



Department
for Environment
Food & Rural Affairs

Consultation on revisions to marine licensing exemptions

November 2018



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Overview

1. Purpose of this consultation

- 1.1. The purpose of this consultation is to seek views on proposed changes to marine licensing exemptions in the marine areas where the Secretary of State is the appropriate licensing authority, as administered by the Marine Management Organisation (MMO).
- 1.2. Exemptions allow the MMO to be proportionate in its regulation of the marine environment. They make the marine licensing process more efficient and cost effective in specific cases which the Secretary of State considers to be appropriate.
- 1.3. Subject to the outcome of this consultation and final decisions by Ministers, the current planning assumption is for any agreed changes to come into effect from **6 April 2019**.

1. The consultation process

Who will be affected by the proposals?

- 2.1 This consultation document is directed at anyone interested in or involved with activities that take place in the marine area. This consultation may be of particular interest to those involved in the following marine activities:
 - Recreational diving
 - Recreational sailing
 - Shellfish farming
 - Scientific surveys
 - Coastal protection
 - Emergency repairs to subsea cables and pipelines
- 2.2 We expect this consultation to be of interest to businesses, operators, clubs/associations and individuals who carry out activities in the marine area and to conservation bodies and environmental groups that are concerned about the effect of human activities on the marine environment, navigational safety and human health. Many other people and groups are also concerned about what takes place along the coastline and in the seas around us and many therefore may have an interest in these proposals.

Timing and duration of this consultation

- 2.3 The consultation period will commence on **02 November** and will be open for responses for a period of six weeks.

The consultation period will end at midnight on 14 December 2018

- 2.4 In line with government's policy on openness, the information you submit may be made available to other parties, including personal information such as your name. If you do not consent to this, you must clearly request that your response be treated as confidential (except where disclosure is required by law). Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.
- 2.5 You should also be aware that there may be circumstances in which we will be required to communicate this information to third parties on request, in order to comply with our obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

3. Introduction

- 3.1 The UK government's vision is to have clean, healthy, safe, productive and biologically diverse oceans and seas. To help achieve this vision, [the Marine and Coastal Access Act 2009 \(MCAA\)](#) introduced the current marine licensing system, which came into effect in April 2011. This system aims to facilitate the sustainable use of the marine environment, so that activities can be permitted whilst having regard to any environmental impacts and preventing interference with other legitimate users of the sea.
- 3.2 Part 4 of the MCAA sets out the marine licensing regime for the UK marine area (other than the Scottish inshore region, where the Marine (Scotland) Act 2010 applies). Marine licences are administered by the appropriate licensing authority, as described in section 113 of the MCAA. The Secretary of State is the appropriate licensing authority for the English inshore and offshore regions and the Northern Ireland offshore region (and in respect of certain reserved matters). Most of the Secretary of State's marine licensing functions have been delegated to the MMO (under the Marine Licensing (Delegation of Functions) Order 2011).
- 3.3 The activities which require a marine licence are described in section 66 of the MCAA. Exemptions to the requirement to obtain a marine licence are provided for in Chapter 2 of Part 4 of the MCAA. Under section 74(1) of the MCAA, the appropriate licensing authority may specify marine licensing exemptions by order.
- 3.4 [The Marine Licensing \(Exempted Activities\) Order 2011 \(as amended\)](#) (the Order) sets out the marine licensing exemptions where the Secretary of State is the appropriate licensing authority. The Order was last updated in 2013.
- 3.5 This consultation does not cover marine licensing exemptions in the Scottish offshore region, the Welsh inshore and offshore regions, or the Northern Ireland inshore region, where the Scottish Ministers, the Welsh Ministers and the Northern

Ireland Department of Agriculture, Environment and Rural Affairs, respectively, are the appropriate licensing authority.

4. Current marine licensing exemptions

4.1 As set out above, the current marine licensing exemptions are largely set out the [Marine Licensing \(Exempted Activities\) Order 2011](#) (as amended). This Order puts in place a range of exemptions. They fall into several groups:

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

4.2 Marine licensing exemptions require differing levels of notification and are split into three categories:

1. Exemptions for which no notification is required,
2. Exemption which require notification to be given to the MMO, and
3. Exemptions which require approval from the MMO.

