

CONSULTATION PAPER

PROPOSALS TO INTRODUCE IN NORTHERN IRELAND PHASE II OF NEW FEES STRUCTURE FOR LICENCES UNDER THE FOOD AND ENVIRONMENT PROTECTION ACT 1985, PART II, (DEPOSITS IN THE SEA)

March 2007



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Environment &
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FOOD AND ENVIRONMENT PROTECTION ACT 1985 PART II PROPOSED NEW FEES STRUCTURE FOR LICENCES TO DEPOSIT MATERIALS AT SEA

PART I

1. Introduction

This consultation paper details proposals for amendments to licence fees for substances and articles deposited in the sea under the Food and Environment Protection Act 1985, (FEPA) Part II. It also sets out the legal basis for charging licence fees under FEPA in Northern Ireland along with newly proposed licence fees.

Following consultation in January / February 2004 with the industry, environmental regulators and relevant non-governmental organisations, Phase I of the new fees structure for FEPA licences was implemented on 7 July 2004. The fees were increased to a level that fully recovers the staff costs incurred in administering the FEPA licensing process. However, it was indicated in the first consultation paper that further reviews would be carried out to meet other licensing costs. To this end the following key areas are being reviewed in this paper:

- Cost recovery for enforcement and compliance monitoring costs associated with FEPA licences.
- Amended variation licence fees.
- New licence fee category for tracers and dye deposits.
- New licence fee category for marine renewable energy projects.

This consultation paper sets out at **Part 4**, the Department's proposals to amend FEPA licence fees to reflect the above, with a view to implementing from **1 July 2007**.

2. Background – Why we license deposits in the sea

In recognition that the protection of ocean resources cannot be dealt with through national legislation only, the United Kingdom is a signatory to a number of international conventions for the protection of various aspects of the marine environment. Two of these Conventions deal specifically with disposal at sea. These are:

- The London Convention 1972 (prevention of marine pollution) which is applicable world wide and;
- The OSPAR Convention (1998) for the Protection of the Marine Environment of the North East Atlantic.

Under Annex II, Article 3 of the OSPAR Convention, contracting parties must control deposits in the sea and are currently only permitted to license the disposal of the following waste materials:

1. *Dredged material;*
2. *Inert materials of natural origin, that is solid, chemically unprocessed geological material the chemical constituents of which are unlikely to be released into the marine environment; and*
3. *Fish waste from industrial fish processing operations;*

In the UK, these controls are implemented under national legislation by Part II of the Food and Environment Protection Act 1985, (FEPA) Deposits in the Sea. In Northern Ireland, the Environment and Heritage Service (EHS), an agency within the Department of the Environment, is the competent authority for FEPA. The FEPA Licensing Section sits within the Water Management Unit, within the Environmental Protection Directorate of EHS. In Scotland this function is carried out by the Scottish Executive Environment Rural Affairs Department (SEERAD) and in England and Wales by the Department of Environment, Food and Rural Affairs (DEFRA).

In determining whether to issue a licence, EHS shall have regard to the need:-

Extract from FEPA Part II, section 8 (1)

- to protect the marine environment, the living resources it supports, human health, and*
- to prevent interference with legitimate uses of the sea; and*

EHS may also have regard to such matters as it considers relevant.

The protection of the marine ecosystem, human health, and the legitimate uses of the sea is achieved by controlling deposits in the sea, including construction works, below the Mean High Water Spring (MHWS) tide mark through a licensing system.

3. Scope of FEPA Part II

Under FEPA, Part II, a licence is required to deposit any article or substance in the sea or under the seabed where the deposit is:

- (i) made from a British vessel, British aircraft, British hovercraft or British marine structure;
- (ii) from a container floating in the sea, if deposit is controlled from a British vessel, British hovercraft, British marine structure;
- (iii) within UK controlled waters either in the sea or under the seabed from any vehicle, vessel, hovercraft, marine structure or structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.

The Act also applies to:

- (i) the loading of a vessel, aircraft, hovercraft, marine structure or vehicle in the United Kingdom or UK controlled waters with articles or substances for deposit anywhere in the sea or under the seabed;
- (ii) the control of scuttling vessels and incineration at sea. However, with effect from 31 December 2004, under the OSPAR Convention, the scuttling of vessels became a prohibited activity, and licences can no longer be obtained for this purpose.

