. The Department of the Environment is the appropriate licensing and enforcement authority for devolved matters within the Northern Ireland “inshore region” as defined in section 322 of the 2009 Act.
5. The marine licensing system provided for in the 2009 Act will replace that set out in Part 2 of the Food and Environmental Protection Act 1985 (FEPA) and will take effect through a Commencement Order on 6 April 2011. It will be supplemented by a suite of subordinate legislation which is being brought forward by the UK government and each of the Devolved Administrations.
6. The Northern Ireland Environment Agency (NIEA), an Executive Agency within the Department, will act as the appropriate licensing and enforcement authority. Section 74 of the 2009 Act enables the licensing authority to make orders exempting, with or without conditions, specified activities from the need to have a marine licence under Part 4 of the Act. In deciding which activities should be exempted, full regard has been given to the need to protect the environment, human health and other legitimate users of the sea and in accordance with sustainable development principles and the requirements of national, European and international law.
7. Marine licences will be the main way in which the UK complies with the EU Waste Framework Directive (Directive 2008/98/EC of the European Parliament and of the Council on waste) in respect of waste activities at sea. This instrument reflects the need to ensure that all exemptions comply with the requirements of that Directive.

Policy Objectives of the Statutory Rule

8. Some of the exemptions with the Rule are similar to ones that currently exist under FEPA. The new marine licensing system in Part 4 of the 2009 Act has a broad scope covering deposits, dredging, construction works as well as removals from the seabed. This allows for consistent decision-making about what activities may be carried out at sea. However, this broad scope also means that the system covers some activities that are already regulated under other legislation or are low risk.
9. Having considered the criteria for making an Order under section 74 of the 2009 Act, the Department developed proposals to exempt a range of activities from licensing. The exemptions fall into several groups:
 - (i) activities that are regulated under other legislation, for example, shipping pollution is regulated under Part 6 of the Merchant Shipping Act 1995 while fishing is regulated under the Common Fisheries Policy and relevant NI legislation;
 - (ii) activities necessary for the safety of vessels or human lives like fire-fighting, coastguard activities, deposit of items such as flares and smoke floats, certain salvage activities and, subject to approval from the Department, certain emergency works. This group also includes air accident investigations where time is critical to finding out the reasons for the loss of an aircraft;
 - (iii) activities taken to prevent pollution. This group includes the deposit of approved oil pollution treatments (including dispersants, chemical treatment substances and antifouling substances) and the deposit of equipment to contain, recover or control oil and other forms of pollution;
 - (iv) certain types of maintenance by statutory relevant bodies – for example the maintenance of harbour works by harbour authorities (within the boundaries of existing works); the maintenance of coastal protection work by Rivers Agency;
 - (v) routine low risk activities such as the deposit and removal of scientific equipment, trails for divers on protected wrecks, markers for designated conservation sites. This group includes activities carried out by vessels etc. in the normal course of navigation such as the discharge of waters from aggregate dredgers to maintain the stability of the vessel.
10. The exemptions in the Statutory Rule will only apply in respect of waste activities if the disposal of the non-hazardous waste is at the place of production or recovery of waste. For example, a fishing vessel that discards fish at sea as part of fishing operation is considered to be disposing of waste at the place of production and is exempt. The Rule specifies conditions to ensure that the exemptions comply with the requirements of the EU Waste Framework Directive, such as the requirement to include keeping a register of exempt waste activities.

11. The Rule contains a specific exemption in relation to the dismantling of ships. This is designed to ensure that ship dismantling is regulated under Waste Management Licensing rather than under Part 4 of the 2009 Act.
12. There are some reserved matters in the Northern Ireland inshore, for which the Secretary of State is the licensing authority. Activities such as oil and gas are exempt under the provisions of the 2009 Act, while other excepted matters such as defence will be exempted by subordinate legislation being produced by the Department for Environment, Fisheries and Rural Affairs.

Consultation

13. A statutory consultation on the proposals was carried out and concluded on 3 November 2010. Thirty written responses were received which were generally supportive of the Department's proposed exemptions. There were some comments made on the proposed conditions attached to the exemption on shellfish deposits, which were considered by some to place an unnecessary regulatory burden on the shellfish industry. After further consideration of existing legislation regulating shellfish activities, these conditions have been removed.

Equality Impact Assessment

14. The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 has been screened for compliance with section 75 of the Northern Ireland Act 1998. The revised licensing system will benefit the whole of Northern Ireland in terms of sustainable use of marine resources. It was therefore found that a full EQIA was not necessary.

Regulatory Impact

15. A Regulatory Impact Assessment (RIA) was prepared which considered the regulatory impact of the range of subordinate legislation proposed to fully implement the requirements of the 2009 Act.
16. Two options were considered within the RIA; option 1 "do nothing", and option 2 "introducing the legislation".
17. A single benefit, in respect of the "do nothing" option was identified as savings in the cost of staff time spent developing the legislation. The cost of pursuing this option was expressed in costs of continuing to operate an outdated system. This was considered a disbenefit, although difficult to quantify.
18. The benefits identified in introducing the legislation include an increased perception that the system is practical and contributing to better regulation by exempting an activity from requiring two licenses. This in turn could encourage higher levels of compliance with marine licensing legislation and a resultant improvement in the quality of the marine environment. This could subsequently help Northern Ireland meet its European obligations, such as the requirements of the Marine Strategy Framework Directive.

Financial Implications

19. The financial implications of the Statutory Rule are minimal.

Section 24 of the Northern Ireland Act 1998

20. The Statutory Rule does not discriminate on the grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or the statutory provisions listed at section 7 of the 1998 Act.

EU Implications

21. Not applicable.

Parity or Replicatory Measure

22. Similar legislation is being introduced simultaneously by the other UK Administrations to allow for a common approach to the exempting of marine licensable activities. There are minor differences between the GB and Northern Ireland legislation. This reflects local circumstances, structures and priorities.

Additional Information

23. Not applicable.

**PLANNING POLICY DIVISON
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