

**PROPOSALS TO INTRODUCE NEW FEES STRUCTURE FOR
THE FOOD AND ENVIRONMENT PROTECTION ACT 1985
PART II, DEPOSITS IN THE SEA LICENCES, FOR**

NORTHERN IRELAND

**INCLUDING
SEA DISPOSAL LICENCE FEES
AND
MARINE CONSTRUCTION LICENCES FEES**

A CONSULTATION PAPER



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CONSULTATION PAPER

FOOD AND ENVIRONMENT PROTECTION ACT 1985 PART II

PROPOSED NEW FEES FOR LICENCES TO DEPOSIT MATERIALS AT SEA

PART I

1. Introduction

This paper explains the background to the control of substances and articles deposited in the sea under the Food and Environment Protection Act 1985, (FEPA) Part II, and sets out the legal basis for charging licence fees under FEPA in Northern Ireland.

2. Background - Why we licence 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 deposits in the 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 only permitted to dispose of certain materials.

OSPAR Convention Annex II, Article 3

1. Dredged material;
2. Inert materials of natural origin, that is solid, chemically unprocessed geological material the chemical constituents that are unlikely to be released into the marine environment;
3. Fish waste from industrial processing operations;
4. Vessels or aircraft until the latest, 31 December 2004.

In the UK, these controls are implemented under national legislation by the Food and Environment Protection Act 1985 (FEPA), Part II, Deposits in the Sea. In Northern Ireland, the Environment and Heritage Service (EHS), an agency within the Department of the Environment, is the licensing authority for FEPA. This function is carried out by the Scottish Executive Environment and Rural Affairs Department (SEERAD) in Scotland and the Department for Environment, Food and Rural Affairs (Defra) in England and Wales.

The purpose of Part II of the Act is outlined below:

FEPA Part II, Section 8 (1):

- (i) to protect the marine environment, the living resources it supports, human health; and
- (ii) to prevent interference with legitimate uses of the sea; and
- (iii) may have regard to such other matters as the authority 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 the scuttling of vessels will be prohibited by 31 December 2004 under the OSPAR Convention.

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 Waters or United Kingdom Controlled Waters. The part of UK controlled waters within the remit of the Department of the Environment in Northern Ireland, for the purposes of FEPA, are those waters defined in the Adjacent Waters Boundaries (Northern Ireland) Order 2002, illustrated in Annex A.

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 section 2 of FEPA while paying due regard to legitimate uses of the sea.

5. Exemptions to the requirement for a FEPA licence

There are some exemptions to the need 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 two types of licence may be obtained for making a deposit in the sea. These are:

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

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

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

List of statutory Consultees

- Maritime and Coastguard Agency
- Department of Agriculture and Rural Development - Fisheries Division
- Department of Agriculture and Rural Development - Agricultural Food and Environmental Science Division
- Department of Culture, Arts and Leisure, Fisheries Division
- Foyle, Carlingford and Irish Lights Commission (Loughs Agency)
- Crown Estate Commissioners
- EHS - Natural Heritage
- EHS - Environmental Health (Rivers) Officers
- EHS - Built Heritage
- EHS - Water Management Unit

7. Licence determination

A number of factors are considered when determining licence applications. Some of the more significant ones are listed below.

- Public safety
- Navigation
- Sea and inland fisheries
- Marine ecosystem
- Legitimate uses of the sea
- Nearfield and farfield effects
- Conservation interests/designations
- Cultural and archaeological heritage
- The Habitats Directive
- The Birds Directive
- The Environmental Impacts Assessment Directive, and
- Any other consideration that the Department deems appropriate.

Following the consultation and appraisal, a licence is either issued or refused. 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 or resources such as maritime heritage, navigation or public safety. 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, when the related work commences, the Department carries out routine and spot licence compliance monitoring.

