



# Food and Environment Protection Act 1985

## 1985 CHAPTER 48

### PART II

#### DEPOSITS IN THE SEA

##### *Licensing*

#### **5 Requirement of licences for deposit of substances and articles in the sea etc.**

Subject to the following provisions of this Part of this Act, a licence under this Part of this Act is needed—

- (a) for the deposit of substances or articles within [<sup>F1</sup> the Scottish inshore region ], either in the sea or under the seabed—
  - (i) from a vehicle, vessel, aircraft, hovercraft or marine structure ;
  - (ii) from a container floating in the sea ; or
  - (iii) from a structure on land constricted or adapted wholly or mainly for the purpose of depositing solids in the sea ;
- <sup>F2</sup>(b) .....
- (c) ..... <sup>F3</sup>
- (e) for the scuttling of vessels—
  - (i) in [<sup>F4</sup> the Scottish inshore region ]; <sup>F5</sup>...
  - <sup>F5</sup>(ii) ..... <sup>F6</sup>
  - (iii) .....
- (f) for the loading of a vessel, aircraft, hovercraft, marine structure or floating container in [<sup>F7</sup> Scotland or the Scottish inshore region ] with substances or articles for deposit anywhere in the sea or under the sea-bed ;
- (g) for the loading of a vehicle in [<sup>F8</sup> Scotland ] with substances or articles for deposit from that vehicle as mentioned in paragraph (a) <sup>F9</sup> . . . above ; and

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- (h) for the towing or propelling from [<sup>F10</sup> Scotland or the Scottish inshore region ] of a vessel for scuttling anywhere at sea.

#### Textual Amendments

- F1** Words in s. 5(a) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(a\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F2** S. 5(b) repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(b\), Sch. 22 Pt. 2](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)(d)
- F3** S. 5(c)(d) repealed (1.4.2015 for S.) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\), ss. 146\(2\)\(b\), 162, Sch. 16 Pt. VIII](#); S.S.I. 2015/72, art. 2(3)
- F4** Words in s. 5(e)(i) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(c\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F5** S. 5(e)(ii) and word repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(d\), Sch. 22 Pt. 2](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)(d)
- F6** S. 5(e)(iii) repealed (1.4.2015 for S.) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\), ss. 146\(2\)\(c\)\(ii\), 162, Sch. 16 Pt. VIII](#); S.S.I. 2015/72, art. 2(3)
- F7** Words in s. 5(f) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(e\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F8** Word in s. 5(g) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(f\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F9** Words in s. 5(g) repealed (5.11.1993) by [1993 c. 50, s. 1\(1\), Sch. 1 Pt. II](#)
- F10** Words in s. 5(h) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(2\)\(g\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)

#### Modifications etc. (not altering text)

- C1** S. 5 power to transfer functions conferred (1.12.1998) by [1998 c. 38, s. 22\(1\)\(c\)\(5\), Sch. 3 Pt. I, para. 4\(1\)\(a\)](#) (with ss. 139(2), 143(2)); S.I. 1998/2789, art. 2  
S.5 amended (1.7.1999) by [S.I. 1999/1750, art. 4, Sch. 3](#) (with s. 7); S.I. 1998/3178
- C2** S. 5 excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\), Sch. 14 para. 9](#)

## 6 Requirement for licences for incineration at sea etc.

- (1) Subject to the following provisions of this Part of this Act, a licence is needed—
- (a) for the incineration of substances or articles on a vessel or marine structure—
- (i) in [<sup>F11</sup> the Scottish inshore region ]; <sup>F12</sup>...
- <sup>F12</sup>(ii) ..... <sup>F13</sup>
- (iii) .....
- (b) for the loading of a vessel or marine structure in [<sup>F14</sup> Scotland or the Scottish inshore region ] with substances or articles for incineration anywhere at sea.
- (2) In this Act “incineration” means any combustion of substances and materials for the purpose of their thermal destruction.

#### Textual Amendments

- F11** Words in s. 6(1)(a)(i) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(3\)\(a\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F12** S. 6(1)(a)(ii) and word repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(3\)\(b\), Sch. 22 Pt. 2](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)(d)

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**F13** S. 6(1)(a)(iii) repealed (1.4.2015 for S.) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 146(3)(b), 162, [Sch. 16 Pt. VIII](#); S.S.I. 2015/72, art. 2(3)

**F14** Words in s. 6(1)(b) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 8 para. 2\(3\)\(c\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)

#### Modifications etc. (not altering text)

**C3** S. 6 power to transfer functions conferred (1.12.1998) by 1998 c. 38, s. 22(1)(c)(5), [Sch. 3 Pt. I](#), para. 4(1)(a) (with ss. 139(2), 143(2)); S.I. 1998/2789, [art. 2](#)

S. 6 amended (1.7.1999) by S.I. 1999/1750, art. 4, [Sch. 3](#) (with s. 7); S.I. 1998/3178

[<sup>F15</sup>**6A.** A licence under this Part of this Act is needed for an operation only if it is an operation to which, by virtue of section 34 of the Marine (Scotland) Act 2010, Part 4 of that Act does not apply.]