PART 2

4. Requirements for a licence

FEPA requires that a licence must be obtained for the deposit of substances or articles, below the Mean High Water Spring tide (MHWS) mark, either in the sea or under the seabed, within United Kingdom (UK) Waters or UK Controlled Waters.

For the purposes of FEPA, the “sea” includes any area submerged at MHWS tide and, therefore, also includes the tidal limits of an estuary or arm of the sea and the tidal waters of any channel, creek, bay or river.

In determining a licence, the Act requires the licensing authority to meet the objectives set out in Part 1 Section 2 of this paper, while giving due regard to legitimate uses of the sea.

5. Exemptions to the requirement to obtain a FEPA licence

There are some exemptions to the requirement for a FEPA licence. These are defined in the Deposits in the Sea (Northern Ireland) Exemptions Order 1995. This Order lists exempted activities such as the placement of navigational lights and marker buoys, the repair of existing harbour and sea wall defences and certain aquaculture and fishing activities. However, in all cases, EHS should be consulted to determine whether or not a licence is required.

PART 3

6. The licensing system

Under FEPA, three types of licence may be obtained from EHS for making a deposit in the sea. These are:

- (1) a construction licence, covering construction works below the MHWS, land reclamation or beach nourishment,
- (2) a disposal licence, for materials that may be deposited in the sea such as dredged material or fish processing waste, and
- (3) a tracer and dye deposit licence.

Each FEPA licence application is determined by an assessment procedure that involves a consultation phase.

Listed below, are the main consultees that contribute to the process of determining each licence application. Other consultees may be added to this list depending on the locality and nature of the proposal:

List of Consultees

- Maritime and Coastguard Agency
- Department of Agriculture and Rural Development – Fisheries Division
- Agri Food and Bio Sciences Institute
- Department of Culture, Arts and Leisure - Fisheries Division
- Foyle, Carlingford and Irish Lights Commission (Loughs Agency)
- Crown Estates Commissioners
- EHS:
 - Natural Heritage Directorate
 - Built Heritage Directorate
- Strangford Lough Management Advisory Committee
- Lower Bann Advisory Committee

The FEPA Licensing Team will also consult colleagues within the Water Management Unit or the wider Environmental Protection Directorate, as appropriate.

7. Licence determination

Many factors are considered when determining licence applications. Some of these factors are listed below.

- Public safety
- Navigation
- Sea and inland fisheries
- Water quality
- Marine ecosystem
- Time of year of proposed works
- Legitimate uses of the sea
- Nearfield and farfield effects
- Quality and quantity of material to be deposited at sea
- Presence of contaminants that could be released into the marine environment
- Nature conservation interests/designations
- Cultural and archaeological heritage
- The Habitats Directive
- The Birds Directive
- The Environmental Impacts Assessment Directive, and
- Any other consideration that EHS deems appropriate.

Following the consultation and appraisal, a licence is either issued or refused and on some occasions a licence may be refused before consultation is carried out. If a licence is to be granted, mitigating measures may be incorporated to avoid or limit any associated impacts on the marine environment or other legitimate uses. Types of mitigating measures can range from specified working practices, time restrictions on aspects of the project, monitoring etc. After the issue of a licence, EHS carries out compliance monitoring.

8. Legal Basis for Fees

8.1 The legal basis for charging fees is set out in Sections 8 (7) to (9) of FEPA Part II - and provides that:

- (7) *A licensing authority may require an applicant for a licence, on making application, to pay a reasonable fee in respect of the administrative expenses of processing an application.*
- (8) *A licensing authority may also require an applicant to pay a further reasonable fee towards the expense -*
- (a) of carrying out any further examinations and tests, which in the opinion of the authority are necessary or expedient, to enable the authority to decide -*
- (i) whether to issue a licence to the applicant, and*
- (ii) the provisions which any licence issued to him ought to include;*
- (b) of checking the manner in which operations for which a licence is needed have been or, are being, conducted; and*
- (c) of monitoring the effect of such operations.*

