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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2012 No.**

**ENVIRONMENTAL PROTECTION**

**LICENSING (MARINE)**

**The Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012**

*Made - - - -*

*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1) of the Marine and Coastal Access Act 2009<sup>(a)</sup> and sections 32(1), (2) and (3) and 165(1) of the Marine (Scotland) Act 2010<sup>(b)</sup> and all other powers enabling them to do so<sup>(c)</sup>.

In deciding to make this Order, the Scottish Ministers have had regard to the matters mentioned in section 74(4) of the Marine and Coastal Access Act 2009 and section 32(4) of the Marine (Scotland) Act 2010.

The Scottish Ministers have carried out consultation in accordance with section 74(5) of the Marine and Coastal Access Act 2009 and section 32(5) of the Marine (Scotland) Act 2010.

In accordance with section 165(5)<sup>(d)</sup> of the Marine (Scotland) Act 2010, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

**1.** This Order may be cited as the Marine Licensing (Exempted Activities) (Scottish Inshore and Offshore Regions) Amendment Order 2012 and comes into force on the day after the day on which it is made.

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(a) 2009 c.23.

(b) 2010 asp 5.

(c) The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

(d) Section 165(5) has been modified by paragraph 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010.

## **Amendment of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011**

2. The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011(a) is amended in accordance with articles 3 to 6.

3. In article 2 (interpretation)—

(a) in paragraph (2), in the definition of “an MPA”—

- (i) after “a Nature Conservation MPA”, insert “or a Historic MPA”; and
- (ii) for “2209 Act” substitute “2009 Act”;

(b) in paragraph (3)—

- (i) in sub-paragraph (b), after “article 18(3);” omit “and”; and
- (ii) after sub-paragraph (b), insert—

“(ba) sub-paragraphs (b) and (c) of article 18A(6);

(bb) sub-paragraphs (c) and (d) of article 18B(5); and”;

(c) after paragraph (3), insert—

“(4) A reference in this Order to anything done in writing includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000 (general interpretation)(b) which has been recorded in written form and is capable of being reproduced in that form.”.

4. In article 5(c) (interpretation of this part) after ““removal activity” is” insert “, except as otherwise provided,”.

5. In article 15 (deposits of marine chemical and marine oil treatment substances etc.)—

(a) in paragraph (2), for “3”, substitute “4”; and

(b) after paragraph (5), insert—

“(5A) Condition 4 is that no deposit of any substance may be made below the surface of the sea except with the approval of the Scottish Ministers.”.

6. After article 18 (scientific instruments etc. – removal activity), insert—

### **“Accidental deposits – removal activity**

**18A.**—(1) This article applies to a removal activity carried on for the purpose of removing any object from the seabed which has been accidentally deposited there.

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

(3) Condition 1 is that notice of the activity must be given, in writing, to the Scottish Ministers no later than 3 months from the date of commencement of the removal activity.

(4) Condition 2 is that the object to be removed from the seabed has been deposited there for less than one year before the removal activity is commenced.

(5) This article does not apply to an activity where—

- (a) it causes, or is likely to cause, obstruction or danger to navigation;
- (b) it is a plan or a project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (c) it is likely to have a significant effect on a Ramsar site; or

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(a) S.S.I. 2011/204.

(b) 2000 c.7; section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

- (d) it is capable of affecting (other than insignificantly)—
  - (i) the protected features of an MPA; or
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

(6) A reference to a “removal activity” in this article does not include the use of an aircraft, marine structure or floating container to remove the object from the seabed.

### **Sediment sampling**

**18B.**—(1) This article applies to a removal activity which is carried on for the purpose of sediment sampling.

(2) This article is subject to the condition that notice of the intention to carry on the activity must be given, in writing, to the Scottish Ministers before the activity is commenced.

(3) The condition in paragraph (2) is deemed to be satisfied where the removal activity is carried on as a condition of an authorisation of a controlled activity granted by the Scottish Environment Protection Agency under Part II of the Water Environment (Controlled Activities) (Scotland) Regulations 2011(a).

(4) This article does not apply to an activity where—

- (a) the volume of sediment removed is more than 1 cubic metre;
- (b) it causes, or is likely to cause, obstruction or danger to navigation;
- (c) it is a plan or a project likely (either alone or in combination with other plans or projects) to have a significant effect on a European site;
- (d) it is likely to have a significant effect on a Ramsar site; or
- (e) it is capable of affecting (other than insignificantly)—
  - (i) the protected features of an MPA; or
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

(5) “Controlled activity” in this article has the meaning given to it in regulation 2(1) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011.”.

