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

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2026 No.

ENVIRONMENTAL PROTECTION

LICENSING (MARINE)

The Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026

Made - - - - ***

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 21(3), 32(1) and 165(1)(b) of the Marine (Scotland) Act 2010(**a**) 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 sections 21(4) and 32(4) of that Act.

The Scottish Ministers have consulted such persons as they consider appropriate in accordance with section 32(5) of that Act.

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

Citation and commencement

1. This Order may be cited as the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 and comes into force on the date on which the Biodiversity Beyond National Jurisdiction Agreement(**b**) enters into force for the United Kingdom(**c**).

(**a**) 2010 asp 5; sections 21 and 32 were amended by the Biodiversity Beyond National Jurisdiction Act 2026 (c. 6).

(**b**) The Biodiversity Beyond National Jurisdiction Agreement is the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, opened for signature at New York on 20 September 2023 (2023 CP 942).

(**c**) In accordance with article 68(1), the Biodiversity Beyond National Jurisdiction Agreement entered into force on 17 January 2026. Under article 68(2) of the Agreement, the Agreement shall enter into force for the United Kingdom on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession. It will be possible to find out the date on which the Agreement enters into force for the United Kingdom by referring to the relevant page on UK Treaties Online which can be found at this link: https://www.gov.uk/uk-treaties.

Amendment of the Marine (Scotland) Act 2010

2.—(1) The Marine (Scotland) Act 2010(**a**) is amended as follows.

(2) In section 21 (licensable marine activities)—

(a) in subsection (1), after item 10 insert—

"11 To deposit any substance or object in the sea or on or under the seabed in an area beyond national jurisdiction if the person carrying on or controlling the deposit is a Scottish person.

12 To scuttle any vessel or floating container at sea in an area beyond national jurisdiction if the person carrying on or controlling the scuttling is a Scottish person.

13 To construct, alter or improve any works in or over the sea or on or under the seabed in an area beyond national jurisdiction if the person carrying on or controlling the construction, alteration or improvement is a Scottish person.

14 To use a vessel, aircraft, marine structure or floating container to remove any substance or object from the seabed in an area beyond national jurisdiction if the person carrying on or controlling the removal is a Scottish person.

15 To carry out any form of dredging in an area beyond national jurisdiction (whether or not involving the removal of any material from the sea or seabed) if the person carrying on or controlling the dredging is a Scottish person.

16 To deposit or use any explosive substance or article in the sea or on or under the seabed in an area beyond national jurisdiction if the person carrying on or controlling the deposit or use is a Scottish person.

17 To incinerate any substance or object at sea in an area beyond national jurisdiction if the person carrying on or controlling the incineration is a Scottish person.",

(b) in subsection (2)—

(i) in paragraph (a), for "item 7" substitute "items 7 and 15",

(ii) in paragraph (b)—

(aa) for "item 10" substitute "items 10 and 17",

(bb) for "item 9" substitute "items 9 and 17",

(iii) after paragraph (c), insert—

"(d) any reference to a person "controlling" an activity includes that person causing or permitting any other person to carry on that activity,

(e) "Scottish person" means—

(i) an individual who is habitually resident in Scotland, or

(ii) a person who is not an individual, where that person—

(A) has its registered office in Scotland,

(B) in a case where it has no registered office, has its place of incorporation in Scotland or is otherwise formed under the law of Scotland",

(c) in subsection (3C), for "subsection (3A)" substitute "this section".

(3) In section 27 (determination of applications)—

(**a**) Section 21 was amended by the Biodiversity Beyond National Jurisdiction Act 2026 (c. 6) and section 27 was amended by S.I. 2011/1210.

(a) in subsection (2), for "1 or 2" substitute "1, 2 or 11",

(b) in subsection (3), after "5" insert "or 13".

(4) In section 29(5) (grant or refusal of licence), after "5" insert "or 13".

Amendment of the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011

3.—(1) The Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011(**a**) is amended as follows.

(2) In regulation 6(1) (deposit of substances or objects), for "1 or 2" substitute "1, 2 or 11".

