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## **Net Zero, Energy and Transport Committee**

# **Net Zero, Energy and Transport Committee report on the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 (draft)**



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# Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport and the Cabinet Secretary for Climate Action and Energy, with the exception of matters relating to just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



[netzero.committee@parliament.scot](mailto:netzero.committee@parliament.scot)



0131 348 6039

# Committee Membership



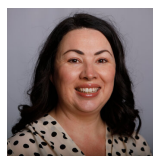
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Scottish Green Party



**Kevin Stewart**  
Scottish National Party

# Introduction

1. The Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 (draft) was laid before the Scottish Parliament by the Scottish Government on 20 February 2026. It is subject to the affirmative procedure, which means it cannot be made unless it has been approved by a resolution of the Parliament.
2. As lead Committee, it is for the Net Zero, Energy and Transport Committee, to decide whether or not to recommend approval. On 20 February, the Cabinet Secretary for Rural Affairs, Land Reform and Islands lodged motion [S6M-20874](#) — That the Net Zero, Energy and Transport Committee recommends that the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 [draft] be approved.

## About the instrument

3. The purpose of the instrument is to amend the Marine (Scotland) Act 2010 (“the 2010 Act”) to expand the licensable marine activities to include activities carried out or controlled by ‘Scottish persons’ in Areas Beyond National Jurisdiction (ABNJ), i.e. beyond 200 nautical miles.
4. If the instrument is approved, licensable activities in ABNJ will include all those categories which are currently licensable only in the Scottish marine area. These categories include the licensing of the 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’.
5. “Scottish person” is defined in the draft Regulations as meaning:
  - “(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”
6. The policy note states that the instrument is required to implement Part IV of the Biodiversity Beyond National Jurisdiction (BBNJ) Agreement (sometimes also known as the “High Seas Treaty”).
7. The BBNJ Agreement is a treaty agreed in 2023 under the framework of the United Nations Convention on the Law of the Sea 1982. Part 3 of the BBNJ agreement, which relates to measures such as area-based management tools, including marine protected areas, includes the objective (Article 17) to: “Conserve and sustainably use areas requiring protection, including through the establishment of a comprehensive system of area-based management tools, with ecologically representative and well-connected networks of marine protected areas.” The policy note states that 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
8. The NZET Committee previously took evidence from the Cabinet Secretary for Climate Action and Energy on the Scottish Government’s LCM on the Biodiversity Beyond National Jurisdiction Bill, now [the Biodiversity Beyond National Jurisdiction Act 2026](#) – the Act received Royal Assent on 12 February 2026. That Act amended the Marine (Scotland) Act 2010 to provide powers to Scottish Ministers to make regulations relating to Scottish licensable marine activities for the purpose of implementing Part IV of the BBNJ Agreement. The instrument utilises these new powers.
9. The policy note states that the instrument will ensure that the UK and Scotland can meet BBNJ EIA obligations, while keeping the regulation of activities taking place in ABNJ proportionate.

10. The Regulations also introduce certain new exemptions (these include: activity which does not meet the EIA threshold set in the BBNJ Agreement, cable laying, cable maintenance and cable removal activity in ABNJ).
11. The policy note also states that amendments made through this instrument are intended to mirror the approach taken by the UK Government where appropriate. It also says that double regulation (i.e. the regulations by both the UK and Scottish Governments) 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.
12. The instrument also amends the Marine Licensing (Register of Licensing Information) (Scotland) Regulations 2011 to reflect the new licensable activities under the 2010 Act.

## Consideration by the DPLR Committee

13. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
14. The DPLR Committee considered the instrument on 3 March 2026 and reported on it in its [22<sup>nd</sup> Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

# Consideration by the Net Zero, Energy and Transport Committee

15. At its meeting on 17 March, the Net Zero, Energy and Transport Committee took evidence on the instrument from:
  - Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands;
  - Michael Bland, Streamlining and Policy Section Head, Licensing Operations Team, Scottish Government; and
  - Dr Joanna Dingwall, Head of the Marine Renewables & Law of the Sea Branch, Scottish Government.
16. The official report of the meeting on 17 March will be available on the Committee's [website](#) in due course.
17. In her opening remarks, the Cabinet secretary said the Scottish Government is committed to meeting its obligations under the BBNJ agreement, which aims to conserve and sustainably use marine biodiversity in ABNJ to support the delivery of global biodiversity and climate goals. The Cabinet Secretary went on to explain the other aspects of the instrument as set out above.
18. Finally, she highlighted that the SSI and the EIA changes covered by the BBNJ Act will provide the framework for meeting the BBNJ EIA requirements in a proportionate way, which honours devolution and enables the UK to join that agreement to which the UK is already a signatory ahead of the first Conference of the Parties, which will take place later this year.
19. The Committee asked whether the Scottish government was responsible for policing Scottish persons in breach of licensable marine activities introduced by the instrument. The Cabinet Secretary said that the Scottish Government was still to assess what relevant activities in the area of the high seas might look like, but the instrument puts in place a framework to screen such activities against the EIA requirements. She also noted that the Scottish Government would gather more of that information from the Conference of the Parties. However, she noted that from the consultation that the Scottish Government had undertaken, there are very few Scottish actors operating in that space at the moment. The Cabinet Secretary confirmed that monitoring and enforcement, where it relates to Scottish persons, would be carried out by the Scottish Government as the licensing authority.
20. The Committee discussed the kinds of controlled activities covered by the instrument, noting that some of these involve the dumping of certain substances or objects. The Committee asked if the Scottish Government had assessed whether these kinds of activities were currently taking place in the ABNJ, and if any specific sector was responsible. The Cabinet Secretary explained that the licensing activities covered by the instrument include exemptions for key sectors, including fisheries, and that these sectors are already governed by other pieces of legislation. She noted that the instrument was about ensuring that Scotland has a framework to enable the Scottish Government to better regulate certain activities or to screen activities that could be taking place in the high seas, rather than assess the extent

of those activities at the moment. Scottish Government officials also stated that Scotland already has a robust marine licensing regime that covers deposits anywhere at sea between Scottish Ministers' licensing and the Marine Management Organisation<sup>i</sup>.

21. The Committee asked whether Scotland's existing licensing regime covered the pelagic sector operating in international waters or whether there is a regulatory gap. The Cabinet Secretary stated that there was no gap because fishing activity is already governed by other licensing and regulations, regardless of where that takes place.
22. Finally, while acknowledging that fishing is exempt from this instrument, the Committee asked whether there would be any other impacts on fisheries or fishing communities from any of the licensing activities covered by the instrument. The Cabinet Secretary said that no issues had been raised with the Scottish Government, including from the Scottish Fishermen's Federation.

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<sup>i</sup> The Marine Management Organisation is responsible for marine licensing in English waters, Northern Ireland offshore waters, and some activities in other parts of the world.

## Conclusion

23. Following the conclusion of evidence taking, the Cabinet Secretary moved motion [S6M-20874](#) in her name — That the Net Zero, Energy and Transport Committee recommends that the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 [draft] be approved.
24. There being no further contribution from Members, the motion was agreed to without division.

### Recommendation

25. The Net Zero, Energy and Transport Committee recommends to the Parliament that the Marine Licensing (Miscellaneous Amendment) (Scotland) Order 2026 [draft] be approved.

