

Marine
Conservation
Society

January 2009

Parliamentary Briefing

Marine and Coastal Access Bill Amendment

Controls & Safeguards for Exempted Activities (Clause 71 etc)

The organisations listed above are all members of Wildlife and Countryside Link's Marine Task Force¹, which has been campaigning for several years for improvements in marine conservation. We have been closely engaged in the Marine & Coastal Access Bill process from the outset.

(i) Greater controls when exempting activities from requiring a marine licence

While we believe that licensing exemptions (clause 71) are not ideal, we concede that they would reduce the regulatory burden. However, the Marine & Coastal Access Bill provides no environmental safeguards, controls or checks in relation to exemptions. For example, none of the requirements used when determining applications (under clause 66) are included for determining exemptions, there is no requirements for assessing impacts prior to exemption, no description of the types of activities that could qualify for exemption and consultation on exempted activities is not mandatory.

The process for the exemption set out in the Bill is vague and creates a potential loophole allowing possibly environmentally damaging activities to proceed unchecked. The Government's associated document, "*Managing our marine resources – licensing under the Marine Bill*", states that it will work with stakeholders to identify where low risk activities can be exempt from marine licensing but this limitation to and assessment of 'low risk' activities is not included in the Bill as currently drafted. Link therefore advocates amendments to achieve the following.

It must be mandatory to:

- (1) Ensure that any exemptions do not compromise the licensing authority's 'purpose' in clause 66 to protect the environment and human health and to prevent interference with legitimate uses of the sea;
- (2) Hence, linked to (1) above, carry out the appropriate environmental assessments, e.g.:
 - Strategic Environmental Assessment (SEA) to strategically assess the Government's proposed plan of exemptions in secondary legislation which it is/will be consulting stakeholders on (the process referred to in Government's response to Recommendation 29 of the Joint Committee's report on the Draft Marine Bill);
 - Environmental Impact Assessments (EIAs);
 - Appropriate Assessments where an activity is likely to impact on a site protected under the Birds or Habitats Directives); as well as

¹ Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife, the countryside and the marine environment.

- an impact assessment (cost-benefit analysis) of the proposal (as stated in paragraph 26 of the Impact Assessment for the Marine & Coastal Access Bill);
- (3) Seek advice from ‘experts’ and to consult with interested parties (to strengthen clause 71(4));
- (4) Take account of the advice from experts and the representations received from interested parties when making the decision on whether to allow the exemption;
- (5) Publish the reason where expert advice is not followed;
- (6) If the Order is granted, the licensee must get approval and/or notify (depending on the conditions in the Order) the licensing authority every time it carries out or repeats the activity (to strengthen clause 71(2)&(3)); and
- (7) Monitor and review the exempted activities to ensure that conditions are being met and that unintended environmental damage is not occurring.

(ii) Keeping a record of all activities, including exempted activities

At the very least, it should be compulsory for the licensing authority to be notified every time an exempted activity is carried out, and for this information to be included in the proposed “*register of licensing information*” (defined under clause 98). This would ensure that as a minimum, licensing and planning authorities would be able to base decisions on a complete record of all licensable activities, including those exempted from licensing, happening in the marine area at any time and allow them to properly determine the cumulative impacts of these activities on the marine environment.

In its response “*Taking forward the Marine Bill*”, to the Joint Committee’s report on the Draft Marine Bill, the Government stated that they would be consulting extensively on its approach to exemptions. Options which could be covered include requiring a licence for exemptions, removing the requirement for a licence altogether and “*in-between options such as a simple registration scheme*” (response to Recommendation 29). We believe that to ensure informed decision making at sea and deliver sustainable development in the marine area that a notification and registration scheme is a minimum, rather than optional, requirement. (It should be noted that the proposed option mentioned in the Government’s response to Recommendation 29, to require a licence for an exemption is potentially obsolete because under clause 71(1)(a), the Bill currently allows the licensing authority to specify in the exemption Order that a licence will not be needed.)

Furthermore, clause 98 contains a statement that allows exclusion of information from the licensing register on the grounds that it “*would be unduly prejudicial to any person’s commercial interests*”. However, the term “*unduly prejudicial*” is not clear and could be interpreted as having a wide meaning. For example, there are no limitations provided on what is and what would not be “*unduly prejudicial*”. Therefore, we believe that it would be more appropriate to make use of existing language, such as that in the Environment Information Regulations 2004. Regulation 12(5) of the 2004 Regulations states that a public authority may refuse to disclose information to the extent that its disclosure “*would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*”. This is a much more definite clause.

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Annex – Amendments

Marine & Coastal Access Bill

House of Lords Committee Stage, January 2009

(i) Greater controls when exempting activities from requiring a marine licence

Clause	Clause 71 Exemptions specified by order
Amendment	Page 41, line 17: at end insert new sub-clause— “(1A) The appropriate licensing authority for an area may only issue an order under subsection (1) where that order— - does not compromise the requirements under section 66; and - the results of any environmental appraisal indicates that it is appropriate to do so.”
Amendment	Page 41, line 25: leave out lines 25-27 and insert— “(4) A licensing authority must:-- (a) consult such persons as the authority thinks appropriate as to every order the authority contemplates making under this section (b) have regard to any representations which it receives from any person having an interest in the outcome of the exemption (c) take account of any representations which it receives from those with particular expertise, and (d) publish details of how it dealt with any representations, especially representations from those with particular expertise, stating its reasons where expert advice is not followed.”
Amendment	Page 41, line 27: at end insert new sub-clause— “All activities subject to an order under this section, must be kept under review by the appropriate licensing authority.”

(ii) Keeping a record of all activities, including exempted activities

Clause	Clause 71 Exemptions specified by order
Amendment	Page 41, line 18: at beginning insert— “Activities carried out under an order granted under subsection (1), require notification to be made in the register defined under section 98.”
Clause	Clause 98 Register
Amendment	Page 58, line 24: at end insert— “(dA) exemptions specified by order under section 71, including the associated notifications;”
Amendment	Page 59, line 4: leave out from “would” to end of line 5, and insert— “adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.”