(3) In regulation 7(1) (scuttling), for "3 or 4" substitute "3, 4 or 12".

(4) In regulation 8(1) (construction, alteration or improvement of works), after "5" insert "or 13".

(5) In regulation 9(1) (use of vehicle etc to remove substances or objects from sea bed), after "6" insert "or 14".

(6) In regulation 10(1) (dredging), after "7" insert "or 15".

(7) In regulation 11(1) (deposit or use of explosives), after "8" insert "or 16".

(8) In regulation 12(1) (incineration or loading vehicle etc. for incineration), for "9 or 10" substitute "9, 10 or 17".

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

4.—(1) The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011(**b**) is amended as follows.

(2) In article 5 (interpretation of this Part)—

(a) for paragraph (a) substitute—

"(a) a reference to a "deposit" is a reference to a deposit falling within—

(i) item 1 (deposits within Scottish marine area), 2 (deposits from vehicle, vessel etc. loaded in Scotland or Scottish marine area), or 11 (deposits in an area beyond national jurisdiction); or

(ii) except as otherwise provided, item 8 (deposits of explosives within Scottish marine area) or 16 (deposits of explosives in an area beyond national jurisdiction);",

(b) in paragraph (b), at the end insert "or 15 (dredging in an area beyond national jurisdiction)",

(c) in paragraph (c), at the end insert "or 14 (use of vessel, etc. to remove substance or object from seabed in an area beyond national jurisdiction)",

(d) in paragraph (d), at the end insert "or 13 (construction, alteration or improvement of works in an area beyond national jurisdiction)".

(3) In article 10(2)(b) (fishing – deposits), after "8" insert "or 16".

(4) For article 13 (propagation and cultivation of fish – removal activity and dredging activity) substitute—

(**a**) S.S.I. 2011/80.
(**b**) S.S.I. 2011/204, relevant amending instrument is S.S.I. 2012/25.

"Propagation and cultivation of fish – removal activity and dredging activity

13.—(1) Subject to paragraph (2), this article applies to—

(a) a removal activity carried on in the course of the propagation or cultivation of fish;

(b) a dredging activity carried on in the course of the propagation or cultivation of shellfish.

(2) This article does not apply to the removal or dredging activities in paragraph (1) where they take place outside the Scottish marine area.".

(5) In article 16(2) (deposit of equipment to control, contain or recover oil etc.), after "8" insert "or 16".

(6) In article 23(2)(b) (deposits in the course of normal navigation or maintenance), after "8" insert "or 16".

(7) In article 30(2) (dismantling of ships), after "8" insert "or 16".

(8) In article 32(3) (cables and pipelines – authorised emergency inspection and repair), after "8" insert "or 16".

(9) For article 35 (activities carried on outside the Scottish marine area) substitute—

"Activities carried on outside the Scottish marine area

35.—(1) Subject to paragraph (2), this article applies to—

(a) an activity carried on outside the Scottish marine area; or

(b) the loading of a vehicle, vessel, marine structure or floating container with any substance or object for incineration outside the Scottish marine area.

(2) This article does not apply where—

(a) an activity falls within item 2 or 4 of the 2010 Act and the activity takes place outside the UK marine area;

(b) an activity falls within item 10 of the 2010 Act and the incineration takes place outside the UK marine area;

(c) an activity falls within item 13, 14, 15 or 16 of the 2010 Act;

(d) an activity falls within item 11 of the 2010 Act and does not fall within item 3 of the 2009 Act;

(e) an activity falls within item 12 of the 2010 Act and does not fall within item 6 of the 2009 Act;

(f) an activity falls within item 17 of the 2010 Act and does not fall within item 13 of the 2009 Act.".

(10) After article 35 insert—

"Activities involving submarine cables outside the Scottish marine area

36.—(1) Subject to paragraph (2), this article applies to an activity carried on outside the Scottish marine area so far as it consists of doing anything in the course of laying, maintaining or removing a submarine cable.

