

2011 No. 57

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

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

Made - - - - *2nd February 2011*
Laid before Parliament *4th February 2011*
Coming into force - - *6th April 2011*

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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^(a) 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 74(4) of that Act.

The Scottish Ministers have carried out consultation in accordance with section 74(5) of that Act.

PART 1

Introductory provisions

Citation and commencement

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

Application

2. This Order applies in relation to any activity for which the Scottish Ministers are the appropriate licensing authority in terms of section 113(2) of the Act.

Interpretation

3. In this Order, except where the context otherwise requires—

“the Act” means the Marine and Coastal Access Act 2009;

“activity” means licensable marine activity^(b);

“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^(c);

(b) a European offshore marine site within the meaning of regulation 15 of the Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007^(d);

“exempt activity” has the meaning given by article 4;

“fish” includes shellfish and any part of a fish;

(a) 2009 c.23.

(b) See section 66 of the Act.

(c) S.I. 1994/2716.

(d) S.I. 2007/1842.

“fishing operation” includes fishing for or taking shellfish but does not include an activity relating to the propagation or cultivation of shellfish;

“item 10” means item 10 in section 66(1) of the Act;

“lighthouse authority” means a general lighthouse authority or a local lighthouse authority within the meaning of Part 8 of the Merchant Shipping Act 1995(a);

“an MPA” means a marine protected area designated under section 116 of the 2009 Act(b) or a Nature Conservation MPA designated under section 67 of the Marine (Scotland) Act 2010;

“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(c);

“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;

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

PART 2

Exempt activities – general provisions

Exemption from need for marine licence

4.—(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

5.—(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.

(a) 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).

(b) 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.

(c) 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).

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

(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.

PART 3

Exempt activities and conditions

Interpretation of this Part

6. In this Part—

- (a) a reference to a “deposit” is a reference to a deposit falling within item 1 (deposits within UK marine licensing area), 3 (deposits from vehicle, vessel etc. loaded in UK marine licensing area) or, except as otherwise provided, 10 (deposit of explosives within UK marine licensing area);
- (b) a reference to a “dredging activity” is a reference to an activity falling within item 9 (dredging within UK marine licensing area);
- (c) a reference to a “removal activity” is a reference to an activity falling within item 8 (use of vehicle, vessel etc. to remove substance or object from sea bed within UK marine licensing area);
- (d) a reference to a “works activity” is a reference to an activity falling within item 7 (construction, alteration or improvement of works within UK marine licensing area).

Safety directions under the Merchant Shipping Act 1995

7. 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(a) (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

8. 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.

(a) 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).

Fire fighting etc.

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

Air accident investigation

10. 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

11.—(1) This article applies—

- (a) to the deposit of fishing gear during the course of a fishing operation;
- (b) to the deposit by way of return to the sea—
 - (i) of any fish during the course of a fishing operation; or
 - (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;
- (c) 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)(b)(ii), to a deposit to the extent that it falls within item 10.

Fishing – removal activity and dredging activity

12. 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.

Deposits of marine chemical and marine oil treatment substances etc.

13.—(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 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.

14.—(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 10.

Scientific instruments etc. – deposits

15.—(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; or
- (b) 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.

(5) In paragraph (4)(a), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Scientific instruments etc. – removal activity

16.—(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 15(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; or

- (b) 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.

(4) In paragraph (4)(a), “likely” has the same meaning as in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

Aggregates or mineral dredging – deposits

17. 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.

Deposits in the course of normal navigation or maintenance

18.—(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 10.

Removal of obstruction or danger to navigation

19. This article applies to a removal activity carried on by or on behalf of a lighthouse authority for the purpose of removing anything causing or likely to cause obstruction or danger to navigation.

Moorings and aids to navigation – deposits and works activity

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

- (a) a lighthouse authority; or
- (b) 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.

Mooring and aids to navigation – removal activity

21. This article applies to a removal activity carried on for the purpose of removing a mooring or aid to navigation referred to in article 20(1).

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

22. 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

23.—(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 10.

Rights of foreign vessels etc. under international law

24.—(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 in the Scottish inshore region

25. This article applies—

- (a) to an activity carried on in the Scottish inshore region; or
- (b) to the loading of a vehicle, vessel, aircraft, marine structure or floating container with any substance or object for incineration in the Scottish inshore region.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
2nd February 2011

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 activities within the Scottish offshore region (within the meaning of section 322(1) of the Marine and Coastal Access Act 2009) in respect of which the Scottish Ministers are the marine licensing authority. Activities in that region in respect of which the Scottish Ministers are not the licensing authority are specified in section 113(3) of the 2009 Act.

Part 1 (articles 1 to 3) contains introductory provisions.

Part 2 (articles 4 and 5) 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 (OJ No. L 312, 22.11.2008, p.3)).

Part 3 (articles 6 to 25) 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).

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