POLICY NOTE

THE MARINE LICENSING (EXEMPTED ACTIVITIES) (SCOTTISH INSHORE REGION) AMENDMENT ORDER 2026

SSI 2026/165

The above instrument was made in exercise of the powers conferred by sections 32(1) and 165(1) of the Marine (Scotland) Act 2010. The instrument is subject to affirmative procedure.

Summary Box

The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 ("Exempted Activities Order") sets out activities that are exempt from the requirement for a marine license under Part 4 of the Marine (Scotland) Act 2010 or will be exempt if specified conditions are satisfied. This includes an exemption for the deposit of certain types of equipment and substances in relation to fish and shellfish farming.

The purpose of this Order is to reduce regulatory duplication by extending the existing exemption on the deposit of any substance which is liable to cause pollution of the water environment from 0 – 3 nautical miles to 0 – 12 nautical miles, following identification of the Scottish Environment Protection Agency as the regulator for fish farm environmental discharges between 3 – 12 nautical miles via The Environmental Authorisations (Scotland) Amendment Regulations 2026.

The Order also amends the exemption on the deposit of fish and shellfish farm equipment, to confirm that the exemption applies to all equipment used directly in the course of the propagation or cultivation of fish and shellfish, where the relevant conditions on the application of the exemption are met and introduces a new condition that, in order for the exemption to apply to a deposit of equipment, it must be authorised by and carried out in accordance with a planning permission.

Policy Objectives

The policy purpose is to make amendments to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (the Exempted Activities Order) relating to the licensing of fish farm deposits providing clarity on the application of the Exempted Activities Order, reducing duplication in the overall consenting process.

The Exempted Activities Order sets out activities that are exempt from the requirement for a marine license under Part 4 of the Marine (Scotland) Act 2010 or will be exempt if specified conditions are satisfied. In relation to fish and shellfish farming, this includes an exemption for the deposit of certain types of equipment and substance which is liable to cause pollution of the water environment.

The objective of the Exempted Activities Order, as set out in the corresponding Executive Note[1] is; "to exempt day to day activities, ensure compatibility with international and domestic law, avoid regulating the same activity twice and enable emergency action to be carried out without damaging delay."

In regards to the deposit of substance which is liable to cause pollution of the water environment, an exemption currently exists for this activity between 0 -3 nautical miles, as this activity is regulated by the Scottish Environment protection Agency by SEPA under The Environmental Authorisations (Scotland) Regulations 2018 ("EASR").

A separate Scottish Statutory Instrument - The Environmental Authorisations (Scotland) Amendment Regulations 2026 – will provide for SEPA also to regulate the discharge of substances from fish farms into the water environment between 3-12 nautical miles as part of the integrated framework under EASR.

The amendments made in this Order are to extend the existing exemption on the deposit of any substance which is liable to cause pollution of the water environment from 0 – 3 nautical miles to 0 – 12 nautical miles, following identification of SEPA as the regulator for fish farm environmental discharges between 3 – 12 nautical miles.

The Order also amends the exemption on the deposit of fish and shellfish farm equipment, to confirm that the exemption applies to all equipment used directly in the course of the propagation or cultivation of fish and shellfish, where the relevant conditions on the application of the exemption are met and provides a condition that deposit of equipment must be authorised by and carried out in accordance with a planning permission.

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

The Scottish Ministers have made the following statement regarding children's rights.

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 (Exempted Activities) (Scottish Inshore Region) Amendment Order 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government sought public and stakeholders' views on proposals to amend the current exemption within the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (the Exempted Activities Order) for the deposit of substance from fish farms which is liable to cause pollution of the water environment out to 12 nautical miles

[1] https://www.legislation.gov.uk/ssi/2011/204/pdfs/ssien_20110204_en.pdf

through a 12-week public consultation. Key stakeholders with a known interest in the issue were contacted directly to alert them to the consultation.

Of the 27 respondents, 17 indicated their agreement with the proposal that the existing marine licence exemption for deposit of substance from fish farms, which is liable to cause pollution of the water environment, be extended to cover waters out to 12 nautical miles, 8 indicated that they were not in agreement and 2 respondents did not answer the question. 23 of the respondents who answered provided additional comments.

A number of respondents who agreed with the proposals commented that the amendments would provide consistency in the consenting system and remove duplication.

The respondents who disagreed noted that while extending the exemption would reduce duplication the Marine Licence provides a stage in the consenting process where the public can comment on applications, there was also the suggestion that the Marine Licence should only be exempted after SEPA has granted its licence and are content that no harm would be done. These concerns were fully considered and Scottish Government responses to these have been included in the consultation report[2].

The consultation also sought views on the proposals to make amendments to the Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 (the Exempted Activities Order) relating to the licensing of deposits of fish and shellfish farm equipment

Of the 27 respondents, 22 agreed that the wording of The Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011 should be updated in regards to the deposit of equipment used in the course of the propagation or cultivation of fish and shellfish to provide businesses with clarity in determining whether the exemption may apply to a development, 3 indicated they were not in agreement and 2 did not answer the question. 22 of the respondents provided further comments.

A number of respondents who agreed with the proposals commented that the amendments would provide clarity for all, that the wording should include all farm equipment. Others indicated their support but would like to see the exemptions tightened and for it to include wording on regulation and conditions attached to the license.

The respondents who disagreed noted that the exemption should not be applied if there is any risk of environmental harm.

Having reviewed the comments made and seeking further input from respondents where necessary, Scottish Ministers have decided to enact the proposals to extend marine planning zones.

A full list of those consulted and who agreed to the release of this information is included in the consultation report published on the Scottish Government website[3], it includes:

Aquaculture Sector
Community Groups

[2] https://www.gov.scot/isbn/9781806436552
[3] https://consult.gov.scot/marine-directorate/regulation-of-fish-and-shellfish-farm-deposits/

Environmental/Animal Welfare Groups
Fisheries Groups
Individuals
Local Authorities
Other Marine Organisations
Other Public Bodies

Impact Assessments

Relevant impact assessments and impact assessment screenings were undertaken and published alongside the consultation paper[4]. Following the consultation updates were made to the Business and Regulatory Impact Assessment, Childs Rights and Wellbeing Impact Assessment and Island Communities Impact Assessment Screening

Following screening the following full impact assessments were scoped out:

Equalities Impact Assessment
Fairer Scotland Duty (FSD) Assessment
Strategic Environment Assessment
Island Communities Impact Assessment

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on businesses is that they may benefit from a reduction in regulatory burden and administrative costs associated with unifying the 3 – 12 nautical mile consenting process with the 0 – 3 nautical mile consenting process. This could result in time savings for businesses as they will already be aware of the existing regulations and regulatory body, so will not have to familiarise themselves with new, or changing, regulations or regulatory processes.

Amending the application of marine licence exemptions may also reduce regulatory burden for businesses, through reduction in regulatory duplication. This is likely to have similar time-saving benefits as outlined above, as businesses will need to spend less time consulting regulations owing to the increased clarification amending the exemption regulations will provide.

The Order will not introduce additional costs on businesses.

Scottish Government
Marine Directorate

29 January 2026

[4] https://www.gov.scot/publications/regulation-fish-shellfish-farm-deposits-consultation/