(2) This article does not apply—

(a) where the activity—

(i) is to occur in an area beyond national jurisdiction; and

(ii) relates to a cable constructed or used in connection with any of the following—

(aa) the exploration of the UK sector of the continental shelf;

(bb) the exploitation of the natural resources of that sector;

(cc) the operations of artificial islands, installations and structures under the jurisdiction of the United Kingdom;

(dd) the prevention, reduction or control of pollution from pipelines;

(b) to deposits to the extent that they fall within item 8 or 16.

(3) In paragraph (2) "area beyond national jurisdiction" has the same meaning that it has in section 21(3C) of the 2010 Act.

Activities carried out in areas beyond national jurisdiction – environmental impact assessments

37.—(1) Subject to paragraph (2), this article applies to an activity in relation to which—

(a) a screening opinion has been adopted in accordance with regulation 9(2A) (general provisions relating to screening) of the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017(**a**) ("the 2017 Regulations") stating that the BBNJ works are not an EIA project; or

(b) a notice has been given under regulation 12(2B) (application without prior screening) of the 2017 Regulations.

(2) This article only applies to such an activity where that activity falls within item 11, 12, 13, 14, 15, 16 or 17.".

Name
A member of the Scottish Government

St Andrew's House,
Edinburgh
Date

(**a**) S.S.I. 2017/115, as prospectively amended by section 24 of the Biodiversity Beyond National Jurisdiction Act 2026 (c. 6).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Marine (Scotland) Act 2010 ("the 2010 Act"), the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 ("the 2011 Regulations") and the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 ("the 2011 Order").

This Order implements in Scotland the Environmental Impact Assessment requirements of Part IV of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, opened for signature at New York on 20 September 2023.

Article 2 amends Part 4 of the 2010 Act (marine licensing), and in particular section 21 (licensable marine activities) to add new licensable marine activities carried out in the area beyond national jurisdiction by Scottish persons (the "new activities"). Article 2 also adds definitions of "controlling" and "Scottish person" to section 21(2), amends subsection (3C) so that the defined terms it contains apply to the whole of section 21, amends the existing definitions of "dredging" and "incineration" to include the new activities where relevant, and amends sections 27 (determination of applications) and 29 (grant or refusal of licence) to include the new activities where relevant.

Article 3 amends the 2011 Regulations, which prescribe the particulars of the matters required by section 54 of the 2010 Act to be contained in the register of information maintained by the Scottish Ministers. These amendments are consequential upon the amendments made by article 2 and they ensure that the existing provisions of the 2011 Regulations apply to the new activities where relevant.

Article 4 amends the 2011 Order, which specifies licensable marine activities in respect of which a marine licence under Part 4 of the 2010 Act is not required, whether subject to conditions or otherwise. Paragraph (2) amends the meaning of "deposit", "dredging activity", "removal activity" and "works activity" set out in article 5 of the 2011 Order to ensure that the new activities are included in the definitions where relevant. Paragraphs (3) and (5) to (8) amend certain existing exemptions to make them unavailable where the activity falls within item 16 (deposit of explosives in an area beyond national jurisdiction). Paragraph (4) substitutes article 13 to make this exemption unavailable outside the Scottish marine area. Paragraph (9) substitutes article 35 to exempt activities outside the Scottish marine area and exempt certain activities in an area beyond national jurisdiction where they also fall within certain marine licensable activities in section 66 of the Marine and Coastal Access Act 2009. Paragraph (10) creates two new exemptions from the need for a marine licence by inserting articles 36 and 37 into the 2011 Order. The insertion of article 36 creates an exemption for the laying, maintaining or removing of submarine cables. The insertion of article 37 creates an exemption where, under the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017, a screening opinion has been adopted by the Scottish Ministers that BBNJ works are not an EIA project or a notice has been given stating that the proposed works do not require an environmental impact assessment.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Marine Directorate - Licensing Operations Team, Area 1A North, Victoria Quay, Edinburgh EH6 6QQ.

© Crown Copyright 2026

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

ISBN 978-0-11-106598-3

£6.40

http://www.legislation.gov.uk/id/sdsi/2026/9780111065983