



UKELA's response to Defra's Second Consultation on Secondary Legislation under the Marine and Coastal Access Act: Part 4 Marine Licensing

Introduction

1. The UK Environmental Law Association (UKELA) aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.
2. UKELA prepares its responses to consultations with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the Water Working Party.
3. UKELA was grateful to the Defra marine licensing policy advisors, Emma Silverton and Sean Ray, who spoke about the proposals at the seminar we arranged jointly with PIANC at the Institution of Civil Engineers on 7th September.

Question 5: Do you agree with the proposals for a pre-application service? Is there anything else that you think would provide extra support to potential applicants during this stage?

Possible assessment under the Water Framework Directive

4. We welcome the pre-application process proposals for screening, scoping and preparing EIAs and/or appropriate assessment under the Habitats Regulations. We would suggest that the process also addresses the possible need for an assessment under the Water Framework Directive. This could apply to any type of development with the potential to cause deterioration at water body level or to prevent the water body from meeting its WFD objectives (for example as a result of a new physical modification). The information needed to inform this assessment would most usefully be collected or collated alongside that required to inform an EIA or appropriate assessment. It therefore seems sensible to deal with the potential need for a WFD assessment at the same time in the pre-application process.

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Licences required under local Acts

5. Many developments in port and harbour areas which require a marine licence will also require some form of licence or consent from the relevant port or harbour authority under their local Act (eg a works licence or a dredging licence).
 - In the interests of better regulation we would suggest Defra explores ways of rationalising the procedures to avoid involving two different authorities having to deal with two different but overlapping kinds of licence for the same activity.
 - We would also suggest that the licensing procedure documents expressly deal with how to approach cases where local Act licences may also be required. Paragraphs 5.1 and 5.10 of the consultation document indicate that that the applicant's attention will be drawn to 'other consents' that may be required. We would suggest this includes express reference to any applicable local Act licences, as these local requirements may otherwise be overlooked.

Question 6: Do you agree with the proposals for the marine licence application process?

Statutory timeframes

6. We query the proposal at 5.21 that there should be no statutory timeframes for the application process because of the need for flexibility. The paragraph goes on to say that timeframes will be set in the service level agreement between Defra and the MMO.
7. Statutory timeframes are a feature of other licensing regimes, such as those for planning permissions and environmental permits. They provide a degree of certainty for applicants and interested parties. Without statutory timeframes, developers and affected communities could face many months or years of uncertainty waiting for a licensing decision. They would not be able to rely on deadlines set out in a service level agreement between Defra and the MMO.
8. We recognise that proposals will differ in complexity making a one-size-fits-all time limit inappropriate. However, it should be possible to develop statutory

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timeframes that provide the necessary flexibility. For example, the Environmental Permitting (England and Wales) Regulations 2010 set a range of timeframes depending on the nature of the application, with provision for a longer period if it is agreed between the regulator and the applicant: Sched 5, Part 1, para 15(3).

9. For the system to have legitimacy, timeframes will need to be set that are realistic and achievable, whilst also ensuring timely decisions. The MMO will, naturally, need to be adequately resourced to meet the deadlines. In the current climate of cuts, we urge the government to make funding available to the MMO to discharge its functions properly.

Question 15: Views on the proposed exemptions

Exemptions: maintenance dredging

10. We consider it crucial that dredging activities are properly regulated so as to avoid environmental harm and possible breaches of European Directives such as the Habitats Directive and Water Framework Directive. However, we are concerned that the approach proposed in paragraph 7.70 may not be within the powers of section 75 of the Marine and Coastal Access Act. Paragraph 7.70 proposes identifying specific dredging proposals that are unlikely to be problematic and then *developing a simplified licensing process* for them. Yet section 75 provides that a marine licence *is not needed* for dredging carried out in accordance with any local Acts or Harbour Order. What, then, would be the basis for this simplified licensing process?
11. If there are no powers for such a process, how else can dredging activities undertaken by a harbour authority be properly controlled? We recognise the practical difficulties in amending section 75, although this would settle the issue unambiguously. Guidance to local ports and harbour authorities on environmentally responsible dredging would help, but is not legally binding. Perhaps Defra should explore its powers of direction. For example, the modification to section 40(2) Environment Act 1995 made by regulation 20(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 enables the Secretary of State/NAW to give directions to *any public body* for the purposes of giving effect to the Water Framework Directive.

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