



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk

**Department of Agriculture, Environment & Rural Affairs
Marine & Fisheries Division**

**LICENCE ISSUED UNDER THE MARINE AND COASTAL ACCESS ACT 2009, PART 4, MARINE
LICENSING**

MARINE CONSTRUCTION LICENCE

Licence to Construct a Long Sea Outfall at Ballyferris, Co. Down

Licence Number: ML 12_19

Part 1 - Particulars

1. Licensee(s) Name & Address:

Mr. Damien McKeown
Northern Ireland Water
Westland House
Old Westland Road
Belfast
BT14 6TE

Farran Construction Ltd
99 Kingsway
Dunmurry
Belfast
BT17 9NU

2. Names, and operators, of the vessels to be employed to undertake or support the deposit, relocation or removal operations:

n/a

3. Description of works and nature and quantity of all deposits below Mean High Water Springs:

A new long sea outfall is to be constructed off the coast at Ballyferris to discharge treated waste water to the Irish Sea.

4. Location of works:

Ballyferris, Co. Down

54° 34.6' N, 5° 28.9' W

5. Valid:

From: 8th January 2020

Until: 7th January 2021

PART 2: CONDITIONS

The Department of Agriculture, Environment & Rural Affairs (referred to as the licensing authority) authorises NI Water and Farran Construction Ltd, to deposit in the sea the substances or articles (except for dredge material) used in the execution of works described in Part 1 of this licence. This licence is subject to the under mentioned condition(s):

Licence Condition(s):

NOTE: FAILURE TO COMPLY WITH THE LICENCE CONDITIONS BELOW MAY RESULT IN ENFORCEMENT ACTION BEING TAKEN

1. All conditions of this licence bind any persons whom, for the time being, owns, occupies or enjoys any use of the works for which this licence has been granted, in relation to those licensed activities authorized under section 66 of the 2009 Act, whether or not the licence has been transferred to that person.
2. The Licensee(s) must receive written authorization from the licensing authority to assign or transfer the consent. The licensing authority must confirm in writing to both the original Licensee(s) and any proposed new Licensee(s) that the licence has been transferred/assigned before any works may commence under the new Licensee(s).
3. The licensee(s) shall inform the licensing authority of the finishing date of the licensed work within **28 days** of completion.
4. The licensee(s) shall not carry out any licensable activity other than that detailed in the Marine Licence application form received by the licensing authority, dated 24th May 2019. The licensee(s) shall contact the Department if it is proposed to vary the materials or methods to be used from those described in the documentation supplied in connection with the Marine Licence application.
5. The licensee(s) shall ensure that a copy of this licence is given to each contractor appointed to carry out part or all of the works. The extent of the works for which the licence has been given and the conditions that are attached to the licence should be made clear to the contractors.
6. The licensee(s) shall, within **eight weeks** after the completion of the licensed works, make a written report to the licensing authority stating the quantity and description of all articles and substances deposited under the authority of this licence.
7. A Construction Environment Management Plan must be forwarded prior to the commencement of works. This should be provided 28 days before work commences.
8. When impact piling or blasting is occurring during construction, the licensing authority must be notified **one week** in advance of commencement. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before impact piling can begin to prevent disturbance to sensitive receptors.
9. The licensee(s) must submit information on the expected location, start and end dates of pile driving to the Department to fulfil the requirements of the Marine Noise Registry, in order to satisfy the 'Forward Look' requirements of the Registry, prior to the commencement of the licensed activities. The licence holder must notify the Department of the successful submission of 'forward look' data within 7 days of commencement of the licensed works. A noise risk impact assessment must be produced and submitted to the licensing authority for approval before piling can begin to prevent disturbance to sensitive receptors. <https://mnr.jncc.gov.uk/>
10. The licensee(s) shall appoint an approved, experienced Marine Mammal Observer (MMO) at the time of impact piling or blasting to ensure there is no disturbance or injury/harm to marine mammals wherever they are present. If marine mammals are detected in the area, the MMO will issue a delay in the commencement of impact piling or blasting, until they are satisfied that the animals have left the mitigation zone which shall be no less than 500 metres, measured from the noise producing location.

11. Scour prevention mats shall be placed along the length of the pipeline to prevent sedimentation during construction.
12. All cable/pipeline protection works must ensure existing and future safe navigation is not compromised. The MCA would accept a maximum of 5% reduction in surrounding depth referenced to Chart Datum but under no circumstances should depth reductions compromise safe navigation.
13. Prior to works commencing, NI Water, in exercising its functions as a public body shall submit an underwater noise monitoring plan to be carried out for the duration of the proposal in agreement with DAERA Marine and Fisheries Division. The completed plan and records shall be submitted to the Department within 3 months of licensed activities being completed.

