EXPLANATORY MEMORANDUM TO

THE MARINE LICENSING (MISCELLANEOUS PROVISIONS) (AMENDMENT ETC.) ORDER 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment Food and Rural Affairs (Defra) and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Emma Hardy MP, Parliamentary Under-Secretary of State at the Department for Environment Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Joly Macleod, Deputy Director for Domestic Marine at Marine and Fisheries Directorate, at the Department for Environment Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Katherine Toome/James Elliott at the Department for Environment Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: marine.licensing@defra.gov.uk. Alternatively, the department can be contacted by telephone: 03459 335577.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument helps implement the United Kingdom's obligations under Part IV of the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement[1] in relation to environmental impact assessment (EIA) of activities in areas beyond national jurisdiction (ABNJ) which are within the remit of marine licensing. The BBNJ Agreement requires parties to ensure that potential environmental impacts of any planned activity in ABNJ under their jurisdiction or control are assessed before any decision is taken to authorise that activity.

4.2 This instrument amends the marine licensing provisions in Part 4 of the Marine and Coastal Access Act ("the 2009 Act"). It extends licensing to new activities in ABNJ, based on the same licensable categories of activity used in UK domestic waters, and also makes changes in relation to existing categories of licensable activity which may be carried out in ABNJ. It extends licensing to activities in ABNJ which are carried on

[1] The Biodiversity Beyond National Jurisdiction Agreement means 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).

or controlled by persons residing, incorporated or formed in the UK or from a British vessel, aircraft, marine structure or floating container.

4.3 This instrument also amends the Marine Licensing (Exempted Activities) Order 2011 ("the 2011 Order") to add new marine licensing exemptions and make consequential amendments. An exemption has been added so that any activity in a new ABNJ licensable category that does not meet the BBNJ Agreement's EIA threshold or EIA screening threshold (see paragraph 5.4 and 5.5 for further detail), is not required to obtain a marine licence. An exemption has also been added for specified subsea cable activities in ABNJ (see paragraph 5.8 for further detail). Consequential amendments have been made in relation to existing exemptions to ensure that they can apply in ABNJ where appropriate. There is an exemption for certain activities in ABNJ regulated under Part 4 of the Marine (Scotland) Act 2010 ("the 2010 Act") to avoid dual regulation (see paragraph 6.4 for further detail).

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom. Any amendment made by this instrument has the same extent as the provision amended.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is wherever the Secretary of State is the licensing authority as determined under section 113 of the 2009 Act and includes ABNJ in relation to any licensable activity carried on in ABNJ for which the Secretary of State is the licensing authority. ABNJ is defined in the BBNJ Agreement as the "high seas" (defined in the United Nations Convention on the Law of the Sea (UNCLOS) as all parts of the sea that are not included in an Exclusive Economic Zone (EEZ), territorial sea or internal or archipelagic waters of any state) and the "Area" (defined in UNCLOS as the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction).

5. Policy Context

What is being done and why?

5.1 The BBNJ Agreement was adopted by consensus at the United Nations on 19 June 2023. The UK signed the Agreement when it opened for signature on 20 September 2023. Before it can ratify the Agreement, the UK must be able to implement fully its obligations under the Agreement. Part IV of the Agreement builds on existing UNCLOS requirements[2] by setting out a detailed framework for assessing the potential impacts to the marine environment of planned activities in ABNJ. Legislation is needed to implement in full the UK's obligations in Part IV as they apply to activities within the remit of the UK's marine licensing regimes.

5.2 This instrument implements EIA obligations under Part IV of the BBNJ Agreement, in connection with licensable activities for which the Secretary of State is the licensing authority (as delegated to the Marine Management Organisation (MMO)).

5.3 The Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 ("the 2026 Scotland Order") was made on 25 March 2026 and extends licensing to activities in ABNJ for which the Scottish Ministers are the licensing authority under Part 4 of the

[2]See Article 206 UNCLOS: "When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments...".

2010 Act. This is to ensure the UK can meet its obligations under Part IV BBNJ Agreement in relation to licensable activities within Scottish competence. This Order will come into force on the date on which the BBNJ Agreement enters into force for the UK.

5.4 The BBNJ Agreement requires the UK to carry out a screening process when planned activities over which it has jurisdiction or control "may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood".

5.5 If the screening exercise determines that there are reasonable grounds for believing the activity may cause substantial pollution or significant and harmful changes to the marine environment an EIA is required.

