

Draft Order laid before the Scottish Parliament under section 165(5) of the Marine (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

**ENVIRONMENTAL PROTECTION
LICENSING (MARINE)**

**The Marine Licensing (Exempted Activities)
(Scottish Inshore Region) Order 2011**

Made - - - - 2011
Coming into force - - 6th April 2011

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 32(1), (2) and (3) and 165(1) of the Marine (Scotland) Act 2010⁽¹⁾ and all other powers enabling them to do so.

In deciding to make this Order, the Scottish Ministers have had regard to the matters mentioned in section 32(4) of that Act.

The Scottish Ministers have carried out consultation in accordance with section 32(5) of that Act.

In accordance with section 165(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

Introductory provisions

Citation and commencement

1. This Order may be cited as the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 and comes into force on 6th April 2011.

Interpretation

2.—(1) In this Order, a reference to—

(1) 2010 asp 5.

- (a) a particular numbered item (without further specification) is a reference to that numbered item in section 21(1) of the 2010 Act; and
- (b) a particular numbered item “of the 2009 Act” is a reference to that numbered item in section 66(1) of the 2009 Act.
- (2) In this Order, except where the context otherwise requires—
- “the 2009 Act” means the Marine and Coastal Access Act 2009(2);
- “the 2010 Act” means the Marine (Scotland) Act 2010;
- “activity” means licensable marine activity;
- “disposal” has the meaning given by Article 3 of the Waste Framework Directive;
- “a European site” means—
- (a) a European site within the meaning of regulation 10(1) of the Conservation (Natural Habitats &c.) Regulations 1994(3);
- (b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007(4);
- “exempt activity” has the meaning given by article 3;
- “fish” includes shellfish and any part of a fish;
- “fishing operation” includes fishing for or taking shellfish but does not include an activity relating to the propagation or cultivation of shellfish;
- “harbour authority” has the meaning given by section 57(1) of the Harbours Act 1964(5);
- “lighthouse authority” means a general lighthouse authority or a local lighthouse authority within the meaning of Part 8 of the Merchant Shipping Act 1995(6);
- “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(7);
- “an MPA” means a Nature Conservation MPA designated under section 67 of the 2010 Act or a marine protected area designated under section 116 of the 2009 Act(8);
- “plan or project” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(9);
- “Ramsar site” has the same meaning as in section 37A of the Wildlife and Countryside Act 1981(10);
- “shellfish” includes crustaceans and molluscs of any kind and any part of a shellfish;
- “waste” means anything that—
- (a) is waste within the meaning of Article 3(1) of the Waste Framework Directive, as read with Article 5(1) of that Directive; and
- (b) is not excluded from the scope of that Directive by Article 2(1), (2) or (3) of that Directive;

(2) 2009 c.23.

(3) S.I. 1994/2716.

(4) S.I. 2007/1842.

(5) 1964 c.40, to which there are amendments not relevant to this Order.

(6) 1995 c.21. See section 193 of that Act, to which certain relevant amendments have been made by paragraph 6 of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997 (c.28).

(7) 1994 c.39.

(8) Section 116(7) provides that a marine conservation zone designated by the Scottish Ministers under that section is to be known as a marine protected area.

(9) O.J. No. L 206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (O.J. No. L 363, 20.12.2006, p.368).

(10) 1981 c.69. Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c.37).

“the Waste Framework Directive” means Directive [2008/98/EC](#) of the European Parliament and of the Council on waste⁽¹¹⁾.

(3) In the following provisions, “likely” has the same meaning as in Council Directive [92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora—

- (a) sub-paragraphs (a) and (b) of article 17(4);
- (b) sub-paragraphs (a) and (b) of article 18(3); and
- (c) sub-paragraphs (a) and (b) of article 22(3).

PART 2

Exempt activities – general provisions

Exemption from need for marine licence

- 3.—(1) A marine licence is not needed for an activity that is an exempt activity.
- (2) An activity is an exempt activity to the extent that—
- (a) it is an activity to which an article in Part 3 applies; and
 - (b) it satisfies any conditions specified in that article in relation to that activity.
- (3) But this is subject to paragraph (4) and article 4.
- (4) Nothing in this Order makes an activity an exempt activity to the extent to which the carrying on of the activity is contrary to international law.

