

**2022 No. 68**

**ENVIRONMENTAL PROTECTION**

**MARINE LICENSING**

**The Marine Licensing (Exempted Activities) (Amendment)  
Order (Northern Ireland) 2022**

*Made* - - - - - *25th February 2022*

*Coming into operation* *1st April 2022*

The Department of Agriculture, Environment and Rural Affairs, as the appropriate licensing authority under section 113(6)(b) of the Marine and Coastal Access Act 2009(a), in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1), having had regard to the matters mentioned in section 74(4) and having carried out consultation in accordance with section 74(5) of that Act, makes the following Order.

**Citation and commencement**

1. This Order may be cited as the Marine Licensing (Exempted Activities) (Amendment) Order (Northern Ireland) 2022 and comes into operation on 1st April 2022.

**Amendment of the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011**

2. The Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 (b) is amended in accordance with Articles 3 to 16.

**Amendment of Article 3**

3. In Article 3 (interpretation) insert at the appropriate place—

““marine litter” means any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment;

“MCZ” means a marine conservation zone designated under section 13(1) of the Marine Act (Northern Ireland) 2013(c);”.

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(a) Formerly the Department of the Environment which was dissolved by section 1(9) of the Departments Act (Northern Ireland) 2016 (c. 5 N.I.) and, by virtue of Article 8(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76), its functions for the purposes of these Order were transferred to the Department of Agriculture, Environment and Rural Affairs.

(b) S.R. 2011/78 as amended by S.R. 2016/95 and S.R. 2020/284

(c) 2013 c. 10 (N.I.)

### **Amendment of Article 12**

4. In Article 12 (fishing operations), paragraph (1)(c) insert at the end “, provided that the fish or other object has not been landed before being so returned”.

### **Amendment of Article 13**

5. In Article 13 (shellfish propagation and cultivation), paragraph (1)(a) after “rope” insert “, marker”.

### **Amendment of Article 15**

6. In Article 15 (deposits of marine chemical and marine oil treatment substances etc)–

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

(b) for paragraph (5) substitute–

“(5) Condition 3 is that the deposit may only be made in accordance with an approval granted by the licensing authority for that purpose.”;

(c) omit paragraph (6).

### **Amendment of Article 17**

7. In Article 17 (scientific instruments etc)–

(a) for paragraph (2) substitute–

“(2) Paragraph (1) is subject to condition 1, and (as that paragraph relates to the deposit of a reagent or tracer) conditions 2 and 3.

(2A) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.”;

(b) in paragraph (3), for “1” substitute “2”;

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

(d) in paragraph (5)–

(i) in sub-paragraph (b) after “navigation” insert “, in particular where any such deposit is tethered to the seabed or reduces navigational clearance by more than 5% by reference to Chart Datum”;(a)

(ii) in sub-paragraph (c)(i), for “(a) or (b)” substitute “(a), (b) or (c)”;

(e) in paragraph (6)–

(i) in sub-paragraph (a) at the end, omit “or”;

(ii) in sub-paragraph (b) at the end, insert–

“; or

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

(i) the protected features of an MCZ;

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

### **Insertion of Articles 17A and 17B**

8. After Article 17 (scientific instruments etc) insert–

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- (a) Chart Datum is the plane below which all depths are published on a navigational chart. It is also the plane to which all tidal heights are referred, so by adding the tidal height to the charted depth, the true depth of water is determined. By international agreement Chart Datum is defined as a level so low that the tide will not frequently fall below it. In the United Kingdom, this level is normally approximately the level of the Lowest Astronomical Tide.

### **“Samples for testing or analysis**

**17A.**—(1) Article 4 applies to a removal activity carried on for the purpose of taking a sample of any material for testing or analysis.

(2) Paragraph (1) is subject to the condition that notice of the intention to carry on the removal activity must be given to the licensing authority before the removal activity is carried on.

(3) But Article 4 does not apply—

- (a) to any such removal activity where the volume of material removed exceeds 1 cubic metre;
- (b) to any such removal activity that causes, or is likely to cause, obstruction or danger to navigation; or
- (c) to any such removal activity—
  - (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 zone (as the case may be) referred to in that sub-paragraph.

(4) A removal 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 significant effect on a Ramsar site; or
- (c) it is capable of affecting (other than insignificantly)—
  - (i) the protected features of an MCZ; or
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.

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

**17B.**—(1) Article 4 applies to a removal activity carried on for the purpose of removing any object which has been accidentally deposited on the seabed.