8. Legal basis for fees

8.1 The legal basis for charging fees is outlined below:

FEPA Part II Sections 8 (7) to (9) provide 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

The Department recently carried out a review of its 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. FEPA fees currently applicable were introduced in 1987, and fall short of effecting full cost recovery for the licensing process in 2003.

PART 4

10. Cost recovery

Total cost recovery will be phased in over 2 years. The first phase will take place over 2003-04 and will recoup the administrative and scientific staff costs incurred by EHS. Phase II will take place during 2004-05 and will further recoup the costs associated with licence compliance and sea disposal site monitoring.

11. Present charging system

The current licence fees are:

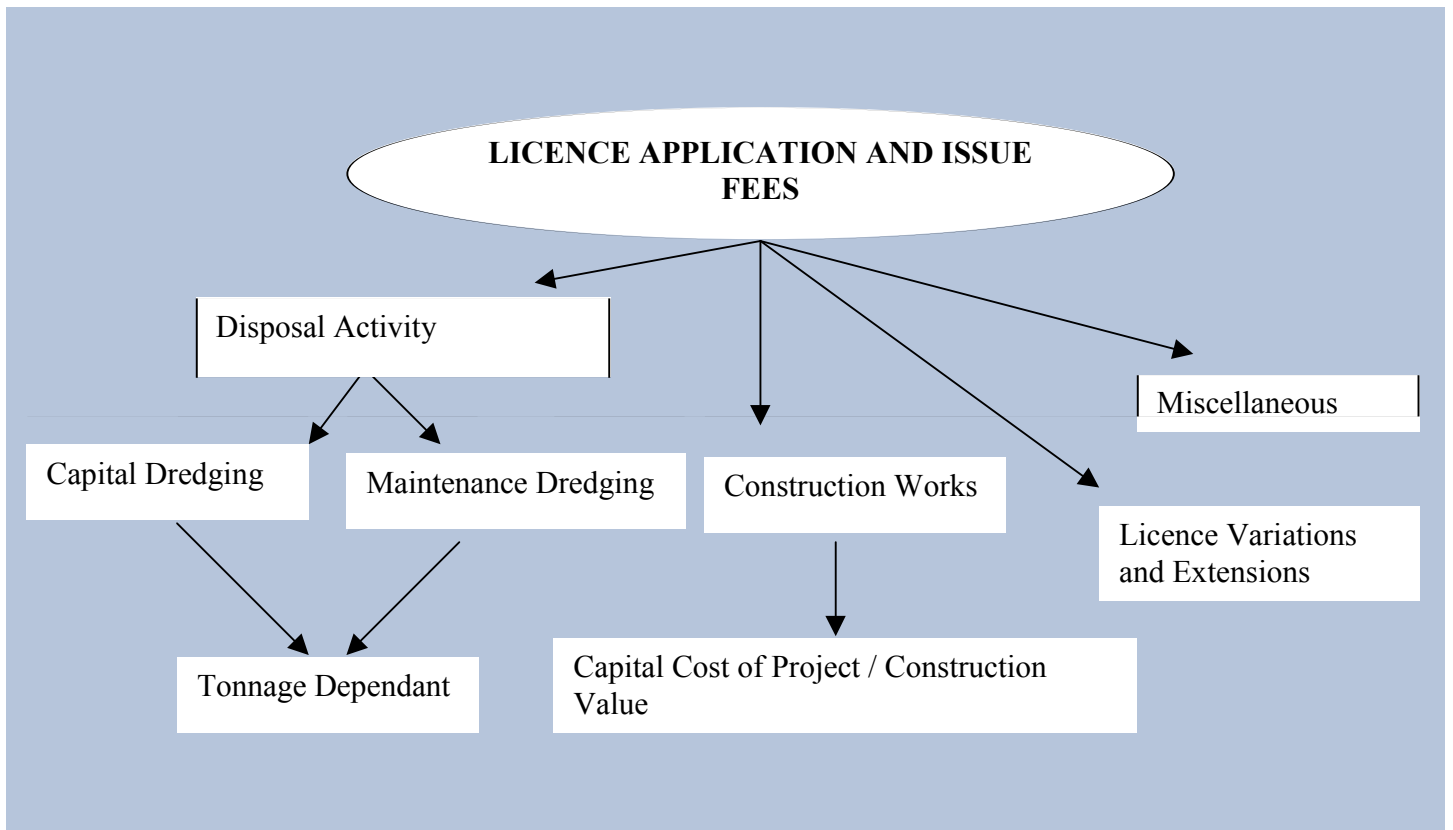
CONSTRUCTION LICENCE APPLICATION FEE	£175
DISPOSAL LICENCE APPLICATION FEE	£260
DISPOSAL LICENCE ISSUE FEE FOR <100,000 tonnes	£140
DISPOSAL LICENCE ISSUE FEE FOR >100,000 tonnes	£4,370

