

## SCHEDULES

### SCHEDULE 8

Section 112(1)

#### LICENSING: MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### CONSEQUENTIAL AMENDMENTS

##### *The Coast Protection Act 1949*

- 1 (1) The [Coast Protection Act 1949 \(c. 74\)](#) is amended as follows.
- (2) Omit Part 2 (provisions for safety of navigation).
- (3) In section 49(1) (interpretation), in the definitions of “sea” and “seashore”, for “subsections (2) and (2A)” substitute “subsection (2)”.

##### *The Food and Environment Protection Act 1985*

- 2 (1) The [Food and Environment Protection Act 1985 \(c. 48\)](#) is amended as follows.
- (2) In section 5 (requirement for licences)—
  - (a) in paragraph (a), for “United Kingdom waters or United Kingdom controlled waters” substitute “the Scottish inshore region”;
  - (b) omit paragraph (b);
  - (c) in paragraph (e)(i), for “United Kingdom waters or United Kingdom controlled waters” substitute “the Scottish inshore region”;
  - (d) omit paragraph (e)(ii) and the preceding “or”;
  - (e) in paragraph (f), for “the United Kingdom or United Kingdom waters” substitute “Scotland or the Scottish inshore region”;
  - (f) in paragraph (g), for “the United Kingdom” substitute “Scotland”;
  - (g) in paragraph (h), for “the United Kingdom or United Kingdom waters” substitute “Scotland or the Scottish inshore region”.
- (3) In section 6(1) (requirements for licences for incineration at sea etc)—
  - (a) in paragraph (a)(i), for “United Kingdom waters or United Kingdom controlled waters” substitute “the Scottish inshore region”;
  - (b) omit paragraph (a)(ii) and the preceding “or”;
  - (c) in paragraph (b), for “the United Kingdom or United Kingdom waters” substitute “Scotland or the Scottish inshore region”.
- (4) In section 7A (exclusion of Part 2 for certain purposes)—
  - (a) in subsection (4), for paragraphs (a) and (b) substitute “the Scottish inshore region.”;

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- (b) omit subsection (5).
- (5) In section 8 (licences)—
  - (a) in subsection (4)(b), for “United Kingdom waters” substitute “the Scottish inshore region”;
  - (b) in subsection (6), omit “evidence, and in Scotland”.
- (6) In section 9 (licensing offences)—
  - (a) in subsection (1) (which is expressed to be subject to subsections (3) to (7)) for “to (7)” substitute “, (4)”;
  - (b) omit subsections (5) to (7).
- (7) In section 11 (enforcement powers)—
  - (a) in subsection (2)—
    - (i) in paragraph (a), for “the United Kingdom” substitute “Scotland”;
    - (ii) for paragraphs (b) and (c) substitute—
      - “(b) vessels, aircraft, hovercraft and marine structures in Scotland or within the Scottish inshore region,”;
  - (b) in subsection (3), for paragraphs (a) and (b) substitute “any vessel within the Scottish inshore region”.
- (8) In section 21 (offences) omit subsection (8).
- (9) In section 24(1) (interpretation)—
  - (a) omit the definition of “adjacent to Scotland”;
  - (b) omit the definition of “Gas Importation and Storage Zone”;
  - (c) in the definition of “licensing authority”—
    - (i) omit paragraph (a);
    - (ii) in paragraph (b)(i), for “United Kingdom waters, or United Kingdom controlled waters, adjacent to Scotland” substitute “waters within the Scottish inshore region”;
    - (iii) in paragraph (b)(ii) and (iii), for “United Kingdom waters, or United Kingdom controlled waters, adjacent to Scotland” in each place where it appears substitute “the Scottish inshore region”;
    - (iv) in paragraph (b)(iii), omit “and the functions of that authority under this sub-paragraph shall be treated as exercisable in or as regards Scotland and may be exercised separately”;
  - (d) after the definition of “plants” insert—
    - ““Scottish inshore region” has the same meaning as in the Marine and Coastal Access Act 2009 (see section 322 of that Act);”;
  - (e) omit the definitions of “United Kingdom waters” and “United Kingdom controlled waters”.