(2) Paragraph (1) is subject to conditions 1 and 2.

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

(4) Condition 2 is that the removal activity must be commenced within a period of 12 months beginning with the day on which the object was accidentally deposited on the seabed.

(5) But Article 4 does not apply—

- (a) to any such removal activity that causes, or is likely to cause, obstruction or danger to navigation; or
- (b) to any such removal activity—
  - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (6); and
  - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.

(6) A removal 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 effecting (other than insignificantly)—
  - (i) the protected features of an MCZ; or
  - (ii) any ecological or geomorphological process on which conservation of any protected feature of an MCZ is (wholly or in part) dependent.”.

## **Amendment of Article 19**

**9.**—(1) In Article 19 (maintenance of coast protection, drainage and flood defence works)—

(a) for paragraph (2) substitute—

“(2) Paragraph (1) is subject to condition 1 and either condition 2 or 3.

(2A) Condition 1 is that the activity must be carried on within the existing boundaries of the works being maintained.

(2B) Condition 2 is that, where a public body, other than the licensing authority, intends to carry on the activity to which paragraph (1) applies, the public body must either—

- (a) give notice of the intention to carry on the activity to the licensing authority before the activity is carried on; or
- (b) if the activity is carried on for the purpose of executing emergency works, the public authority must—
  - (i) notify the licensing authority before the end of the period of 3 working days beginning with the date on which the activity commences; and
  - (ii) the notification must set out the location of, the circumstances giving rise to and the nature of the emergency works.

(2C) Condition 3 is that, where a person, other than the licensing authority or a public body, intends to carry on the activity to which paragraph (1) applies, the person must obtain approval from the licensing authority before the activity is carried on.”.

(2) After paragraph (3) insert—

“(4) In this Article—

“beach replenishment” means the addition of material from land-based, off-shore or other coastal sources not connected to the beach or its associated sediment system to replace material permanently lost from the system;

“coast protection works” includes—

- (a) beach re-profiling, which involves the movement of beach material in a cross-shore direction up or down the beach; and
- (b) beach recycling, which involves the movement of beach material along the beach from areas of accretion to areas of erosion within the beach or associated sediment system.”(a).

## **Amendment of Article 20**

**10.** In Article 20 (emergency works in response to flood or flood risk), for paragraph (2) substitute—

“(2) Paragraph (1) is subject to the condition that—

- (a) the activity is notified to the licensing authority before the end of the period of 3 working days beginning with the date on which the activity commences; and
- (b) the notification sets out the location of, the circumstances giving rise to and the nature of the emergency works.”.

## **Amendment of Article 21**

**11.** In Article 21 (use of vehicles to remove litter or seaweed from beaches)—

(1) In the heading, for “or seaweed” to the end, substitute “, seaweed or dead animals from beaches or intertidal areas”.

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(a) Public body is defined in s 322 of 2009 c.23.

(2) In paragraph (1) for “or seaweed” to the end, substitute “, seaweed or dead animals from beaches or intertidal areas”.

(3) After paragraph (1) insert–

“(1A) Paragraph (1) is subject to the condition that notice of the intention to carry on the removal activity must be given to the licensing authority before the removal activity may be carried on for the purpose of removing a dead animal.”.

(4) In paragraph (2)(a) for “(a) or (b) of paragraph (3)” substitute “(a), (b) or (c) of paragraph (3), or paragraph (3A)”.

(5) In paragraph (3)–

(a) at the end of sub-paragraph (a) omit “or”;

(b) at the end of sub-paragraph (b) insert–

“; or

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

(i) the protected features of an MCZ;

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

(6) After paragraph (3) insert–

“(3A) Such an activity falls within this paragraph if it is likely to cause damage to features of archaeological or historic interest in an area where the activities in question occur.”.

(7) After paragraph (4) insert–

“(4A) In paragraph (1), “intertidal area” means the area between the level of mean high water spring tides and the level of mean low water spring tides.”.

## **Insertion of Article 21A**

**12.** After Article 21 (use of vehicles to remove litter or seaweed from beaches) insert–

### **“Recovery of marine litter etc**

**21A.**—(1) Article 4 applies to the removal during the course of diving activities of–

(a) marine litter; and

(b) abandoned, discarded or lost fishing gear.

(2) Paragraph (1) is subject to the condition that the activity is notified to the licensing authority before it is carried out.

