

MARINE AND COASTAL ACCESS ACT 2009

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Part 4: Marine Licensing

Chapter 1: Marine Licences

Sections 65 and 66: Requirement for licence; Licensable marine activities

226. Anyone undertaking an activity mentioned in section 66 will need to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act.
227. The appropriate licensing authority for any area is specified in section 113.
228. The list of licensable activities is similar to that covered by the Act's predecessor, Part II of the Food and Environment Protection Act 1985 ("FEPA"). One of the main differences is dredging. Under FEPA only some forms of dredging were licensable, namely those that involved the removal and dumping of sediment elsewhere at sea. For example, hydrodynamic and plough dredging that involve the use of water jets or ploughs, respectively, to move sediment along the sea bed were not licensable. Aggregate dredging which involves the removal of sediment but for use on land was also not licensed under FEPA. Item 9 of *subsection (1)*, as read with *subsection (2)(a)*, make all forms of dredging within the UK marine licensing area licensable under this Part. Section 75 provides an exemption from the need for a marine licence for dredging already authorised under a Harbour Order or other local Act.
229. The list of licensable activities is self-explanatory. In summary:
- All vessels, aircraft or structures, regardless of their country of origin, will need a licence to deposit, scuttle or incinerate any object or substance within the UK marine licensing area;
 - All vessels, aircraft or structures, regardless of their country of origin, where it is their intention to engage in such an activity anywhere at sea, will need a licence to load or begin towing in the UK marine licensing area; and
 - British vessels, aircraft or structures will need a licence to deposit, scuttle or incinerate any object or substance anywhere at sea. British vessels, aircraft or structures are defined in section 115.
230. By virtue of section 85, it is an offence to engage in a licensable activity without the requisite licence or in a way that breaches the conditions attached to that licence.
231. The list of activities that need a licence may be amended by order. Each licensing authority may produce such an order for activities within its competence. This order making power cannot be delegated to another body under the powers given in section 98.

Sections 67 and 68: Applications; Notice of applications

- 232. The licensing authority, by virtue of these sections, may specify in what form an application for a marine licence should be submitted and may charge an application fee. The licensing authority may vary these requirements for different cases. Fees will be set according to regulations made by the licensing authority.
- 233. The licensing authority may require any supplementary information or investigations it thinks are necessary to be able properly to assess an application. If, as part of the assessment of the application the authority undertakes additional investigations or tests, then it will be able to recover the costs from the applicant.
- 234. If an applicant fails to provide any such information, or fails to pay the associated fee, then the licensing authority may refuse to proceed with an application entirely or until the failure is remedied.
- 235. On receipt of an application, the licensing authority must, subject to section 68(7), secure that any application for a marine licence is advertised in a manner that will bring it to the attention of those likely to be interested in it. It may either advertise the application itself or ask the applicant to do so on its behalf.
- 236. It must also notify, or require the applicant to notify, any local authority in whose area the activity is proposed (wholly or in part) to be carried on (whether or not notice has been published under *subsection (1)*).
- 237. *Subsections (7) and (8)* give the licensing authority the discretion to lift the requirement to publicise or give notice if it thinks that a particular application should not be published or notified. This would be the case, for example, where it was clear to the licensing authority that the operation under consideration would have no impact on others and providing notice would serve no function other than to delay a decision on the application and increase the costs of the project unnecessarily. Section 68(7)(b) and (8)(b) makes provision for the specific case where the Secretary of State decides that giving notice would be prejudicial to the interests of national security.
- 238. The licensing authority may refuse to proceed with an application if publication or notice has not been given where it was required to have been; it may also refuse to proceed if any costs of publishing or giving notice which are due to the licensing authority are outstanding.

Sections 69 and 70: Determination of applications; Inquiries

- 239. When determining an application for a marine licence the licensing authority 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 the authority thinks relevant.
- 240. The reference to the “environment” includes the local and global environment; the natural environment; and, by virtue of section 115(2), any site of historic or archaeological interest. The natural environment may include the physical, chemical and biological state of the sea, the sea-bed and the sea-shore, and the ecosystems within it, or those that are directly affected by an activity, whether within the marine licensing area or otherwise.
- 241. Legitimate uses of the sea include (but are not limited to): navigation (including taking any steps for the purpose of navigational safety); fishing; mineral extraction; and amenity use.
- 242. During its assessment of an application the licensing authority may actively seek views and comments from expert bodies on matters where they have expertise relevant to the application. It must also take into account any comments it receives from other

interested parties. The licensing authority may hold an inquiry in connection with the determination of the application.