*The Government of Wales Act 2006*

- 3 (1) In Schedule 3 to the [Government of Wales Act 2006 \(c. 32\)](#) (transfer etc of functions: further provisions) paragraph 4 (power to direct that certain functions exercisable by a Minister of the Crown are exercisable in relation to Welsh controlled waters only after consultation with the Welsh Ministers) is amended as follows.

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- (2) In sub-paragraph (1) (which extends the power conferred by section 58(1)(c) of that Act and specifies the enactments to which it applies)—
- (a) omit paragraph (a) (Part 2 of the [Food and Environment Protection Act 1985 \(c. 48\)](#)), and
  - (b) after paragraph (b) insert—
    - “(c) the provisions of Parts 4 and 8 of the Marine and Coastal Access Act 2009 (marine licensing and enforcement) specified in sub-paragraph (1A), or
    - (d) regulations under section 73 of that Act (appeals).”.
- (3) After sub-paragraph (1) insert—
- “(1A) The provisions of the Marine and Coastal Access Act 2009 mentioned in sub-paragraph (1)(c) are—
- (a) sections 67(1) to (5), 69(1), (3) and (4), 71(1) to (3) and 72(1) to (3) (marine licences), so far as relating to items 1 to 6 and 11 to 13 in section 66(1) of that Act (licensable marine activities);
  - (b) section 101 (registers);
  - (c) sections 106 and 91(7)(c) (power to take remedial action, and power to require payment of sum representing reasonable expenses of taking such action);
  - (d) section 107 (power to test, and charge for testing, certain substances);
  - (e) sections 235(3) and 240(1)(c) (enforcement officers).”.

### *The Planning Act 2008*

- 4 (1) The [Planning Act 2008 \(c. 29\)](#) is amended as follows.
- (2) After section 149 insert—

#### **Deemed consent under a marine licence**

- (1) An order granting development consent may include provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009 (marine licensing) for any activity only if the activity is to be carried out wholly in one or more of the areas specified in subsection (2).
- (2) The areas are—
- (a) England,
  - (b) waters adjacent to England up to the seaward limits of the territorial sea,
  - (c) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions,
  - (d) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions,
  - (e) an area designated under section 1(7) of the Continental Shelf Act 1964, except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish Ministers have functions.

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- (3) Subsections (4) and (5) apply if an order granting development consent includes provision—
- (a) deeming a marine licence to have been granted under Part 4 of the Marine and Coastal Access Act 2009 subject to specified conditions, and
  - (b) deeming those conditions to have been attached to the marine licence by the Secretary of State under that Part.
- (4) A person who fails to comply with such a condition does not commit an offence under section 161 of this Act.
- (5) Sections 68 (notice of applications) and 69(3) and (5) (representations) of the Marine and Coastal Access Act 2009 do not apply in relation to the deemed marine licence.”.
- (3) In section 161 (breach of terms of order granting development consent), in subsection (2), for “sections 148(4) and 149(4)” substitute “section 149A(4)”.
- (4) In Schedule 4, in paragraph 1(11) (power to correct certain errors or omissions in development consent decisions) for the words from “any of paragraphs” to the end of the sub-paragraph substitute “paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009).”.
- (5) In Schedule 5 (provision relating to, or to matters ancillary to, development) after paragraph 30 insert—
- “30A Deeming a marine licence under Part 4 of the Marine and Coastal Access Act 2009 to have been given by the Secretary of State for activities specified in the order and subject to such conditions as may be specified in the order.
- 30B Deeming any such conditions to have been attached to the marine licence by the Secretary of State under that Part.”.
- (6) In Schedule 6 (changes to, and revocation of, orders granting development consent) in—
- (a) paragraph 2(13) (power to make non-material changes to development consent order not to apply in relation to deemed consents and licences), and
  - (b) paragraph 5(6) (power to change or revoke development consent order not to apply in relation to deemed consents and licences),
- for the words from “any of paragraphs” to the end of the sub-paragraph substitute “paragraph 30A or 30B of Schedule 5 (deemed marine licence under Marine and Coastal Access Act 2009).”.
- (7) The following provisions cease to have effect—
- (a) section 148 (deemed consent under section 34 of the [Coast Protection Act 1949 \(c. 74\)](#)),
  - (b) section 149 (deemed consent under Part 2 of the [Food and Environment Protection Act 1985 \(c. 48\)](#)),
  - (c) in Schedule 5, paragraphs 27 to 30 (which relate to deemed consents).