(3) But Article 4 does not apply to any such removal activity–

(a) that is likely to cause damage to features of archaeological or historic interest in an area where the diving activities in question occur; or

(b) that–

(i) falls within paragraph (4); and

(ii) is not directly connected with or necessary for the management of a site or zone (as the case may be) referred to in that paragraph.

(4) 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 MCZ;

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

### **Insertion of Article 24A**

13. After Article 24 (removal of obstruction or danger to navigation) insert–

#### **“Use of vehicles or vessels to remove marine litter and debris**

**24A.**—(1) Article 4 applies to a removal activity using a vehicle or vessel carried on by or on behalf of a Harbour Authority for the purpose of removing marine litter and debris from the area within its jurisdiction.

(2) But Article 4 does not apply to any such removal activity–

- (a) that is likely to cause damage to features of archaeological or historic interest in the area where the activities in question occur; or
- (b) that–
  - (i) falls within paragraph (3); and
  - (ii) is not directly connected with or necessary for the management of a site or zone (as the case may be) referred to in that paragraph.

(3) 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 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 MCZ;
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.”.

### **Insertion of Articles 25A and 25B**

14. After Article 25 (moorings and aids to navigation – deposits and construction) insert–

#### **“Markers for European marine sites and marine conservation zones**

**25A.** Article 4 applies–

- (a) to a deposit made by the Secretary of State for the purpose of installing a marker for the purpose of regulation 28(1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (marking of site and advice by the Secretary of State);(a)
- (b) to a removal activity carried on by the Secretary of State for the purpose of removing a marker referred to in sub-paragraph (a);
- (c) to a deposit made by a public authority for the purpose of installing a marker indicating the existence and extent of an MCZ;
- (d) to a removal activity carried on by a public authority for the purpose of removing a marker referred to in sub-paragraph (c).

#### **Temporary markers**

**25B.**—(1) Article 4 applies–

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(a) S.R. 1995/380 to which there are amendments but none are relevant.

- (a) to a deposit made for the purpose of placing a marker;
- (b) to a removal activity carried on for the purpose of meeting the condition in paragraph (3).

(2) Paragraph (1) is subject to the condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on, except where the activity consists of a deposit made for the purpose of placing a marker and the subsequent removal of that marker will take place within 24 hours of the deposit.

(3) Sub-paragraph (a) of paragraph (1) is subject to the condition that the marker and its appurtenances must be removed from the sea and, where applicable, the seabed within the period of 28 days beginning with the day on which the deposit is made.

(4) But Article 4 does not apply–

- (a) to any such activity that causes, or is likely to cause, obstruction or danger to navigation; or
- (b) to any such activity–
  - (i) that falls within sub-paragraph (a), (b) or (c) of paragraph (5); and
  - (ii) that is not directly connected with or necessary to the management of the site or zone (as the case may be) referred to in that sub-paragraph.

(5) 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 MCZ; or
  - (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.”.

#### **Insertion of Article 27A**

**15.** After Article 27 (launching of vessels etc) insert–

##### **“Deposit of a substance arising from the cleaning of vessels**

**27A.**—(1) Article 4 applies to the deposit of a substance removed from that part of the hull of a vessel which is normally submerged.

(2) Paragraph (1) is subject to the condition that the removal of the substance is undertaken by hand, using only–

- (a) a soft cloth;
- (b) a sponge;
- (c) the bristles of a soft brush;
- (d) sandpaper, the grit size of which is at least P20002.”(a).

#### **Amendment of Article 29**

**16.** In Article 29 (diver trails within restricted areas)–

- (a) the words from “a wreck within an area designated as a restricted area” to the end become sub-paragraph (a);
- (b) at the end of sub-paragraph (a) insert “;”;

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(a) ISO 6344-3: 2013 which sets standards for the determination of grain size distribution in relation to coated abrasives. This is accessible at <https://www.iso.org/standard/56010.html>.

(c) after of sub-paragraph (a) insert–

“(b) a monument designated as a scheduled monument under Article 3 of the Historic Monuments and Archaeological Objects (Northern Ireland) 1995;

(c) an area designated as a controlled site under section 1(2)(b) of the Protection of Military Remains Act 1986.”(a).

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 25th February 2022.



*Owen Lyttle*  
A senior officer of the  
Department of Agriculture, Environment and Rural Affairs

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(a) 1995 No. 1625 (N.I. 9). 1986 c.35.