Activities relating to disposal or recovery of waste

- 4.—(1) An activity carried on by an establishment or undertaking involving the disposal or recovery of waste is not an exempt activity unless the conditions in this article are satisfied.
- (2) Condition 1 is that the establishment or undertaking is carrying out—
- (a) disposal of its own non-hazardous waste at the place of production; or
 - (b) recovery of waste.
- (3) Condition 2 is that the type and quantity of waste involved, and the method of disposal or recovery, are consistent with the need to attain the objectives mentioned in Article 13 of the Waste Framework Directive.
- (4) Condition 3 is that the establishment or undertaking must be registered with the Scottish Ministers.
- (5) The Scottish Ministers must maintain a register containing the name and address of any establishment or undertaking carrying on an exempt activity involving the disposal or recovery of waste in the Scottish marine area.
- (6) The register may be kept in any form.
- (7) In this article—
- (a) “establishment” and “undertaking” have the same meaning as in Articles 23 and 24 of the Waste Framework Directive;
 - (b) “recovery” has the meaning given by Article 3 of the Waste Framework Directive;
 - (c) “non-hazardous waste” has the same meaning as in the Waste Framework Directive.

(11) O.J. No. L 312, 22.11.2008, p.3.

PART 3

Exempt activities and conditions

Interpretation of this Part

5. In this Part—

- (a) a reference to a “deposit” is a reference to a deposit falling within item 1 (deposits within Scottish marine area), 2 (deposits from vehicle, vessel etc. loaded in Scotland or Scottish marine area) or, except as otherwise provided, 8 (deposits of explosives within Scottish marine area);
- (b) a reference to a “dredging activity” is a reference to an activity falling within item 7 (dredging within Scottish marine area);
- (c) a reference to a “removal activity” is a reference to an activity falling within item 6 (use of vehicle, vessel etc. to remove substance or object from seabed within Scottish marine area);
- (d) a reference to a “works activity” is a reference to an activity falling within item 5 (construction, alteration or improvement of works within Scottish marine area).

Safety directions under the Merchant Shipping Act 1995

6. This article applies to an activity carried on—

- (a) by or on behalf of the Secretary of State in exercise of a power under Schedule 3A to the Merchant Shipping Act 1995⁽¹²⁾ (safety directions);
- (b) by any person for the purpose of complying with a direction under that Schedule; or
- (c) by any person for the purpose of avoiding interference with action taken by virtue of that Schedule.

Salvage activities

7. This article applies to an activity carried on, in the course of a salvage operation, for the purpose of ensuring the safety of a vessel or preventing pollution.

Fire fighting etc.

8. This article applies to an activity carried on for the purpose of fighting, or preventing the spread of, any fire.

Air accident investigation

9. This article applies to a deposit or removal activity carried on for the purpose of recovering any substance or object as part of an investigation into any accident involving an aircraft.

Fishing – deposits

10.—(1) This article applies—

- (a) to the deposit by way of return to the sea—
 - (i) of any fish during the course of a fishing operation; or

⁽¹²⁾ 1995 c.21; section 108A, which gives effect to Schedule 3A, was inserted by section 1(1) of the Marine Safety Act 2003 (c. 16).

- (ii) of any other object during the course of a fishing operation, provided that the fish or other object has not been landed before being so returned;
 - (b) to the deposit by way of return to the sea of any fish during the course of fish processing at sea.
- (2) This article does not apply—
- (a) to a deposit of fishing gear made for the purpose of disposal;
 - (b) except in the case of a deposit falling within paragraph (1)(a)(ii), to a deposit to the extent that it falls within item 8.

Fishing – removal activity and dredging activity

11. This article applies—
- (a) to a removal activity carried on for the purpose of removing fishing gear in the course of a fishing operation;
 - (b) to a dredging activity carried on in the course of any fishing operation.