12. Proposed charging scheme

The proposed new fees take into consideration the types of projects that will require low, medium, or high input of staff time in determining the licence application. Factors such as the nature, scale and the sensitivity of the location of the proposed project can have significant effects on the determination of an application. Hence these elements have been incorporated into the proposed new fees and charges.

The following schematic (Figure 1) shows the diverse nature of FEPA licence applications.

Figure 1. Schematic of Fees structure



13. Proposed fees

All applications will be subject to an initial application fee, and a further fee payable prior to issue. The proposed fees are rated according to the scale and nature of the proposed work.

13.1 Marine construction works

This category will cover 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 banding in **Table 1** reflects the size and scale of the project. The greater the size of the project, the greater the level of examination required to assess the possible impacts and hence the costs incurred by the Department increase proportionately.

Table 1: Proposed fees for marine construction licences

BAND	CONSTRUCTION VALUE	LICENCE APPLICATION FEE	LICENCE ISSUE FEE	TOTAL
BAND A	£5K - £20K	£130	£270	£400
BAND B	£20K - £50K	£200	£400	£600
BAND C	£50K - £200K	£400	£800	£1,200
BAND D	£200K - £500K	£600	£1,200	£1,800
BAND E	£500K - £1M	£670	£1,330	£2,000
BAND F	£1M - £3M	£1,330	£2,670	£4,000
BAND G	£3M - £5M	£1,660	£3,340	£5,000
BAND H	£5M - £20M	£2,000	£4,000	£6,000
BAND I	£20M +	£3,330	£6,670	£10,000

(K = thousand, M = million)

13.2 Sea disposal licences

Sea disposal activity has been split into 2 categories:

- (i) sea disposal as a result of capital dredging, and
- (ii) sea disposal as a result of maintenance dredging.

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.

Maintenance dredging is the removal of unconsolidated material to maintain existing charted depths for navigational purposes.

Capital dredging projects will attract a higher disposal fee because of a potentially greater impact of the disposal operation on the marine environment due to the disposal of unconsolidated material. There is a need for greater examination and assessment of the application. The proposed charging scheme incorporates higher charges for larger scale disposal operations since these will require more detailed assessment.

13.3 Proposed sea disposal licence fees for capital dredging

Capital dredging sea disposal operations have been categorised into 7 bands depending on the quantity to be disposed of.

Table 2: Proposed sea disposal licence fees for capital dredging

BAND	LOW RANGE TONNES	HIGH RANGE TONNES	LICENCE APPLICATION FEE CAPITAL DREDGING	LICENCE ISSUE FEE CAPITAL DREDGING	TOTAL
BAND 1	0	9,999	£820	£1,640	£2,460
BAND 2	10,000	24,999	£1,140	£2,280	£3,420
BAND 3	25,000	49,999	£1,600	£3,190	£4,790
BAND 4	50,000	99,999	£2,280	£4,570	£6,850
BAND 5	100,000	499,999	£3,200	£6,390	£9,590
BAND 6	500,000	999,999	£4,570	£9,130	£13,700
BAND 7	1000,000+		£7,760	£15,530	£23,290

13.4 Proposed sea disposal licence fees for maintenance dredging

Maintenance dredging sea disposal operations have been categorised into 7 Bands depending on the quantity to be disposed of.