### **Amendment of the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011**

7. The Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011(b) is amended in accordance with articles 8 to 13.

**8.** In article 3 (interpretation)—

- (a) before “In this Order” insert “—(1)”;
- (b) in paragraph (1), in the definition of “an MPA”—
  - (i) omit “2009”; and
  - (ii) after “a Nature Conservation MPA”, insert “or a Historic MPA”; and
- (c) after paragraph (1), insert—

“(2) A reference in this Order to anything done in writing includes a reference to an electronic communication, as defined in section 15 of the Electronic Communications Act 2000 (general interpretation) which has been recorded in written form and is capable of being reproduced in that form.”.

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(a) S.S.I. 2011/209.

(b) S.S.I. 2011/57.

9. In article 4(3) (exemption from need for marine licence) for “article 4” substitute “article 5”.

10. In article 6(c) (interpretation of this part) after ““removal activity” is” insert “, except as otherwise provided,”.

11. In article 13 (deposits of marine chemical and marine oil treatment substances etc.)—

(a) in paragraph (2), for “3” substitute “4”; and

(b) after paragraph (5) insert—

“(5A) Condition 4 is that no deposit of any substance may be made below the surface of the sea except with the approval of the Scottish Ministers.”.

12. In article 15(3)(c)(i) (scientific instruments etc. – deposits) for “(a), (b) or (c)” substitute “(a) or (b)”.

13. After article 16 (scientific instruments etc. – removal activity) insert—

#### **“Accidental deposits – removal activity**

**16A.**—(1) This article applies to a removal activity carried on for the purpose of removing any object from the seabed which has been accidentally deposited there.

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

(3) Condition 1 is that notice of the activity must be given, in writing, to the Scottish Ministers no later than 3 months from the date of commencement of the removal activity.

(4) Condition 2 is that the object to be removed from the seabed has been deposited there for less than one year before the removal activity is commenced.

(5) This article does not apply to an activity where—

(a) it causes, or is likely to cause, obstruction or danger to navigation;

(b) it is a plan or project that is likely (either alone or in combination with other plans or projects) to have a significant effect on a European site; or

(c) it is capable of affecting (other than insignificantly)—

(i) the protected features of an MPA; or

(ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.

(6) A reference to a “removal activity” in this article does not include the use of an aircraft, marine structure or floating container to remove the object from the seabed.

(7) In paragraph (5)(b), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(a)</sup>.

#### **Sediment sampling**

**16B.**—(1) This article applies to a removal activity carried on for the purpose of sediment sampling.

(2) This article is subject to the condition that notice of the intention to carry on the activity must be given, in writing, to the Scottish Ministers before the activity is commenced.

(3) This article does not apply to an activity where—

(a) the volume of sediment removed is more than 1 cubic metre;

(b) it causes, or is likely to cause, obstruction or danger to navigation;

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(a) OJ L 206, 22.07.1992, p.7, as last amended by Council Directive 2006/105/EC (OJ L 363, 20.12.2006, p.368).

- (c) 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; or
  - (d) it is capable of affecting (other than insignificantly)—
    - (i) the protected features of an MPA; or
    - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MPA is (wholly or in part) dependent.
- (4) In paragraph (3)(c), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Executive

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 and the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (“the principal Orders”).

Articles 15 and 13, respectively, of the principal Orders provide that a marine licence is not required for the deposit of marine chemical and marine oil treatment substances if certain specified conditions apply. Articles 5 and 11 of this Order, respectively, amend articles 15 and 13 of the principal Orders to add a new condition, namely that no deposit of any such substance may be made below the surface of the sea except with the approval of the Scottish Ministers.

Articles 6 and 13 of this Order amend the principal Orders by inserting new provisions which provide that removal activity carried out either for the purpose of retrieving objects from the seabed which have been accidentally deposited there or for the purpose of sediment sampling does not require a marine licence in certain specified circumstances. Under the new provisions notice of the intention to carry on the removal activity must be given to the Scottish Ministers. Notice is not required to be given to the Scottish Ministers where the removal activity concerns sediment sampling which has been authorised by the Scottish Environment Protection Agency to be carried on as a condition of a controlled activity under Part II of the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

Articles 4 and 10 of this Order make provision consequential to the new provisions made within articles 6 and 13.

Articles 3 and 8 of this Order extend the definition of “an MPA” in the principal Orders to include historic marine protected areas. They also make minor and consequential amendments.

Articles 9 and 12 make minor amendments to the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011.

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*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.*

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