Propagation and cultivation of fish – deposits

- 12.—(1) This article applies to the deposit of any trestle, raft, cage, pole, rope or line in the course of the propagation or cultivation of fish.
- (2) This article does not apply to a deposit—
- (a) made for the purpose of disposal;
 - (b) made for the purpose of creating, altering or maintaining an artificial reef; or
 - (c) that causes or is likely to cause obstruction or danger to navigation.

Propagation and cultivation of fish – removal activity and dredging activity

13. This article applies to—
- (a) a removal activity carried on in the course of the propagation or cultivation of fish;
 - (b) a dredging activity carried on in the course of the propagation or cultivation of shellfish.

Oil and gas activities and carbon dioxide storage

- 14.—(1) This article applies to anything done—
- (a) in the course of carrying on an activity for which a licence under section 3 of the Petroleum Act 1998⁽¹³⁾ or section 2 of the Petroleum (Production) Act 1934⁽¹⁴⁾ is required;
 - (b) for the purpose of constructing or maintaining a pipeline as respects any part of which an authorisation (within the meaning of Part 3 of the Petroleum Act 1998) is in force; or
 - (c) in the course of carrying on an activity for which a licence under section 4 or 18 of the Energy Act 2008⁽¹⁵⁾ is required.
- (2) For the purposes of paragraph (1)(a) or (c), activities are to be regarded as activities for which a licence of the description in question 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.

⁽¹³⁾ 1998 c.17.

⁽¹⁴⁾ 1934 c.36.

⁽¹⁵⁾ 2008 c.32.

Deposits of marine chemical and marine oil treatment substances etc.

15.—(1) This article applies to the deposit of any—

- (a) marine chemical treatment substance;
- (b) marine oil treatment substance;
- (c) marine surface fouling cleaner.

(2) This article is subject to conditions 1 to 3.

(3) Condition 1 is that the substance must be one the use of which is for the time being approved for the purposes of this Order by the Scottish Ministers.

(4) Condition 2 is that the substance must be used in accordance with any conditions to which the approval is subject.

(5) Condition 3 is that no deposit must be made in an area of the sea of a depth of less than 20 metres or within one nautical mile of any such area except with the approval of the Scottish Ministers.

(6) In paragraph (1)—

- (a) “marine chemical treatment substance” and “marine oil treatment substance” have the same meaning as in section 107(2) of the 2009 Act;
- (b) “marine surface fouling cleaner” means any substance used or intended to be used for removing surface fouling matter from the surface of the sea or of the sea bed.

Deposit of equipment to control, contain or recover oil etc.

16.—(1) This article applies to the deposit of any equipment for the purpose of controlling, containing or recovering any—

- (a) oil;
- (b) mixture containing oil;
- (c) chemical;
- (d) flotsam; or
- (e) algal bloom.

(2) This article does not apply to a deposit to the extent that it falls within item 8.

Scientific instruments etc. – deposits

17.—(1) This article applies—

- (a) to the deposit of any scientific instrument or associated equipment in connection with any scientific experiment or survey;
- (b) to the deposit of any reagent or any chemical or particle tracer.

(2) In the case of the deposit of any reagent or chemical or particle tracer, this article is subject to the condition that the use of the reagent or the chemical or particle tracer must be for the time being approved for the purposes of this Order by the Scottish Ministers.

(3) This article does not apply to—

- (a) a deposit made for the purpose of disposal;
- (b) a deposit that causes or is likely to cause obstruction or danger to navigation;
- (c) a deposit—
 - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (4); and

- (ii) that is not directly connected with or necessary to the management of the site or area referred to in that sub-paragraph.
- (4) A deposit falls within this paragraph if—
 - (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
 - (b) it is likely to have a significant effect on a Ramsar site; or
 - (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MPA;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

Scientific instruments etc. – removal activity

18.—(1) This article applies to a removal activity carried on for the purpose of removing any scientific instrument or associated equipment referred to in article 17(1)(a).

