

Draft Order laid before the Scottish Parliament under section 165(5) of the Marine (Scotland) Act 2010, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**ENVIRONMENTAL PROTECTION
LICENSING (MARINE)**

**The Marine Licensing (Exempted Activities)
(Scottish Inshore Region) Amendment Order 2020**

Made - - - - 2020
Coming into force - - 9th November 2020

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 32(1) and 165(1) of the Marine (Scotland) Act 2010⁽¹⁾ 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 32(4) of that Act.

The Scottish Ministers have carried out consultation in accordance with section 32(5) of that Act.

In accordance with section 165(5) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

PART 1

General

Citation and commencement

1. This Order may be cited as the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Amendment Order 2020 and comes into force on 9 November 2020.

Interpretation

2. In this Order—

“the 2011 Regulations” means the Marine Licensing Appeals (Scotland) Regulations 2011⁽²⁾,

(1) 2010 asp 5.

(2) S.S.I. 2011/203.

“the Act” means the Marine (Scotland) Act 2010,

“the Controlled Activities Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2011⁽³⁾,

“controlled waters” means that part of the Scottish marine area which is within the area extending landward from the three mile limit,

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

“marine licence” means a licence granted under section 29 of the Marine (Scotland) Act 2010 which relates to an operation which involves the deposit of any substance within controlled waters carried on in the course of the propagation or cultivation of fish, other than a deposit—

- (a) made for the purpose of creating, altering or maintaining an artificial reef, or
 - (b) that causes or is likely to cause obstruction or danger to navigation,
- and which deposit is liable to cause pollution of the water environment,

“pollution” means the direct or indirect introduction, as a result of human activity, of a substance or heat into the water environment, or any part of it, which may give rise to any harm; and “harm” means—

- (a) harm to the health of human beings or other living organisms,
- (b) harm to the quality of the water environment, including—
 - (i) harm to the quality of the water environment taken as a whole,
 - (ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,
- (c) offence to the senses of human beings,
- (d) damage to property, or
- (e) impairment of, or interference with, amenities or other legitimate uses of the water environment,

“relevant date” has the meaning given by article 4(4),

“shellfish” includes crustaceans and molluscs of any kind and any part of a shellfish,

“substance” means—

- (a) any chemical used for medicinal purposes or otherwise, with the exception of any reagent or chemical or particle tracer used in connection with any scientific experiment or survey,
- (b) any organic or biological matter,

“three mile limit” means the limit consisting of a line every point of which is at a distance of 3 miles on the seaward side from the nearest point of the baseline from which the breadth of the territorial sea of the United Kingdom adjacent to Scotland is measured; and “miles” means international nautical miles of 1,852 metres,

“the water environment” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003⁽⁴⁾,

“water use licence” means an authorisation granted by the Scottish Environment Protection Agency under regulation 8 of the Controlled Activities Regulations.

⁽³⁾ S.S.I. 2011/209.

⁽⁴⁾ 2003 asp 3.

PART 2

Amendments

Amendment of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011

3. Article 12 (propagation and cultivation of fish – deposits) of the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011(5) is amended as follows—

(a) for paragraph (1) substitute—

“(1) This article applies to the deposit of any—

- (a) trestle;
- (b) raft;
- (c) cage;
- (d) pole;
- (e) rope;
- (f) line; or
- (g) within controlled waters, substance which is liable to cause pollution of the water environment,

carried on in the course of the propagation or cultivation of fish.”,

(b) in paragraph (2) for “This” substitute “Subject to paragraph (3), this”,

(c) after paragraph (2), insert—

“(3) Paragraph (2)(a) does not apply to a deposit of the type described in paragraph (1)(g).

(4) In this article—

“controlled waters” means that part of the Scottish marine area which is within the area extending landward from the three mile limit;

“pollution” means the direct or indirect introduction, as a result of human activity, of a substance or heat into the water environment, or any part of it, which may give rise to any harm; and “harm” means—

- (a) harm to the health of human beings or other living organisms;
- (b) harm to the quality of the water environment, including—
 - (i) harm to the quality of the water environment taken as a whole;
 - (ii) other impairment of, or interference with, the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems;
- (c) offence to the senses of human beings;
- (d) damage to property; or
- (e) impairment of, or interference with, amenities or other legitimate uses of the water environment;

“substance” means—

(5) [S.S.I. 2011/204](#), to which there are amendments not relevant to this Order.

(a) any chemical used for medicinal purposes or otherwise, with the exception of any reagent or chemical or particle tracer used in connection with any scientific experiment or survey,

(b) any organic or biological matter;

“three mile limit” means the limit consisting of a line every point of which is at a distance of 3 miles on the seaward side from the nearest point of the baseline from which the breadth of the territorial sea of the United Kingdom adjacent to Scotland is measured; and “miles” means international nautical miles of 1,852 metres; and

“the water environment” has the same meaning as in section 3(2) of the Water Environment and Water Services (Scotland) Act 2003(6).”.