#### Textual Amendments

**F15** [S. 6A](#) inserted (S.) (6.4.2011) by [The Marine \(Scotland\) Act 2010 \(Transitional and Consequential Provisions\) Order 2011 \(S.S.I. 2011/202\)](#), arts. 1, [10](#)

## 7 Exemptions.

- (1) [<sup>F16</sup>**A** licensing authority may]by order made by statutory instrument specify operations—
  - (a) which are not to need a licence; or
  - (b) which are not to need a licence if they satisfy conditions specified in the order.
- (2) The conditions that an order under this section may specify include conditions enabling a licensing authority to require a person to obtain the authority's approval before he does anything for which a licence would be needed but for the order.
- (3) Approval under subsection (2) above may be without conditions or subject to such conditions as the authority considers appropriate.

[<sup>F17</sup>**(3A)** A licensing authority—

- (a) shall consult the Food Standards Agency as to any order the authority contemplates making under this section; and
  - (b) shall from time to time consult that Agency as to the general approach to be taken by the authority in relation to the granting of approvals and the imposition of conditions under subsections (2) and (3) (including the identification of circumstances in which it may be desirable for the Agency to be consulted in relation to particular cases).]
- (4) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F16** Words in s. 7(1) substituted (30.6.1999) by S.I. 1999/1756, art. 2, [Sch. 10\(7\)](#) (with art. 8)

**F17** S. 7(3A) inserted (1.4.2000) by 1999 c. 28, s. 18, [Sch. 3 Pt. III para. 16\(3\)](#) (with s. 38); S.I. 2000/1066, [art. 2](#)

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#### Modifications etc. (not altering text)

- C4** S. 7 power to transfer functions conferred (1.12.1998) by 1998 c. 38, s. 22(1)(c)(5), **Sch. 3 Pt. I, para. 4(1)(a)** (with ss. 139(2), 143(2)); S.I. 1998/2789, **art. 2**  
S. 7 amended (1.7.1999) by S.I. 1999/1750, **art. 4, Sch. 3** (with s. 7); S.I. 1998/3178

#### [<sup>F18</sup>7A Application of Part II: further provisions.

[ Nothing in this Part of this Act shall apply to anything done—

- <sup>F19</sup>(1) (a) for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of Part III of the Petroleum Act 1998) is in force; or  
(b) for the purpose of establishing or maintaining an offshore installation within the meaning of Part IV of that Act.]

[<sup>F20</sup>(2) Nothing in this Part of this Act applies to anything done in the course of carrying on an activity for which a licence under section 4 or 18 of the Energy Act 2008 is required (gas unloading, storage and recovery, and carbon dioxide storage).

(3) For this purpose, activities are to be regarded as activities for which such a licence is required if, by virtue of such a licence, they are activities which may be carried on only with the consent of the Secretary of State or another person.

(4) Subsection (2) does not apply in relation to anything done in the course of carrying out an activity for which a licence under section 4 of the Energy Act 2008 is required in, under or over [<sup>F21</sup> the Scottish inshore region. ]

<sup>F22</sup>( 5 ) . . . . .]

#### Textual Amendments

- F18** S. 7A inserted (15.2.1999) by 1998 c. 17, s. 50, **Sch. 4 para. 20** (with Sch. 3 para. 5(1)); S.I. 1999/161, **art. 2(1)**  
**F19** S. 7A(1): s. 7A renumbered as s. 7A(1) (6.4.2009) by Energy Act 2008 (c. 32), s. 110(2), **Sch. 1 para. 2(a)**; S.I. 2009/45, **art. 4(a)(iii)**  
**F20** S. 7A(2)-(5) inserted (6.4.2009) by Energy Act 2008 (c. 32), s. 110(2), **Sch. 1 para. 2(b)**; S.I. 2009/45, **art. 4(a)(iii)**  
**F21** Words in s. 7A(4) substituted for s. 7A(4)(a)(b) (6.4.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 8 para. 2(4)(a)** (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, **art. 3(2)(a)**  
**F22** S. 7A(5) repealed (6.4.2011) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 8 para. 2(4)(b), Sch. 22 Pt. 2** (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, **art. 3(2)(a)(d)**

## 8 Licences.

(1) In determining whether to issue a licence a licensing authority—

- (a) shall have regard to the need—  
(i) to protect the marine environment, the living resources which it supports and human health; and  
(ii) to prevent interference with legitimate uses of the sea; and  
(b) may have regard to such other matters as the authority considers relevant.