5.6 To enable the UK to license activities in ABNJ which are in scope of the BBNJ Agreement, this instrument extends the list of activities the MMO can license in ABNJ to include ten new activities.

5.7 New activities are added which fall under the categories of dredging, construction works, the removal of any substance or object and the use of explosives. New licensable activities are also added which fall into the categories of deposits, scuttling, and incineration; these categories of activities already require a licence in ABNJ when carried out from a British vessel or loaded in the UK, and the amendments extend the licensing requirement to cover these activities when carried on or controlled by a UK person in ABNJ.

5.8 Where relevant, existing exemptions set out in the 2011 Order will continue, or be extended, to apply in ABNJ. The current exemption for cable laying and maintenance in section 81 of the 2009 Act will continue to apply to the new activities. The instrument creates a new exemption for cable removal in ABNJ, due to the low environmental impact of this activity. It is anticipated that relatively few activities will be carried out in ABNJ and require a marine licence. In this instrument, we are exempting some new activities in ABNJ which fall below the EIA threshold.

5.9 To date, only two marine licence applications have been submitted for activities in ABNJ. This low volume reduces the overall risk of implementing regulatory changes.

What was the previous policy, how is this different?

5.10 Without the changes made by this instrument, the current marine licensing regime would not have enabled us to meet the BBNJ Agreement's EIA obligations in full, as there was a gap in the UK's ability to manage the environmental impacts of all planned activities under the UK's control or jurisdiction that take place in ABNJ. Without government action, the UK would not have been able to comply with its obligations under the BBNJ Agreement and consequently would not have been able to ratify it.

5.11 The UK signed the BBNJ Agreement on 20 September 2023, having played a key role in negotiations. Whilst signature is not legally binding, it does signal support for the Agreement and intent to ratify. Failure to ratify the BBNJ Agreement would have a negative impact on the UK's ability to enable greater conservation in ABNJ and would reduce the UK's ability to contribute to meeting global targets such as the Kunming-Montreal Global Biodiversity Framework target to conserve and effectively manage at least 30% of the ocean by 2030.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument implements some of our obligations under Part IV of the BBNJ Agreement in relation to EIAs. Legislation is required because these international obligations cannot be fulfilled by non-legislative means. The Scottish Ministers have made necessary amendments to Scottish marine licensing legislation where activities in ABNJ fall within Scottish competence (see paragraph 11.1 for more information).

6.2 Activities that currently require a marine licence are listed at section 66 of the 2009 Act. Existing exemptions are set out in the 2011 Order. The MMO maintains a register in relation to marine license applications, decisions, and EIAs, and the particulars of this register are prescribed in the Marine Licensing (Register of Licensing Information) Regulations 2011 ("the 2011 Regulations"). This instrument amends the 2009 Act, the 2011 Order and the 2011 Regulations, as summarised at paragraphs 6.3 to 6.5 below.

6.3 This instrument adds new licensable marine activities to section 66 of the 2009 Act and designates these as activities added in contemplation of the United Kingdom's obligations under Part IV of the BBNJ Agreement. Amendments are also made to three existing activities to avoid duplication with the new activities. The new activities do not extend to anything done in the course of laying or maintaining an offshore stretch of exempt submarine cable, the meaning of which can be found in section 81(5) of the 2009 Act.

6.4 Three new licence exemptions are added to the 2011 Order in relation to the new activities. These are inserted as new Articles 39 to 41 of that Order. Article 39 provides an exemption for activities where a notice or a screening opinion has been issued stating an EIA is not required under the Marine Works (Environmental Impact Assessment) Regulations 2007. This exemption is only available for specified new licensable activities. Article 40 provides an exemption for certain licensable marine activities specified in section 21(1) of the 2010 Act (as amended by the 2026 Scotland Order). The article exempts certain activities which require a licence under the Scottish marine licensing regime set out in Part 4 of the 2010 Act, with the purpose of minimising 'dual regulation' (where an activity would require two licences under both the Scottish and UK marine licensing regimes). Article 41 provides an exemption for the removal of exempt submarine cables in ABNJ. Amendments are also made to the 2011 Order which are consequential to the amendments which the instrument makes to the 2009 Act.

6.5 Amendments are made to the 2011 Regulations that are also consequential to the amendments this instrument makes to the list of licensable activities in section 66 of the 2009 Act. These changes ensure that the existing provisions apply to the new licensable activities where relevant.