5. Why change?

5.1 Marine licensing exemptions were last reviewed in 2013 and, as a consequence, a range of amendments were introduced. The government has recently conducted another review of the exemptions, with the aim of reducing burdens, where appropriate, as well as ensuring that any risks to the marine area are well managed. The resulting proposed amendments to the exemptions are set out in the rest of this document.

5.2 In particular, there has been a significant amount of interest in marine litter and the numerous actions of the UK government to address this issue. This includes the removal of destructive ghost fishing gear from the marine environment which is also a major source of marine plastic pollution.

Details of proposed amendments

6. New exemption: recovery of marine litter and abandoned, discarded or lost fishing gear

Overview:

- 6.1 Under the MCAA it is a licensable activity to use a vehicle, vessel, aircraft, marine structure or floating container to remove a substance or object from the seabed in the UK marine area.
- 6.2 Divers often remove objects such as marine litter and abandoned, discarded or lost fishing gear (ADLFG or “ghost gear”) from the marine environment during the course of diving activities. A marine licence is currently required for this activity in certain circumstances.
- 6.3 Stakeholders have told us that they are concerned that the requirement to obtain a marine licence, and the rising cost of a marine licence, risks deterring divers from undertaking such voluntary removal activities which deliver a clear public benefit.

Proposed exemption:

- 6.4 The proposed new exemption will permit divers to remove marine litter and ADLFG from the marine environment during the course of diving activities and to do so without disproportionate regulatory burden. Marine litter is taken here to mean any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment¹.
- 6.5 The proposed exemption will be worded to ensure the protection of protected species and habitats and items of archaeological or historical interest. The wording of the exemption will also need to minimise the risk of well-intended divers removing items of defence equipment which are intentionally placed on the sea bed.

6. Do you agree with the proposed new exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this proposed exemption?

¹ http://www.un.org/Depts/los/global_reporting/WOA_RPROC/Chapter_25.pdf

7. New exemption: use of vehicles and vessels to remove marine debris by a Harbour Authority

Overview:

- 7.1 Harbour Authorities use vehicles and vessels to remove marine debris and litter from their jurisdiction in order to keep the navigational channel and intertidal area clear. Under current arrangements, Harbour Authorities are permitted to take action to remove objects that present an immediate risk of obstruction or danger to navigation. These powers currently do not apply to marine litter where it does not pose any obstruction or danger to navigation.
- 7.2 For the purposes of this exemption, Harbour Authority has the meaning given by section 57(1) of the Harbours Act 1964.

Proposed exemption:

- 7.3 To permit Harbour Authorities to carry out activities to remove marine debris and litter (defined as any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment) from their jurisdiction.
- 7.4 The exemption will be worded to ensure the protection of protected species and habitats and items of archaeological or historical interest.

7. Do you agree with the proposed new exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this proposed exemption?

8. New exemption: in-water hull cleaning of lightly fouled recreational vessels

Overview:

- 8.1 This exemption relates to activities to reduce the risk of marine invasive nonnative species (INNS) being introduced or spread on the hulls of vessels.
- 8.2 For example, the invasive non-native carpet sea-squirt (*Didemnum vexillum*), which is a significant threat to reef biodiversity and an aquaculture nuisance, spreads as a fouling agent and its distribution in the UK suggests boating has played a significant role. There are currently forty marine non-native species

established in the UK with the potential to be spread by vessels and threaten native species.

