

# **Divers & Marine Licensing: The Marine (Scotland) Act 2010 and the Marine & Coastal Access Act 2009**

## **NAS Interim Statement: October 2011**

### **Introduction**

On 6th April 2011 Part 4 of the Marine (Scotland) Act 2010 and Part 4 of the Marine and Coastal Access Act 2009 (the Acts) introduced a new regulatory regime for Marine Licensing in Scottish Seas. This regime requires divers to apply for a marine licence in order to carry out certain activities which divers did not previously require a licence to undertake.

The Marine (Scotland) Act covers the Scottish inshore region from Mean High Water Springs (MHWS) to 12 Nautical Miles. The Marine and Coastal Access Act covers the UK offshore region from 12 to 200 Nautical Miles.

This Interim Statement, produced in consultation with Marine Scotland, outlines the new legislative provisions and associated exemptions.

### **Introductory Outline**

The Acts state that no one may carry out a “*licensable marine activity*” in the UK Marine Licensing Area or the Scottish Inshore Region<sup>1</sup> except in accordance with a marine licence. In Scottish waters (from 0 – 200 Nm) marine licenses are administered by the Marine Scotland Licensing Operations Team (MS LOT).

The Acts list a number of activities which are licensable marine activities and for which a marine licence would be required.

However, the *Marine Licensing (Exempted Activities) (Scottish Inshore Region) Order 2011* and the *Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011* grant a number of exemptions to licensable activities.

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<sup>1</sup> The UK Marine Licensing Area comprises all United Kingdom marine waters out to the continental shelf with the exception of Scottish inshore waters. In addition, certain activities are licensable wherever carried out if they are carried out by British vessels, vehicles, aircraft, marine structures or floating containers or if the vessels etc have been loaded in the United Kingdom.

## **Licensable marine activities potentially affecting Divers**

Within the Acts there are a number of activities described as *licensable marine activity*. These include:

*To deposit any substance or object... either in the sea or on or under the seabed, from any of the following:*

- (a) a vehicle, vessel, aircraft or marine structure,*
- (b) a container floating in the sea, or*
- (c) a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids on the sea.*

*To use a vehicle, vessel, aircraft, marine structure or floating container to remove any substance or object from the sea bed within the UK marine licensing area.*

*To carry out any form of dredging within the UK marine licensing area or the Scottish Inshore Region (whether or not involving the removal of any material from the sea or sea bed)\**

\* ‘Dredging’ is defined as including the use of any device to move any material (whether or not suspended in water) from one part of the seabed to another part.

## **The Marine Licensing (Exempted Activities)(Scottish Inshore Region) Order 2011 and the Marine Licensing (Exempted Activities) (Scottish Offshore Region) Order 2011**

These Statutory Instruments, made under powers granted by the Acts, grant a number of exemptions to activities which would otherwise require a marine licence.

In the context of recreational diving, these activities are exempt:

### **1. Salvage activities**

*Article 7 of the inshore order and Article 8 of the offshore order apply to an activity carried on, in the course of a salvage operation, for the purpose of ensuring the safety of a vessel or preventing pollution.*

#### **Comment:**

This would allow a diver to recover objects which posed a threat of pollution.

### **2. Deposits in the course of normal navigation or maintenance**

*Article 23 of the inshore order and Article 18 of the offshore order apply to a deposit from a vehicle, vessel, aircraft or marine structure in the course of its normal navigation or maintenance.*

*These articles do not apply--*

- (a) to any such deposit made for the purpose of disposal;*
- (b) to the deposit or use of any explosive substance or article.*

**Comment:**

This would permit anchoring in the course of navigation but not the placing of a permanent mooring, which is only exempt if done by certain authorities. The deposit of shot weights and temporary moorings for the purpose of placing divers in specific locations and to provide a safe mode of descent and ascent are considered to be within the scope of the exemption.

**3. Diver trails within restricted areas**

There is no corresponding exemption for Scottish waters to Article 26 of the Marine Licensing (Exempted Activities) Order 2011 as it relates to diver trails in other parts of the UK. For this reason, the laying of diver trails is currently a licensable marine activity in the Scottish Inshore and Offshore Regions.

**4. Deposit and use of flares etc--safety purposes and training**

*Articles 31 of the inshore order and 22 of the offshore order apply to the deposit or use of any distress flare, smoke float or similar pyrotechnic:*

- (a) securing the safety of a vessel, aircraft or marine structure,*
- (b) saving life, or*
- (c) training for any purpose referred to in paragraph (a) or (b).*

**Comment:**

This permits the use of distress flares etc to save life or to secure the safety of a vessel, or for use in associated training.

**5. Use of a vehicle or vessel to remove any substance or object from the seabed**

A licence is *not normally required* if a free swimming diver removes an object or substance from the seabed. Neither is a licence required if a diver removes an object or substance and carries it across the foreshore to a vehicle.\*

A licence will be required if:

- A vessel, vehicle etc. is used to transport, tow, winch or raise from the seabed an object or substance from a position below MHWS during any part of a removal operation.
- A vehicle is used to carry or drag the object or substance across the foreshore from below MHWS.

*\*Note – Scallops and other shellfish are not considered to be ‘substances or objects’ and their collection is not covered by this legislation.*

### **Meaning of seabed**

The seabed includes any structure lying on the seabed. Therefore where a wreck is resting on the seabed any part of that wreck will be on the seabed for the purposes of the Acts, even if that part of the wreck rises above the seabed.

### **Sites designated under s.1 Protection of Wrecks Act 1973**

Contrary to previous guidance if a marine licensable activity is conducted on such a designated site then a marine licence *will be required, in addition to any licence granted under the PWA 1973.*

### **Other Consents**

Similarly, where other licences (such as under the Protection of Military Remains Act 1986) or consents (such as from a Harbour Authority or the Crown Estate) have been obtained, if a marine licensable activity is conducted on such a designated site then a marine licence *will be required, in addition.* The Marine Licensing regime is a separate, stand alone regulatory scheme and other licences or consents *do not* remove the need for a marine licence where a marine licensable activity is being conducted.

### **Dredging**

Hand fanning or the use of a hand trowel by divers does not constitute dredging within the meaning of the Acts. However, use of an airlift or water dredge will constitute dredging and will require a licence, even on a site designated under the 1973 Act.

### **NOTE:**

This clarification is **not** comprehensive, and is merely the result of consultation with Marine Scotland. It should not be used as legal advice, as Marine Scotland are continuing to formulate more comprehensive guidance for divers. Any queries relating to marine licensing should be

emailed to the Marine Scotland Licensing Operations Team directly at: [ms.marinelicensing@scotland.gsi.gov.uk](mailto:ms.marinelicensing@scotland.gsi.gov.uk)

Marine Scotland is keen to develop a close working relationship with the recreational, archaeological and scientific diving communities. To this end the Marine Scotland will be consulting further with these communities and in due course more comprehensive guidance and legislation will emerge. Once formal guidance for divers has been finalised, it will be made available on the Marine Scotland website.