Reason: to further the conservation of biodiversity in compliance with the [Wildlife and Natural Environment Act \(Northern Ireland\) 2011](#)

14. NI water in exercising its functions as a public body, shall submit a proposed activity form (detailing the planned activity) and close-out report (an accurate account of where and when the activity had occurred) to the [UK Marine Noise Registry \(MNR\)](#).

Reason: to further the conservation of biodiversity in compliance with the [Wildlife and Natural Environment Act \(Northern Ireland\) 2011](#)

15. All rock drill and blast activities shall be carried out in accordance with [JNCC Guidance 'The protection of marine European Protected Species from injury and disturbance October 2010'](#) Appendix C.

Reason: to minimise the impact of the proposal on marine protected species

16. The Licencee must ensure that HM Coastguard, in this case nmcccontroller@hmcg.gov.uk, The National Maritime Operations Centre is made aware of the works prior to commencement.
17. The Licencee must notify the UK Hydrographic Office to permit the promulgation of maritime safety information and updating of nautical charts and publications through the national Notice to Mariners system.
18. The Licencee must issue local notification to marine users - including fisherman's organisations, neighbouring port authorities and other local stakeholders - to ensure that they are made fully aware of the activity.
19. The licensee(s) must prepare a written scheme of archaeological investigation (WSI) in relation to the proposed intertidal ground disturbance, which must be submitted for approval to this office at least 4 weeks before work is due to begin and include –
 - Details of responsibilities of the undertaker, archaeological consultant and contractor;
 - A watching brief method statement for the prompt reporting and recording of unexpected archaeological remains encountered during intertidal groundworks;
 - Delivery of any mitigation;
 - Details of archaeological contractor appointed; and,
 - Conservation, publication and archiving duties for archaeological material.
20. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department to observe the intertidal groundworks and to monitor the implementation of archaeological requirements.
21. The License holder must submit an archaeological monitoring report no more than 3 months after completion of works.
22. The licensee(s) shall ensure that copies of the licence are available for inspection by any authorised Enforcement Officer at:
 - a. The premises of the licensee(s)
 - b. The premises of the operating facility
 - c. The site of the works (including on board vessels)

23. The licensee(s) shall adhere to the following:

- Works in, near or over watercourses, PPG5 and
- Prevent Pollution, & Construction and Demolition sites: PPG6: Prevent Pollution.

Signed on behalf of the Department:



Dated: 8th January 2020

NOTE:

(1) The licensing authority would advise that this licence does not negate the licensees' responsibility to gain any other environmental or access permissions that may be required to progress the works.

(2) Under Part 4, Chapter 1, paragraph 72 of the **Marine and Coastal Access Act 2009**, the licensing authority may revoke, vary or suspend this licence if it appears to the authority that the holder is in breach of a condition included in it, or if it appears to the authority that the licence ought to be varied, suspended or revoked because of a change of circumstances relating to the marine environment or human health, including a change in scientific knowledge. A revocation, variation or suspension may also be enforced in the interests of safety of navigation.

(3) A person who deposits material in contravention of the terms of a licence is guilty of an offence under Section 85 of the Act. It is a defence under paragraph 86 (1) for a person charged with such an offence to prove 'force majeure'. However they are also required to prove that they took steps within a reasonable time to inform the licensing authority of all details pertaining to the incident contained in paragraph 86 (2). The licensing authority shall be obliged to report force majeure cases immediately to the OSPAR Commission.

(4) Attention is drawn to the necessity of complying where appropriate with the **Radioactive Substances Act 1960**, the **Prevention of Oil Pollution Act 1971** and to the **Merchant Shipping (Dangerous Goods) (Amendment) Rules 1968**.

(5) If within 28 days of the issue of a licence the person to whom it was issued requests the licensing authority to give him notice in writing of the reasons for the inclusion of any provision in it, the Authority shall comply with his request within 28 days of receiving it.

(6) Anyone who fails to comply with a condition on a Marine Licence commits an offence under Section 85 of the **Marine and Coastal Access Act 2009**, and may be subject to enforcement action. Possible enforcement actions are compliance notices, remediation notices, fixed monetary penalties and variable monetary penalties. In the worst cases, a person found guilty of an offence on summary conviction may be subject to a fine not exceeding £50,000. In addition, a person found guilty of an offence on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both. Further details can be found at our guidance note

<https://www.daera-ni.gov.uk/sites/default/files/publications/doe/marine-licensing-guidance-enforcement-under-part-4-marine-and-coastal-access-act%2C-2009-may-2016.pdf>

Further information from consultation:

1. Northern Ireland Environment Agency – Water Management Unit

The licensee(s) should be aware that it is an offence under the **Water (Northern Ireland) Order 1999** to discharge or deposit whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and /or three months imprisonment.

