

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

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

#### *Chapter 5: Supplementary*

#### **Register**

#### *Section 101: Register*

303. Each licensing authority must maintain a register of information relating to applications and licences for which it is responsible. It must make the register available to the public. Each licensing authority must also set out in regulations further provision regarding the maintenance of its register.
304. Information must be withheld from the register if disclosure would, in the opinion of the Secretary of State, be contrary to the interests of national security or adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate commercial interest. In the latter case, review of the excluded information must take place after four years. There is a presumption that after this period the excluded information will be made public unless on an application by the person to whom the information relates the licensing authority determines that it should remain excluded, in which case it will be reviewed in a further four years. The existence of commercially confidential information has to be recorded in the register.

#### **Stop notices and emergency safety notices**

#### *Section 102: Notice to stop activity causing serious harm etc*

305. An enforcement authority may issue a notice to a person prohibiting the person from carrying on a licensable marine activity if that activity is causing or is likely to cause serious harm to the environment or to human health or is causing or is likely to cause serious interference with legitimate uses of the sea. Such a notice is called a stop notice.
306. An enforcement authority may issue a stop notice whether or not the person to whom it is issued has a marine licence or is operating in accordance with the conditions of the licence.
307. A stop notice must state the enforcement authority's reasons for issuing the notice, the date and time that the activity must cease being carried out and any steps required by the enforcement authority to be carried out to ensure safe cessation.
308. A stop notice may only be in effect for up to seven days. A stop notice may be extended, but only up to a combined total period of 35 days. This limit does not apply where the activity is carried out without a marine licence. In such cases stop notices may remain in effect until a marine licence is granted for the activity in question.

***Section 103: Further provision as to stop notices***

309. Stop notices must be in writing (see section 322(1)). They must be served on the person carrying on or in control of the activity and, if a licence has been granted for that activity to another person, may also be served on the licensee. A notice may be revoked or varied by a further notice.
310. It is an offence to fail to comply with a stop notice.

***Sections 104 and 105: Emergency safety notices; Further provision as to emergency safety notices***

311. These sections provide a way to enforce the navigational safety provisions being repealed in section 36A of the Coast Protection Act 1949 and brought within the licensing provisions of the Act.
312. An enforcement authority may issue a notice to a person if it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, as a result of licensable works. The notice may require the provision of lights, signals or other aids to navigation or the stationing of guard ships until the serious interference, or threat of interference, is removed.

**Other powers**

***Section 106: Power to take remedial action***

313. Where it appears that a licensable marine activity has been carried on without a licence or in breach of the conditions of a licence, the appropriate licensing authority may carry out any works that appear to be necessary or expedient for the purpose of protecting the environment or human health, preventing interference with legitimate uses of the sea, preventing or minimising, or remedying or mitigating the effects of, any harm to the environment or any interference with legitimate uses of the sea, or restoring the condition of any place affected by any such harm or interference.

***Section 107: Power to test, and to charge for testing, certain substances***

314. At any person's request, the licensing authority may perform tests on substances for their effect on the marine environment, and the authority may charge for that testing. Substances covered by the testing regime include those used to treat oil or chemicals, algae or other living or dead organisms that may foul a surface, whether on, in or under the sea or sea bed, or on a vessel, vehicle, aircraft or marine structure.

**Appeals against notices under this Part**

***Section 108: Appeals against notices***

315. Each appropriate licensing authority is under an obligation to establish a mechanism under which people may appeal its decision to issue a statutory notice. This includes compliance, remediation, stop, and emergency safety notices.

**Offences: supplementary provision**

***Section 109: General defence of due diligence***

316. In any proceedings for an offence under Part 4 of the Act, it is a defence under this section to prove that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
317. *Subsections (2) to (6)* specify some particular circumstances in which the defence is available and prescribe procedures which apply to the proving of this defence.

### ***Section 110: Offences: jurisdiction***

318. Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom. This produces the result that, depending on whether the offence is to be tried summarily or on indictment, any court in the United Kingdom with jurisdiction to try an offence summarily or (as the case may be) on indictment will have jurisdiction to try the offence, even if it was in fact committed at sea.

### **Application to the Crown**

#### ***Section 111: Application to the Crown***

319. This Part of the Act applies to the Crown. While the Crown is not criminally liable for contravening any provision in this Part, certain higher courts may, on receipt of an application, declare any of its acts or omissions unlawful.
320. The Secretary of State has the power to certify, in the interests of national security, that any specified powers of entry should not be exercised on any Crown land specified in the certificate.

### **Consequential and transitional provision**

#### ***Section 112: Amendments and transitional provision***

321. This section gives effect to Schedules 8 and 9.

### **Interpretation**

#### ***Sections 113: The appropriate licensing authority***

322. This section contains the rules for determining who is the appropriate licensing authority for any area. This varies depending on both the area and the nature of the activity.
323. *Subsections (2) and (3)* relate to the Scottish offshore region (defined in section 322). In this region the Scottish Ministers are the licensing authority unless the activity to be licensed falls within *subsection (3)*. In respect of those activities the Secretary of State is the licensing authority. Activities licensable by the Secretary of State are those that relate to oil and gas, Part 6 of the Merchant Shipping Act 1995 or defence, where the activities that relate to oil and gas or defence are more particularly described in the subsection. An example of the type of activities that would be licensable in this region by the Secretary of State is an activity relating to the abandonment of offshore oil platforms.
324. *Subsections (4) and (5)* relate to Wales and the Welsh inshore region (defined in section 322). In this area the Welsh Ministers are the licensing authority unless the activity to be licensed falls within *subsection (5)*. In respect of those activities the Secretary of State is the licensing authority. Activities licensable by the Secretary of State are those that relate to the exploration for, or production of, petroleum, and defence activities as defined by *subsection (9)*. As with the Scottish offshore region, an example of the type of activities that would be licensable in this area by the Secretary of State is an activity relating to the abandonment of offshore oil platforms.
325. *Subsections (6) and (7)* relate to Northern Ireland and the Northern Ireland inshore region (defined in section 322). In this area the Department of the Environment in Northern Ireland is the licensing authority unless the activity relates to defence of the realm, as described in *subsection (7)*, for which the Secretary of State is the licensing authority.
326. In all other areas the licensing authority is the Secretary of State (*subsection (8)*).

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

***Sections 114 and 115: Meaning of “enforcement authority”; Interpretation of this Part***

327. These sections provide definitions of terms used in this Part.