Table 3: Proposed sea disposal licence fees for maintenance dredging

BAND	LOW RANGE TONNES	HIGH RANGE TONNES	LICENCE APPLICATION FEE MAINTENANCE DREDGING	LICENCE ISSUE FEE MAINTENANCE DREDGING	TOTAL
BAND 1	0	9,999	£600	£1,200	£1,800
BAND 2	10,000	24,999	£830	£1,670	£2,500
BAND 3	25,000	49,999	£1,160	£2,340	£3,500
BAND 4	50,000	99,999	£1,660	£3,340	£5,000
BAND 5	100,000	499,999	£2,330	£4,670	£7,000
BAND 6	500,000	999,999	£3,330	£6,670	£10,000
BAND 7	1000,000+		£5,660	£11,340	£17,000

13.5 Variation licence fee

In some cases issued licences may be varied subject to a request being made to the Department. Depending on the nature of the variation request, the Department may consult with its statutory consultees for their opinion. In this instance there will be a fee of £50 charged for an issue of a variation licence. Where the Department instigates and imposes a variation to an issued licence, a fee will not be charged.

14. Duration of licence

Normally licences are valid for 1 year, but can be extended for up to 1½ years. Where major projects are likely to run for more than 1½ years, the Department may consider issuing a licence for up to a maximum period of 3 years. Such licences will be subject to an annual fee of £2,000 after the first year of issue.

15. Licence refusal

In the case where the Department has determined that a licence is not to be issued on grounds that it may detrimentally impact or compromise one or more of the factors listed in Section 7 of this paper, a refund of the licence application fee shall not be given.

16. Acceptance of application fee

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

17. 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,
- the period of the licence, including the expiry date.

The final licence fee will be made payable to the Department on completion and return of the acceptance certificate, which is enclosed with the draft licence. On receipt of the signed acceptance certificate and cheque, the Department will issue the final authorised licence.

18. Future review of fees

It should be noted that licence fees will be subject to annual review.

19. Equality/Human Rights

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

20. Responses to consultation

This consultation paper invites comments on the Department's proposals. Written comments should be sent by not later than 10 March 2004, to -

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Environment and Heritage Service
Water Management Unit
1st Floor
Calvert House
23 Castle Place
Belfast
BT1 1FY

Tel: 028 9025 4757
Fax: 028 9025 4865
email: Laura.Hamilton@doeni.gov.uk

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.

STATUTORY INSTRUCTIONS

2002 No. 791**CONSTITUTIONAL LAW****NORTHERN IRELAND****The Adjacent Waters Boundaries (Northern Ireland) Order 2002**

Made 26th March 2002

Coming into force 28th March 2002

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Adjacent Waters Boundaries (Northern Ireland) Order 2002.

(2) This Order shall come into force on the second day after the day on which it is made.

(3) In this Order “co-ordinate” means a co-ordinate on the Ordnance Survey of Great Britain 1936 Datum.

The territorial sea adjacent to Northern Ireland

2. - (1) For the purposes of the definition of “Northern Ireland” in section 98(1) of the Northern Ireland Act 1998 and for all other purposes of that Act, the part of the territorial sea of the United Kingdom which is to be treated as adjacent to Northern Ireland shall, subject to paragraph (2), be the part whose breadth is measured from baselines in Northern Ireland.

(2) Where any part of the territorial sea adjacent to the United Kingdom whose breadth is measured from baselines in Northern Ireland falls outside the Northern Ireland zone, that part shall not be treated as adjacent to Northern Ireland for the purposes mentioned in paragraph (1).

