

Northern Ireland Guidance on Marine Licensing

Construction (including renewables) and removals, under Part 4 of the Marine and Coastal Access Act 2009

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1.0 Introduction

The Department of Environment (DOE) Marine Division carries out licensing and enforcement functions under the Marine and Coastal Access Act (MCAA) Part 4, in all Northern Ireland territorial waters.

In determining an application for a marine licence, it is the duty of Marine Division, under section 2 of the Act, to ensure that the carrying on of activities is managed, regulated or controlled.

The purpose of this guidance is to:

- Introduce applicants to construction and removal activity types;
- Detail any applicable exemptions;
- Identify whether a proposed project requires a marine licence or is subject to an exemption;
- Identify whether there are likely to be other consents or permissions that may be required (whether or not issued by Marine Division or another regulatory body or Department).

In determining an application for a marine licence Marine Division 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 Marine Division think relevant.

1.1 Does the Project require a marine licence?

Part 4 of the MCAA (marine licensing) states that a marine activity to do with any of the following requires a marine licence:

- To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from:
 - Any vehicle, vessel, aircraft or marine structure;
 - Any container floating in the sea; or
 - Any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.
- To deposit any substance or object anywhere in the sea or on or under the sea bed from:
 - A British vessel, British aircraft or British marine structure, or
 - A container floating in the sea, if the deposit is controlled from a British vessel, British aircraft or British marine structure.
- To deposit any substance or object anywhere in the sea or on or under the sea bed from a vehicle, vessel, aircraft, marine structure or floating container which was loaded with the substance or object:
 - In any part of the United Kingdom except Scotland, or
 - In the UK marine licensing area.
- To scuttle any vessel or floating container in the UK marine licensing area.

- To scuttle any vessel or floating container anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft or British marine structure.
- To scuttle any vessel or floating container anywhere at sea, if the vessel or container has been towed or propelled, for the purpose of that scuttling:
 - From any part of the United Kingdom except Scotland, or
 - From the UK marine licensing area, unless the towing or propelling began outside that area.
- To construct, alter or improve any works within the UK marine licensing area either.
 - In or over the sea, or
 - On or under the seabed.
- 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.
- To carry out any form of dredging within the UK marine licensing area (whether or not involving the removal of any material from the sea or sea bed).
- To deposit or use any explosive substance or article within the UK marine licensing area either in the sea or on or under the sea bed.
- To incinerate any substance or object on any vehicle, vessel, marine structure or floating container in the UK marine licensing area.
- To incinerate any substance or object anywhere at sea on:
 - A British vessel or British marine structure, or
 - A container floating in the sea, if the incineration is controlled from a British vessel, British aircraft or British marine structure.
- To load a vehicle, vessel, aircraft, marine structure or floating container in any part of the United Kingdom except Scotland, or in UK marine licensing area, with any substances or object for incineration anywhere at sea.

Any activity seaward of mean high water springs (MHWS) will require a licence if it falls within the 13 categories above, unless an appropriate exemption applies. You should contact Marine Division to discuss whether your proposal can be considered as an exempt activity under the Marine Licensing (Exempted Activities) Order 2011.

Dredging includes using any device to move any material (whether suspended or not) from one part of the sea or sea bed to another. Therefore, hydrodynamic dredging and plough dredging are activities that are licensable under the MCAA but weren't under The Food and Environment Protection Act 1985 (the previous licensing regime).

Incineration means the combustion of a substance or object for the purpose of its thermal destruction.

The **UK marine licensing area** consists of the UK marine area¹, other than the Scottish inshore region.

Please refer to the Marine Licensing Guidance: Overview and Process for detailed information about each step in the application process and how to apply online.

¹ 'UK marine area' consists of the following:

- A. The area of sea within the seaward limits of the territorial sea adjacent to the United Kingdom;
- B. Any area of sea within the limits of the exclusive economic zone;
- C. The area of sea within the limits of the UK sector of the continental shelf so far as not falling within the exclusive economic zone and includes the bed and subsoil of the sea within those areas.

The area of sea mentioned in C. is to be treated as part of the UK marine area for any purpose only to the extent that such treatment for that purpose does not contravene any international obligation binding on the United Kingdom or Her Majesty's government.