9. The need for reviewing the Fees

In 2003, EHS instigated a detailed review of the FEPA licensing system. One of the recommendations of the review was that fees should be adjusted to effect full cost recovery of the licensing system. The Phase 1 fees, which were implemented with effect from 7 July 2004, recouped administrative costs incurred by EHS staff. Phase II of the fees will also:-

- (i) recoup the costs associated with enforcement and compliance monitoring,
- (ii) amend the variation licence fee,
- (iii) introduce a new licence fee category for tracers and dye deposits, and
- (iv) introduce a new licence fee category for marine renewable energy projects.

PART 4

10. Cost Recovery

As indicated at the start of this paper, total cost recovery will be effected on implementation of the proposals outlined in this consultation document. The second phase now proposed will recoup costs associated with enforcement and licence compliance monitoring, in addition to the cost of licence processing. It will also increase the cost of the fee for variation licence requests and introduce two new fee categories as outlined in Part 3 Section 9.

11. Costs associated with Enforcement and Compliance Monitoring

The costs incurred by the Department on enforcement and licence compliance monitoring duties are due in the main to expenditure on travel, equipment use and/or hire, including boat use and boat staff time. The range of the activities involved include site visits, both on land and at sea, to ascertain:

- any requirements for a FEPA licence, where no application has been submitted to EHS;
- any alleged illegal deposit below MHWS tide mark
- whether licence conditions are being complied with.

12. Proposals to recover Enforcement and Compliance Monitoring costs

The Department has analysed the costs associated with the above mentioned activities and has ascertained that in order to recover these costs it will be necessary to add a flat rate amount to all FEPA licence application fees. This flat rate will be calculated annually, taking into account the number of enforcement and compliance monitoring actions / visits that are carried out by staff during the previous 12 months. The costs incurred will then be divided over the typical number of applications made in 1 year. As is already the case with the existing application and issue fees, the 'Enforcement and Compliance Monitoring Fee' will be 'graded' depending on the value of the project / contract.

The following tables set out all fees associated with applications for FEPA licences, including the proposed new 'Enforcement and Compliance Monitoring Fee'. It is anticipated that the full range of fees

contained in the 5 tables will be applied to all applications received on, or, after **1 July 2007**.

The Enforcement and Compliance Monitoring Fee will be payable together with the issue fee – immediately prior to the licence being issued by EHS.

Table (1) CAPITAL DREDGING PROJECTS

BAND	LOW RANGE TONNES	HIGH RANGE TONNES	LICENCE APPLICATION FEE	LICENCE ISSUE FEE	ENFORCEMENT & MONITORING FEE	TOTAL FEE
BAND 1	0	9,999	£820	£1,640	£125	£2,585
BAND 2	10,000	24,999	£1,140	£2,280	£125	£3,545
BAND 3	25,000	49,999	£1,600	£3,190	£180	£4,970
BAND 4	50,000	99,999	£2,280	£4,570	£180	£7,030
BAND 5	100,000	499,999	£3,200	£6,390	£300	£9,890
BAND 6	500,000	999,999	£4,570	£9,130	£300	£14,000
BAND 7	1000,000+		£7,760	£15,530	£300	£23,590

NOTE: Capital dredging is the excavation of the seabed, down to a level not previously dredged during the preceding 10 years. Capital dredging is generally undertaken for construction or navigational purposes. All fees for capital dredging sea disposal operations are categorised into 7 Bands - based on the estimated quantity to be disposed of.

Table (2) MAINTENANCE DREDGING PROJECTS

BAND	LOW RANGE TONNES	HIGH RANGE TONNES	LICENCE APPLICATION FEE	LICENCE ISSUE FEE	ENFORCEMENT & MONITORING FEE	TOTAL FEE
BAND 1	0	9,999	£600	£1,200	£125	£1,925
BAND 2	10,000	24,999	£830	£1,670	£125	£2,625
BAND 3	25,000	49,999	£1,160	£2,340	£180	£3,680
BAND 4	50,000	99,999	£1,660	£3,340	£180	£5,180
BAND 5	100,000	499,999	£2,330	£4,670	£300	£7,300
BAND 6	500,000	999,999	£3,330	£6,670	£300	£10,300
BAND 7	1000,000+		£5,660	£11,340	£300	£17,300

NOTE: Maintenance dredging is the removal of unconsolidated material to maintain existing charted depths for navigational purposes. All fees for maintenance dredging sea disposal operations are categorised into 7 Bands - based on the estimated quantity to be disposed of.

