

**EXPLANATORY MEMORANDUM TO**  
**THE MARINE LICENSING (EXEMPTED ACTIVITIES) (AMENDMENT) ORDER**  
**2013**  
**2013 No. 526**

**1.** This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Marine Licensing (Exempted Activities) Order 2011. The 2011 Exemptions Order exempts certain activities from the need to have a marine licence under Part 4 of the Marine and Coastal Access Act 2009 (the MCA Act). It applies in relation to activities for which the Secretary of State is the appropriate licensing authority under section 113 of that Act. This amending Order modifies the conditions for four existing exemptions and introduces seven new exemptions.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 Part 4 of the MCA Act provided for a new marine licensing system. This regulates the activities specified in section 66 of that Act including, in particular, deposits at sea, removals of objects from the seabed, dredging and construction works.

4.2 Section 74 of the MCA 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 whether to make an Order under Section 74, the licensing authority must consider the need to protect the environment, the need to protect human health, the need to prevent interference with other legitimate uses of the sea and any other factor that the licensing authority considers relevant.

**5. Territorial Extent and Application**

5.1 This instrument extends to all of the United Kingdom, and applies wherever the Secretary of State is the licensing authority under Part 4 of the MCA Act. The UK Marine Licensing Area covers all UK marine waters apart from Scottish inshore waters. In addition certain activities are licensable wherever carried out if they are carried out by British vessels, vehicles, aircraft, marine structures or floating containers or if the vessels etc have been loaded in the UK.

5.2 The appropriate licensing authority is defined in section 113 of the MCA Act. Licensing in Welsh inshore waters, Northern Ireland inshore waters and Scottish offshore waters has been devolved except for the reserved matters specified in section 113. Other than where responsibility has been devolved, the Secretary of State is the licensing authority. The Secretary of State has then delegated licensing (and enforcement) functions to the Marine Management Organisation (MMO) by means of the Marine Licensing (Delegated Functions) Order 2011.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The marine licensing system in Part 4 of the MCA 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. While several activities have been exempted on the face of the Act, the policy intention was that most exemptions would be set out in secondary legislation.

7.2. The 2011 Exemptions Order introduced a range of exemptions. They fall into several groups

- (i) activities that are regulated under other legislation;
- (ii) activities for the safety of vessels or human lives;
- (iii) activities taken to prevent pollution;
- (iv) operational defence activities;
- (v) certain types of maintenance by relevant bodies – for example the maintenance of harbour works by harbour authorities; and
- (vi) routine low risk activities.

7.3 Experience gained from implementing the new marine licensing system over the first eighteen months together with comments received during the Government's Red Tape Challenge review of water and marine legislation pointed to a number of areas where improvements could be made to existing exemptions as well as the need for several new exemptions. The Government therefore consulted between August and October 2012 on a set of possible modifications to the Exemptions Order. The consultation included options for reducing the burden of licensing on navigational dredging following a decision to extend a transitional period for such dredging by a further two years in view of concerns about the potential regulatory burden.

7.4 In summary the proposals were:

- A range of possible measures to exempt low risk navigational dredging activities, or otherwise reduce the costs of licensing dredging such as through fast tracking of licence applications, making licences last longer, and reducing duplication of consenting by delegating functions to certain Harbour Authorities;
- Amendments to existing exemptions, i.e.:
  - Extending the scope of the exemption for shellfish propagation and cultivation to include marker buoys;
  - Modifying the conditions to the exemption for deposit of marine chemical and marine oil treatment substances so that a non-licensing approval by the licensing authority is required in all cases;
  - Requiring advance notification to the licensing authority before making use of the exemption for scientific instruments and removal of beach litter or seaweed (in order to check compliance with conditions relating to protected sites);
  - Extending the exemption for removal of litter or seaweed to include removal of dead animals (e.g. stranded cetaceans);
  - Extending the exemption for moorings and aids to navigation to include other small-scale activities such as the construction of pontoons;
- Creation of other new exemptions, i.e.:
  - Sediment sampling;
  - Removal of objects accidentally deposited on the seabed;
  - Temporary marker buoys used during recreational activities.

## 8. Consultation outcome

8.1 There were 56 responses to the Government's consultation exercise drawn from a range of sectors including business, recreational, regulatory and non-governmental organisations. Respondents were generally very supportive of the overall objective of exempting low risk activities whilst still maintaining a high level of environmental protection.

8.2 Some respondents were fully in favour of the proposed modifications and new exemptions, appreciating the reduction in the cost and time burden and stating it was important to be able to focus on the projects which required a more detailed assessment or control. Other respondents were in favour of the approach in principle, but had some clarifications or queries, for example on the operation of notification conditions or the definition of temporary.

8.3 There were a number of suggestions for additional exemptions but in most cases the issue was more about clarifying whether the relevant activity would be licensable in the first place. The MMO will be producing further guidance on this during 2013.

8.4 The Government has made a number of modifications to its proposals taking on board comments received during the consultation. The changes include:-

- Exempting “de minimis” dredging activities as originally proposed. Other small-scale dredging and dredging covered by an approved Maintenance Dredging Protocol would not be exempted in the Order but would be licensed through a fast track route (which would significantly reduce application costs whilst ensuring compliance through standard licence conditions);
- Requiring that the MMO is notified for all deposits made for the purposes of shellfish propagation in view of the potential risks to safe navigation;
- Not implementing the proposal to require notification of beach litter or seaweed removal activities;
- Exempting construction of pontoons only by or with the consent of Harbour Authorities, subject to restrictions on size and numbers (but not time limit);
- Extending the proposed exemption for sediment sampling to include other types of sampling for testing or analysis;
- Not limiting the exemption for temporary markers to recreational activities only – such markers must be removed within 28 days.

## **9. Guidance**

9.1 The MMO will produce detailed guidance on the operation of the new and amended exemptions as well as guidance on whether certain activities are licensable.

## **10. Impact**

10.1 An Impact Assessment has been produced. This will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 Small businesses carrying out small-scale low risk activities will benefit from the proposed exemptions in avoiding the administrative burdens, time delay and application fees required to obtain a marine licence.

## **12. Monitoring and review**

12.1 The effectiveness of the changes to the exemptions will be assessed by April 2014.

## **13. Contact**

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