- (2) This article does not apply to such an activity—
 - (a) that falls within sub-paragraph (a), (b) or (c) of paragraph (3); and
 - (b) that is not directly connected with or necessary to the management of the site or area referred to in that sub-paragraph.
- (3) Such an activity falls within this paragraph if—
 - (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
 - (b) it is likely to have a significant effect on a Ramsar site; or
 - (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MPA;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

Aggregates or mineral dredging – deposits

- 19.** This article applies—
- (a) to the deposit, on the site of dredging for aggregates or other minerals, of any substance or object taken from the sea in the course of such dredging (other than any of the aggregates or minerals being dredged);
 - (b) to the deposit of waters (whether by overflow or pumped discharge) from the hold of a vessel—
 - (i) in the normal course of dredging for aggregates or other minerals; or
 - (ii) at the site of such dredging following its completion or during the return journey of the vessel.

Maintenance of coast protection, drainage and flood defence works

20.—(1) This article applies to an activity carried on by or on behalf of a local authority for the purpose of maintaining any—

- (a) coast protection works;
- (b) drainage works;

(c) flood defence works.

(2) This article is subject to the condition that the activity is carried on within the existing boundaries of the works being maintained.

(3) This article does not apply in relation to any beach replenishment.

Emergency works

21.—(1) This article applies to an activity carried on for the purpose of executing emergency works—

- (a) in response to any flood or the imminent risk of any flood;
- (b) for the purpose of preventing pollution of the environment; or
- (c) to repair an existing structure.

(2) This article is subject to the condition that the activity is approved by the Scottish Ministers before it is carried on.

Use of vehicles to remove litter or seaweed from beaches

22.—(1) This article applies to a removal activity using a vehicle carried on by or on behalf of a local authority for the purpose of removing any litter or seaweed from a beach.

(2) This article does not apply to any such removal activity—

- (a) that falls within sub-paragraph (a), (b) or (c) of paragraph (3); and
- (b) that is not directly connected with or necessary to the management of the site or area referred to in that sub-paragraph.

(3) Such an activity falls within this paragraph if—

- (a) it is a plan or project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (b) it is likely to have a significant effect on a Ramsar site; or
- (c) it is capable of affecting (other than insignificantly)—
 - (i) the protected features of an MPA;
 - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

Deposits in the course of normal navigation or maintenance

23.—(1) This article applies to a deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance.

(2) This article does not apply to a deposit—

- (a) made for the purpose of disposal;
- (b) to the extent that it falls within item 8.

Maintenance of harbour works

24.—(1) This article applies to a deposit, removal activity or works activity carried on by or on behalf of a harbour authority for the purpose of maintaining any harbour works.

(2) This article is subject to the condition that the activity is carried on within the existing boundaries of the works being maintained.

Removal of obstruction or danger to navigation

25.—(1) This article applies to a removal activity carried on by or on behalf of—

- (a) a conservancy authority;
- (b) a harbour authority;
- (c) a lighthouse authority; or
- (d) a navigation authority,

for the purpose of removing anything causing or likely to cause obstruction or danger to navigation.

(2) In paragraph (1)—

“conservancy authority” has the meaning given by section 313(1) of the Merchant Shipping Act 1995⁽¹⁶⁾;

“navigation authority” means any person having powers under any enactment or statutory order to work or maintain a canal or other inland navigation, including a navigation in tidal water.

Harbour dredging

26.—(1) This article applies to any dredging activity carried on in connection with a harbour.

(2) This article is subject to conditions 1 to 3.

(3) Condition 1 is that the activity—

- (a) involves the dredged material being contained within a secure structure and transported for deposit other than at the place of dredging; or
- (b) involves the use of plough dredging as part of a dredging operation in respect of which any other dredging falls within sub-paragraph (a).

(4) Condition 2 is that the activity is authorised by or under, and carried out in accordance with—

- (a) any local Act; or
- (b) any order under section 14 or 16 of the Harbours Act 1964.

(5) Condition 3 is that the activity is approved by the Scottish Ministers before it is carried on.