243. A licensing authority may set out further details in regulations as regards the procedure for applications and how it grants them.

Section 71: Licences

244. The licensing authority may, by virtue of this section, impose conditions on any licence it grants. Examples of the sorts of conditions that may be imposed are given in *subsection (3)*; these are very similar in effect to those that could be imposed by the Act's predecessor, FEPA. However, under FEPA, conditions could only be imposed that governed the original carrying out of an activity. *Subsection (2)(b)* allows the licensing authority to attach conditions that will govern the behaviour of the licensee after the carrying out of the authorised activities. For example, under FEPA a developer would obtain a licence to build a jetty and the conditions attached to the licence would only cover the activity of building that jetty. Under the Act, the same licence could also include conditions relating to precautions to be taken when using the jetty once it has been built and also how the jetty should be dismantled and removed from the sea once its active life is over.
245. In the particular case of licensing the construction, alteration or improvement of works, licence conditions may bind persons other than those to whom the licence is given. The persons who may be bound are those that own, occupy or enjoy the use of the works. There is a similar provision in section 34(4A)(b) of the Coast Protection Act 1949 ("CPA") though not in FEPA, as the consequences of using the works primarily relate to obstructing navigation (the subject matter of the CPA). Given that the Act subsumes the CPA's navigational remit under the interpretation of "interference with legitimate uses of the sea", the Act also includes this provision. Such persons may commit an offence in failing to comply with the condition in the circumstances described in section 85.

Section 72: Variation, suspension, revocation and transfer

246. The licensing authority may vary, suspend or revoke a licence in certain cases by notice. These may include, for example, where there has been a breach of conditions or where there has been a change in circumstances relating to the environment or human health. A licence may not be suspended for more than 18 months.
247. On receipt of an application from the licensee, the licensing authority may transfer a licence from one named person to another. Licensees themselves cannot transfer their licences.
248. Where a licensing authority has delegated its function to another organisation (see section 98), any licences issued before the delegation may be varied, revoked or transferred by the new body as if it had issued the original licence (section 99(6)).

Section 73: Appeals against licensing decisions

249. Each appropriate licensing authority is under an obligation to establish a mechanism through which an applicant for a marine licence may appeal against its decision to refuse to grant a licence or against any of the conditions attached to one.

Chapter 2: Exemptions and Special Cases

Exemptions

Sections 74 and 75: Exemptions specified by order; Exemptions for certain dredging etc activities

250. The licensing authority may, by order, either exempt activities from the need for a licence completely, or specify conditions which, if met, will mean the activity may be exempted from the need for a licence. Examples of the sorts of activity which might be covered by such exemptions are the routine re-distribution of sand along a beach or minor repairs to seawalls. Conditions may include the requirement for approval prior to the activity proceeding, in order for the activity to be exempt. This order-making power cannot be delegated to another body under the powers given in section 98.
251. In deciding whether to make an order, the licensing authority 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 the authority thinks relevant.
252. Where a particular dredging operation or a deposit of dredged materials is already authorised under any of the legislation in *subsection (3)* of section 75, that particular operation will not need an additional marine licence.

Section 76: Dredging in the Scottish zone

253. Marine licensing as described in this Part does not apply to any dredging done, in the exercise of the specified functions in *subsection (2)*, in the Scottish zone for the purpose of extracting minerals.

Section 77: Oil and gas activities and carbon dioxide storage

254. This section exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998 or the Energy Act 2008. The exempted activities are listed in *subsection (1)*. *Subsections (3)* and *(4)* place geographical restrictions on the exemption.

Special provisions in certain cases

Section 78: Special procedure for applications relating to harbour works

255. This section takes effect where a marine licence is required and an application for a harbour order (for example in respect of certain harbour works) has been, or is likely to be, made.
256. In such cases the authority granting, or likely to grant, the harbour order, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a harbour order and the application will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.
257. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Harbours Act 1964 and disapply any provision of the marine licensing process.