PART 3

Transitional and saving provisions

Deemed licence

4.—(1) A marine licence has effect on and after the relevant date (“a deemed CAR licence”) as if it were a water use licence granted in relation to the activities it authorises and regulates and is subject to the provisions of the Controlled Activities Regulations from that date.

(2) For the purposes of paragraph (1)—

(a) a marine licence granted for a specified period has effect as a deemed CAR licence for so much of that period as falls on and after the relevant date or until 30 April 2021, whichever is later,

(b) any condition subject to which a marine licence has been granted under section 29(1)(b) of the Marine (Scotland) Act 2010 has effect as if it were a condition attached to the deemed CAR licence, subject to the modifications in paragraph (3),

(c) the licensing authority for a deemed CAR licence is the Scottish Environment Protection Agency,

(d) the person who is named on the marine licence as the licensee is to be treated as the person who is responsible for securing compliance with the deemed CAR licence and the conditions specified in it (“the responsible person”), and

(e) it is an additional condition of the deemed CAR licence that the responsible person secures such compliance.

(3) The modifications referred to in paragraph (2)(b) are—

(a) any reference to “Marine Scotland – Licensing Operations Team” or “MS-LOT” is to be read as if it were a reference to “the Scottish Environment Protection Agency”, and

(b) in the “Notes” section of the licence, paragraphs 2 to 5 are to be treated as omitted.

(4) For the purposes of this article, the relevant date is determined in accordance with articles 5 to 10.

(5) Article 3 does not have effect in relation to—

(a) a marine licence until immediately before the relevant date,

(b) an application for a marine licence, where article 6 applies,

(6) 2003 asp 3.

- (c) an appeal in relation to a marine licence under regulation 3 or 4 of the 2011 Regulations, where article 7 or article 9 applies.

Marine licences existing when this Order comes into force

- 5.—(1) This article applies to a marine licence—
 - (a) which is in effect immediately before 9 November 2020, and
 - (b) to which none of articles 7 to 10 apply.
- (2) The relevant date for a marine licence which is due to expire after 29 November 2020 is 30 November 2020.
- (3) Where a marine licence is due to expire in the period beginning on 9 November 2020 and ending on 29 November 2020, it is deemed to have been granted to 30 November 2020 and that is also the relevant date for that licence.

Applications

- 6.—(1) Any application for a marine licence which—
 - (a) is made before 9 November 2020, and
 - (b) has not been determined in accordance with section 29 of the Act before that date,is to be processed and determined in accordance with the provisions of the Act.
- (2) The relevant date for a marine licence granted by the Scottish Ministers following an application of the type referred to in paragraph (1) is 22 days after the date of grant.

Applications – appeals

- 7.—(1) This article applies where—
 - (a) a person who has applied for a marine licence appeals in accordance with regulation 3 of the 2011 Regulations against a decision taken by the Scottish Ministers under section 29(1) of the Act, and
 - (b) either—
 - (i) the appeal is not made or the appeal has not been determined under regulation 3(2) of the 2011 Regulations before 9 November 2020, or
 - (ii) the sheriff has made a direction under regulation 3(3) of the 2011 Regulations which has not been implemented by the Scottish Ministers before that date.
- (2) Where this article applies and the appeal proceedings culminate in—
 - (a) the Scottish Ministers granting a marine licence or granting a marine licence on such terms or subject to such conditions as directed by the sheriff following a direction under regulation 3(3) of the 2011 Regulations, the relevant date for that marine licence is the later of 30 November 2020 and the date of grant,
 - (b) an appeal concerning conditions applicable to a marine licence being dismissed, the relevant date for that marine licence is the later of 30 November 2020 and the date of dismissal of the appeal.

Marine licences subject to variation, suspension or revocation procedure

- 8.—(1) This article applies where—
 - (a) the Scottish Ministers give notice under section 30(1), (2) or (3) of the Act to vary, suspend or revoke a marine licence, and

- (b) the notice procedure is either—
 - (i) commenced on or after 9 November 2020, or
 - (ii) commenced, but not concluded, before 9 November 2020 .
- (2) Where this article applies, the relevant date for a marine licence is the later of 30 November 2020 and the date on which the notice procedure is concluded, except where—
 - (a) the marine licence is revoked (in which case there is no relevant date required),
 - (b) a person to whom the Scottish Ministers have issued a notice under section 30(1), (2) or (3) of the Act appeals against the notice in accordance with regulation 4 of the 2011 Regulations.
- (3) Where paragraph (2)(b) applies, the relevant date is to be determined in accordance with article 9.
- (4) For the purposes of this article—
 - (a) the notice procedure is commenced on the date on which the Scottish Ministers notify the licensee in accordance with section 31(2) of the Act,
 - (b) the notice procedure is concluded on the date on which the marine licence to which the notice relates has been varied, suspended or revoked pursuant to that notice, in accordance with sections 30(1) to (6) and 31(1) to (5) of the Act, or the date on which the notice is withdrawn.