Table (3) MARINE CONSTRUCTION PROJECTS

BAND	MARINE CONSTRUCTION VALUE	LICENCE APPLICATION FEE	LICENCE ISSUE FEE	ENFORCEMENT & MONITORING FEE	TOTAL FEE
BAND A	Up to £20 K	£130	£270	£125	£525
BAND B	£20 K - £50 K	£200	£400	£125	£725
BAND C	£50 K - £200 K	£400	£800	£180	£1,380
BAND D	£200 K - £500 K	£600	£1,200	£180	£1,980
BAND E	£500 K - £1 M	£670	£1,330	£300	£2,300
BAND F	£1 M - £3 M	£1,330	£2,670	£300	£4,300
BAND G	£3 M - £5 M	£1,660	£3,340	£300	£5,300
BAND H	£5 M - £20 M	£2,000	£4,000	£300	£6,300
BAND I	£20 M +	£3,330	£6,670	£300	£10,300

(K = thousand, M = million)

*NOTE: This category covers the construction of harbours, piers, beach replenishment works, rock armouring and concrete mattressing of pipelines and cables, sea outfalls and other deposits that are not exempt. The 9 charging bands in **Table 3** reflect the size and scale of the project. This category currently applies to Renewable Energy Projects.*

13. Tracer and dye deposits in the sea - new fee category

The release of tracers and dyes is in the main associated with the 'modelling' of effluent discharges to the marine environment, but they are also used to trace the route of a discharge, eg where a pollution incident occurs. This activity is licensed under FEPA in England, Scotland and Wales, and a new licence category is therefore being introduced under this review phase as follows:-

Table (4) TRACERS AND DYE DEPOSITS IN THE SEA

LICENCE APPLICATION FEE	LICENCE ISSUE FEE	TOTAL FEE
£130	£270	£400

Note: There are no other fees associated with this category

14. Renewable Energy Projects - new fee category

An increasing number of proposals are being received for construction activities related to marine renewable energy projects like sea based wind turbines, or marine current turbines. In these circumstances a FEPA construction licence is required. Some of these projects involve new technologies for which there is little information on environmental impacts. Projects can also be sited in areas where there is a paucity of information on the quality of the marine environment. Consequently, these types of project require a substantial amount of assessment, consultation and consideration by EHS in the determination of a licence application. A new category of licence for Marine Renewable Energy Projects is proposed to cover projects of this nature. Within this new category EHS considers renewable energy projects to be of two types – Long-term or Temporary.

Long-term Marine Renewable Energy FEPA licences

These licences will apply for projects that will remain in the sea or on the seabed for greater than 10 years, e.g. most off-shore windfarms will have an expected lifespan of 25 years, after which time they will be de-commissioned. These licences will include installation and de-commissioning aspects of the project.

Temporary Marine Renewable Energy FEPA licences

These licences will cover projects that will have a lifespan of up to 10 years in the sea or on the seabed. This category will include demonstration, pilot or small scale projects which will be de-commissioned and removed from the sea within 10 years of being licensed. These licences will cover installation, operation and de-commissioning aspects of the project. Due to the innovative nature of the technology and uncertainty of its interaction with the environment, Temporary Licences will be subject to an annual licence fee charge (see below). This charge will go towards covering additional costs incurred by EHS through on-going monitoring of the operation of the FEPA licence. The table below sets out the cost bandings for marine renewable energy projects.

In addition to the above, for both temporary and long-term renewable energy FEPA licences, there will be an annual Environmental Monitoring and Assessment Charge of £15,000.

This will go towards covering costs incurred by EHS in assessing environmental monitoring data and reports for the project.