- 8.3 Currently, in-water cleaning of vessels requires a marine licence because it involves the deposit of a substance into the marine environment from a vessel. Stakeholders have expressed concerns that it is unreasonable to be expected to haul out and clean lightly fouled vessels and consider the costs associated with this prohibitive. We understand that some vessel owners have continued the practice of in-water cleaning without obtaining a marine licence despite it being an offence which could lead to prosecution.
- 8.4 The risk to the marine environment of undertaking gentle cleaning of lightly fouled hulls in-water is considered low, provided that the anti-foul coating is not damaged. However, the risk associated with heavier fouling can be high: if any more significant fouling is allowed to develop, the affected vessel must be removed from the water and scrapings from the hull deposited in landfill to minimise the risk of introducing or spreading invasive non-native species.
- 8.5 This exemption is proposed to enable in-water cleaning of light fouling whilst achieving good biosecurity practice which requires that any more significant fouling is not released to the water.
- 8.6 We are seeking views on whether this exemption should apply to all marine vessels or be limited by size, for example to vessels under 10 metres long or vessels under 20 metres long. The Ministry of Defence (MOD) recommend a 15m limit to the exemption as vessels larger than 15m are more likely to be undertaking international voyages.
- 8.7 We are seeking views on how light fouling suitable for in-water cleaning might be identified, for example a slime layer or soft green or brown algal beard [not distinguishable as distinct organisms] that can be removed by wiping [without damaging the anti-fouling coating].

Proposed exemption:

- 8.8 To exempt in-water cleaning of lightly fouled vessels – this would not include vessels which are more significantly fouled.

8. Do you agree with the proposed new exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this proposed exemption?

9. Disapplication of current exemption: shellfish propagation and cultivation for new shellfish farms or extensions to areas of shellfish propagation and cultivation by existing shellfish farms (Article 13)

Overview:

- 9.1 The deposit and removal of any shellfish, trestle, raft, cage, pole, rope, marker or line in the course of propagation or cultivation of shellfish does not require a licence. This is covered by Article 13 of the Order.

The current exemption does not apply to:

- deposits made for the purpose of disposal,
- deposits made for the purpose of creating, altering or maintaining a reef,
- deposits that cause or are likely to cause obstruction or danger to navigation.

The condition attached to this current exemption is that notification is submitted to the MMO.

- 9.2 The shellfish farming industry have raised concerns that the current regulatory system relating to shellfish propagation and cultivation activity does not afford business a robust standing in the marine/coastal area. It is our understanding that they feel that operations are open to challenge (including retrospective challenge) from a number of sources and are interested in being afforded a more sound position. This is needed now, more than in earlier years, because of the growing levels of activity and increasing pressures on the inter-tidal and marine area.
- 9.3 The Maritime and Coastguard Agency (MCA) and Trinity House (TH) have also expressed concerns about the self-declaration required by an applicant in regard to whether a proposal causes or is likely to cause obstruction or danger to navigation. The applicant may not possess the correct expertise to identify a potential navigational risk. However under the proposed amendment below this issue would be addressed.

Proposed amendment of exemption:

- 9.4 The proposed amendment would **dis-apply** the current exemption, with the effect that a marine licence would be required for the deposit and removal of any shellfish, trestle, raft, cage, pole, rope, marker or line in the course of propagation and cultivation of shellfish. The requirement for a marine licence would apply to new areas of shellfish propagation or for those where existing areas of shellfish propagation are to be extended.
- 9.5 Including shellfish cultivation in the marine licensing system would offer industry the robust position they seek. Marine licences must be considered in accordance with Marine Plans. As such both operators and regulators are afforded a clearer

steer on the types of activities and developments that might more readily be given consents in any given plan area. This saves both applicants and regulators time and money. A marine licence would also require the consideration of an operations impact on both the environment and other users, this consideration mitigates against potential conflicts which may arise

- 9.6 We propose that the current exemption would continue to apply to existing areas of shellfish propagation in so far as they may continue to deposit markers as required to effectively mark the existing operation.

9. Do you agree with the Government's proposal to dis-apply this exemption?

Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this proposal?

10. Amendment to existing exemption: scientific instruments (Article 17)

Overview:

- 10.1 The deployment of scientific instruments is currently exempt from the requirement to have a marine licence, as set out in Article 17(1) of the Order. Such activities are not exempt where they involve a deposit that causes or is likely to cause obstruction or danger to navigation.
- 10.2 This assessment of whether the deposit causes a danger to navigation is currently left to those deploying the scientific instrument. There is, however, growing concern that those undertaking the assessment do not have the relevant knowledge or expertise to make that assessment, or have not sought expert advice prior to taking a view.
- 10.3 As a consequence there may be scientific instruments deployed in the marine area, in reliance on the current exemption, but which the MCA or TH (with responsibility for implementing British and international maritime law and safety policy) may deem to be a potential risk to the safety of navigation. MCA and TH have advised that the scientific instruments that cause the main concern are those that are tethered to the sea bed and which reduce the depth by more than 5%. The MOD recommend that HA's are made statutory consultees for such licences in HA waters.

