

EXECUTIVE NOTE

THE MARINE LICENSING (EXEMPTED ACTIVITIES) (SCOTTISH INSHORE AND OFFSHORE REGIONS) AMENDMENT ORDER 2012

SSI 2012/

The above instrument will, if approved, be made in exercise of the powers conferred by sections 74(1), (2) and (3) and 316(1) of the Marine and Coastal Access Act 2009 (“the 2009 Act”) and sections 32(1), (2) and (3) and 165(1) of the Marine (Scotland) Act 2010 (“the 2010 Act”). The instrument is subject to affirmative procedure.

In accordance with section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, the Scottish Ministers consider it desirable to exercise together and by the same instrument the power conferred by section 32(1), (2) and (3) of the 2010 Act (which is subject to the affirmative procedure) and the powers conferred by sections 74(1), (2) and (3) and 316(1) of the 2009 Act and section 165(1) of the 2010 Act (which are subject to the negative procedure).

Policy Objectives

The objective of this Order is to resolve three issues that have arisen in the period following the introduction and implementation of the marine licensing regime under the 2009 and the 2010 Acts. Subordinate legislation has been made under the two Acts, namely the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 and the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011 (“the principal Orders”), which exempt activities from the marine licensing requirements in the Scottish inshore and offshore regions.

Under the two Acts, removals from the seabed became licensable activities under certain circumstances. This unintentionally captured the sampling of the seabed for analysis within its scope. Sediment sampling is a very low impact activity carried out by various organisations, including government departments and parties who carry it out as part of the conditions of a licence issued under the Water Environment (Controlled Activities) (Scotland) Regulations 2011. It is widely considered to be inappropriate for sediment sampling activity to require a marine licence in many cases. The Order will amend the principal Orders to exempt sediment sampling activity from the marine licensing regime in those cases to which the Order applies and where prior notification of the activity has been given to the Scottish Ministers.

The Acts also unintentionally capture the removal from the seabed of objects that have been accidentally deposited there, for example, where a piece of equipment has been dropped over the side of a boat. It is not considered that the retrieval of these items should require a licence and, to resolve this issue, the Order will exempt the retrieval of accidentally deposited items from the seabed in those cases to which the Order applies.

The use of marine chemical and oil treatment substances is exempt from the licensing regime where the conditions set out in the principal Orders are satisfied, to allow for an appropriately quick reaction to spills. However, some of the chemicals approved under this exemption are

not suitable for use under the surface of the sea. The Order proposes to amend the principal Orders to add a further condition to the exemption to provide that sub-sea chemicals can be used without a licence where prior approval is given by the Scottish Ministers.

The Order also proposes to make some minor and consequential changes to the principal Orders.

Consultation

A public consultation took place between 22 September and 3 December 2011, as is required by sections 74(5) and 32(5) of the 2009 and the 2010 Acts, respectively, which covered the proposed changes to these Orders and requested comments. Responses received to the consultation were mostly positive. Some comments and suggestions were received and minor changes were made to the amending Order as a result.

A full list of those persons and bodies who were consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes –

Scottish Natural Heritage
Department of Energy and Climate Change
Marine Alliance for Science and Technology for Scotland
Nautical Archaeology Society
British Ports Association

Impact Assessments/Financial Implications

A Business and Regulatory Impact Assessment was not deemed a necessary part of the consultation. The proposals were of limited impact and are expected to benefit all parties affected. The Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead MSP, confirmed that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

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