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- (2) Without prejudice to the generality of subsection (1) above, where it appears to a licensing authority that an applicant for a licence has applied for the licence with a view to the disposal of the substances or articles to which it would relate, the authority, in determining whether to issue a licence, shall have regard to the practical availability of any alternative methods of dealing with them.
- (3) A licensing authority—
- (a) shall include such provisions in a licence as appear to the authority to be necessary or expedient—
    - (i) to protect the marine environment, the living resources which it supports and human health; and
    - (ii) to prevent interference with legitimate uses of the sea; and
  - (b) may include in a licence such other provisions as the authority considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, a licensing authority—
- (a) may include in any licence provisions requiring—
    - (i) that no operation authorised by the licence shall be carried out until the licensing authority has given such further consent to or approval of the operation as the licence may specify; and
    - (ii) that automatic equipment shall be used for recording such information relating to any operation of deposit, scuttling or incineration mentioned in the licence as the licensing authority may specify; and
  - (b) may include in a licence which only authorises operations such as are mentioned in section 5(f) or (h) above or section 6(1)(b) above provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it shall take place at a specified site, whether in [<sup>F23</sup> the Scottish inshore region ] or not.
- (5) A licensing authority may require an applicant for a licence to supply such information and permit such examinations and tests as in the opinion of the authority may be necessary or expedient to enable the authority to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to him ought to contain.
- (6) Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of subsection (4)(a) above, any record produced by means of the equipment shall, in any proceedings under this Part of this Act, be <sup>F24</sup>... sufficient evidence, of the matters appearing from the record.
- (7) A licensing authority may require an applicant for a licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of processing his application.
- (8) A licensing authority may also require an applicant for a licence to pay a further reasonable fee towards the expense—
- (a) of carrying out any 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

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- (c) of monitoring the effect of such operations.
- (9) Fees under this section shall be determined on principles settled by the Ministers with the consent of the Treasury and after consultation with organisations appearing to the Ministers to represent persons who are likely to apply for licences.
- (10) A licensing authority may vary or revoke a licence which the authority has issued if it appears to the authority that there has been a breach of any of its provisions.
- (11) A licensing authority may vary or revoke a licence which the authority has issued if it appears to the authority that the licence ought to be varied or revoked—
  - (a) because of a change in circumstances relating to the marine environment, the living resources which it supports or human health; or
  - (b) because of increased scientific knowledge relating to any of those matters; or
  - (c) for any other reason that appears to the authority to be relevant.
- [<sup>F25</sup>(11A) The matters to which a licensing authority is to have regard in exercising powers under this section include any advice or information given to that authority by the Food Standards Agency (whether of a general nature or in relation to the exercise of a power in a particular case).
- (11B) A licensing authority shall from time to time consult the Food Standards Agency as to the general manner in which the authority proposes to exercise its powers under this section in cases involving any matter which may affect food safety or other interests of consumers in relation to food (including the identification of circumstances in which it may be desirable for the Agency to be consulted in relation to particular cases).]
- (12) Schedule 3 to this Act shall have effect.

#### Textual Amendments

- F23** Words in s. 8(4)(b) substituted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(5\)\(a\)](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)
- F24** Words in s. 8(6) repealed (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\), s. 324\(3\), Sch. 8 para. 2\(5\)\(b\), Sch. 22 Pt. 2](#) (with ss. 111, 323(6), Sch. 9 Pts. 3); S.I. 2011/556, art. 3(2)(a)(d)
- F25** S. 8(11A)(11B) inserted (1.4.2000) by 1999 c. 28, s. 18, [Sch. 3 Pt. III para. 16\(4\)](#) (with s. 38); S.I. 2000/1066, art. 2

#### Modifications etc. (not altering text)

- C5** S. 8 power to transfer functions conferred (1.12.1998) by 1998 c. 38, s. 22(1)(c)(5), [Sch. 3 Pt. I, para. 4\(1\)\(a\)](#) (with ss. 139(2), 143(2)); S.I. 1998/2789, art. 2
- C6** S. 8(9) applied (with modifications) (24.6.2007) by [The Marine Works \(Environmental Impact Assessment\) Regulations 2007 \(S.I. 2007/1518\), regs. 1, 3\(4\)](#)

### [<sup>F26</sup>8A **Electronic communications apparatus: operations in tidal waters etc**

- (1) The Scottish Ministers must not issue a licence to carry out any operation which amounts to, or involves the exercise of, a right conferred by [<sup>F27</sup>Part 9 of Schedule 3A of the Communications Act 2003 (the electronic communications code)] unless they are satisfied that adequate compensation arrangements have been made.
- (2) For the purposes of subsection (1) “adequate compensation arrangements” are adequate arrangements for compensating any persons—

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- (a) who appear to the Scottish Ministers to be owners of interests in the tidal water or lands on, under or over which the right is to be exercised,
- (b) for any loss or damage sustained by those persons in consequence of the operation being carried out.]

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#### Textual Amendments

- F26** S. 8A inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 8 para. 5** (with ss. 111, 323(6)); S.I. 2011/556, art. 3(2)(a)
- F27** Words in s. 8A(1) substituted (28.12.2017) by [Digital Economy Act 2017 \(c. 30\)](#), s. 118(6), **Sch. 3 para. 22**; S.I. 2017/1286, reg. 2(d)

**Changes to legislation:**

There are currently no known outstanding effects for the Food and Environment Protection Act 1985, Cross Heading: Licensing.