The boundary of the Northern Ireland zone

3. - (1) For the purposes of the definition of “the Northern Ireland zone” in section 98(1) of the Northern Ireland Act 1998, the part of the sea within British fishery limits which is to be treated as adjacent to Northern Ireland shall, subject to paragraph (2), be the part which is within limits measured from baselines in Northern Ireland.

(2) Any part of the sea within British fishery limits which is within limits measured from baselines in Northern Ireland but which is separated from Northern Ireland by the boundary described in paragraph (3) shall not be treated as adjacent to Northern Ireland for the purposes mentioned in paragraph (1).

(3) The boundary -

(a) follows a loxodromic line joining the co-ordinates numbered 1 to 8 in the Schedule,

(b) then follows the seaward limit of the territorial sea of the United Kingdom

adjacent to the Isle of Man to the point where it meets the seaward limit of the territorial sea of the United Kingdom adjacent to Scotland,

(c) then follows the seaward limit of the territorial sea of the United Kingdom adjacent to Scotland to the co-ordinate numbered 9 in the Schedule,

(d) then follows a loxodromic line joining the co-ordinates numbered 9 to 126 in the Schedule, and

(e) then follows the seaward limit of the territorial sea of the United Kingdom adjacent to Northern Ireland between the co-ordinates numbered 126 and 127 in the Schedule.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE
Article 3

CO-ORDINATES

Point	Latitude	Longitude
1.	53° 52' 12" N	05° 49' 30" W
2.	53° 49' 12" N	05° 45' 00" W
3.	53° 49' 18" N	05° 41' 12" W
4.	53° 48' 48" N	05° 27' 24" W
5.	53° 48' 42" N	05° 24' 42" W
6.	53° 43' 11" N	05° 18' 53" W
7.	53° 47' 23" N	05° 12' 42" W
8.	53° 52' 19" N	05° 01' 48" W
9.	54° 27' 52" N	05° 04' 36" W
10.	54° 28' 13" N	05° 05' 08" W
11.	54° 30' 37" N	05° 07' 18" W
12.	54° 31' 56" N	05° 08' 37" W
13.	54° 32' 15" N	05° 08' 57" W
14.	54° 33' 57" N	05° 10' 50" W
15.	54° 36' 22" N	05° 12' 41" W
16.	54° 38' 13" N	05° 13' 43" W
17.	54° 38' 27" N	05° 13' 44" W
18.	54° 39' 48" N	05° 14' 37" W
19.	54° 40' 39" N	05° 14' 33" W
20.	54° 41' 49" N	05° 14' 49" W
21.	54° 42' 02" N	05° 14' 53" W
22.	54° 42' 50" N	05° 15' 33" W
23.	54° 44' 08" N	05° 16' 48" W
24.	54° 44' 58" N	05° 17' 37" W
25.	54° 46' 37" N	05° 19' 38" W
26.	54° 48' 21" N	05° 21' 50" W
27.	54° 49' 29" N	05° 23' 21" W
28.	54° 49' 51" N	05° 23' 48" W
29.	54° 50' 05" N	05° 24' 11" W
30.	54° 50' 40" N	05° 25' 05" W
31.	54° 51' 22" N	05° 26' 05" W
32.	54° 51' 25" N	05° 26' 08" W
33.	54° 51' 57" N	05° 26' 28" W
34.	54° 52' 40" N	05° 26' 51" W
35.	54° 53' 10" N	05° 27' 07" W
36.	54° 53' 53" N	05° 27' 24" W
37.	54° 54' 19" N	05° 27' 23" W
38.	54° 54' 54" N	05° 27' 44" W
39.	54° 55' 44" N	05° 28' 21" W
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41.	54° 56' 49" N	05° 29' 13" W
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43.	54° 57' 53" N	05° 30' 10" W
44.	54° 58' 53" N	05° 31' 05" W