Proposed amendment to exemption:

- 10.4 To amend the current exemption to exclude scientific instruments that pose the greatest risk to the safety of navigation - those which are tethered to the seabed or that reduce navigational clearance by more than 5% from Chart Datum. Chart Datum is the level of water below which all depths on a nautical chart are

measured from. By international agreement Chart Datum is defined as a level so low that the tide will not frequently fall below it. In the United Kingdom, this level is normally approximately the level of Lowest Astronomical Tide.

10.5 Scientific instruments are devices placed in the marine environment for research or scientific purposes.

10. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this amendment?

11. Amendment to existing exemption: maintenance of coast protection, drainage and flood defence works (Article 19)

Overview:

- 11.1 Article 19 of the Order includes an exemption for any activities carried on by or on behalf of a coast protection authority to maintain any coast protection works.
- 11.2 Most Local Authorities (LAs) are coast protection authorities (CPAs) but not all. This proposed amendment has been suggested to extend this exemption to LAs that are not currently CPAs so that they may also carry out coast protection works. The MOD recommends that this exemption is extended to cover the Secretary of State for Defence to allow MOD to also maintain its infrastructure without need for a licence.
- 11.3 The Environment Agency (EA) has advised that whilst coast protection works include beach management activities to maintain soft defences, this is not explicit in the current wording of the exemption and this should be amended to provide clarification and avoid misinterpretation.

Proposed amendment to exemption:

- 11.4 To amend the current exemption to extend it to include all LAs, not just CPAs, by adding LAs to the list of bodies that can use this exemption. To also amend to cover the Secretary of State for Defence.
- 11.5 Amend the exemption to clarify the scope of coast protection works: to include beach profiling and recycling.

11. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this amendment?

12. Amendment to exemption: emergency work in response to flood or flood risk (Article 20)

Overview:

- 12.1 This current exemption applies to activities carried out on by or on behalf of the EA for the purpose of executing emergency works in response to any flood or the imminent risk of any flood. The activity may only be carried on in accordance with an approval granted by the licensing authority for that purpose.
- 12.2 The EA have advised that in the case of an emergency, for practical reasons, they are focused the emergency response at hand and it is impractical to seek prior approval from the MMO, particularly on occasions when emergencies occur outside of the MMO's office hours.

Proposed amendment:

- 12.3 To amend the current exemption by removing the requirement for the EA, or those working on its behalf, to secure approval from MMO prior to the emergency works being undertaken.
- 12.4 To introduce a requirement for the EA to notify the MMO of emergency works undertaken pursuant to the exemption, within 72 hours of emergency works commencing. This notice would detail works undertaken and the circumstances of the emergency.

12. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

13. Amendment to exemption: use of vehicles to remove litter, seaweed or dead animals (Article 21)

Overview:

- 13.1 The current exemption under Article 21 of the Order allows LAs, or those acting on behalf of LAs, to use vehicles to remove litter, seaweed or dead animals from beaches.
- 13.2 The exemption was originally introduced to permit the use of beach cleaners to remove litter from beaches, but was extended in 2013 to also permit the removal of dead animals and seaweed that had washed up. The MOD recommend that this exemption is extended to cover the Secretary of State for Defence to allow the MOD to also remove litter or dead animals without need for a licence.

- 13.3 The use of the word 'beach' in the exemption prevents LAs, or those acting on their behalf, from removing litter, dead animals and seaweed from other intertidal areas where they may have cause to do so.

Proposed amendment:

- 13.4 To amend the current exemption so that it applies to both beaches and intertidal areas and to extend it to include the Secretary of State for Defence.

13. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

14. Amendment to exemption: moorings or aids to navigation (Article 25)

Overview:

- 14.1 The current exemption under Article 25 of the Order, permits harbour and lighthouse authorities, or those acting with their consent, to lay or remove moorings or aids to navigation. Prior notice of the intention to undertake the activity needs to be given to the MMO.
- 14.2 After further consideration, Government now thinks it is disproportionate to require harbour and lighthouse authorities to have to notify the MMO when carrying out activity under this exemption.

Proposed Amendment:

- 14.3 To amend the current exemption to remove the requirement on harbour and lighthouse authorities to provide prior notice to the MMO when carrying out relevant activity.
- 14.4 This amendment may also be applied to those carrying out activity with the consent of the harbour or lighthouse authority.

14. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this amendment?

15. Amendment to existing exemption: temporary markers (Article 26A)

Overview:

- 15.1 Under this exemption, individuals and organisations putting markers in place for less than 28 days are exempt from the requirement to have a marine licence. Prior notice of the intention to undertake the activity must be given to the MMO.
- 15.2 The MMO considers it disproportionate for there to be a requirement to provide prior notice where markers are in place for less than 24 hours.

Proposed Amendment:

- 15.3 To amend the current exemption to provide that the requirement to provide prior notice to the MMO only applies to markers that will be in place for longer than 24 hours (but less than 28 days).

15. Do you agree with the proposed amendment to the exemption?

Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this amendment?

16. Amendment to existing exemption: diver trails within restricted areas (Article 31)

Overview:

- 16.1 An exemption is in place for a deposit or removal activity when placing, securing or removing signage or other identification relating to a wreck in a restricted area (as defined in section 1 of the Protection of Wrecks Act 1973).
- 16.2 The exemption as currently worded does not include wrecks and other assets protected under other Acts, such as the Ancient Monuments and Archaeological Areas Act 1979 or the Protection of Military Remains Act 1986.

Proposed Amendment:

- 16.3 Amend the exemption by extending it to include wrecks protected under the Ancient Monuments and Archaeological Areas Act 1979 and the Protection of Military Remains Act 1986.

16. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this amendment?

17. Amendment to existing exemption: cables and pipeline – authorised emergency inspection repair (Article 34)

Overview:

- 17.1 The current exemption applies to deposit, removal or dredging activities for the purposes of emergency inspection or repair works to any cable or pipeline. Prior approval from the MMO is required.
- 17.2 Historic feedback from cables industry stakeholders is that in an emergency they are focused on matters other than seeking approval from the licensing authority and there may be instances when emergencies occur outside of office hours. MMO do now provide a weekend out of hours contact for such events though the proposed amendment to the exemption could be preferable.
- 17.3 Applicants regularly include cable and pipeline protection (through deposit of rock and by other means) activity within the applications for approval that are submitted under this article. This is a cause of concern with regards to navigational safety and environmental impact. Government is of the view that cable and pipeline protection activities do not fall within the exemption because they are a) ancillary to the repair of the pipeline or cable and b) the emergency has ended by the time the protection activity takes place.

Proposed Amendment:

- 17.4 To amend the current exemption to remove the requirement to obtain prior approval from MMO and replace this with a requirement to notify the MMO within 24 hours of completion of the emergency works.
- 17.5 To further amend the exemption to clarify that this exemption does not apply to cable and pipeline protection works, such as a deposit made for the purpose of providing rock protection. Such deposit of rock protection would require a marine licence.

17. Do you agree with the proposed amendment to the exemption? Yes/No/Neither Agree or Disagree

Do you have any further comments you wish to make on this

18. What happens next?

- 18.1 The closing date for this consultation is midnight on **14 December 2018**. Responses received by this date will be analysed and taken into account by Ministers in their consideration of the proposals for amending the marine exempted activities order. The consultation responses will be published. If you do not wish for your response to be published, please make that clear in your reply.
- 18.2 **During the consultation, if you have any enquiries or wish to receive hard copies of the documents, please contact: Exemption@defra.gsi.gov.uk**
- 18.3 Written responses can be sent to the email address above or posted to:
- Marine Licensing Team (Exemptions), Seacole Block, 2 Marsham Street. London SW1P 4DF

We have asked you a number of specific questions throughout this document. If you have any other views on the subject of this consultation, which have not been addressed, you are welcome to provide us with these views in your response.