

# ISLANDS (SCOTLAND) ACT 2018

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## EXPLANATORY NOTES

### OVERVIEW OF THE ACT

#### PART 6 – DEVELOPMENT IN THE SCOTTISH ISLAND MARINE AREA

##### Key definitions

##### *Section 22 – Meaning of “development activity”*

52. This section defines “development activity” for the purposes of Part 6 of the Act, setting out the kinds of activity which are to be subject to the licensing scheme to be created by regulations under section 24.
53. Subsection (1) provides for sea-based construction, alteration and improvement works in general, and also for dredging, to be “development activities” and thus licensable under this Part. These are also licensable (along with numerous other activities) under the marine licensing regime created by Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”).
54. Paragraphs (a) to (c) of subsection (2) explicitly exclude activities relating to the reserved areas of oil and gas, defence and pollution from the definition of “development activity”. Therefore these activities will not be subject to the requirement for a licence under regulations made under section 24. This makes similar provision to section 34 of the 2010 Act. Paragraph (d) of subsection (2) also excludes fish farming from the definition of “development activity” – again, this will not be subject to the requirement for a licence under regulations made under section 24. This is because planning permission from a local authority is already required for fish farming. In this way the Act is consistent with the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 ([S.S.I. 2007/268](#)), which provided amendments to a range of primary and secondary legislation to allow for the consideration of planning applications for new fish farms by planning authorities. This included amendments to the Orkney County Council Act 1974 and the Zetland County Council Act 1974 to disapply the provisions relating to works licences in respect of the placing or assembly of equipment in marine waters for the purposes of marine fish farming. The definition of fish farming itself is imported from section 26 of the Town and Country Planning (Scotland) Act 1997 – that is, “the breeding, rearing or keeping of fish or shellfish (which includes any kind of crustacean or mollusc).”
55. Paragraph (e) of subsection (2) provides that, as well as fish farming under paragraph (d) of subsection (2), other forms of fishing are not defined as a development activity under the Act.

##### *Section 23 – Meaning of “Scottish island marine area”*

56. This section defines the “Scottish island marine area” for the purposes of Part 6. This is the geographical area which the new licensing scheme created under this Part will cover.

57. The first limitation on “Scottish island marine area” is that it is part of the “Scottish marine area” as that term is defined in Part 1 of the 2010 Act. The “Scottish marine area” is itself within the seaward limits of the territorial sea of the United Kingdom and includes the bed and subsoil of the sea within that area. The boundaries between the parts of the territorial sea for Scotland and other parts of the United Kingdom are determined under an Order in Council made under section 126(2) of the Scotland Act 1998 – currently the Scottish Adjacent Waters Boundaries Order 1999 ([S.I. 1999/1126](#)). Within that, the “Scottish island marine area” is therefore further defined as that portion of Scotland’s territorial sea (the Scottish marine area) which is up to a radius of 12 nautical miles from an island, measured from the low water mark of the ordinary spring tide. Although section 24(2) qualifies the practical application of the licensing regime to areas that are adjacent to an inhabited island, any island (whether inhabited or uninhabited) counts for the prior conceptual purpose of measuring the 12-mile radius, as there may be some variation in habitation over time.