In this section 'sea' includes:

Any area submerged at mean high water springs tide, and
The waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide.

The area of sea mentioned includes waters in any area:

- Which is closed, whether permanently or intermittently, by a lock or other artificial means against the regular action of the tide, but
- Into which seawater is caused or permitted to flow, whether continuously or from time to time, and
- From which seawater is caused or permitted to flow, whether continuously or from time to time.

2.0 Construction (including renewables)

Construction applies to a wide range of activities including:

- Energy generation;
- Harbour/navigation works;
- Land reclamation;
- Oil and Gas activities and carbon dioxide storage works;
- Piers;
- Scour protection;
- Slipways;
- Cables and pipelines;
- Barrage and islands;
- Bank stabilisation;
- Miscellaneous, e.g. shellfish aquaculture and cultivation.

A marine licence is required to construct, alter or improve any works within the UK marine licensing area either;

- In or over the sea; or
- On or under the sea bed.

Construction projects may trigger the requirement for a formal environmental impact assessment and similarly, where the project is within or adjacent to a European site it may trigger the need for a Habitats Regulation Assessment under The Conservation of Habitats and Species Regulations 2010 (as amended).

Consents from other regulators may also be required particularly where they extend into inter-tidal areas or are partly land-based, e.g. planning permission from DOE Planning Service, ASSI assent from the Northern Ireland Environment Agency (NIEA).

The following sections list different types of construction activities, their sub-categories and any relevant exemptions. Please contact Marine Division to discuss the licensing requirements of your project.

2.1 Coastal Defences

Within this category of construction, there are many sub-categories including the following:

- Armour facing;
- Artificial reefs;
- Berms;
- Wave screens;
- Breakwaters;
- Groynes;
- Revetments; and
- Sea walls.

2.2 Maintenance of Coast Protection, Drainage and Flood Defence Works

An activity carried out for the purpose of maintaining the following is exempt from requiring a marine licence, the only qualification being that the activity is carried out within the existing boundaries of the works:

- Coastal protection works;
- Drainage works; or
- Flood defence works.

This exemption does not apply to an activity which consists of beach replenishment works.

2.3 Emergency Works in Response to Flood or Flood Risk

An activity carried out for the purpose of executing emergency works in response to any flood or the imminent risk of flood is exempt from requiring a marine licence.

This exemption is subject to the condition that the activity may only be carried out in accordance with an approval granted by Marine Division for that purpose.

Marine Division definition of Emergency works is:

*Works where urgent permission is required to shore up/make safe **only**, an existing structure/development/project (possibly in response to a recent event) where human health, property or the environment are at **imminent** risk. These works will only be classed as an emergency where there is no realistic possibility that the applicant can proceed through the normal application process or a fast tracked version of the process without posing a higher risk.*

2.4 Energy Generation

Within this category of construction, there are many sub-categories including the following:

- Wind farms;
- Tidal barriers;
- Tidal power; and
- Substations.

2.5 Harbour/Navigation Works

Within this category of construction, there are many sub-categories including the following:

- Buoys;
- Navigation Marks;
- Docks walls;
- Quays;
- Wharfs;
- Lock gates;
- Marinas;
- Pontoons;
- Mooring (single and multiple);
- Mooring dolphins;

- Retaining walls; and
- Breakwaters.

2.6 Maintenance of Harbour Works

A deposit, removal or works activity carried out by or on behalf of a Harbour Authority for the purpose of maintaining harbour works is exempt from requiring a marine licence.

This exemption is subject to the condition that the activity is carried out within the existing boundaries of the works being maintained.

2.7 Moorings and Aids to Navigation

A deposit or works activity carried out by one of the following is exempt from requiring a marine licence for a pile mooring, swing mooring, trot mooring or aid to navigation:

- A Harbour Authority;
- A Lighthouse Authority; and
- Any other person in accordance with consent required from and granted by one of those authorities.

The exemption does not apply where the activity consists of a deposit or construction of a pontoon.

2.8 Land Reclamation

Within this category of construction, there are many sub-categories including the following:

- Bunded area;
- Piled area;
- Dock infill.

Please note that land reclamation does not include the alternative use of dredged material for beach nourishment or habitat creation. Please refer to the '*Marine Licensing Guidance: Dredging, Disposal, Alternative Use & Aggregate Dredging Guidance*' for more information.