## PART 2

### OTHER AMENDMENTS

#### *The Food and Environment Protection Act 1985*

##### *Electronic communications apparatus: operations in tidal waters etc*

5 In the [Food and Environment Protection Act 1985](#) after section 8 (licences) insert—

##### **“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 paragraph 11 of the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 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—
  - (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.”.

##### *Electronic communications: emergency works*

6 (1) Section 9 of the [Food and Environment Protection Act 1985](#) (offences relating to the licensing system) is amended as follows.

(2) In subsection (1) (which is expressed to be subject to certain later subsections) in the words preceding paragraph (a), before “below” insert “and (8)”.

(3) After subsection (7) insert—

“(8) It shall be a defence for a person charged with an offence under subsection (1) in relation to any operation to prove that—

- (a) for the purposes of paragraph 23 of the electronic communications code (undertaker’s works), the person is the operator or a relevant undertaker, and
- (b) the activity was carried out for the purpose of executing emergency works, within the meaning of that code.

In this subsection “the electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984.”.

#### *The Petroleum Act 1998*

##### *Application of Part 3 in relation to submarine pipelines*

7 (1) Section 24 of the [Petroleum Act 1998 \(c. 17\)](#) (application of Part 3) is amended as follows.

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(2) After subsection (2) insert—

“(2A) If a pipeline—

- (a) is specified in an order made by the Secretary of State under this subsection, or
- (b) is of a description so specified,

the pipeline shall be disregarded for the purposes of this Part of this Act (other than this subsection) or shall be so disregarded while any specified condition is satisfied.”.

(3) After subsection (3) insert—

“(3A) The Secretary of State may by order provide that specified provisions of this Part of this Act shall apply, subject to such modifications (if any) as are specified, in relation to a controlled pipeline—

- (a) which is specified or of a specified description, and
- (b) which meets the conditions in subsection (3B).

(3B) The conditions are—

- (a) that the pipeline is used in connection with exploration for, or exploitation of, petroleum, or the importation of petroleum into the United Kingdom;
- (b) that, by virtue of the date when construction of the pipeline was begun, section 14(1)(b) would not apply in relation to use of the pipeline but for an order under this subsection.”.

(4) In subsection (5) (negative resolution procedure) after “an order under subsection (2)” insert “, (2A) or (3A)”.

(5) Any authorisation issued under section 14(1)(b) of the [Petroleum Act 1998](#) (use of certain pipelines) continues to have effect notwithstanding the provisions of any order under section 24(2A) of that Act.

(6) Where an order under subsection (3A) of section 24 of the [Petroleum Act 1998](#) (c. 17) comes into force in relation to a pipeline, the Secretary of State must grant an authorisation under section 14(1)(b) of that Act in respect of the conveyance, on and after the day on which the order comes into force, of any substances for which the pipeline was normally used before the coming into force of the order.

(7) Sub-paragraph (6) is without prejudice to the provision that may be included in the authorisation with respect to information to be provided by the owner of the pipeline.

*Exception of certain pipelines from being “submarine pipelines” for the purposes of Part 4*

8 (1) Section 45 of the [Petroleum Act 1998](#) (interpretation of Part 4) is amended as follows.

(2) In the definition of “submarine pipeline”, after the paragraphs, insert—

“but does not include any such pipeline which, by virtue of an order under subsection (2A) of section 24, is to be disregarded for the purposes of Part 3 of this Act (other than that subsection).”.