Moorings and aids to navigation – deposits and works activity

27.—(1) This article applies to a deposit or works activity carried on by—

- (a) a harbour authority;
- (b) a lighthouse authority; or
- (c) any other person in accordance with the approval or consent of any such authority,

for the purpose of providing a pile mooring, swinging mooring or aid to navigation.

(2) This article does not apply—

- (a) to the deposit of a pontoon;
- (b) to the construction of a pontoon.

Moorings and aids to navigation – removal activity

28. This article applies to a removal activity carried on for the purpose of removing a mooring or aid to navigation referred to in article 27(1).

(16) 1995 c.21.

Launching of vessels etc.

29. This article applies to a deposit in connection with the launching of any vehicle, vessel, aircraft, marine structure or floating container.

Dismantling of ships

30.—(1) This article applies to a deposit or removal activity carried on as part of dismantling a ship that is waste.

(2) This article does not apply to a deposit to the extent that it falls within item 8.

Deposit and use of flares etc. – safety purposes and training

31. This article applies to the deposit or use of any distress flare, smoke float or similar pyrotechnic substance or object for the purpose of—

- (a) securing the safety of a vessel, aircraft or marine structure;
- (b) saving life; or
- (c) training for any purpose referred to in paragraph (a) or (b).

Cables and pipelines – authorised emergency inspection and repair

32.—(1) This article applies to a deposit, removal activity or dredging activity carried on for the purpose of executing emergency inspection or repair works to any cable or pipeline.

(2) This article is subject to the condition that the activity may only be carried on in accordance with an approval granted by the Scottish Ministers for that purpose.

(3) This article does not apply to any such deposit falling within item 8.

Bored tunnels

33.—(1) This article applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

(2) This article is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the activity must be given to the Scottish Ministers before the activity is carried on.

(4) Condition 2 is that the activity must not adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) This article does not apply to a deposit carried on for the purpose of disposal.

Rights of foreign vessels etc. under international law

34.—(1) This article applies to an activity to the extent that it is carried on in exercise of a right under rules of international law, by or in relation to—

- (a) a third country vessel;
- (b) a warship, naval auxiliary, other vessel or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service (whether or not the warship, naval auxiliary or other vessel is a third country vessel).

(2) In this article, “third country vessel” means a vessel which—

- (a) is flying the flag of, or is registered in, any State or territory (other than Gibraltar) which is not a member State; and

- (b) is not registered in a member State.

Activities carried on outside the Scottish marine area

35.—(1) This article applies to an activity carried on outside the Scottish marine area.

(2) But paragraph (1) does not apply where—

- (a) a deposit activity takes place outside the UK marine area and the activity does not fall within item 2 of the 2009 Act;
- (b) a vessel or floating container is scuttled outside that area and the activity does not fall within item 5 of the 2009 Act.

(3) This article also applies to the loading of a vehicle, vessel, marine structure or floating container with any substance or object for incineration outside the Scottish marine area.

(4) But paragraph (3) does not apply where the incineration—

- (a) takes place outside the UK marine area; and
- (b) does not fall within item 12 of the 2009 Act.

St Andrew's House,
Edinburgh

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies activities which are not to need a marine licence, or not to need a marine licence if conditions specified in the Order are satisfied. It applies to the Scottish marine area (within the meaning of section 1 of the Marine (Scotland) Act 2010) which is basically the UK territorial sea adjacent to Scotland. The Scottish Ministers are responsible for granting marine licences in that area (as well as in Scottish offshore waters – governed by the Marine and Coastal Access Act 2009).

Part 1 (articles 1 and 2) contains introductory provisions.

Part 2 (articles 3 and 4) contains provisions setting out when a marine licence is not needed for a licensable marine activity, and provisions relating to waste (which implement in part Directive [2008/98/EC](#) of the European Parliament and of the Council on waste (O.J. No. L 312, 22.11.2008, p.3)).

Part 3 (articles 5 to 35) contains provisions setting out the licensable marine activities which do not need a marine licence (including any conditions that must be satisfied as part of that exemption).