Section 79: Special procedure for applications relating to certain electricity works

258. This section takes effect where both a marine licence and consent under section 36 of the Electricity Act 1989 (in relation to offshore generating stations) are required.
259. In such cases the authority to determine consent under section 36 of the Electricity Act, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a section 36 consent and the application for a marine licence will be subject to the same administrative procedure. That procedure will secure that the two related applications for the two different permissions are dealt with in parallel at the same time rather than in sequence. In cases where only one of the applications has been received, that application must not be dealt with until the other application is received.
260. When both applications have been received the process that the applications will go through is that which is to be determined by the Secretary of State in any order made under *subsection (6)*. That order may modify the process as specified in the Electricity Act 1989 and disapply any provision of the marine licensing process.

Section 80: Electronic communications apparatus

261. This section removes the obligation for an operator to apply to the Secretary of State for a licence under the Electronic Communications Code (“the Code”), as set out in Schedule 2 to the Telecommunications Act 1984. The carrying on of activities in connection with submarine cable-laying or the removing of any submarine cable is licensable under the marine licensing regime established by Part 4 of the Act instead.
262. The licensing authority must not grant a licence for an activity that amounts to or involves the exercise of a right conferred by paragraph 11 of the Code unless it is satisfied that adequate compensation arrangements have been made for loss or damage suffered in consequence of that activity.
263. This in no other way affects the rights granted to operators by other parts of the Code.

Section 81: Submarine cables on the continental shelf

264. In the case of certain submarine cables, this section restricts the application of the marine licensing regime as respects their laying or maintenance. The effect of the section, as read with the other provisions of Part 4, is as follows-
- a cable constructed or used in connection with any of the activities specified in *subsection (5)* (mineral exploration and exploitation activities etc) is fully licensable anywhere in the UK marine licensing area;
 - the following rules apply to a cable that is not constructed or used for any of those purposes (an “exempt cable”);
 - if the whole of an exempt cable is beyond the seaward limits of the territorial sea, the cable is not subject to any requirement for a marine licence;
 - if the whole of an exempt cable is within those limits, the cable is fully licensable;
 - if part of an exempt cable is, but part is not, within those limits, a marine licence is needed, but only in relation to the laying (and not the maintaining) of the part of the cable that is within those limits, and the licensing authority must grant the licence though it may attach conditions to it as respects the laying of that part of the cable.

Section 82: Structures in, over or under a main river

265. In cases where an activity requires a licence under the Act, and would otherwise also require consent under section 109 of the Water Resources Act 1991, the Environment

Agency may remove the need for separate consent under the Water Resources Act by issuing a notice to that effect to the applicant.

Section 83: Requirements for Admiralty consent under local legislation

266. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Admiralty under any local legislation, the Secretary of State may remove the need for that separate consent by issuing a notice to that effect.

Section 84: Byelaws for flood defence and drainage purposes

267. In cases where an activity requires a licence under the Act, and would otherwise also require consent from the Environment Agency under any of its byelaws under Schedule 25 to the Water Resources Act 1991, the Environment Agency may remove the need for that separate consent by issuing a notice to that effect.

Chapter 3: Enforcement

Offences

Section 85: Breach of requirement for, or conditions of, a licence

268. It is an offence for a person to carry out a licensable activity (as defined in section 66) without a licence or to do so in a manner that breaches any conditions of a licence.
269. With regard to the construction, alteration or improvement of any works, any person who owns, occupies or enjoys the use of the works and is, by virtue of section 71(5), bound by specified conditions in a licence is not to be taken to have committed an offence unless the enforcement authority has served a notice on the person identifying the particular condition and specifying a period within which the condition must be complied with, and the person fails to comply with the condition within that period.
270. *Subsection (4)* states the penalties for committing any such offence.

Section 86: Action taken in an emergency

271. If a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving life, the person has a defence against a charge under section 85(1). However, this is dependent on the person informing the licensing authority within a reasonable time of the matters specified in *subsection (2)*; on the steps taken being necessary and reasonable; and on it not being the person's fault that the emergency occurred.

Section 87: Electronic communications: emergency works

272. The scope of emergency works under the Electronic Communications Code (Schedule 2 to the Telecommunications Act 1984) ("the Code") is broader than the defence provided by section 86 of the Act. For example, emergency works under the Code include works to put right any interruption in service provided by an operator's system. This section therefore provides a defence against any charge brought under section 85(1) of the Act where the activity in question is carried out by an operator or relevant undertaker, within paragraph 23 of the Code, for the purpose of executing emergency works, within the meaning of the Code.

