

**2019 No. 893**

**ENVIRONMENTAL PROTECTION**

**LICENSING (MARINE)**

**MARINE POLLUTION**

**The Marine Licensing (Exempted Activities) (Amendment)  
Order 2019**

*Made* - - - - - *29th April 2019*

*Laid before Parliament* *30th April 2019*

*Coming into force* - - - *31st May 2019*

The Secretary of State, as the appropriate licensing authority under section 113(2)(a), (4)(a), (6)(a) and (8) of the Marine and Coastal Access Act 2009, makes the following Order in exercise of the powers conferred by sections 74 and 316(1) of that Act<sup>(a)</sup>.

In deciding to make this Order, the Secretary of State has had regard to the matters mentioned in section 74(4) of that Act.

The Secretary of State has carried out consultation in accordance with section 74(5) of that Act.

**Citation, commencement and application**

**1.**—(1) This Order may be cited as the Marine Licensing (Exempted Activities) (Amendment) Order 2019 and comes into force on 31st May 2019.

(2) This Order applies in relation to any area, and to any licensable marine activity<sup>(b)</sup> carried on in that area, for which the Secretary of State is the appropriate licensing authority under section 113 of the Marine and Coastal Access Act 2009<sup>(c)</sup>.

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(a) 2009 c. 23. Section 113 was amended by section 46(2) of the Wales Act 2017 (c. 4).

(b) For the meaning of “licensable marine activity” see sections 66 and 115(1) of the Marine and Coastal Access Act 2009 (“the Act”).

(c) By virtue of subsections (2)(a), (4)(a), (6)(a) and (8) of that section, the Secretary of State is the appropriate licensing authority as respects anything done in the course of carrying on certain activities in the Scottish offshore region, Wales, the Welsh inshore region and the Welsh offshore region, Northern Ireland and the Northern Ireland inshore region, and in relation to any other area not mentioned in subsections (2), (4) or (6) of that section. See section 322(1) of the Act for definitions of those regions.

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

2. The Marine Licensing (Exempted Activities) Order 2011(a) is amended in accordance with articles 3 to 14.

### **Amendment of article 3**

3. In article 3 (interpretation), after the definition of “lighthouse authority” insert—

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

### **Amendment of article 17**

4. In article 17 (scientific instruments etc), in paragraph (5)(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(b)”.

### **Amendment of article 19**

5. In article 19 (maintenance of coast protection, drainage and flood defence works)—

(a) for paragraph (1)(b) substitute—

“(b) to an activity carried on by or on behalf of any of the following for the purpose of maintaining any coast protection works(c)—

(i) a coast protection authority (within the meaning of Part 1 of the Coast Protection Act 1949(d));

(ii) a local authority (within the meaning of section 68(9) of the Act);

(iii) the Secretary of State for Defence”;

(b) at the end 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.”.

### **Amendment of article 20**

6. 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—

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(a) S.I. 2011/409, as amended by S.I. 2013/526, 2017/1012 and 1013; there are other amendments but none are relevant.

(b) 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 Lowest Astronomical Tide.

(c) Section 49 of the Coast Protection Act 1949 defines “coast protection work”.

(d) 1949 c. 74.

- (a) the Environment Agency notifies the licensing authority of the emergency works before the end of the period of 168 hours beginning with the time when those works commence; 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**

7. In article 21 (use of vehicles to remove litter, seaweed or dead animals from beaches)—

- (a) in the heading, at the end insert “and intertidal areas”;
- (b) in paragraph (1), at the end insert “or intertidal area”;
- (c) 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**

8. After article 21 insert—

**“Recovery of marine litter etc.**

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

- (a) marine litter; and
- (b) abandoned, discarded or lost fishing gear.

(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 an area where the diving 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 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.

(4) In paragraph (3)(a) and (b), “likely” has the same meaning as in the Habitats Directive(a).”.

**Insertion of article 24A**

9. After article 24 insert—

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(a) OJ No. L 206, 22.7.92, p.7, as last amended by Council Directive 2013/17/EU (OJ No. L 158, 10.6.2013, p.193), and see OJ No. L 80, 21.3.2007, p.15, for the corrigendum amending the original title.

### **“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 an 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 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.

(4) In paragraph (3)(a) and (b), “likely” has the same meaning as in the Habitats Directive.”.

### **Amendment of article 25**

**10.** In article 25 (moorings and aids to navigation), in paragraph (2A), for “Paragraph” substitute “In the case of a person referred to in paragraph (2)(c), paragraph”.

### **Amendment of article 26A**

**11.** In article 26A (temporary markers), in paragraph (2), at the end insert “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”.

### **Insertion of article 27A**

**12.** After article 27 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 P2000(a).”.

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(a) See 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> and is available for inspection at the offices of the

### **Amendment of article 31**

**13.** In article 31 (diver trails within restricted areas)—

- (a) the words from “a wreck within an area designated as a restricted area” to the end become paragraph (a);
- (b) after paragraph (a) insert—
  - “(b) a monument designated as a scheduled monument under section 1 of the Ancient Monuments and Archaeological Areas Act 1979(a); or
  - (c) an area designated as a controlled site under section 1(2)(b) of the Protection of Military Remains Act 1986(b)”.

### **Amendment of article 34**

**14.** In article 34 (cables and pipelines – authorised emergency inspection and repair)—

- (a) for paragraph (2) substitute—
  - “(2) Paragraph (1) is subject to the condition that—
    - (a) the person carrying out the emergency inspection or repair works (as the case may be) notifies the licensing authority before the end of the period of 24 hours beginning with the time when the emergency inspection or repair works commence; and
    - (b) the notification sets out the location, the circumstances giving rise to and the nature of the emergency works.”;
- (b) in paragraph (3) at the end insert “or to any such deposit made for the purpose of providing cable or pipeline protection”.

*Thérèse Coffey*

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

29th April 2019

### **EXPLANATORY NOTE**

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

This Order amends the Marine Licensing (Exempted Activities) Order 2011 (S.I. 2011/409) (“the 2011 Order”). The 2011 Order specifies licensable marine activities in respect of which a marine licence under Part 4 of the Marine and Coastal Access Act 2009 (c. 23) (“the 2009 Act”) is not required, whether subject to conditions or otherwise.

These amendments apply in relation to any area, and any licensable marine activity carried on in that area, for which the Secretary of State is the appropriate licensing authority under section 113 of the 2009 Act.

The amendments introduce three new exemptions from the requirement to hold a marine licence. Those relate to the recovery of marine litter etc. in the course of diving activities (article 8), permitting harbour authorities to use vehicles or vessels to remove marine litter and debris (article 9) and permitting the deposit of a substance removed from the hull of a vessel in the course of certain removal methods (article 12).

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- (a) 1979 c. 46. Section 1 is amended by paragraph 25 of Schedule 4 to the National Heritage Act 1983 (c. 47), paragraphs 1 and 2 of Schedule 2 to the Historic Environment Scotland Act 2014 (2014 asp 19), section 4(1) and (2) of the Historic Environment (Wales) Act 2016 (2016 anaw 4).
- (b) 1986 c. 35. S.I. 2017/147 was made under section 1(2)(b).

This Order also amends a number of the existing exemptions from the requirement to hold a marine licence set out in the 2011 Order by adding or amending conditions relating to those exemptions.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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