Marine licences subject to variation, suspension or revocation procedure – appeals

- 9.—(1) This paragraph applies where—
- (a) a person to whom the Scottish Ministers have issued a notice under section 30(1), (2) or (3) of the Act appeals against the notice in accordance with regulation 4 of the 2011 Regulations, and
 - (b) the appeal is—
 - (i) made on or after 9 November 2020, or
 - (ii) made before 9 November but the appeal procedure is not concluded before that date.
- (2) Where paragraph (1) applies and—
- (a) the sheriff—
 - (i) determines that the notice is withdrawn,
 - (ii) determines that a requirement contained in the notice is withdrawn,
 - (iii) confirms the notice or any requirement contained in it,
 - (iv) varies the notice or any requirement contained in it,
- the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date on which the appeal procedure is concluded,
- (b) the sheriff remits the decision on whether to confirm the notice, or any matter relating to that decision, to the Scottish Ministers and—
 - (i) the Scottish Ministers decide to confirm the notice or to withdraw a requirement in the notice, the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date on which the appeal procedure is concluded,
 - (ii) the Scottish Ministers decide to withdraw the notice, the relevant date for the marine licence to which the notice relates is the later of 30 November 2020 and the date of withdrawal.
- (3) For the purposes of this article, the appeal procedure is concluded on the date on which—

- (a) the marine licence to which the notice relates has been varied, suspended or revoked pursuant to that notice, in accordance with sections 30(1) to (6) and 31(1) to (5) of the Act, or
- (b) the notice is withdrawn,

following determination of the appeal under regulation 6 of the 2011 Regulations.

Applications for variation or transfer

10.—(1) This article applies where—

- (a) an application has been made by a licensee under section 30(7) or (8) of the Act to vary or transfer a marine licence, and
 - (b) the Scottish Ministers have not determined the application before 9 November 2020.
- (2) Subject to paragraph (3), where this article applies the relevant date is the latest of—
- (a) 30 November 2020,
 - (b) the date on which the Scottish Ministers determine the application, and
 - (c) where applicable, the date on which the marine licence is transferred or varied.
- (3) Where this article applies and article 8 or 9 also applies, the relevant date is the later of—
- (a) the date that would apply under paragraph (2) if disregarding articles 8 and 9,
 - (b) the date determined under article 8 or 9 as applicable.

Inquiries

11. Section 28 of the Act continues to apply as regards any determination of an application for a marine licence.

Offences

12. Sections 39 to 42 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.

Enforcement notices

13. Sections 43 to 45 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.

Civil sanctions

14. Sections 46 to 50 and schedule 2 of the Act continue to apply in relation to anything done otherwise than under and in accordance with a marine licence before the relevant date for that licence.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (“the principal Order”) specifies activities which do not need a marine licence or do not need a marine licence if conditions specified in the principal Order are satisfied.

Article 12 of the principal Order makes such provision in relation to deposits within the Scottish marine area concerning the propagation and cultivation of fish.

Article 3 of this Order amends article 12 of the principal Order to provide, subject to certain exceptions, that the deposit within controlled waters of any chemical used for medicinal purposes or otherwise, or of any organic or biological matter, which may cause pollution of the water environment, is an exempted activity in terms of the marine licensing regime contained in Part 4 of the Marine (Scotland) Act 2010 (“the 2010 Act”).

Activities licensable under Part 4 of the 2010 Act are not subject to the regulatory regime contained in the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR”) by virtue of regulation 3(2) of those regulations. The effect of the exemption introduced by this Order is that the activity to which the exemption relates becomes subject to regulation under CAR. This Order makes various transitional and saving provision to support this change.

Article 4 of this Order provides that an existing marine licence for an activity which after this Order comes into force would be exempt from the marine licensing regime becomes a deemed water use licence (“a deemed CAR licence”) under CAR on a relevant date.

Articles 5 to 10 set out how the relevant date is to be determined for a given marine licence.

Articles 4 to 14 make saving provision to provide that certain things occurring before the relevant date continue to be governed by the 2010 Act and that the 2010 Act continues to apply to an existing marine licence until such point as it becomes a deemed CAR licence.

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.