Section 88: Activity licensed by another State

273. There is a further defence to the undertaking of certain activities without a licence. The activities are those mentioned in *subsection (2)* – namely the depositing or incineration of any substance or object, or the scuttling of a vessel or floating container, from a British vessel, aircraft or structure, in non-UK waters. For the defence to be applicable,

the vessel, aircraft or structure must have either been loaded (in the case of making a deposit or incineration), or started its journey (in the case of scuttling) in a State that is party to the international Conventions identified in *subsection (5)*. Under *subsection (4)* the activity must also have been undertaken in pursuance of, and in accordance with, a licence issued by the appropriate authority in that State.

274. The Secretary of State may amend *subsections (5) and (6)* to give effect to any international agreement which alters or replaces any Convention or Protocol mentioned in those subsections.

Section 89: Information

275. It is an offence for a person who is applying for a new licence, or for the variation or transfer of an existing licence or who, in complying, or purporting to comply, with obligations imposed either by this Part or a licence, knowingly or recklessly supplies false or misleading information, or intentionally fails to disclose any material particular. Penalties set out in *subsection (3)* apply if an offence has been committed.

Enforcement notices

Section 90: Compliance notice

276. A person carrying on a licensed activity in a manner that breaches the conditions of the licence may be issued with a notice requiring compliance. Such a notice is called a compliance notice.
277. An enforcement authority, as defined in section 114, may issue a compliance notice in all circumstances where licence conditions have been breached, except where serious harm to either the environment or human health has occurred or is likely to occur, or where the activity has seriously interfered, or is likely seriously to interfere with, legitimate uses of the sea. A compliance notice may be served, for example, in case of a technical breach. The enforcement authority will be able to use other enforcement tools available to it, such as a stop notice or an emergency safety notice, where the breach has led to serious harm or serious interference.
278. A compliance notice must state the enforcement authority's reasons for issuing the notice, the steps which the enforcement authority requires to be taken, and the period within which any steps required should be completed.

Section 91: Remediation notice

279. A person who has carried on or is in the process of carrying on a licensable activity, either without a licence or with a licence but in a manner that breaches the conditions of the licence and who has caused, is causing or is likely to cause any of the results described in *subsection (5)*, may be issued with a remediation notice. This is a notice requiring the person to take "remedial or compensatory steps" (described in more detail below) or to pay a sum representing the cost of taking such steps.
280. The enforcement authority may issue a remediation notice in cases where harm to the environment or human health has occurred, is occurring, or is likely to occur, or where the activity has interfered is interfering or is likely to interfere with legitimate uses of the sea.
281. The enforcement authority may only issue a remediation notice after they have consulted the person to whom they intend to issue the notice.
282. The "remedial or compensatory steps" which a remediation notice may require a person to take are steps to protect the environment or human health, or to prevent interference with legitimate uses of the sea, or to prevent, minimise, remedy or mitigate the effects of the harm or interference in question, or to restore the condition of any place affected by the activity, or for any other purpose which the enforcement authority considers

appropriate, or to pay a sum representing the cost of taking such steps. A remediation notice may require steps to be taken at a site other than the one affected by the harm or interference (see *subsection (9)(f)*). It may not be reasonably possible to restore the whole or part of a site to the condition it would have been in had the harm or interference not been caused, so steps to be taken at another site may be considered more appropriate. This could occur for instance where steps to be taken would be disproportionately expensive compared to the gain achieved or the best course of action may be to allow the site to recover naturally over time.

- 283. A remediation notice could be served in addition to a stop notice (see section 102). This would be the case, for example, where an enforcement authority puts an immediate halt to a damaging activity and then requires the operator to put right the damage already caused.
- 284. A remediation notice must state the enforcement authority's reasons for issuing the notice; any remedial or compensatory steps to be taken, or any sum to be paid in respect of the cost of taking such steps; and the period within which any such steps are to be completed or any such sum is to be paid. The requirements contained in a remediation notice must be reasonable.