45.54° 59' 45" N:05° 32' 00" W
46.55° 00' 31" N:05° 32' 58" W
47.55° 01' 22" N:05° 34' 12" W
48.55° 02' 08" N:05° 35' 29" W
49.55° 02' 48" N:05° 36' 47" W
50.55° 03' 25" N:05° 38' 13" W
51.55° 04' 01" N:05° 39' 47" W
52.55° 04' 29" N:05° 41' 15" W
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55.55° 05' 30" N:05° 44' 37" W
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59.55° 08' 21" N:05° 48' 41" W
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61.55° 09' 57" N:05° 49' 54" W
62.55° 10' 58" N:05° 50' 50" W
63.55° 11' 53" N:05° 51' 50" W
64.55° 12' 41" N:05° 52' 48" W
65.55° 12' 57" N:05° 53' 11" W
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67.55° 13' 46" N:05° 54' 29" W
68.55° 14' 20" N:05° 55' 08" W
69.55° 14' 33" N:05° 55' 25" W
70.55° 15' 04" N:05° 56' 10" W
71.55° 15' 20" N:05° 56' 35" W
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73.55° 16' 07" N:05° 58' 02" W
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82.55° 19' 10" N:06° 02' 07" W
83.55° 19' 36" N:06° 02' 34" W
84.55° 20' 11" N:06° 03' 18" W
85.55° 20' 15" N:06° 03' 24" W
86.55° 20' 32" N:06° 03' 47" W
87.55° 20' 56" N:06° 04' 25" W
88.55° 21' 16" N:06° 05' 02" W
89.55° 21' 43" N:06° 05' 57" W
90.55° 22' 00" N:06° 06' 34" W
91.55° 22' 07" N:06° 06' 54" W

92.55° 22' 18" N:06° 07' 22" W
93.55° 22' 33" N:06° 08' 06" W
94.55° 22' 45" N:06° 08' 45" W
95.55° 22' 55" N:06° 09' 12" W
96.55° 23' 09" N:06° 09' 53" W
97.55° 23' 22" N:06° 10' 40" W
98.55° 23' 31" N:06° 11' 13" W
99.55° 23' 39" N:06° 11' 38" W
100.55° 23' 59" N:06° 12' 41" W
101.55° 24' 09" N:06° 13' 16" W
102.55° 24' 24" N:06° 14' 19" W
103.55° 24' 26" N:06° 14' 24" W
104.55° 24' 37" N:06° 15' 16" W
105.55° 24' 47" N:06° 16' 12" W
106.55° 24' 49" N:06° 16' 23" W
107.55° 24' 59" N:06° 17' 16" W
108.55° 25' 09" N:06° 18' 18" W
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120.55° 25' 51" N:06° 30' 11" W
121.55° 25' 54" N:06° 30' 25" W
122.55° 26' 05" N:06° 31' 23" W
123.55° 26' 14" N:06° 32' 11" W
124.55° 26' 22" N:06° 32' 57" W
125.55° 26' 34" N:06° 34' 15" W
126.55° 26' 37" N:06° 34' 40" W
127.55° 24' 54" N:06° 44' 36" W

EXPLANATORY NOTE

(This note is not part of the Order)