EHS will consult with the FEPA applicant, prior to licence issue, as to the period of time that the Environmental Monitoring and Assessment Charge applies. This charge will be payable on the date of licence issue, and every 12 months thereafter for the agreed period of environmental monitoring.

Table (5) MARINE RENEWABLE ENERGY PROJECTS

BAND	CONSTRUCTION VALUE OF PROJECT	LICENCE APPLICATION FEE	LICENCE ISSUE FEE	ANNUAL ENVIRONMENTAL MONITORING AND ASSESSMENT CHARGE	TOTAL INITIAL FEE	ANNUAL FEE (Temporary licences only)
BAND R1	Up to £1M	£1340	£2660	£15000	£19000	£1000
BAND R2	£1M - £20M	£4000	£8000	£15000	£27000	£3000
BAND R3	£20M +	£6660	£13340	£15000	£35000	£5000

15. Notes about other existing fees not included in Tables 1-5

VARIATION LICENCE FEE

In some cases, current licences may be varied by EHS subject to a request being made by a licence holder, providing that sufficient prior notice is given to EHS. There will be a licence variation fee to cover administration costs, and other costs incurred in determining the licence variation request. This licence variation fee will be calculated as 25% of the original total licence fee. In cases where EHS instigates and imposes a variation to a current licence, a fee will not be charged.

EXTENDING THE DURATION OF LICENCES

Over 12 months and potentially up to a maximum of 24 months.

Normally licences are valid for 1 year from the date of issue. However, on occasions, EHS may consider issuing a licence for up to 1½ years, if requested at the time of application, with no further charge. If a request is made to extend the validity of a licence after it has been granted, the above licence variation fee will apply. The fee will be payable prior to the issue of the extension on the licence.

Over 18 months and potentially up to a maximum of 36 months.

Where major projects are likely to run for more than 1½ years, EHS may consider issuing a licence for up to a maximum period of 3 years. EHS shall review the licence after 12 months, and if content with all aspects of its operation, the licence will be permitted to continue. There will be an annual fee of £2,000 applicable after the first year of issue until the licence expires. This amount will be payable at 12 month intervals, from the date of issue on the first and second anniversary of the licence issue dates.

PART 5

16. Licence refusal

Where EHS determines that a licence should be refused on the grounds that it may detrimentally impact or compromise some, or any, of the factors listed in Section 7 of this paper a refund of the licence application fee will not be given. EHS incurs costs throughout the determination of a licence application, irrespective of the outcome.

17. Acceptance of application fee

EHS will only accept an application fee when it is satisfied that the application is complete, enabling full determination to be undertaken.

18. Payment of issue fee for licence

Following full application determination, the applicant will be issued with a draft licence. The draft licence is not a formal licence, and does not authorise the commencement of any proposed works. The draft licence will stipulate:

- full details of the proposed works,
- all licence conditions that must be adhered to in the subsequent operation of the final authorised licence, and
- the period of the licence, including the expiry date.

The final licence issue fee (including the new proposed Enforcement and Compliance Monitoring fee from **1 July 2007**) will be made payable to the Department of Environment on completion and return of the acceptance certificate, which is enclosed with each draft licence. On receipt of the signed acceptance certificate and cheque, EHS will issue the final authorised licence.

19. Equality / Human Rights

The Department does not consider there to be any equality or human rights implications in these proposals.

20. Proposed Changes to FEPA

FEPA is currently being amended to incorporate the Environmental Impact Assessment and Public Participation Directives. It is likely that the amended regulations will be introduced in July 2007. Following the introduction of the FEPA Amendment Regulations, EHS will review the fees structure again in order to effect full cost recovery. This is likely to result in a further fees consultation paper being issued in late 2007/early 2008.

21. Responses to Consultation

This consultation paper invites comments on the Department's proposals. Written comments should be sent not later than 1 June 2007, to –

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The Department may want to publish responses to this consultation paper in due course, or deposit them in libraries. If this is done, all responses received will be so published or deposited, unless a respondent specifically asks that his or her response be treated as confidential. Confidential responses will, however, be included in any statistical summary of numbers of comments received or of views expressed.



Our aim is to protect, conserve and promote the natural and built environment for the benefit of present and future generations.

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