## **EXPLANATORY NOTE**

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

This Order amends the Marine Licensing (Exempted Activities) Order (Northern Ireland) 2011 (S.R. 2011 No. 78) (“the Principal Order”). The Principal Order specifies activities that do not need a marine licence, or do not need a marine licence if conditions specified in the Principal Order are satisfied.

This Order (like the Principal Order) applies in relation to any area, and any licensable marine activity taking place in that area, in relation to which the Department of Agriculture, Environment and Rural Affairs is the appropriate licensing authority by virtue of section 113(6)(b) of the Marine and Coastal Access Act 2009.

The functions of the licensing authority formerly rested with the Department of the Environment which was dissolved by section 1(9) of the Departments Act (Northern Ireland) 2016 (c. 5 N.I.) and, by virtue of Article 8(1)(c) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 (S.R. 2016 No. 76), its functions for the purposes of this Order were transferred to the Department of Agriculture, Environment and Rural Affairs.

Article 3 of the Order inserts definitions for “marine litter” and “MCZ” in the Principal Order.

Article 4 amends the exemption for fishing operations (Article 12 of the Principal Order) to require that fish or other objects have not been first landed before being returned to the sea.

Article 5 amends the exemption for shellfish propagation and cultivation (Article 13 of the Principal Order) to include the deposit of a marker.

Article 6 amends the exemption for the deposit of marine chemical and marine oil treatment substances etc. (Article 15 of the Principal Order) by requiring that the deposit may only be made in accordance with an approval granted by the licensing authority for that purpose.

Article 7 amends the exemption for scientific instruments etc. (Article 17 of the Principal Order) by inserting a condition that notice of the intention to carry on the activity must be given to the licensing authority before the activity can be undertaken. It amends the circumstances in which the exemption does not apply.

Article 8 inserts new exemptions as Articles 17A and 17B into the Principal Order. Article 17A relates to a removal activity carried on for the purposes of taking a sample for testing and analysis. Article 17B relates to a removal activity carried on for the purpose of removing objects accidentally deposited on the seabed.

Article 9 amends the exemption for the maintenance of coast protection, drainage and flood defence works (Article 19 of the Principal Order) by requiring that the activity must be carried on within the existing boundaries of the works being maintained. Public bodies must give notice of the intention to carry on the activity to the licensing authority. In the case of emergency work, public bodies must notify the licensing authority within 3 working days of the date the activity commenced. The notice must set out the location of, the circumstances giving rise to and the nature of the emergency works. Non-public bodies must obtain approval from the licensing authority before the activity is carried on in all circumstances.

Article 10 amends the exemption for emergency works in response to flood or flood risk (Article 20 of the Principal Order) by requiring that the licensing authority must be notified with 3 working days of the date the activity commenced and that the notification must set out the location of, the circumstances giving rise to and the nature of the emergency work.

Article 11 amends the exemption for the use of vehicles to remove litter or seaweed from beaches (Article 21 of the Principal Order) by specifying an additional activity (the removal of dead animals). Prior notice must be given to the licensing authority before this activity can be carried out. The area within which the activities specified in Article 21 may be carried out has been extended to include the intertidal area.

Article 12 inserts a new exemption as Article 21A into the Principal Order which relates to the recovery of marine litter and abandoned, discarded or lost fishing gear in the course of diving activities.

Article 13 inserts a new exemption as Article 24A into the Principal Order which relates to the use of vehicles or vessels by Harbour Authorities to remove marine litter and debris.

Article 14 inserts new exemptions as Articles 25A and 25B into the Principal Order. Article 25A relates to the placement of markers for European marine sites and marine conservation zones. Article 25B relates to the placement of temporary markers which must be removed within a period of 28 days starting with the date on which they are placed and which do not cause an obstruction to navigation or impact on protected areas.

Article 15 inserts a new exemption as Article 27A into the Principal Order. Article 27A permits the deposit of a substance removed from the hull of a vessel in the course of certain removal methods.

Article 16 amends the exemption for diver trails within restricted areas (Article 29 of the Principal Order). It extends the circumstances under which the requirement for a marine licence is not required.

Guidance on the application of this Order can be obtained from the Marine Licensing Team, Marine and Fisheries Division, Department of Agriculture, Environment and Rural Affairs, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.

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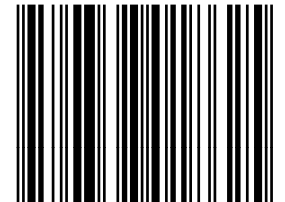
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