6.6 The enabling power at section 66(3) of the 2009 Act is being used for the first time in this instrument. This power allows for the Secretary of State (as appropriate licensing authority) by order to amend the list of licensable activities at section 66(1) to add or remove activities, for the area for which Secretary of State is the licensing authority, which includes ABNJ. The enabling powers at sections 66(3A) and (3B) of the 2009 Act are also being used for the first time in this instrument. Sections 66(3A) and (3B) were added to the 2009 Act by section 20 of the Biodiversity Beyond National Jurisdiction Act 2026 ("the 2026 Act"). Section 66(3A) allows an order made under section 66(3) to designate new activities as activities added in contemplation of the

UK's obligations under Parts III or IV or the BBNJ Agreement. Section 66(3B) specifies that if a new activity has been added under section 66(3) and designated under section 66(3A), the consequential etc provision that may be made under section 316(1)(b) includes provision amending primary or secondary legislation whenever passed or made.

Why was this approach taken to change the law?

6.7 Articles 1 and 2 of the instrument are stand-alone provisions, and the remaining provisions in the instrument consist of amendments; this is the most suitable option for making these legislative changes. The powers set out in paragraph 6.6 only allow for new activities to be added to licensing by means of amendments to the 2009 Act. Where instruments have previously created new exemptions, they have done so by amending the 2011 Order, rather than by means of a free-standing instrument, and so it is appropriate for the same approach to be taken in this instrument.

6.8 This instrument adds a new licensing exemption at Article 39 in the 2011 Order which refers to provision in the Marine Works (Environmental Impact Assessment) Regulations 2007. The provision in the 2007 Regulations is amended by section 21 of the 2026 Act. Section 21 is not yet in force and will be commenced by regulations providing for it to enter into force on the date on which the BBNJ Agreement enters into force for the UK which is also the date on which this instrument will enter into force – see Article 1(1).

7. Consultation

Summary of consultation outcome and methodology

7.1 On 21 November 2025, Defra and the Scottish Government launched a joint public consultation on 'the implementation of Part IV of the Biodiversity Beyond National Jurisdiction Agreement concerning EIAs in areas beyond national jurisdiction'.[3] The consultation lasted 4 weeks and closed on the 19 December 2025. The consultation was hosted on the online platform Citizen Space, and Defra also received email responses.

7.2 The summary of responses and government response was published on 2 April 2026.[4]

7.3 The purpose of the consultation was to seek views on the proposed approach to extend marine licensing to include more activities in ABNJ, as well as to seek evidence on the activities occurring in ABNJ and their impact, and views on licence exemptions in relation to activities in ABNJ. For certain activities we proposed a bespoke approach to regulation in ABNJ. The proposed approach to secondary legislation is consistent with what was proposed in the consultation, but we have made changes to our approach to marine scientific research (MSR).

7.4 We received 22 responses in total, from marine industries (with the majority from the cables sector), research organisations, eNGOs, independent consultants and Arm's Length Bodies. The majority of respondents (17/22) supported the overall approach to extend marine licensing to ABNJ and maintain current exemptions in ABNJ. The

[3] Consultation on the implementation of Part IV of the Biodiversity Beyond National Jurisdiction Agreement concerning Environmental Impact Assessments in areas beyond national jurisdictions: https://consult.defra.gov.uk/marine-licensing-and-reform/implementation-of-part-iv-of-the-bbnj-agreement/supporting_documents/consultation-on-the-implementation-of-part-iv-of-the-bbnj-agreement-for-publication-final-20251121pdf.

[4] https://www.gov.uk/government/consultations/implementing-part-4-of-the-biodiversity-beyond-national-jurisdiction-agreement/outcome/summary-of-responses-and-government-response

majority of respondents also supported our activity specific approaches, including developing specific licensing exemptions for subsea cables and MSR. Respondents were either neutral or supported the approach to spaceflight deposits.

7.5 While respondents were supportive of the approach to exempt MSR from government vessels, our further consideration of this option has since indicated that this exemption is unsuitable at this time.

7.6 The main concern about our overall approach expressed primarily by eNGOs and independent consultants was that the approach should be more robust and require more activities to obtain a marine licence. After reviewing all responses, we believe that our proposed approach is proportionate and enables us to meet the BBNJ Agreement's requirements without introducing unnecessary burden to regulators or industry.