Water Management Unit would refer the applicant to DAERA's Standing Advice on Pollution Prevention and Discharges to the Water Environment, available at: www.daera-ni.gov.uk/water-environment-standingadvice

2. DAERA Marine & Fisheries – Inland Fisheries & Sea Fisheries

The licensee(s) should be made aware that it is an offence, under Section 47 of the Fisheries Act (Northern Ireland) 1966, to cause pollution which is subsequently shown to have a deleterious effect on fish stocks.

3. DAERA Marine & Fisheries – Marine Conservation

Marine National Protected Species

The licensee's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended), under which it is an offence to intentionally or recklessly kill, injure or take any wild animal included in Schedule 5 to the Order. This includes the common seal (*Phoca vitulina*), grey seal (*Halichoerus grypus*), basking shark (*Cetorhinus maximum*), angel shark (*Squatina squatina*), common skate (*Dipturus batis*) short snouted seahorse (*Hippocampus hippocampus*), spiny seahorse (*Hippocampus guttulatus*), spiny lobster (*Palinurus elaphus*) and fan mussel (*Atrina fragilis*).

Article 11 of the Wildlife (Northern Ireland) Order 1985 (as amended) provides that a person shall not be guilty of an offence under Article 10 if the act was incidental to a lawful operation (i.e. activity permitted by a Marine Licence or Planning Permission) and could not reasonably be avoided. A separate marine Wildlife Licence is therefore not required for national marine protected species if a Marine Licence/Planning Permission has been granted, since adherence to the conditions of the Marine Licence should reduce the likelihood of harm to marine national protected species.

Under Article 10 it is an offence to intentionally or recklessly disturb; common seals, grey seals or basking sharks. It is also an offence under Article 10 to intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which these animals (Schedule 5¹) use for shelter or protection; damage or destroy anything which conceals or protects any such structure; or disturb any such animal while it is occupying a structure or place which it uses for shelter or protection.

Under Article 13 it is an offence to sell or transport any Schedule 7 animal dead or alive at any time².

Any person who knowingly causes or permits an act which is made unlawful under Article 10 or Article 13 shall also be guilty of an offence.

Under the Wildlife (Northern Ireland) Order 1985 (as amended) a licence may be required for any operations which might impact on protected species.

¹ Common skate and angel sharks in respect to Article 10 (1) only and within 6 nautical miles of coastal water only.

² Schedule 7 species includes all Schedule 5 species listed in Appendix A, with the exception of the common skate and angel shark. Sea urchin is protected under Schedule 7 only.

Marine European Protected Species:

The licensee's attention is drawn to regulation 34 of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), which states that it is an offence to deliberately capture, injure or kill a wild animal of a European Protected Species included in Schedule 2 to these Regulations. This includes all species of dolphins, porpoises and whales and the marine turtle species.

(1) It is also an offence to;

- (a) deliberately disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- (b) deliberately disturb such an animal in such a way as to be likely to;
 - (i) affect the local distribution or abundance of the species to which it belongs;
 - (ii) impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - (iii) impair its ability to hibernate or migrate;
- (c) deliberately take or destroy the eggs of such an animal;
- (d) deliberately obstruct access to a breeding site or resting place of such an animal; or
- (e) damage or destroy a breeding site or resting place of such an animal.

(2) It is an offence for any person;

- (a) to have in his possession or control,
 - (b) to transport,
 - (c) to sell or exchange, or
 - (d) to offer for sale or exchange,
- any live or dead animal which is taken from the wild and is of a species listed in Annex IV(a) to the Habitats Directive, or any part of, or anything derived from, such an animal.

If there is evidence of Schedule 2 animals listed above at the site, all works must cease immediately and further advice must be sought from DAERA Marine and Fisheries Division, Klondyke Building, Cromac Avenue, Belfast, BT7 2JA.

Under this legislation a licence may be required for any operations which might impact on European Protected Species.

¹ Following two European Court of Justice cases (C-103/00 and C-221/04) "deliberate actions are to be understood as actions by a person who knows, in the light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action"

http://jncc.defra.gov.uk/PDF/consultation_epsGuidanceDisturbance_all.pdf

4. DAERA Marine & Fisheries – Marine Archaeology

An application for an excavation licence for the watching brief, required under the *Historic Monuments and Archaeological Objects (NI) Order 1995*, should be submitted at least 4 weeks before work is due to begin, by a qualified archaeologist responsible for the project, to:

Historic Environment Division – Historic Monuments Unit
Department for Communities
Ground Floor
9 Lanyon Place
Town Parks
Belfast
BT1 3LP

Quote reference: **ML 12/19**