2.9 Pier

Within this category of construction, there are many sub-categories including the following:

- Bridge;
- Bridge foundation;
- Jetty; and
- Pier.

2.10 Scour Protection

Within this category of construction, there are many sub-categories including the following:

- Gabion baskets;
- Mattress;
- Rock placement;

- Seabed investigation works.

2.11 Slipways

Within this category of construction, there are many sub-categories including the following:

- Causeway;
- Launching ramp; and
- Slipway.

2.12 Pipelines and Cables

Within this category of construction, there are many sub-categories including the following:

- Cable;
- Subsea cable;
- Intake pipeline;
- Outfall pipeline;
- Pipeline; and
- Pipeline maintenance.

2.14 Barrage and Islands

Within this category of construction, there are many sub-categories including the following:

- Artificial islands;
- Barrages;
- Rock placement; and
- Tidal barrier.

2.15 Miscellaneous

Within this category of construction, there are many sub-categories including the following:

- Shellfish propagation and cultivation;
- Cofferdams;
- Ground investigation works;
- Piling;
- Scaffolding;
- Sculptures, statues and fountains;
- Sluices;
- Weather masts; and
- Scientific instruments.

2.16 Shellfish Propagation and Cultivation

The deposit of any shellfish, trestle, raft, cage, pole, rope or line in the course of propagation or cultivation of shellfish is exempt from requiring a marine licence.

A dredging activity carried out for the purpose of moving shellfish within the sea in propagation or cultivation is exempt from requiring a marine licence.

The exemptions above do not apply to:

- A deposit for the purpose of disposal;
- A deposit made for the purpose of creating, alternating or maintaining an artificial reef; or
- A deposit that causes or is likely to cause obstruction or danger to navigation.

The exemptions related to shellfish cultivation are limited to deposits, removal and dredging. The exemptions do not apply to construction works, scuttling or the deposit or use of explosives. For example anyone building a jetty associated with a shellfish operation will need a licence for that construction but will not need a licence to put down trestles or ropes etc (unless they pose a risk to navigation).

2.17 Scientific instruments

Section 17 of the Marine Licensing (Exempted Activities) Order 2011 exempts the deposit of any scientific equipment or associated equipment in connection with any scientific experiment or survey.

However, this exemption does not apply where:

- It is a plan or project likely² (either alone or in-combination with other plans or projects) to have a significant effect on a European (N2K) site;
- Is it likely to have an effect on a Ramsar Site; or
- It is capable of affecting (other than insignificantly);
 - The protected features of a Marine Conservation Zone (MCZ);
 - Any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- It is not directly connected or necessary to the management of a site or zone mentioned above.

² 'Likely' has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

3.0 Removals

Removal applies to a wide range of activities including:

- Wrecks;
- Litter (where not exempt);
- Scientific equipment (where not exempt)
- Pipelines and cables;
- Mineral extraction;
- Decommissioning.

Please discuss your project with Marine Division to see what licensing requirements it has.

3.1 What is a wreck?

Wreck³ material includes any part of the vessel, aircraft or hovercraft including any of its cargo or equipment under the Merchant Shipping Act 1995. Wreck can be classed as flotsam, jetsam, derelict and lagan in or on the shores of the sea or any tidal water.

Definitions:

Flotsam: floating wreckage of a ship or its cargo, e.g. floating debris.

Jetsam: Part of a ship, its equipment, or its cargo that is cast overboard to lighten the load in time of distress and that sinks or is washed ashore.

Derelict: vessels or cargo, which was abandoned at sea without any hope of recovering it.

Lagan: goods cast overboard from a ship, sometimes marked by a buoy, which can be recovered or may perish.

3.1.1 Protected Wrecks in the UK

Around the coasts of the UK there are over 100 wreck sites that are designated as protected wrecks. There are three main pieces of legislation under which wreck sites have been protected:

- The Protection of Wrecks Act 1973;
- The Protection of Military Remains 1986; and
- Ancient Monuments and Archaeological Areas Act 1979.

3.1.2 The Protection of Wrecks Act 1973

The Act is separated into two main sections:

- Protection of sites of historic wrecks; and
- Prohibition on approaching dangerous wrecks.

