POLICY NOTE

THE MARINE LICENSING (MISCELLANEOUS AMENDMENT) (SCOTLAND) ORDER 2026

SSI 2026/XXX

The above instrument was made in exercise of the powers conferred by sections 21(3), 32(1) and 165(1)(b) of the Marine (Scotland) Act 2010.

The instrument is subject to *affirmative procedure*.

Summary Box

The Biodiversity Beyond National Jurisdiction (BBNJ) Agreement is a treaty agreed under the framework of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), aiming to conserve and sustainably use marine biodiversity in areas beyond national jurisdiction (ABNJ), i.e., beyond 200 nautical miles. A key pillar is for parties to carry out Environmental Impact Assessment (EIA) of activities under their control which may cause substantial pollution of or significant and harmful changes.

The above instrument amends the Marine (Scotland) Act 2010 ("the 2010 Act") to expand the licensable marine activities to include activities carried on or controlled by 'Scottish persons' in Areas Beyond National Jurisdiction (ABNJ), required for implementation of Part IV of the BBNJ Agreement.

The instrument will ensure that the UK and Scotland can meet BBNJ Environmental Impact Assessment (EIA) obligations, while keeping regulation of activities taking place in ABNJ proportionate.

It will extend licensable marine activities to ABNJ; extend existing relevant exemptions in the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 ("2011 Order") (other than exemptions in respect of the propagation or cultivation of fish) to activities in ABNJ and introduce certain new exemptions (in respect of activity which does not meet the EIA threshold set in the BBNJ Agreement, cable laying, cable maintenance and cable removal activity in ABNJ).

The instrument will ensure that the devolved position is reflected by revising the marine licensing responsibility of the Scottish Ministers in respect of activity 'in and as regards Scotland' carried on outside the UK marine area, by revising an exemption which covered the activity of British vessels, vehicles, aircraft or marine structures (or containers when controlled from the aforementioned) when loaded from Scotland or the Scottish marine area.

Changes are also made by the instrument to the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 to reflect the new licensable activities in the 2010 Act.

Policy Objectives
This instrument is necessary to extend the Scottish marine licensing regime to cover activities which may occur in ABNJ, extend certain current marine licensing exemptions to those activities occurring in ABNJ, introduce new exmeptions for specifc actvities in ABNJ and to update licensing exemptions to appropriately reflect the division of licensing responsibilities between UK Government and Scottish Ministers. The Scottish Government will ensure, as far as possible, that implementation of the marine licensing approach will be consistent with the UK Government implementation.

The instrument will expand the list of licensable marine activities to include activities in ABNJ in section 21(1) of the 2010 Act. Those licensable activities in ABNJ will include all those categories which are currently licensable only in the Scottish marine area. The new activities added to the 2010 Act by the instrument to meet EIA obligations under the BBNJ Agreement will apply to individuals habitually resident in Scotland and to persons who are not individuals which have their registered office in Scotland or, if no registered office, have their place of incorporation in Scotland or are formed under the law of Scotland that are carrying on or exercising control over the activity.

The instrument introduces controls on deposit of substances or objects, scuttling of vessels or containers, construction, removal of substances or objects, dredging, deposit or use of any explosive substance or article and incineration of substances or objects where these activities are to take place in ABNJ by 'Scottish persons'.

The instrument will exempt the new activities in ABNJ where impacts would be below the EIA thresholds set by article 30 of the BBNJ Agreement by adding a new exemption to the 2011 Order which will apply in relation to the new ABNJ activities where a screening opinion has been adopted under regulation 9(2A) of, or a notice given under regulation 12(2B) of, the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

The instrument will add an exemption to the 2011 Order to specifically exempt cable laying, maintenance and removal activity outside the Scottish marine area, save in respect of activities in the ABNJ where the cables are constructed or used in relation to certain specified matters.

The instrument will extend existing exemptions in the 2011 Order to also apply to activity in ABNJ on grounds of those activities either being regulated by another authority, being needed in the event of an emergency or being day-to-day activities and having little environmental impact.

The instrument will replace an existing exemption in article 35 of the 2011 Order which relates to activities carried on outside the Scottish marine area. This will mean that marine licences require to be obtained from the Scottish Ministers under the 2010 Act for existing licensable activities set out in section 21(1) of that Act where the relevant activity or incineration takes place outside the UK marine area.

Amendments made through this instrument are intended to mirror the approach taken by UK Government where appropriate.

Double regulation of the new BBNJ activities by the marine licensing regimes of the UK Marine and Coastal Access Act 2009 and the 2010 Act will be avoided by an exemption for BBNJ activity regulated by Scottish Ministers to be made in UK Government secondary legislation.

The instrument will also make small consequential amendments to section 1 (licensable marine activities), section 27 (determination of applications) and section 29 (grant or refusal of licence) of the 2010 Act.

Changes to the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 will be made to include the details of the new licensable marine activities in ABNJ so that they are captured in requirements for certain information to be included on the register.

