

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### **Part 4: Marine Licensing**

#### *Chapter 2: Exemptions and Special Cases*

#### **Exemptions**

#### *Sections 74 and 75: Exemptions specified by order; Exemptions for certain dredging etc activities*

250. The licensing authority may, by order, either exempt activities from the need for a licence completely, or specify conditions which, if met, will mean the activity may be exempted from the need for a licence. Examples of the sorts of activity which might be covered by such exemptions are the routine re-distribution of sand along a beach or minor repairs to seawalls. Conditions may include the requirement for approval prior to the activity proceeding, in order for the activity to be exempt. This order-making power cannot be delegated to another body under the powers given in section 98.
251. In deciding whether to make an order, the licensing authority must have regard to the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant.
252. Where a particular dredging operation or a deposit of dredged materials is already authorised under any of the legislation in *subsection (3)* of section 75, that particular operation will not need an additional marine licence.

#### *Section 76: Dredging in the Scottish zone*

253. Marine licensing as described in this Part does not apply to any dredging done, in the exercise of the specified functions in *subsection (2)*, in the Scottish zone for the purpose of extracting minerals.

#### *Section 77: Oil and gas activities and carbon dioxide storage*

254. This section exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998 or the Energy Act 2008. The exempted activities are listed in *subsection (1)*. *Subsections (3)* and *(4)* place geographical restrictions on the exemption.

## **Special provisions in certain cases**

### ***Section 78: Special procedure for applications relating to harbour works***

255. This section takes effect where a marine licence is required and an application for a harbour order (for example in respect of certain harbour works) has been, or is likely to be, made.
256. In such cases the authority granting, or likely to grant, the harbour order, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a harbour order and the application will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.
257. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Harbours Act 1964 and disapply any provision of the marine licensing process.

### ***Section 79: Special procedure for applications relating to certain electricity works***

258. This section takes effect where both a marine licence and consent under section 36 of the Electricity Act 1989 (in relation to offshore generating stations) are required.
259. In such cases the authority to determine consent under section 36 of the Electricity Act, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a section 36 consent and the application for a marine licence will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.
260. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Electricity Act 1989 and disapply any provision of the marine licensing process.

### ***Section 80: Electronic communications apparatus***

261. This section removes the obligation for an operator to apply to the Secretary of State for a licence under the Electronic Communications Code (“the Code”), as set out in Schedule 2 to the Telecommunications Act 1984. The carrying on of activities in connection with submarine cable-laying or the removing of any submarine cable is licensable under the marine licensing regime established by Part 4 of the Act instead.
262. The licensing authority must not grant a licence for an activity that amounts to or involves the exercise of a right conferred by paragraph 11 of the Code unless it is satisfied that adequate compensation arrangements have been made for loss or damage suffered in consequence of that activity.
263. This in no other way affects the rights granted to operators by other parts of the Code.

### ***Section 81: Submarine cables on the continental shelf***

264. In the case of certain submarine cables, this section restricts the application of the marine licensing regime as respects their laying or maintenance. The effect of the section, as read with the other provisions of Part 4, is as follows-

*These notes refer to the Marine and Coastal Access Act 2009  
(c.23) which received Royal Assent on 12th November 2009*

- a cable constructed or used in connection with any of the activities specified in *subsection (5)* (mineral exploration and exploitation activities etc) is fully licensable anywhere in the UK marine licensing area;
- the following rules apply to a cable that is not constructed or used for any of those purposes (an “exempt cable”);
- if the whole of an exempt cable is beyond the seaward limits of the territorial sea, the cable is not subject to any requirement for a marine licence;
- if the whole of an exempt cable is within those limits, the cable is fully licensable;
- if part of an exempt cable is, but part is not, within those limits, a marine licence is needed, but only in relation to the laying (and not the maintaining) of the part of the cable that is within those limits, and the licensing authority must grant the licence though it may attach conditions to it as respects the laying of that part of the cable.

***Section 82: Structures in, over or under a main river***

265. In cases where an activity requires a licence under the Act, and would otherwise also require consent under section 109 of the Water Resources Act 1991, the Environment Agency may remove the need for separate consent under the Water Resources Act by issuing a notice to that effect to the applicant.

***Section 83: Requirements for Admiralty consent under local legislation***

266. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Admiralty under any local legislation, the Secretary of State may remove the need for that separate consent by issuing a notice to that effect.

***Section 84: Byelaws for flood defence and drainage purposes***

267. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Environment Agency under any of its byelaws under Schedule 25 to the Water Resources Act 1991, the Environment Agency may remove the need for that separate consent by issuing a notice to that effect.