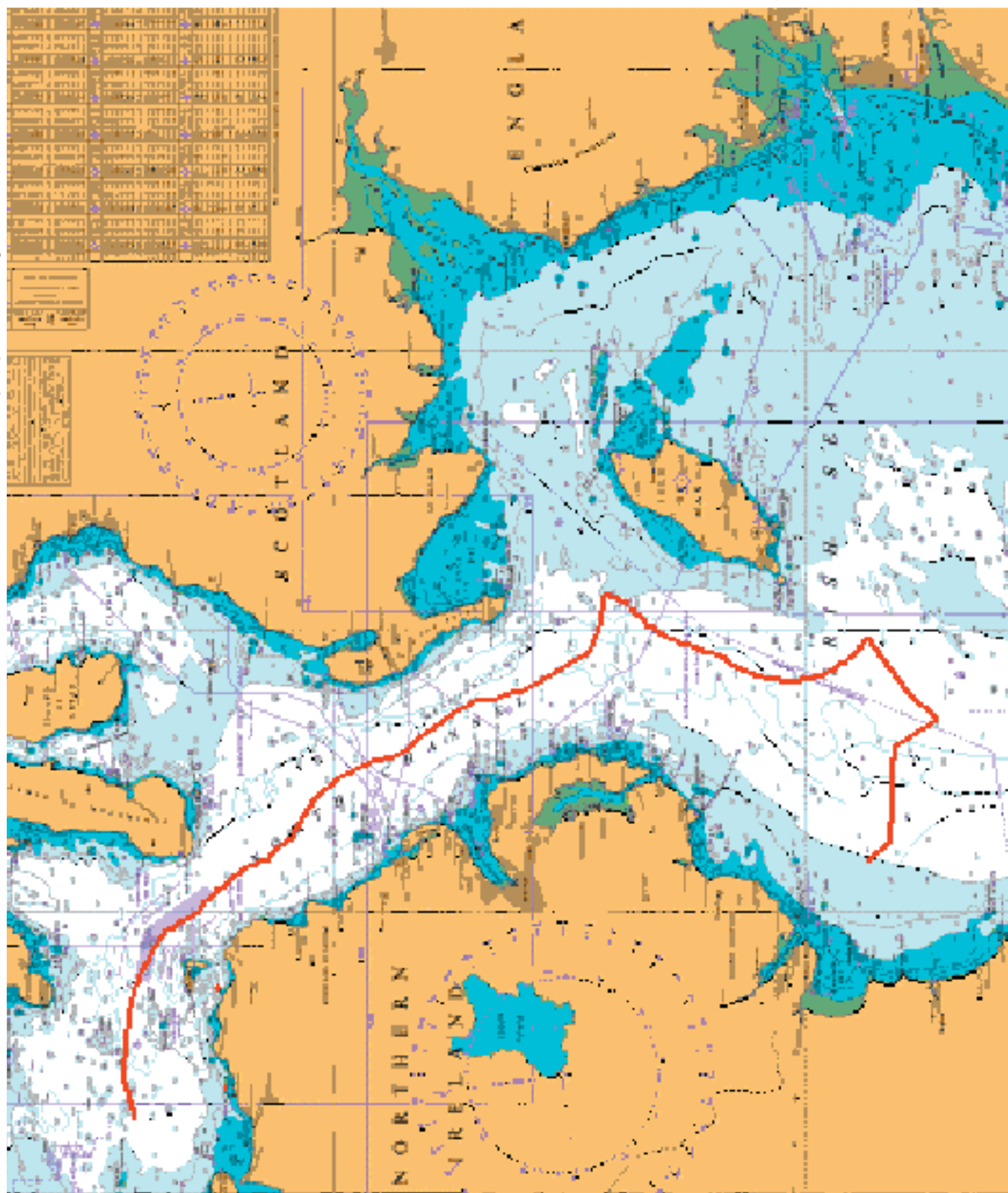
This Order describes for the purposes of the Northern Ireland Act 1998 -

- (a) the boundary between the parts of the territorial sea of the United Kingdom which are to be treated as adjacent to Northern Ireland and the parts which are not to be so treated (article 2), and
- (b) the boundary between the parts of the sea within British fishery limits which are to be treated as adjacent to Northern Ireland and the parts which are not to be so treated (article 3).

The part of the sea within British fishery limits which is to be treated as adjacent to Northern Ireland under article 3 forms the Northern Ireland zone. A map showing the line of the boundary described by article 3 for illustrative purposes only is appended to this note.

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Adjacent Waters Boundaries (Northern Ireland) Order 2002 - chart to show "the Northern Ireland Zone" as defined in Order - for information purposes only.



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



INVESTOR IN PEOPLE

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