³ Any reference to environment in the Marine and Coastal Access Act (MCAA) 2009 includes a reference to any site (including any site comprising, or comprising the remains of, any vessel, aircraft or marine structure) which is of historic or archaeological interest.

3.1.3 Protection of Sites of Historic Wrecks

This part of the Act provides protection for wrecks where it is deemed they have historical, archaeological or artistic importance.

According to Maritime and Coastguard Agency (January 2011), there are ~56 wrecks around the UK coast that are protected under this section of the act.

It is an offence to tamper with, damage or remove any objects or part of the vessel, or to carry out any diving or salvage operation within the exclusion zone around the wreck.

Administration of the Act and associated licences is the responsibility of MARINE DIVISION in Northern Ireland.

3.1.4 Prohibition on Approaching Dangerous Wrecks

This section of the Act provides protection for wrecks that are designed as dangerous by virtue of their contents. Diving on these wrecks is strictly prohibited. This section of the Act is administered by the Maritime and Coastguard Agency through the Receiver of Wreck.

3.1.5 The Protection of Military Remains Act 1986

Under this Act it is an offence to interfere with the wreckage of any crashed, sunken or stranded military aircraft or designated vessel without a licence.

All crashed military aircraft receive automatic protection, but vessels must be individually designated.

According to the MCA, there are 21 vessels protected under this Act, both in UK waters and abroad, and it is likely that the Ministry of Defence will designate more vessels in the future (January 2011).

There are two levels of protection offered by this Act:

- Protected Places; and
- Controlled Site.

3.1.6 Protected Places

This include the remains of any aircraft which crashed while in military service or any vessel designated (by name, not location) which sank or was stranded in military service after 4th August 1914.

It is an offence to conduct unlicensed diving or salvage operations to tamper with damage, remove or unearth any remains or enter any hatch or other opening where an aircraft or wreck is designated under Protected Places.

3.1.7 Controlled Sites

These are designated areas which cover the remains of a military aircraft or a vessel sunk or stranded in military service within the last two hundred years.

Where a Controlled Site had been designated it is an offence to tamper with, damage, move or unearth any remains, enter any hatch or opening or conduct

diving, salvage or excavation operations for the purposes of investigating or recording the remains, unless authorised by licence.

This Act administered by the Department of the Environment (DOE).

3.1.8 Ancient Monuments & Archaeological Areas Act 1979

This Act provides for the scheduling of 'monuments', which covers buildings, structures or work, cave or excavation, vehicle, vessel, aircraft, or other movable structure.

Under this Act it is an offence to demolish, destroy, alter or repair a scheduled monument without scheduled monument consent.

3.1.9 Other Types of Protection

Some wreck sites may have restrictions placed on them, for example by Harbour Authorities or by Directives issued by the Secretary of State's representative for Salvage and Intervention.

Artefacts recovered from protected wreck sites under licence to the Secretary of State must be reported to the Receiver of Wreck.

3.1.10 The Receiver of Wreck

The Receiver of Wreck, a post defined under the Merchant Shipping Act 1995, is an official of the Government whose main task is to administer the law in relation to Wreck and Salvage. The Receiver of Wreck is to process reports of wreck, in the interest of both finder and owner. The process of reporting wreck provides legal owners the opportunity to be reunited with their property and to ensure that law-abiding finders of wreck receive appropriate recognition in the form of a salvage award.

3.1.11 Reporting Wrecks

Any wreck found within the UK territorial waters (tidal only), or outside the UK and brought into the UK territorial waters must be reported to the Receiver of Wreck. This can be done by downloading a form from the Receiver of Wreck's website.

The address of the Receiver of Wreck is:

The Maritime and Coastguard Agency
Bay 1/05, Spring Place
105 Commercial Road
Southampton
Hampshire
S015 1EG
Tel: 023 8032 9474

Examples of what should be reported include:

- Portholes;
- Bells;
- Plates;
- Compasses;

- Fixtures and fittings; and
- Historical and archaeological material, e.g. medieval pots, gold coins, cannons etc.

Material from non-tidal waters fall under other legislation, e.g. Treasure Act 1996, Ancient Monuments and Archaeological Areas Act 1979, and are treated if they were found on land.

3.1.12 Treasure

Treasure is the property of the Crown. It includes things like gold and silver objects and groups of coins from the same find which are at least 300 years old.