Section 92: Further provision as to enforcement notices

- 285. All compliance and remediation notices must be in writing (see the definition of notice in section 322(1)). They must be served on the person carrying on or in control of the activity in question, and may, if a licence has been granted for that activity to another person, also be served on the licensee. Notices may be varied or revoked by the issue of a further notice.
- 286. It is an offence to fail to comply with a notice.

Civil sanctions

- 287. The fixed and variable monetary penalties and processes described in the following sections are based on those in the Regulatory and Enforcement Sanctions Act 2008.

Section 93: Fixed monetary penalties

- 288. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under this Part.
- 289. The appropriate enforcement authority is defined in section 115(1).
- 290. The appropriate enforcement authority may impose a fixed monetary penalty only if it is satisfied beyond reasonable doubt that the person has committed the offence in question.
- 291. The amount of a fixed monetary penalty will be specified by the order and may not exceed the maximum fine that could be imposed on conviction of the offence in question. Different provision may be made for different cases.

Section 94: Fixed monetary penalties: procedure

- 292. This section specifies certain minimum requirements that the licensing authority must ensure that any fixed monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority must be required to issue a notice of intent to the person setting out the information specified in *subsection (3)*, and providing the person with an opportunity to discharge the liability by payment of a prescribed sum. Alternatively a person may make representations, in accordance with *subsection (2)(c)(i)*. The authority may decide to impose a fixed monetary penalty by a "final notice" which must contain the information specified in *subsection (5)*. A person on whom a

final notice is served has a right of appeal. *Subsection (6)* states the minimum grounds for appeal that must be available.

Section 95: Variable monetary penalties

- 293. This section enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under this Part.
- 294. The appropriate enforcement authority is defined in section 115(1).
- 295. The appropriate enforcement authority may impose a variable monetary penalty only when satisfied beyond reasonable doubt that the person has committed the offence.
- 296. The enforcement authority will determine the amount of the variable monetary penalty on a case-by-case basis.

Section 96: Variable monetary penalties: procedure

- 297. This section specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime includes. In particular, when imposing the penalty the enforcing authority is required to issue a notice of intent to the person which must contain the information specified in *subsection (3)* and must provide the person with an opportunity to discharge the liability by making a payment or offering an undertaking (for example, remediation works or another kind of activity). Alternatively a person may make representations against the imposition of the notice. The authority may decide to impose a variable monetary penalty by a “final notice” which must contain the information specified in *subsection (6)* and the authority will take into account any representations it has received. A person on whom a final notice is served has a right of appeal. *Subsection (7)* sets out the minimum grounds for appeal that must be available.

Section 97: Further provision about civil sanctions

- 298. *Schedule 7* makes further provision in relation to the civil sanctions that may be imposed under this Part.

Chapter 4: Delegation

Sections 98 and 99: Delegation of functions relating to marine licensing; Orders under section 98: supplementary provisions

- 299. The licensing authority may by order delegate any of its delegable marine licensing functions, as defined in this section, to such other body as the licensing authority considers appropriate. The power also extends to conferring on such a body powers that the licensing authority might confer on an enforcement authority in orders under sections 93 or 95 that relate to imposing civil sanctions. However, it does not include the “excepted functions” specified in *subsection (6)* of section 98, which must remain the preserve of each licensing authority. This section enables each licensing authority either to retain the delegable functions described above or to delegate some or all of them to another competent body. The Government intends that most of the Secretary of State’s licensing functions will be delegated to the Marine Management Organisation established under Part 1 of the Act.
- 300. The body to which any functions are to be delegated under the section must give its consent before the licensing authority may make the order. The licensing authority may not exercise any function it has delegated unless the order explicitly permits it to do so. There is no minimum or maximum period for which the delegation applies. Different functions may be delegated to different bodies, or the same function may be delegated to different bodies in different cases.

301. **Section 99** enables further provision to be made in an order concerning the exercise of any delegated functions. *Subsection (4)* provides a list of the aspects of the licensing process that the licensing authority may want to regulate specifically in the order.

Section 100: Directions to persons as regards performance of delegated functions

302. This section applies where a licensing authority has delegated any of its licensing or enforcement functions under section 98. It enables the licensing authority to give further directions to a person to whom it has delegated functions, setting out how those functions should be performed. *Subsection (3)* requires the person to comply with any such directions, which must be published by the appropriate licensing authority in accordance with *subsection (4)*.

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.