The Scottish Ministers introduce this instrument having had regard to the need to protect the environment, the need to protect human health and the need to prevent interference with legitimate uses of the sea.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument will allow Scotland and the UK to meet the BBNJ Agreement EIA requirements, which sits under the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out. This includes 320 articles and nine annexes which set out the limits of various maritime zones and rights and obligations of Parties in these zones. The European Union is part of UNCLOS. Therefore, implementing the instrument will ensure Scotland meets the obligations of the BBNJ Agreement and the legislation will align with the EU.

Consultation

To comply with section 32(5) of the 2010 Act, the Scottish Ministers consulted on proposed exemptions. Policy proposals were also consulted in line with the priorities set out in the Scottish Approach to Government.

The UK and Scottish governments held a joint consultation from 21 November 2025 to 19 December 2025, which sought views on marine licensing changes to enable the implementation of the EIA requirements in Part IV of the BBNJ Agreement as they apply to activities within the remit of marine licensing. The consultation covered proposed amendments to the marine licensing regimes in both the UK and Scotland, including changes to secondary legislation, which are required to ensure compliance with Part IV of the Agreement on EIAs as it applies to licensable activities. It also sought views on revising the split of responsibility for marine licensing in relation to activities outside the Scottish marine area as established by article 35 of the 2011 Order.

The consultation was aimed at anyone with an interest in marine activities which are regulated under UK control or jurisdiction in ABNJ. A list of relevant stakeholders was agreed with DEFRA and the stakeholders with interests across business, conservation, maritime industries and those with a statutory marine licensing or EIA role were notified of the consultation. A total of 22 consultation responses were received by UK Government on the joint consultation, with 7 responses specifically relevant to Scotland.

Consultation respondents provided feedback on a range of themes, including the EIA screening approach, implementation of approach in relation to Scottish marine licensing and division of responsibilities for licensing marine activities, exemptions, potential activities occurring in ABNJ, companies or persons carrying out activities in ABNJ, cable laying and removal, marine scientific research, rocket launch deposits, fees and the overall application process. Responses were used to support the policy approach taken forward in the instrument.

The Scottish Government shares the view of the UK Government that measures in the Space Industry Act 2018 (SIA) and Outer Space Act 1986 (OSA) are sufficient to ensure compliance with the BBNJ Part IV requirements. No requirement to alter licensing requirements for deposit of substances or objects from space flight activities is therefore needed, as a case-by-case EIA exemption (deferring to other 'persons' responsible for EIA) can be applied.

The instrument does not exempt marine scientific research activities undertaken by Scottish Government vessels, as little activity is considered to take place in ABNJ, but this aspect will be kept under review for consideration for future exemptions. It is also not considered that any new specific exemption is required for deep sea mining activities as the Deep Sea Mining Act 1981 exempts such activity from the need for a marine licence. An exemption for the placement of fish farms is being introduced by a separate instrument which would limit the exemtion to the Scottish marine area once in to force.

A full list of those consulted and who agreed to the release of this information will be attached to the joint UK consultation report published on the UK Government website[1].

Impact Assessments
A list of impact assessments considered and decisions taken on their scope in relation to the draft SSI is listed below, with the relevant assessments and templates attached.

- No impacts on equality were identified, therefore a 'no Equality Impact Assessment needed' declaration template has been completed.
- No impacts to child rights and wellbeing were identified, therefore a Child Rights and Wellbeing Impact Assessment (CWRIA) was screened out. In accordance with the Rights of the Child (Incorporation) (Scotland) Act 2024 (UNCRC Act), a 'Statement of Compatibility' has been completed.
- The instrument will not have any relevance to socio-economic inequalities, therefore a Fairer Scotland Duty assessment is not required, and the relevant template has been completed.
- No impacts to island communities were identified, therefore an Island Communities Impact Assessment (ICIA) screening form was completed supporting this decision.

[1] https://consult.defra.gov.uk/marine-licensing-and-reform/implementation-of-part-iv-of-the-bbnj-agreement/

- A Data Protection Impact Assessment was not required, as confirmed with the Data Protection team.
- A Strategic Environmental Assessment (SEA) screening report was prepared and concluded that the SSI is unlikely to have significant environmental effects. A SEA is therefore not required. The Responsible Authorities NatureScot, Historic Environment Scotland and SEPA were consulted on the report and agreed with its conclusions. The SEA determination was made publicly available via the Scottish Government website and advertised in the Edinburgh Gazette in accordance with sections 10(1) and 10(2) of the Environmental Assessment (Scotland) Act 2005.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is expected to be minimal, with most impacts identified relating to administrative changes, and stability for businesses which would facilitate long term planning and resourcing.

Impacts to consumers have also been considered within the final BRIA, meeting the Consumer Scotland Act 2020 (Relevant Public Authorities) Regulations 2024. These were considered minimal, and consultation responses did not raise any concerns.

Scottish Government
Marine Directorate
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