If you find treasure, you must report it to the coroner for the district where you found it within 14 days. This should either be 14 days from when you found it or 14 days from when you first had a reason to believe the object may be treasure.

Property found in the sea or the seashore however, could be from a ship and is technically known as a wreck. Wreck is not defined as treasure because it would not have buried with the intention to recover it.

Therefore all wreck must be reported to the Receiver of the Wreck. All finds of treasure must be reported to the Receiver of the Wreck, even if the owner is the finder.

3.1.13 Marine Licence for Wreck Removal

Marine Division will only consider licensing the removal of wrecks if it does not fall under any of the legislation mentioned above. If the wreck does not fall under the legislation above then the appropriate authority who administers the Act or section of the Act must be approached by the applicant for licensing information.

Where a site does not fall under any of the legislation mentioned above, Marine Division will consider whether the proposed project is a licensable activity. If it is deemed to be a licensable activity, Marine Division will proceed through the normal application, consultation, analysis and licence decision-making process.

3.2 Litter

Part 3 of the Marine Licensing (Exempted Activities) Order 2011 details activities which are exempt from requiring a marine licence.

Section 21 exempts the use of vehicles to remove litter or seaweed from beaches by or on behalf of a local authority from requiring a marine licence. However, this exemption does not apply where:

- It is a plan or project likely⁴ (either alone or in-combination with other plans or projects) to have a significant effect on a European site.
- It is likely to have an effect on a Ramsar Site; or
- It is capable of affecting (other than significantly):
 - The protected features of an Marine Conservation Zone (MCZ)

⁴ 'Likely' has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora.

- Any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- It is not directly connected or necessary to the management of a site or zone mentioned above.

3.3 Scientific Instruments

Section 17 of the Marine Licensing (Exempted Activities) Order 2011 exempts removal activities for the purpose of removing any scientific instrument or associated equipment referred to in the following:

- Any scientific instrument or associated equipment in connection with any scientific experiment or survey.

However, this exemption does not apply to a removal activity where:

- It is a plan or project likely⁵ (either alone or in-combination with other plans or projects) to have a significant effect on a European site;
- It is likely to have an effect on a Ramsar Site; or
- It is capable of affecting (other than insignificantly);
 - The protected features of a Marine Conservation Zone (MCZ);
 - Any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
- It is not directly connected or necessary to the management of a site or zone mentioned above.

3.4 Pipelines

Section 32 of the Marine Licensing (Exempted Activities Northern Ireland) Order exempts a removal activity carried out for the purpose of executing emergency inspection or repair works to any pipeline.

This is subject to the condition that the activity may only be carried out in accordance with an approval granted by Marine Division for that purpose.

This exemption does not apply where the deposit falls within article 10 (fire fighting) of the Marine Licensing (Exempted Activities) NI Order 2011.

3.5 Mineral Extraction

The removal of minerals from the seabed falls within a licensable activity under section 66(1), sub-paragraph 8 of the Marine and Coastal Access Act 2009.

If you would like information on how to apply for a marine licence to undertake dredging of marine aggregate, please refer to Marine Licensing Guidance: Dredging, Disposal and Aggregate Dredging Guidance document.

3.6 Specific Removal Exemptions

3.6.1 Removal of Obstruction or Danger to Navigation

⁵ 'Likely' has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora.

In addition to the removal types mentioned previously in the document there is this one which is exempt in the order.

A removal activity carried out by one of the following for the purpose of removing anything causing or likely to cause obstruction or danger to navigation is exempt from requiring a marine licence:

- A Conservancy Authority⁶;
- A Harbour Authority;
- A Lighthouse Authority; or
- A person having powers under any enactment or statutory order to work or maintain a canal or other inland navigation, including navigation in tidal waters.

3.6.2 Shellfish Propagation and Cultivation

A removal activity carried out for the purpose of moving shellfish within the sea in the course of its propagation or cultivation is exempt from requiring a marine licence.

Contact Details:

If wish to contact us with any questions or feedback regarding this guidance document, please contact us at:

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Gasworks Business Park
Belfast
BT7 2JA

Tel: 028 90 569247

Email: MarineLicensingTeam@doeni.gov.uk

⁶ Within the meaning given by section 313(1) of the Merchant Shipping Act 1995