8. Applicable Guidance

8.1 Statutory guidance will not be provided for this secondary legislation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business. A De Minimis Assessment (DMA) has been produced and published on legislation.gov.uk because the Equivalent Annual Net Direct Cost to Business is estimated at £0.085m, considerably below the £10m threshold. This is robust to a worst-case scenario sensitivity.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies. The estimated number of businesses in scope remains small, reflecting the specialised nature of operations in ABNJ. 113 distinct companies are expected to undertake at least one ABNJ activity within scope over the 10-year appraisal period. In addition, telecommunication cable laying, maintenance and removal which is likely to take place in ABNJ is exempt from a marine licence, so the cable industry will not be impacted by any changes in this secondary legislation.

9.3 At this stage, this instrument is not expected to have a disproportionate impact on small or micro businesses (SMBs). The number of UK-linked SMBs currently operating in ABNJ is expected to be very low. This assumption is based on a very small number of total companies likely currently operating in ABNJ, and the nature of ABNJ operations, such as offshore construction, and MSR which typically require specialised equipment, vessel access, and international coordination, making them less accessible to SMBs.

9.4 The BBNJ Agreement does not contain a provision for state parties to exempt SMBs, and so the UK will not be exempting these businesses whilst implementing the BBNJ Agreement. There is no evidence at this stage to suggest that the proposed measures would impose disproportionate burdens on SMBs.

9.5 There will be impacts on the UK public sector. For example, the MMO will be required to regulate more activities in ABNJ. While this may increase the MMO's workload, not many activities are considered likely to require screening by the MMO in ABNJ.

9.6 Environmental impacts: The effect of this policy is to have greater control and understanding of the types of activities that take place in areas beyond national jurisdiction. The policy will require applicants to consider the environmental effects of their activities in a similar way to what is required for activities within national jurisdiction. The effect of this will lead to more projects potentially being screened to consider their environmental impacts and will enable regulators to see what activities are happening and identify appropriate mitigations to limit the potential environmental impacts where necessary.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through assessments carried out by Defra on how the UK has met its obligation and objectives via feedback from the relevant BBNJ Agreement compliance mechanisms and subsidiary bodies under the Agreement. Stakeholder engagement and review of licensing applications are also expected to highlight any new activities that should be brought into scope of the EIA regime in ABNJ, and if legislative changes are proportionate or have any unintended or unexpected impacts on business.

10.2 Given the expected low level of impact to business the instrument does not include a statutory review clause. As outlined in the Impact Assessment for the BBNJ Act, the Act will be subject to post-legislative scrutiny after five years, and we will review the associated secondary legislation as part of this process.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument relates to the 2026 Scotland Order, which was made on 25 March 2026 and will come into force on the day in which the BBNJ Agreement enters into force for the UK (which is also the day on which this instrument comes into force). The 2026 Scotland Order makes amendments to Scottish marine licensing legislation in relation to activities in ABNJ which are within Scottish competence. In particular, it adds new licensable activities to section 21 of the 2010 Act.

11.2 At Article 13 of this instrument, an exemption is inserted into the 2011 Order for certain activities specified in section 21 of the 2010 Act, as that section will have effect on the day in which this instrument comes into force. The exemption includes references to activities added by the 2026 Scotland Order. The 2026 Scotland Order will come into force on the date on which the BBNJ Agreement enters into force for the UK.

11.3 This instrument adds a new licensing exemption at Article 39 in the 2011 Order which refers to provision in the Marine Works (Environmental Impact Assessment) Regulations 2007. The provision in the 2007 Regulations is amended by section 21 of the 2026 Act. Section 21 is not yet in force and will be commenced by regulations providing for it to enter into force on the date on which the BBNJ Agreement enters into force for the UK which is also the date on which this instrument will enter into force – see Article 1(1).

11.4 This instrument amends primary legislation, where the power in section 66(3) of the 2009 Act is used to amend the list of licensable activities at section 66(1) of that Act. Consequential amendments to sections 66, 69 and 71 and are also made, using the powers at sections 316(1)(b) read with 66(3B) of the 2009 Act.

12. European Convention on Human Rights

12.1 Emma Hardy MP, Parliamentary Under-Secretary of State at the Department for Environment Food and Rural Affairs has made the following statement regarding Human Rights: “In my view the provisions of The Marine Licensing (Miscellaneous Provisions) (Amendment etc.) Order 2026 are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).